except that an Owner or other Resident of a Dwelling may conduct a business activity within a Dwelling so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Community; (iii) the business activity does not involve persons coming on to the Unit or the door-to-door solicitation of Owners or other Residents in the Community and; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Community, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a provider's Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Dwelling by the Unit's Owner thereof shall not be considered a trade or business within the meaning of this Section

4.13 **Animals** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Unit, except that two (2) dogs, cats, parakeets (or similar household birds) or common domestic pets may be kept on a Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Unit except that a dog or cat may be permitted to leave an Owner's Unit if such dog or cat is at all times kept on a leash not to exceed six (6) feet in length and is not permitted to enter upon any other Unit No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property Upon the written request of any Owner or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Unit's Owner, Resident or other person who brings or permits an animal to be on the Common Elements or any Unit shall be responsible for immediately removing any solid waste deposited by said animal

4.14 **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit, except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Community

4.15 **Signs** No signs whatsoever (including commercial, political, "for sale," "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Unit except

(i) Signs required by legal proceedings;

(ii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee, and

(iii) One (1) "For Sale" sign provided, the size, color, design, message content, location and type has been approved in writing by the Architectural Committee

4.16 **Restriction on Further Subdivision, Property Restrictions and Rezoning** No Unit shall be further subdivided or separated into smaller units or parcels by any Unit's Owner other than the Declarant, and no portion less than all of any such Unit shall be conveyed or transferred by any Unit's Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be Recorded by any Unit's Owner or other Person other than the Declarant against any Unit without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Unit shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration

4.17 **Trucks, Trailers, Campers and Boats**. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; and (ii) boats and vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair.

4.18 **Motor Vehicles**.

4.18.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Unit or other property in the Community, and no inoperable vehicle may be stored or parked on any such Unit so as to be Visible From Neighboring Property or to be visible from any Common Element or any street.

4.18.2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Community except in garages of Units.

4.18.3 The parking of any motor vehicle on streets and within the Limited Private Utility and Access Easement is prohibited.

4.19 **Towing of Vehicles**. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit's Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

4.20 **Drainage** No Dwelling, structure, building, landscaping, fence, wall or other improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Community, or any part thereof, or for any Unit as shown on the drainage plans on file with the county or municipality in which the Community is located.

4.21 **Garages and Driveways** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

4.22 **Rooftop Air Conditioners Prohibited**. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other building so as to be Visible From Neighboring Property without the prior written consent of the Architectural Committee

4.23 **Leasing**.

4.23.1 Subject to the terms of this Section, an entire Unit may be leased to a lessee from time to time by a Unit's Owner provided that each of the following conditions is satisfied

(i) The lease or rental agreement must be in writing.

(iii) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration and the other Governing Documents and that any violation of any of the foregoing shall be a default under the lease or rental agreement.

(iii) Before commencement of the lease term or rental agreement, the Unit's Owner shall provide the Association with the names of the lessees and each person who will reside in the Dwelling and the address and telephone number of the Unit's Owner.

4.23.2 Any Unit's Owner that leases or rents such Unit's Owner's Unit shall keep the Association informed at all times of the Unit's Owner's address and telephone number. Any lease or rental agreement shall be subject to the Governing Documents, and any breach of the Governing Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any lessee breaches any restriction contained in the Governing Documents, the Unit's Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the lessee. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and the Governing Documents.

4.24 **Restrictions on Landscaping within Dewatering Easement.** Underground pipes have been installed on certain Units within areas designated on the Plat as "10' Dewatering Easement." No trees shall be planted or maintained within the 10' Dewatering Easement area, and only ground cover, grass and small shrubs will be permitted within such easement areas. If any landscaping within the 10' Dewatering Easement is damaged or destroyed in the course of maintaining the underground pipes, each Unit Owner, at its sole cost and expense, shall be responsible for the repair of such damage.

4.25 **Variances; Diminution of Restrictions.** The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this **Article 4** if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit's Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Unit's Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. If any restriction set forth in this **Article 4** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

4.26 **Change of Use.** Upon (i) adoption of a resolution by the Board of Directors stating that in the Board of Directors' opinion the then present use of a designated part of the Common

Elements is no longer in the best interests of the Units' Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such part of the Common Elements under the terms of this Declaration, the Board of Directors shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board of Directors to accommodate the new use), provided such new use shall be for the benefit of the Units' Owners and shall be consistent with any zoning regulations restricting or limiting the use of that part of the Common Elements.

ARTICLE 5

MAINTENANCE AND REPAIR OF

COMMON ELEMENTS AND UNITS

5.1 **Duties of the Association**

5.1.1 The Association shall maintain, repair and replace all Common Elements. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Common Elements, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Section.

5.1.2 The Association shall maintain, repair and replace (i) all paving and curbing Improvements lying within the Limited Private Utility and Access Easements (specifically excluding any portion thereof which constitutes a driveway located between such curbing and the Dwelling), (ii) all portions all private sewer and water lines and appurtenant facilities and all other utility Improvements lying within the Limited Private Utility and Access Easements and not maintained by a utility company (the Improvements in (i) and (ii) being collectively referred to herein as the "Easement Improvements"), and (iii) those portions of Dewatering System lying within the Community. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Easement Improvements and those portions of the Dewatering System lying within the Community, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Subsection.

5.2 **Duties of Unit's Owners.**

5.2.1 Each Unit's Owner shall maintain, repair and replace, at such Unit's Owner's expense, all portions of such Unit's Owner's Unit and all Improvements situated thereon

not required to be maintained, repaired and replaced by the Association pursuant to **Section 5.1** in good condition and repair, including grass, hedges, shrubs, vines, plants and other landscaping. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Units upon which no Dwelling has been constructed shall be maintained in a weed free and attractive manner.

5.2.2 Each Unit's Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon and the Easement Improvements which results from the negligence or willful conduct of the Unit's Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit's Owner shall be paid by the Unit's Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 **Unit's Owner's Failure to Maintain.** If a Unit's Owner fails to maintain the Unit's Owner's Unit in good condition and repair as required by this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit's Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit's Owner pursuant to **Subsection 7.2.4** of this Declaration.

5.4 **Common Walls.** The rights and duties of Unit's Owners of Units with respect to common walls shall be as follows:

5.4.1 The Units' Owners of contiguous Units who have a common wall shall both equally have the right to use such wall provided that such use by one Unit's Owner does not interfere with the use and enjoyment of same by the other Unit's Owner;

5.4.2 If any common wall is damaged or destroyed through the act of a Unit's Owner, it shall be the obligation of such Unit's Owner to rebuild and repair the common wall without cost to the other Unit's Owner or Units' Owners;

5.4.3 If a common wall is damaged or destroyed by some cause other than the act of one of the adjoining Units' Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then all adjoining Units' Owners shall rebuild or repair the common wall at their joint and equal expense;

5.4.4 The right of any Unit's Owner to contribution from any other Unit's Owner under this Section shall be appurtenant to the land and shall pass to such Unit's Owner's successors in title.

5.4.5 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit's Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Units' Owners; and

5.4.6 If any common wall encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Units' Owners of the Units which share such common wall.

5.5 **Maintenance of Walls other than Common Walls.**

5.5.1 Walls (other than common walls) located on a Unit shall be maintained, repaired and replaced by the Unit's Owner.

5.5.2 Any wall which is placed on the boundary line between a Unit and the Common Elements shall be maintained, repaired and replaced by the Unit's Owner, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Elements.

5.5.3 Any wall which is placed on the boundary line between a Unit and public right-of-way, the outside of which is decorative (i.e., patterned block or stuccoed and or painted) as installed by Declarant to promote the identity of the Community, shall be maintained, repaired and replaced by the Unit's Owner except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way. Any such wall, the outside of which is not decorative, shall be maintained, repaired and replaced by the Unit's Owner.

ARTICLE 6

THE ASSOCIATION

6.1 **Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a Nevada nonprofit corporation. The Association shall be the entity through which the Units' Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital improvements in the Community by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit's Owners representing more than fifty percent (50%) of the votes in the Association.

6.2 **Directors and Officers.**

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, whom do not have to be Units' Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Units' Owners shall elect the Board of Directors which must consist of at least three (3) members, at least a majority of whom must be Units' Owners. The Board of Directors elected by the Units' Owners shall then elect the officers of the Association.

6.2.3 The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.2.4 No later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created to Units' Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created to Units' Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant.

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given and taken by the Board of Directors. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, shall have the power to levy reasonable fines against a Unit's Owner for a violation of the Governing Documents by the Unit's Owner, a guest of the Unit's Owner, a lessee of the Unit's Owner or by any Resident of the Unit's Owner's Unit.

6.3 **Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations (collectively, the "Rules"). Except as otherwise provided in this Declaration or under the Act, the Rules may, among other things, restrict and govern the use of any area by any Unit's Owner, by the family of such Unit's Owner, or by any invitee, licensee or lessee of such Unit's Owner.

6.4 **Composition of Members.** Each Unit's Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the

Units' Owners. A Unit's Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit's Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit's Owner's ownership ceases for any reason, at which time, such Unit's Owner's membership in the Association shall automatically cease.

6.5 **Personal Liability**. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 **Implied Rights**. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

6.7 **Voting Rights**. Subject to **Section 6.8** below, each Unit's Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit's Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and or Bylaws.

6.8 **Voting Procedures**. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit's Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit's Owner was acting with the authority and consent of all other Unit's Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 **Transfer of Membership**. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as

may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit's Owner thereof. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit's Owner of a Unit.

6.10 **Suspension of Voting Rights.** If any Unit's Owner fails to pay any Assessments or other amounts due to the Association under the Governing Documents within fifteen (15) days after such payment is due or if any Unit's Owner violates any other provision of the Governing Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit's Owner of the violation, the Board of Directors shall have the right to suspend such Unit's Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Governing Documents are corrected.

6.11 **Architectural Committee.** The Association may, in the discretion of the Board of Directors from time to time, have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. In the event no Architectural Committee is formed, the Board of Directors shall perform all functions of the Architectural Committee except as provided herein to the contrary or as waived in writing by the Board of Directors. The Architectural Committee shall be a Committee of the Board of Directors. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Unit, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Unit, the members of the Architectural Committee shall be appointed by the Board of Directors. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Unit, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

6.12 **Conveyance or Encumbrance of Common Element.** The Common Elements shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Units' Owners representing at least two-thirds (2/3) of the votes allocated to Units' Owners other than the Declarant.

6.13 **Commencement of Civil Action.** The Association may not commence a civil action without the prior written consent or affirmative vote of Units' Owners to which at least a majority of the votes of the Members of the Association are allocated. At least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Units' Owners that includes a reasonable estimate of the costs of the civil action, including reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced (i) to enforce the payment of an Assessment, (ii) to enforce the Governing Documents, (iii) to proceed with a counterclaim, or (iv) to protect the health, safety and welfare of the Members of the Association

ARTICLE 7

ASSESSMENTS

7.1 **Preparation of Budgets.**

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including contributions to be made to the reserve fund, and (ii) a budget to maintain a reserve fund for the repair, replacement and restoration of the major components of the Common Elements prepared in accordance with applicable law. The budget described in (i) above shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4 or 7.2.5 of this Declaration.

7.1.2 Within thirty (30) days after the adoption of the budgets, the Board of Directors shall send to each Unit's Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit's Owner in accordance with Section 7.2 of this Declaration and shall set a date for the meeting of the Units' Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Units' Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Units' Owners must be continued until such time as the Units' Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit's Owner's obligation to pay such Unit's Owner's

allocable share of the Common Expenses as provided in **Section 7.2** of this Declaration, and each Unit's Owner shall continue to pay the Common Expense Assessment against such Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.2 **Common Expense Assessment.**

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to **Subsections 7.2.4 and 7.2.5** of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in **Section 2.6** of this Declaration, for the purpose of providing funds for the Association to pay Common Expenses. The amount of the Common Expense Assessment assessed pursuant to this **Subsection 7.2.1** shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The maximum Common Expense Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum annual Common Expense Assessment for each Unit shall be eight hundred forty dollars ($840.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Board of Directors may, without a vote of the Members, increase the maximum Common Expense Assessment during each fiscal year of the Association by the greater of (a) fifteen percent (15%) of the maximum Common Expense Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84 = 100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

$$A \times \frac{\text{Consumer Price Index for September of the calendar year immediately preceding the year in which the Common Expense Assessments commenced.}}{}$$

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Common Expense Assessment is to be determined

MOX

X = multiplied by the maximum Common Expense Assessment for the then current fiscal year equals the amount by which the maximum Common Expense Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index that shall be used for computing the increase in the maximum Common Expense Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board of Directors.

(iii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum Common Expense Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with **Subsection 7.2.1** of this Declaration.

7.2.4 If any Common Expense is caused by the misconduct of any Unit's Owner, the Association shall assess that Common Expense exclusively against such Unit's Owner's Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

7.2.6 All Assessments, fines and other fees and charges levied against a Unit shall be the personal obligation of the Unit's Owner of the Unit at the time the Assessments, fines or other fees and charges became due. The personal obligation of a Unit's Owner for Assessments, fines and other fees and charges levied against such Unit shall not pass to the Unit's Owner's successors in title unless expressly assumed by them.

7.3 **Uniform Rate of Assessment.** The amount of the Common Expense Assessment levied against each Unit shall be equal and at the uniform rate established by the Board of Directors, and shall be determined by dividing the budgeted Association funds by the number of

Units then subject to assessment. Accordingly, the Common Expense Assessment shall be allocated to each Unit based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then subject to assessment.

7.4 **Special Assessments.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Units' Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Units' Owners.

7.5 **Assessment Period.** The period for which the Common Expense Assessment is to be levied (the "Assessment Period") shall be the calendar year. The first Assessment Period, and the obligation of the Units' Owners to pay Common Expense Assessments, shall commence upon the first day of the month following the conveyance of the first Unit to a Purchaser and shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors, in its sole discretion from time to time, may change the Assessment Period.

7.6 **Commencement Date of Assessment Obligation.** All Units described on **Exhibit A** to this Declaration shall be subject to Assessments upon the first day of the month following the conveyance of the first Unit to a Purchaser. Units annexed pursuant to **Section 2.8** of this Declaration shall be subject to Assessments on the first day of the month following the date which the amendment annexing the additional Units is Recorded. Upon the annexation of any portion of the Additional Property, the amount of the Common Expense Assessment levied against each Unit shall be recalculated based upon a fraction, the numerator of which is one (1) and the denominator of which is the new number of Units then subject to Assessments.

7.7 **Rules Regarding Billing and Collection Procedures.** Common Expense Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board of Directors. Special Assessments may be collected as specified by the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth in **Section 7.10** below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after

delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment Period, but successor Units' Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Units' Owners.

7.8 **Effect of Nonpayment of Assessments; Remedies of the Association.**

7.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the maximum rate allowable under Nevada law. In addition, the Board of Directors may establish a late fee to be charged to any Unit's Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

7.8.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit's Owner of the Unit; (iii) all fines levied against the Unit's Owner of the Unit, (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit's Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Unit's Owner of a Unit; and (v) any amounts payable to the Association pursuant to **Section 5.2 or 5.3** of this Declaration. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Unit's Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit's Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Unit.

7.8.3 The Assessment Lien shall have priority over all liens and encumbrances except for: (i) liens and encumbrances recorded prior to the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any bona fide First Mortgage Recorded prior to the date the delinquent Assessment(s) first accrued, provided, however, that the Assessment Lien is also prior to any such First Mortgage to the extent of Common Expense Assessments which became due during the six (6) months immediately preceding the date of filing the Notice of Lien described in **Section 7.9** below. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit

through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person except for Common Expense Assessments which became due during the six (6) months immediately prior to the date of filing of the Notice of Default described in **Section** 7.10 below. Any Assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit's Owner of the Unit. Any delinquent Assessments, fines and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense.

7.8.4 Except as otherwise provided in **Section** 7.9 or in the Act, the Association shall not be obligated to release the Assessment Lien as to any portion of Assessments due until all such delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Unit's Owner of the Unit have been paid in full.

7.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including (i) bringing an action at law against the Unit's Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided under the Act. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.9 **Notice of Lien**. No action shall be brought to enforce any Assessment Lien herein unless a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, to the Unit's Owner of the Unit and a copy thereof has been Recorded by the Association. Such Notice of Lien must state (i) the amount of the Assessment and interest, costs (including attorneys' fees) and penalties, (ii) a description of the Unit against which the assessment was made, and (iii) the name of the record Unit's Owner of the Unit. The Notice of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied. However, a lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if a Unit's Owner subject to the lien under this Article files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled under thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Court is lifted.

7.10 **Foreclosure Sale**. In the event that a Unit's Owner has failed to comply with the thirty (30) days written notice provided for in **Section** 7.7 above, the Association may enforce the

lien by sale of the applicable Unit. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens. Unless otherwise permitted by law, no sale to foreclose an Assessment Lien may be conducted until (i) the Association, its agent or attorney has first executed and recorded a notice of default and election to sell the Unit or cause its sale to satisfy the Assessment Lien ("Notice of Default"), and (ii) the delinquent Unit's Owner or such Unit's Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the later of (a) the day on which the Notice of Default is recorded, or (b) the day upon which a copy of the Notice of Default is mailed by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Unit. The Notice of Default must describe the deficiency in payment, the name of the Unit's Owner and a legal description of the Unit. The Association, its agent or attorney shall, after the expiration of such (60) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

7.11 **Curing of Default.** Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Association shall record an appropriate Release of Lien, upon payment by the defaulting Unit's Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of preparing and recording such release.

7.12 **Cumulative Remedies.** The Assessment Liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.13 **Exemption of Unit Owner.** No Unit's Owner may claim an exemption from liability for payment of Assessments, fines and other fees and charges levied pursuant to the Governing Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

7.14 **Certificate of Payment.** The Association on written request shall furnish to a lienholder, Unit's Owner or person designated by a Unit's Owner a Recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit's Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.15 **No Offsets** All Assessments, fines and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, fines, other fees and charges shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or the Act

7.16 **Working Capital Fund**. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Unit's Owner of the Unit, a sum equal to one-sixth (1/6) of the current annual Common Expense Assessment for the Unit Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.17 **Surplus Funds**. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Units' Owners pro rata in accordance with each Unit's Owner's Common Expense Liability or be credited on a pro rata basis to the Units' Owners to reduce each Unit's Owner's future Common Expense Assessments.

7.18 **Transfer Fee**. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Unit's Owner a transfer fee in such amount as is established from time to time by the Board of Directors.

7.19 **Payments Pursuant to Easement and Maintenance Agreement**. Each Unit Owner acknowledges that certain portions of the Common Elements and Units are subject to the Easement and Maintenance Agreement, and the Association is obligated to pay fees and charges imposed or levied pursuant to the Easement and Maintenance Agreement (the "Easement Payments"). Each Unit Owner authorizes the Association to collect all Easement Payments attributable to the Association and agrees that all Easement Payments shall be a Common Expense of the Association and secured by the Assessment Lien.

ARTICLE 8

INSURANCE

8.1 **Scope of Coverage.**

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement

cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy

(iii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than $1,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use or ownership of the Common Elements or arising out of or incident to the performance by the Association of its maintenance and other obligations under the Governing Documents, whether on the Common Elements, any Unit or any public or private right-of-way. Such policy shall include (a) a cross liability clause to cover liabilities of the Units' Owners as a group to a Unit's Owner, (b) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles, and (c) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Nevada.

(v) Directors' and officers' liability insurance covering all the directors, officers and committee members of the Association in such limits as the Board of Directors may determine from time to time.

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the officers, the members of any committee or the Units' Owners.

(vii) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) Each Unit's Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest to the Common Elements or his membership in the Association

(b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit's Owners and members of their household.

(c) No act or omission by any Unit's Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(d) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit's Owners or their mortgagees or beneficiaries under deeds of trust.

(e) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit's Owner because of the negligent acts of the Association or other Unit's Owners.

(f) The Association shall be the insured for use and benefit of the individual Units' Owners (designated by name if required by the insurer).

(g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any insurance trust agreement will be recognized by the insurer.

(i) "Agreed Amount" and "Inflation Guard" endorsements.

8.1.2 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit's Owner, the Association's policy shall provide primary coverage.

8.2 **Payment of Premiums.** Premiums for all insurance and fidelity bonds obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.3 **Insurance Obtained by Unit Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit's Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

8.4 **Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Units' Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in N.R.S. 116.31135.

8.5 **Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this **Article 8** shall issue certificates or memoranda of insurance to the Association and, on

written request, to any Unit's Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit's Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.6 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Elements which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Units' Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Elements are not repaired or replaced, insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.1 **First Mortgagee's Right of Inspection of Records.** Any First Mortgagee will be entitled, upon written request, to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.2 **Limitation on Partition and Subdivision.** No Unit shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.

9.3 **Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or Units' Owners (other than the Declarant or other sponsor, developer or builder of the Community) of the Units have given their prior written approval, the Association shall not be entitled to:

9.3.1 Seek to abandon, partition, subdivide, sell or transfer the Common Elements owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this Subsection;

9.3.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit's Owner;

9.3.3 Change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units or the maintenance of the Common Elements,

9.3.4 Fail to maintain fire and extended coverage insurance for all Common Elements on a current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value; or

9.3.5 Use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

9.4 **No Priority over First Mortgagees**. No provision of this Declaration gives or shall be construed as giving any Unit's Owner or other Person priority over any rights of a First Mortgagee of a Unit in the case of the distribution to such Unit's Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Elements.

9.5 **Failure of First Mortgagees to Respond**. Any First Mortgagee who receives a written request from the Board of Directors to respond or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.6 **Liens Prior to First Mortgage**. All taxes, assessment and charge which may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Community as a whole.

9.7 **Conflicting Provisions**. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Governing Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Governing Documents with respect to the number or percentage of Units' Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Community or (iii) certain actions of the Association as specified in **Section 9.3** of this Declaration, the provision requiring the consent of the greatest

number or percentage of Units' Owners or First Mortgagees shall prevail. Notwithstanding the foregoing or anything herein to the contrary, so long as Declarant retains effective control of the Association, the Declarant, and thereafter the Board of Directors, without the consent of any Unit's Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association (the "FNMA"), the Federal Home Loan Mortgage Corporation (the "FHLMC"), the Federal Housing Administration (the "FHA"), the Veterans Administration (the "VA") or any federal, state or local governmental agency whose approval of the Community, the Plat or the Governing Documents is required or requested by the Declarant or the Board of Directors.

ARTICLE 10

RESERVATION OF DEVELOPMENTAL AND

SPECIAL DECLARANT'S RIGHTS

Pursuant to N.R.S. 116.2105(1)(h), Declarant reserves all of the developmental and special declarant's rights in the Community including any Additional Property annexed hereafter, afforded under N.R.S. 116.11034 and N.R.S. 116.110385, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

10.1 **Developmental Rights.** Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration, all developmental rights under N.R.S. 116.11034.

10.2 **Right to Complete Improvements and Construction Easement.** Declarant hereby reserves the right, for a period of seven (7) years following the recordation of this Declaration, to complete the construction of Improvements in the Community and an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

10.3 **Exercise of Developmental Rights.** Declarant reserves the right to exercise all developmental rights reserved pursuant to **Section 10.1** above, until the seventh (7th) anniversary of the recordation of this Declaration.

10.4 **Offices, Model Homes and Promotional Signs.** Declarant reserves the right to maintain offices for sales and management and models as provided in **Section 3.4** above, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Community.

10.5 **Use of Easements.** Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property.

10.6 **Master Association.** Declarant reserves the right to make the Community subject to any additional master homeowners association.

10.7 **Merger or Consolidation.** Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

10.8 **Appointment and Removal of Directors and Officers.** Declarant reserves the right to appoint and remove a majority of the Board of Directors and the officers of the Association or any master association or any member of the Board of Directors as set forth in **Section 6.2** above, for the time period set forth therein.

ARTICLE 11
GENERAL PROVISIONS

11.1 **Enforcement** The Association, or any Unit's Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Unit's Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

11.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.3 **Duration.** Unless amended in accordance with the provisions of **Section 11.5** below, the covenants and restrictions of this Declaration shall run with and bind the Community, for a term of twenty (20) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

11.4 **Termination of Community** The Community may be terminated only in the manner provided for in the Act.

11.5 **Amendment.**

11.5.1 Except in cases of amendments that may be executed by a Declarant under N.R.S. 116.2109 or 116.2110, by the Association under N.R.S. 116.1107, 116.2106, Subsection 3 of N.R.S. 116.2108 or N.R.S. 116.2113 or by certain Units' Owners under Subsection 2 of N.R.S. 116.2108, 116.2112 or 116.2118 and except as limited by **Section 11.5.2** of this Declaration, this

Declaration, including the Plat and Plans, may be amended only by a vote of the Units' Owners to which more than seventy-five percent (75%) of the votes in the Association are allocated

11.5.2 Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not create or increase Special Declarant's Rights, increase the number of Units, change the boundaries of any Unit, change the allocated Interests of a Unit, or change the use as to which any Unit is restricted, in the absence of unanimous consent of the Units' Owners affected and the consent of a majority of the Units' Owners of the remaining Units in the Community.

11.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant's Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

11.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit's Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit's Owner, (iii) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including the VA, the FHA, the FNMA or the FHLMC, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Community, the Plat or the Governing Documents is required by law or requested by Declarant

11.5.5 To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of amendment, and to the extent that it is required by any regulations governing FHA/VA mortgages, during the Period of Declarant Control, any amendment to the Declaration or the Plat must be approved by the VA or the FHA.

11.5.6 Any amendment adopted by the Units' Owners pursuant to **Subsection 11.5.1** of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to **Subsection 11.5.4** of this Declaration or the Act shall be executed by the Declarant and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any amendment shall be effective only upon Recordation.

11.5.7 No amendment or modification to this Declaration shall have the effect of modifying or amending the obligations of the Association pursuant to the Easement and

Maintenance Agreement unless the Easement and Maintenance Agreement is modified concurrently therewith.

11.6 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive

11.7 **Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit's Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit's Owner, at the address which the Unit's Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit's Owner. A Unit's Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) of the Unit's Owners shall constitute notice to all Unit's Owners of the same Unit. Each Unit's Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address

11.8 **Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Community, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Units' Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Units' Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit

11.9 **Gender.** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the

provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 **Topic Headings**. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

11.11 **Survival of Liability**. The termination of membership in the Association shall not relieve or release any such former Unit's Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Unit's Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

11.12 **Construction**. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, the Rules or the Architectural Committee Rules, the provisions of this Declaration shall prevail.

11.13 **Joint and Several Liability**. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit's Owners set forth in, or imposed by, the Governing Documents shall be joint and several.

11.14 **Guests and Tenants**. Each Unit's Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Governing Documents. A Unit's Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit's Owner by reason of such Unit's Owner's own noncompliance

11.15 **Attorneys' Fees**. In the event the Declarant, the Association or any Unit's Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit's Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action

11.16 **Number of Days**. In computing the number of days for purposes of any provision of the Governing Documents, all days shall be counted including Saturdays, Sundays and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.17 **Notice of Violation**. The Association shall have the right to Record a written notice of a violation by any Unit's Owner of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain

substantially the following information: (i) the name of the Unit's Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit's Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit's Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Unit against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

11.18 **FHA/VA Approval**. To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of the following described actions, and to the extent that it is required by any regulations governing FHA/VA mortgages, until the expiration of the Period of Declarant Control, the following actions will require the prior approval of the FHA or the VA: (i) annexation of additional properties; (ii) mergers and consolidations; (iii) mortgaging or dedication of Common Elements; (iv) amendment of this Declaration; and (v) termination of the Community.

11.19 **References to VA and FHA**. In various places throughout the Governing Documents, references are made to the VA and the FHA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Governing Documents to meet certain requirements of such agencies should Declarant request approval of the Community by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Community by either or both of such agencies. Unless and until the VA or the FHA have approved the Community as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

11.20 **No Absolute Liability**. No provision of the Governing Documents shall be interpreted or construed as imposing on any Unit's Owner absolute liability for damage to the Common Elements or the Units. A Unit's Owner shall only be responsible for damage to the Common Elements or Units caused by the Unit's Owner's negligence or intentional acts.

11.21 **Governing Law**. The provisions of this Declaration shall be liberally construed to promote and effectuate the purpose of the Association as set forth in this Declaration. The provisions of this Declaration shall be construed and governed by the laws of the State of Nevada.

This Declaration is intended to comply with the provisions of the Act. In the event any provision of this Declaration is held to be in violation of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

11.22 **Interpretation**. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control except to the extent the Declaration is inconsistent with the Act. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

11.23 **References to this Declaration in Deeds** Deeds to and instruments affecting any Unit or any other part of the Community may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee, Unit's Owner or other Person claiming through any instrument and such grantee's, Unit's Owner's or other Person's heirs, executors, administrators, successors and assigns.

11.24 **Construction Defect Dispute Notification and Resolution Procedure**. All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Community, including but not limited to, the Declaration or any other Governing Documents, the use or condition of the Community or the design or construction of or any condition on or affecting the Community, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Community or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this **Section** 11.24. Declarant and each Unit Owner acknowledge that the provisions set forth in this **Section** 11.24 shall be binding upon current and future Unit Owners of the Community and upon the Association, whether acting for itself or on behalf of any Unit Owner(s).

11.24.1 Claim Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing within sixty (60) days after becoming aware of the Dispute by certified mail, return receipt requested, of the claim, which writing shall include (i) in reasonable detail, the defects or any damages or injuries to each Improvement that is the subject of the Dispute, (ii) in reasonable detail, the cause of the defects if the cause is known, the

nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each Improvement, and (iii) an expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects based on a representative sample of the components of the Improvements involved in the Dispute (the "Claim Notice").

11.24.2 Right to Inspect. Within forty-five (45) days after receipt of the Claim Notice, the Declarant and the Declarant's representatives, upon written request to the claimant, shall be entitled to inspect the property that is the subject of the Dispute to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. After reasonable notice to the claimant and at reasonable times, Declarant shall have the right to conduct inspections, testing and/or destructive or invasive testing (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing unless such repairs are covered by a policy of insurance) provided that all such activities are reasonably necessary to establish the existence of the defect, which right shall continue until such time as the Dispute is resolved as provided in **Subsection 11.24.3**.

11.24.3 Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Community or some other mutually acceptable place to discuss the Dispute. The parties shall negotiate in good faith in an attempt to resolve the Dispute. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Community and the property which is the subject of the Dispute at reasonable times and upon reasonable notice to the claimant to take and complete corrective action.

11.24.4 No Additional Obligations, Irrevocability and Waiver of Right. Nothing set forth in **Subsections 11.24.2 and 11.24.3** shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Community for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Community and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of Clark County, Nevada.

11.24.5 Mediation. If the parties to the Dispute cannot resolve the Dispute pursuant to the procedures described in **Subsection 11.24.3** above, the parties must select a mediator and submit the matter to the mediator. The mediator shall be selected by the claimant and agreed to by Declarant. If the Declarant and the claimant fail to agree upon a mediator within forty-five (45) days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service and acceptable to the parties for the

appointment of a mediator qualified in the area pertaining to the Dispute. No person shall serve as a mediator in the Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Declarant without complying with the procedures described in this **Subsection 11.24.5**.

(i) Position Memoranda, Dispute Materials; Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within fifteen (15) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not

limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

11.24.6 Arbitration. Should mediation pursuant to **Subsection 11.24.5** above not be successful in resolving the Dispute, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules as modified or as otherwise provided in this **Subsection 11.24.6**. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this **Subsection 11.24.6**, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Community is located.

(ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Community. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein or in the manner prescribed by the American Arbitration Association.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations, (iii) expert witness reports; (iv) exhibits, (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing, and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in **Subsection 11.24.2** above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Limitation on Remedies/Prohibition on the Award of Punitive Damages. The arbitrator shall not have the power to award punitive damages or other damages on account of any damage, loss or injury which does not result directly and immediately from the

defect or action, including, without limitation, the reduction in market value of a Dwelling ("Consequential Damages"). As further provided below, the right to punitive and Consequential Damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

(vii) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(viii) Arbitration Award. The arbitrator's award may be enforced as provided for in N.R.S. § 38.105 and Nevada Arbitration Rule 19, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

11.24.7 WAIVERS

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS **SECTION 11.24** AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS **SECTION 11.24**. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS **SECTION 11.24**, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

11.24.8 Statutes of Limitation. Nothing in this **Section 11.24** shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

11.24.9 Required Consent of Declarant to Modify. This **Section 11.24** shall not be amended except in accordance with **Subsection 11.5.1** of this Declaration and with the express written consent of the Declarant.

11.25 Gated Entrances; Release of Claims. The Declarant intends to construct gated entrances leading into the Community from Tropicana Avenue and Broadbent Boulevard in order to limit vehicular access and to provide some privacy for the Units' Owners and Residents. Each Unit's Owner and Resident for itself and its family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant Parties make no representations or warranties that gated entrances will provide security and safety to the Units' Owners, Residents and their family, invitees and licensees.

Each Unit's Owner and Resident, for itself and its family, invitees and licensees, assumes the risk that any such gated entrances may not provide security and safety and may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit's Owner, Resident or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrances. **Each Unit's Owner and Resident, for itself and its family, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 11.25.**

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11.26 **Rule Against Perpetuities**. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board of Directors who are living at the time the period of perpetuities starts to run on the challenged interest.

BEAZER HOMES HOLDINGS CORP., a Delaware corporation

By: _____
Patrick J. Helfrich

Its: _____

STATE OF NEVADA)
: ss.
County of Clark)

The foregoing instrument was acknowledged before me this 15 day of September, 2001, by Patrick J. Helfrich, the Vice President of Beazer Homes Holdings Corp., a Delaware corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

July 21, 2004

Notary Public - State of Nevada
County of Clark
TRACI W COMBS
My Appointment Expires
No. 00-63216 - July 21, 2004

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01331

EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

Lots 44 through 59, inclusive; Lots 74 through 79, inclusive; and Common Element Lots A through F, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

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EXHIBIT B

ADDITIONAL PROPERTY

Lots 1 through 43, inclusive; Lots 60 through 73, inclusive; and Lots 80 through 238, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

LAWYERS TITLE OF NEVADA
09-17-2001 13:24 GWC 6:

BOOK: 20010917 OFFICIAL RECORDS INST: .01331

FEE: 17.00 RPTT: .00

EXHIBIT M

EXHIBIT M

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-13-679329-C DEPT. NO. XXVI

CONDENSED TRANSCRIPT

DEPOSITION OF DAVID ALESSI

30(b)(6) REPRESENTATIVE FOR ALESSI & KOENIG, LLC

Taken on Monday, January 11, 2016

At 3:20 p.m.

At All-American Court Reporters

1160 North Town Center Drive, Suite 300

Las Vegas, Nevada

Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706

DEPOSITION OF DAVID ALESSI, taken at All-American Court Reporters, 1160 North Town Center Drive, Suite 300, Las Vegas, Nevada, on Monday, January 11, 2016, at 3:20 p.m., before Cindy K. Johnson, Certified Court Reporter on behalf of All-American Court Reporters.

APPEARANCES:

For the Plaintiff: DIANA CLINE EBRON, ESQ.
KIM GILBERT EBRON
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139
(702) 485-3300

For the Defendant FIRST HORIZON HOME LOANS:
MELANIE D. MORGAN, ESQ.
AKERMAN LLP
1160 Town Center Drive
Suite 330
Las Vegas, Nevada 89144
(702) 634-5000

For ALESSI & KOENIG, LLC & SQUIRE VILLAGE AT SILVER SPRINGS COMMUNITY ASSOCIATION:
STEVEN T. LOIZZI, ESQ.
ALESSI & KOENIG
9500 West Flamingo
Suite 205
Las Vegas, Nevada 89147
(702) 222-4033

* * * * *

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* * * * *

Whereupon --

DAVID ALESSI,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MS. MORGAN:

Q. Please state your name?
A. David Alessi.
Q. Are you employed?
A. Yes.
Q. Where are you employed?
A. Alessi & Koenig.
Q. What is your title at Alessi & Koenig?
A. I'm a manager. The LLC. It is an LLC.
Q. Okay. And you have had your deposition taken before; is that correct?
A. Yes.
Q. And you have had it taken within the past few months by me and others, correct?
A. Yes.
Q. Are you comfortable waiving the standard admonitions?
A. Yes.
Q. All right. I'll just remind you that your

testimony here is under oath and you are under the same penalties of perjury, if you don't tell the truth, as though we were in a court of law. Do you understand that?
A. Yes.
Q. Are you familiar with Squire Village HOA?
A. Yes.
Q. Okay. And how are you familiar with that HOA?
A. It is an HOA that we had done business with for a number of years. It was actually one of Alessi & Koenig's first clients, if I remember correctly.
Q. Does Alessi represent Squire Village in capacity as its collection agent and in capacity as its counsel?
A. It did. I don't believe it does any longer.
Q. Okay. And which one does it not?
A. Both. I don't think we represent Squire Village in any capacity currently.
Q. I'm going to hand you what we'll mark as Exhibit A, the Notice -- First Amended Notice of Rule 30(b)(6) Deposition.
A. Thank you.
(Exhibit A marked for identification.)
MS. LOIZZI: Thank you.
/////

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BY MS. MORGAN:
Q. Have you reviewed this document before?
A. Just briefly today.
Q. And are you the individual designated as the 30(b)(6) deponent?
A. Yes.
Q. For today's deposition, when I refer to the HOA, I'll be referring to Squire Village HOA and, when I speak about the property, I'll be referring to the property located at 5069 Midnight Oil Drive, Las Vegas, Nevada 89122. Is that okay?
A. Yes.
Q. What did you do to prepare for your deposition today?
A. I reviewed the foreclosure documents briefly. I briefly reviewed the ledger and a couple of demands.
Q. I'm going to hand you what we'll mark as Exhibit B.
(Exhibit B marked for identification.)
BY MS. MORGAN:
Q. These are documents that have been produced to my office in response to a subpoena, and they are Bates Stamp A&K 000001 through -261. Let me know when you have had a chance just to flip through those.
A. Okay. I have.

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Q. Did you have any part in compiling these documents in response to the subpoena?
A. Minor. I reviewed them prior to them going out, I believe. A great portion of this is the CC&Rs.
Q. Right. The CC&Rs stop at page -62.
A. Mine go to -83.
Q. There are a few recorded documents after -62.
A. They are part of the governing docu- -- oh, I see. Deed of trust.
Q. Yeah. On page -62 there is a grant, bargain, sale deed. On -64 there is a notice of trustee's sale. On -66 there is a special warranty deed and on -71 is a deed of trust.
A. Yes.
Q. Okay. Do you know who was responsible for compiling the documents responsive to the subpoena?
A. I believe it was one of the paralegals in our office. I am not sure who, though.
Q. Are the documents in your office maintained by property address? HOA? Homeowner? How is that organized?
A. You can search for the documents with any one of those search engines. We also have an internal fingerprint, as it were, which we call the "HO number," the homeowner number. It is usually a four-digit or five-digit number that we assigned to the property.

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Q. Okay. Is there a contact between Squire Village HOA and Alessi & Koenig?
A. I am not sure. There may be -- there -- there no longer is. I believe at one time there was a retainer, but I'm not sure about that.
Q. Do you know when this particular account was first referred to Alessi for collection?
A. No. I could find that out for you, but not off the top of my head.
Q. Okay. Let's look to page -96.
A. Yes.
Q. Are you familiar with this document?
A. Yes. This is a notice of delinquent assessment lien recorded by Alessi & Koenig on behalf of Squire Village on February 6, 2012.
Q. All right. So would -- the file then would have been referred to Alessi prior to February 22, 2012; is that accurate?
A. Right. This document has a signature date of February 6th and recording date of February 22nd, so I would say it was referred to us sometime prior to February 6th.
Q. The middle of that notice of delinquent assessment lien states, "The owner of record is

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reflected on the public record as of today's date is Ana Torres." Do you see that?
A. Yes.
Q. How does Alessi identify which individual should be listed as the owner of record in the notice of delinquent assessment lien?
A. One of the ways is by pulling the real property parcel record, which is AK -- Bates AK-90, and on that document it shows the owner to be Ana Torres, and it gives her mailing address and also the property address.
We also -- that is our primary reference. Oftentimes, the owner name will be on the account ledger that is sent to us by management.
Q. Okay. And so the primary way is the assessor's website?
A. Yes.
Q. And the notice of delinquent assessment lien states that the amount due was $1,055 -- I'm sorry. That is page -96.
A. Yes.
Q. And how would -- where would Alessi look to determine the amount to place on the notice of delinquent assessment lien?
A. We would start with the amount shown on the

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account ledger. I don't know if this was the account ledger that we were actually sent at the time the file was opened, but I'm looking at page -97, and it shows a February -- a balance, as of February 16, 2012, of $515. We would then add the management company audit fee, if any, which approximates -- well, now it's statutorily set at $200. We would add our lien fee, which, I believe, at this time was between $295 and $325. There would also be the addition of the intent-to-lien fee, which is a document that management sends certified and regular mail to the delinquent owner. That charge is approximately 150. And then the costs for recording the notice of delinquent assessment, as well as the release and then cost for mailings.

Q. All right. Do you know, as you sit here today, whether Alessi, the person who prepared the notice of delinquent assessment lien, referred to the account history report reflected on Bates No. -97?

A. I don't.

Q. Can you tell by looking at the notice of delinquent assessment lien how many months of assessments were due and owing at the time it was recorded?

A. No.

Q. Can you tell, by looking at the notice of

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delinquent assessment lien, which portion of the lien amount represents assessments only?

A. No.

Q. In February of 2012, what was Alessi's understanding of what amounts comprise an HOA super-priority lien?

MS. LOIZZI: Objection. Calls for a legal conclusion. But to the extent that you have an opinion or an answer, you can answer.

THE WITNESS: We didn't have a formal opinion as to what -- what that meant. We were aware of the cases being litigated through the district courts so that it -- to that extent, we understood the way the courts were interpreting the provision, but we didn't have, ourselves, an opinion about it.

BY MS. MORGAN:

Q. And in 2012, what was Alessi's understanding of how the courts were interpreting the provision?

A. That some courts were interpreting it to mean nine months of assessments, that some courts were interpreting super-priority language to mean a variety of different things. There were many issues dealing with the language, super priority, at this time.

MS. EBRON: Can you be more specific on when in 2012?

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MS. MORGAN: February.

THE WITNESS: Yeah. I mean, at this time, it was -- my recollection is still fairly new -- a fairly new issue, but I don't have any specific recollection as to what our opinion about the litigation at this time was.

BY MS. MORGAN:

Q. Did Alessi -- well, let me back up.

Does the notice of delinquent assessment lien specify whether the lien encompasses the HOA super-priority lien?

MS. EBRON: Form.

THE WITNESS: Other than a general reference to Nevada Revised Statutes and the association's governing documents and the inferences contained there with regard to a super-priority lien, there is no specific language in this -- in the notice of delinquent assessment referencing a super-priority lien.

BY MS. MORGAN:

Q. And the notice of delinquent assessment also does not specify an amount for the super-priority lien; is that accurate?

A. Yes.

MS. EBRON: Form.

THE WITNESS: There are no words

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"super-priority lien" on this document.

BY MS. MORGAN:

Q. Did Alessi provide a copy of this document to First Horizon Home Loans?

A. No.

Q. Did Alessi provide a copy of this document to Mortgage Electronic Registration Systems?

A. Not that I'm aware of.

Q. To whom did Alessi provide a copy of this notice of delinquent assessment lien?

A. To the delinquent homeowner via regular and certified mail at the property address and, if different, their mailing address.

Q. And how did -- well, did Alessi also determine who the homeowner was or who they should -- let me back up.

In determining who should receive a copy of the notice of delinquent assessment lien, did Alessi also rely on the information on the assessor's website?

MS. EBRON: Form.

THE WITNESS: Yes.

BY MS. MORGAN:

Q. And how would Alessi determine whether there was another address, other than the property address, to send the notice of delinquent assessment lien?

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A. Generally, we would determine that by reviewing the assessor's page.
Q. Okay. Turning to page -109 --
A. Yes.
Q. -- are you familiar with this document?
A. Yes. This is a notice of default and election to sale recorded by Alessi & Koenig on behalf of Squire Village on 4-20-2012. It was signed on March 28, 2012.
Q. And what is the lien amount as reflected in this notice of default?
A. $2,089.
Q. And does the notice of default specify which portion of that is for assessments?
A. No. It just gives one lump sum total.
Q. Does the notice of default specify how many months the homeowner was delinquent?
A. No.
Q. Does the notice of default state whether the HOA super-priority lien is being foreclosed on?
A. There are no references on this notice of default to a super-priority lien.
Q. So then does -- would you agree that the notice of default does not specify the amount of the HOA super-priority lien?
A. Yes.

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Q. How did Alessi identify which party should receive a copy of the notice of default?
A. We would order -- we order a report from a title company. In this case, it was First American Title. We also have an in-house research person that confirms all of the addresses for accuracy.
Q. Okay. Let's turn to page -112.
A. Yes.
Q. Are you familiar with this document?
A. Yes.
Q. Oh, wait. Not -112 --
A. I'm very familiar with this document.
Q. -- because we just talked about it. -119.
A. Yes. Okay. I'm looking at a second notice of default that was recorded on August 13, 2012.
Q. And do you know why Alessi would have recorded a second notice of default?
A. No.
Q. And the amount due under this second notice of default is 2,699; is that accurate?
A. Yes.
Q. Does the August 13, 2012 notice of default specify which portion of that amount is assessments?
A. Just give me a second.
Q. Yep.

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A. Do you know the date of the sale?
Q. The HOA sale was March 6, 2013.
A. Oh. No, there was no reference made to a super-priority interest on this document.
Q. Okay. Can you tell which portion of the lien amount is for assessments?
A. No, not just for assessments. The document just gives one total amount due which includes assessments.
Q. And there is no way to tell by looking at this document how many months the homeowner is in arrears? Would you agree with that?
MS. EBRON: Form.
THE WITNESS: Well, you could, by looking at the document, see the phone number of the office and call and find out. But in the document itself, there is no reference to how many months the homeowner is in arrears.
BY MS. MORGAN:
Q. And the dollar amount for the HOA super-priority lien is not specified in the August 15, 2012 notice of default; is that correct?
MS. EBRON: Form. Calls for a legal conclusion.
MS. LOIZZI: Join.

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THE WITNESS: Correct.
BY MS. MORGAN:
Q. Turning to page -122.
A. Yes.
Q. What is this document?
A. This is a copy of the parties that were mailed the notice of default that got recorded in August of 2012.
Q. Okay. And then starting on page -124 through page -128 there are a series of copies of what appear to be envelopes.
A. Yes.
Q. What are those copies of?
A. Those are copies of the envelopes that the notice of default was mailed in to the parties listed on page -122, so the envelope should correspond with the mailing list on -122.
Q. And on -122 there is a certified mail receipt to Ana Torres. Do you see that?
A. Yes.
Q. Were the other mailings mailed certified mail?
A. I don't know. It appears to me that they were mailed regular mail. I did not see any copies of the NODs having been mailed certified.
Q. On page -129 there is another account history

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report. Is this a document that was created by the HOA, its management company, or Alessi & Koenig?
A. By the management company for the HOA.
Q. Okay. How would Alessi receive access to the account history report?
A. Usually, e-mail. It looks like this one may have been faxed on November 29, 2012.
MS. EBRON: Sorry, Counsel. What page was that?
MS. MORGAN: It was on -129.
MS. EBRON: All right. Thank you.
BY MS. MORGAN:
Q. Okay. And turning to page -150.
A. Yes.
Q. Okay. Are you familiar with this document?
A. This is a notice of -- copy of the notice of trustee's sale recorded February 5, 2013 by Alessi & Koenig on behalf of Squire Village.
Q. And what is the amount due as listed in the notice of trustee's sale?
A. $4,109.
Q. Does the notice of trustee's sale specify which portion of that is for assessments?
A. No, not -- it just gives one lump-sum total which includes assessments.

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Q. Does the notice of trustee's sale state whether the foreclosure sale is going to be of the HOA super-priority lien?
A. No.
Q. Does the notice of trustee's sale specify the amount of the HOA super-priority lien?
MS. EBRON: Form. Calls for a legal conclusion.
MR. LOIZZI: Join, but you can answer.
THE WITNESS: It makes no reference to a super-priority lien in this document.
BY MS. MORGAN:
Q. In its collection efforts with respect to this account, did Alessi ever look at the recorder's website?
A. Yes.
Q. Did Alessi have an understanding as to whether there was a deed of trust recorded against this property?
A. Yes.
Q. And what was the understanding?
A. I believe there was -- I believe there was a deed of trust recorded on the property, and, in which case, Alessi, trustee, would have an understanding of that.
Q. Okay. Did Alessi have an understanding as to

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whether the -- well, I'll just say the bank -- the bank was attempting to foreclose under that deed of trust at the same time that Alessi was undertaking its collection efforts?
A. I don't know. I don't know if we had an understanding that it was at the same time. I did not see where -- the bank's notice of default yet, so I don't know when that was recorded, so I don't know if we had an understanding that the bank was foreclosing at approximately the same time.
Q. Has Alessi ever had the situation where, during its collection efforts, the bank did complete a foreclosure?
MS. EBRON: Form.
THE WITNESS: I don't -- I don't recall. I don't know. I don't have any specific recollection of a file where that occurred.
BY MS. MORGAN:
Q. All right.
MS. EBRON: Are you talking about besides this one?
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. Just in general, you know, while the HOA is attempting to foreclose on its lien, the bank is also

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attempting to foreclose under its deed of trust and the bank just happens to foreclose first. Is that a situation that Alessi has encountered?
A. I don't have any specific -- I don't have a specific recollection, but I would be surprised if it is not a scenario that was encountered by us over the years.
Q. Yeah. Is it Alessi's experience that, when the bank does foreclose, it satisfies the HOA's lien?
MR. LOIZZI: Objection. Calls for a legal conclusion, but you can answer to the extent you have an answer.
THE WITNESS: I don't -- we don't have a formal opinion on that. We would just defer to the courts.
MS. EBRON: And can you repeat your question? I'm not sure I understood it.
MS. MORGAN: I'm just -- I was just asking if it was Alessi's experience that, when a bank forecloses, if the HOA's lien would be paid shortly thereafter?
MR. LOIZZI: If it would be paid shortly thereafter?
THE WITNESS: Oh, I thought you said it was wiped out.
MR. LOIZZI: That's what I thought you said,

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too.
MS. MORGAN: Huh-uh. Let's repeat the question so we're clear.
(The following record was read by the court reporter: "Question: Is it Alessi's experience that, when the bank does foreclose, it satisfies the HOA's lien?)
MS. EBRON: That's not clear --
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. And by "satisfy," I mean, when the bank forecloses, the HOA's lien gets paid shortly thereafter. Is that Alessi's experience?
MS. EBRON: Incomplete hypothetical.
THE WITNESS: Yeah. And I don't have any specific recollection.
MR. LOIZZI: I'm going to withdraw my objection while he's thinking -- my previous objection.
THE WITNESS: If we were to get paid subsequent to a bank foreclosure, in the past, my recollection is, it would have been by the purchaser of the property at that foreclosure, but I -- like I said, I don't have any specific recollection of any files having transpired in that way.
/////

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BY MS. MORGAN:
Q. What documentation did Alessi review in order to determine which party should be sent a copy of the notice of trustee's sale?
A. The report we ascertained from title, as well as the public records in Clark County.
Q. Okay. So let's look at the report that was obtained from the title company in this case.
A. -105?
Q. -105?
A. I think so, yeah. I think there were two, actually. Let me see.
Q. Is it generally the practice to obtain a title report at the time the notice of default is recorded and then a date down at the time the notice of sale is recorded?
A. Yes.
MS. MORGAN: Let's go off the record real quick.
(Discussion held off the record.)
THE WITNESS: I don't think -- my understanding of this file, though, is that I don't think a pub date down or a sale date down would have shown a deed having -- a trustee's deed having been recorded by your client, but that is just my

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understanding of the file, though, that the trustee's deed recorded on behalf of the bank was recorded after the HOA sale.
COURT REPORTER: Is that supposed to be on the record or off?
MS. MORGAN: It could be on.
MR. LOIZZI: It doesn't matter.
MS. MORGAN: Yeah, it can be on.
MS. LOIZZI: Yeah. I'm okay with it being on it, as well.
BY MS. MORGAN:
Q. All right. So let's just break it down. So the notice of trustee's sale on Bates -150 is dated January 16, 2013, recorded February 5, 2013; is that accurate?
A. Yes.
Q. And it lists a sale date of March 6, 2013?
A. Yes.
Q. At what point would Alessi have obtained the date-down report in order to determine which party should be sent a copy of the notice of trustee's sale?
A. The day on or before the date of the first publication. The date of the first publication, I believe, was -- I see one here for January 16, so on or before January 16, 2013.

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Q. Did anyone from Alessi attend the HOA foreclosure auction?
A. We would have had a representative there crying the sale.
Q. Is there any document that would reflect what was said by the individual who cried the sale for this property?
A. Well, no. We don't record our auctions.
Q. Was there a script that the individual crying the sale would go off of back in March of 2013?
A. Generally, yes. We would -- as we do now, we would give the APN of the property, as well as the common address, the amount of the opening bid and then we would open the bidding to the floor.
Q. Do you know what the opening bid was in this case?
A. It was $4,109 plus any -- let me see -- fees or costs or assessments that accrued after the date of the document; that is, the notice of trustee's sale. And I'm looking at the trustee's deed upon sale now, AK-179, and it appears that the opening bid was $5,342, and I'm getting that from the trustee's deed upon sale.
Q. And the trustee's deed upon sale, at the last paragraph that -- the last sentence -- I'm sorry, second to last sentence of the last paragraph that starts with

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"all requirements of law" --
Do you see that sentence?
A. Yes.
Q. What did Alessi do -- or did Alessi do anything at the time this trustee's deed upon sale was prepared to verify that that sentence was accurate?
MS. EBRON: Form.
THE WITNESS: We -- we have several different departments or employees, attorneys, paralegals, legal assistants reviewing the file at all stages of the process, specifically a Nevada licensed attorney --
(Interruption by cell phone).
THE WITNESS: I'm sorry.
MS. MORGAN: That's okay.
THE WITNESS: -- to, to the best of our ability, help us ensure that that sentence is true.
BY MS. MORGAN:
Q. Is it important to Alessi that all of the information reflected on the trustee's deed upon sale is true and accurate?
A. We would certainly prefer that, so in that regard, I would say it's important.
Q. Did Alessi do anything to verify that the identity of the trustor is accurate at the time the trustee's deed upon sale was prepared?

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A. Well, we review the public records to confirm that the owner of record is the same as the trustor former owner that is shown on the trustee's deed upon sale. So, yes.
Q. And the individual that was foreclosed on in this case, as reflected on the trustee's deed upon sale, was Ana Torres?
A. I believe that's what the public record showed at the time.
Q. All right. And that's what the trustee's deed states; is that accurate?
A. Yes.
Q. So it was her interest in the property that was foreclosed upon by way of the March 6, 2013 foreclosure?
MS. EBRON: Form.
THE WITNESS: That would be something for the court to decide, not me.
BY MS. MORGAN:
Q. All right. But you would agree that that is what the trustee's deed upon sale states?
MS. EBRON: Form.
THE WITNESS: No, it doesn't say anything about that. I wouldn't agree.
/////

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BY MS. MORGAN:
Q. Okay. Would you agree that it states that the former owner who was foreclosed on was Ana Torres?
A. Yes.
Q. Does the trustee's deed upon sale anywhere state that First Horizon was foreclosed on?
MS. EBRON: Form.
THE WITNESS: No.
BY MS. MORGAN:
Q. Does the trustee's deed upon sale identify First Horizon as a former owner?
MS. EBRON: Form.
THE WITNESS: No. The trustee's deed upon sale makes no reference to First Horizon.
BY MS. MORGAN:
Q. Let's turn to page -170.
A. Yes.
Q. Okay. Let me know when you've had a second to look at that document.
A. Yes. This is a trustee's deed upon sale. It was recorded by National Default Servicing on behalf of First Horizon on March 7, 2013.
Q. All right. And this document reflects that there was a public auction on February 26, 2013 on page -171. Do you see that?

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A. Yes.
Q. And on page -172 do you see where about two-thirds of the way down it says "buyer/grantee information, First Horizon Home Loans"?
A. Yes.
Q. Following the HOA's March 6, 2013 foreclosure, did Alessi still continue to act as the HOA's collection agent?
MS. EBRON: Form.
THE WITNESS: You mean in general did we still collect assessments for Squire Village or --
BY MS. MORGAN:
Q. Yes, just in general.
A. -- on this specific property?
Q. Start in general.
A. Yes. Yes.
Q. And did Alessi continue collection efforts at some point in time after the HOA foreclosure sale for this specific property?
A. It is my understanding that we did.
Q. Going back real quick, I forgot to ask you a few questions about the sale itself. There is a series of documents entitled "Bidder Qualification and Purchase Sheet" starting at -155 and ending at -169.
A. Bear with me.

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Q. Uh-huh.
A. Okay.
Q. What are these sheets?
A. This is Alessi & Koenig bidder qualification and purchase sheets. These sheets show the bidder purchaser -- bidder's names who attended the auction and the units that they purchased.
Q. Okay. So --
A. If any.
Q. -- because the auction --
More than one property was sold at the auction; is that accurate?
A. Yes. The first thing these documents do is they qualify each bidder up to a certain amount, and then, if the bidder ends up purchasing a property at the trustee's sales on calendar for that day, that information would be put in the spaces below.
Q. Okay. How does Alessi determine -- well, let me back up. Does Alessi determine the qualification amount for each bidder?
A. Yes, we qualify bidders. They can show us a line of credit, I believe, at a bank or a cashier's check, money orders, cash, or letters of deposit.
Q. Who was the buyer for this particular property on March 6th?

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A. My understanding is it was SFR.
Q. All right. Is there a bidder qualification and purchase sheet for SFR contained within Bates -155 to -169?
A. I don't see one. It may be that -- I don't know. Yeah. I don't see a bidder qualification sheet for an entity named SFR. A couple of these aren't 100 percent legible, so I don't know if one of them could have been a representative of SFR, so I'm not sure.
Q. Okay. It has been represented to us during SFR's deposition that the auction would have been attended by a gentleman named Christopher Harden.
A. March 2013. I believe that's right.
Q. All right. Does that help you determine whether there is a bidder qualification purchase sheet for SFR within here?
A. Well, there is a couple of bidder purchaser names that are something-something real estate and are just -- one looks to be "TAG," but I don't see any that say "Chris Harden" or "SFR" on them.
Q. Have you ever seen a bidder qualification and purchase sheet with either SFR or Mr. Harden's name on it?
A. I believe this is only, out of the dozens of depositions I've done, the second time that I've

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actually seen that we retained the bidder qualification sheets, so I have not, not to my recollection. It is my recollection that SFR was qualified by way of a letter from, I believe, the bank that SFR banked at confirming that SFR had a certain amount of funds on deposit. I don't know what that specific amount was, but I believe that that is the way we qualified SFR.
AK-169 has a "C" something-something for 20,000. I don't know who that was.
Q. Okay.
A. But it does start with a C.
I can see on page -173 that there was an e-mail that -- to Chris Harden from George Bates showing that they had purchased five properties at the sale, so that would lead me to believe that there is not a bidder qualification sheet since none of them list five properties.
Q. Okay. Do you know whether -- well, let me strike that.
In March 2013 did Alessi --
(Discussion held off the record.)
MR. LOIZZI: Sorry.
BY MS. MORGAN:
Q. In March 2013 did Alessi have an understanding of the effect the HOA's foreclosure sale had on the

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ledger's deed of trust?
A. We did not have a formal opinion about that.
Q. Okay. Did Alessi have an informal opinion about that?
A. No.
Q. How did Alessi determine which party to look to for payment of HOA assessments following an HOA foreclosure sale?
A. Well, if the property was purchased by an investor at the HOA foreclosure sale, that would be one way of us determining.
THE WITNESS: Could you repeat the question?
(The following record was read by the court reporter: "Question: How did Alessi determine which party to look to for payment of HOA assessments following an HOA foreclosure sale?")
THE WITNESS: So that would be one way of determining which party to look to. Another would be the public records and a third would be the management company.
BY MS. MORGAN:
Q. When Alessi resumed its collection efforts following the March 6, 2013 HOA foreclosure, which party did it look to for payment of assessments?

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A. I don't know. I think I saw a document that showed First Horizon as the recipient. Let me just double-check.
Q. Okay. We are going to go through them, so --
A. Okay.
Q. -- turn to page -187.
A. Yes.
Q. Okay. What is this document?
A. This is a lien letter that was sent to First Horizon Home Loans on July 15, 2013, and attached to it would have been the lien shown on page -190 that was recorded July 23, 2013.
Q. And that lien lists the owner of record as First Horizon Home Loans; is that accurate?
A. Yes.
Q. Is it accurate, then, that in July 15, 2013, it was Alessi's opinion that First Horizon was a party responsible for payment of the HOA foreclosure -- or the HOA assessments?
A. No. I would say it was Alessi & Koenig's opinion that First Horizon Home Loans was the party that most likely showed up on title, but we would have had no opinion as to who was inevitably responsible for the assessments.
Q. In July 2013 was it Alessi's practice to send

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collection letters to parties that weren't responsible for payment of assessments?
A. It was our practice to send the letter -- the lien letters to the owner of record per the Clark County recorder's office and assessor's page. I mean, there are scenarios where the party could fraudulently deed a unit into their own name and they would show up as the owner of record. It would not necessarily mean they were the proper party.
Q. Okay. Do you know whether First Horizon appeared as the owner of record in the public record on July 15, 2013?
A. I am assuming they did, since this lien letter was mailed to them. I haven't seen the recorder's parcel -- let me see here. But, yes, I'm assuming they were. And I'm looking -- well. . .
So, yes. On -- AK-185 shows that on July 11, 2013, First Horizon Home Loans showed up on the real property parcel record for Clark County as the owner of record.
Q. All right.
A. And we have -- we mailed out the lien within a couple of days of this printout.
Q. Okay. So the July 15, 2013 lien letter on page -187, the party -- Alessi determined it should be

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sent to First Horizon by referencing the printout from the assessor's web page on page -185?
A. Correct.
Q. Did Alessi ever look at the recorder's website to determine which party should receive -- I don't know what you call this -- a demand letter -- lien letter?
A. Yes. We just discussed that. That would have been the July 11th document printout.
Q. Well, that is from the assessor's website. Did Alessi ever look to the recorder's website?
A. I don't know.
Q. When Alessi recorded the notice of delinquent assessment lien in July of 2013, that was just a few months after it had sold the property to SFR on the HOA's behalf; is that accurate?
A. I believe it was four months later. Yes.
Q. Did Alessi undertake any investigation to determine whether the notice of delinquent assessment lien should list SFR as the owner of record?
A. We did not take a position. We obviously did not list them. I'm looking at AK page -184. This would have been the account ledger that came over from the management company on July 3rd which states First Horizon Home Loans. So we would have taken that information and cross-referenced it to AK-185 and seen

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that they were the same, and we would have mailed the lien letter out accordingly.
I don't think that -- that at that time anybody would have formed an opinion as to whether or not that was the correct owner.
Q. So page -194 is an account history report that Alessi received from the management company?
A. Yes.
Q. And do you know whose handwriting that is that lists the Louisville, Texas address?
A. I saw that and I don't.
Q. Does page -184 indicate to you that -- well, do you see at the top it says "05" and then it says "First Horizon Home Loans"?
A. Yes.
Q. Does this account history report indicate to you that the HOA's management company was considering First Horizon Home Loans to be the owner of the property?
MS. EBRON: Calls for speculation.
MS. LOIZZI: Join.
THE WITNESS: I would say that it infers that the management company saw the same thing that we saw when -- on the assessor's website, that First Horizon was listed as the owner. I don't think that the

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management company would have formed a legal opinion as to whether or not they actually were.
BY MS. MORGAN:
Q. Okay. But to know for sure, I would need to ask a representative from the management company?
A. Yeah.
Q. But regardless, we know that, at least in July of 2013, the management company was looking to First Horizon for payment of monthly assessments?
A. Yes.
Q. Okay. Starting on page -191 there is a document called "Real Estate Listing Report." It appears to go through page -200.
A. Yes.
Q. Do you know what this document is?
A. Well, I mean, it is a real estate listing report that we apparently purchased from Stewart Title. I'm not too clear on what it is beyond that. If I had a date to cross-reference.
Q. Yeah.
A. So this is September 2013. This would have been part of our processes in determining who to mail the notice of default to.
Q. And that notice of default you are referring to, is that document -207?

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A. -207, yes. So this report was purchased on or around September 20 of 2013, and the notice of default was dated and recorded approximately a month after that, so I believe these -- this was a report that was purchased in relation to the subsequent notice of default.
Q. And the notice of default was First Horizon Home Loans as the owner?
A. It is.
Q. And on page -208 and -209 --
A. Yes.
Q. -- what are those documents?
A. These are proofs of mailing for the notice of default that was recorded October 21, 2013, NOD 10-day mailings. It shows that the NOD was mailed certified mail to: First Horizon at the Irving, Texas address; Howard Kim & Associations at their Henderson address; National Default Servicing at their Phoenix, Arizona address; First Horizon at the property address, 5069 Midnight Oil.
Q. Do you know why Howard Kim's office would have been mailed a copy of the notice of default?
A. I was just wondering that. I'm assuming that it was because there was a lis pendens, maybe, recorded on the property at that time, but I don't know that. I

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haven't -- I don't know why.
Q. And these notices of default were mailed via certified mail?
A. Yes.
Q. And the notices of default we referenced earlier in the deposition that were recorded in 2012, do you recall that those were just noticed via regular mail with the exception of the mailing to the homeowner, Ana Torres?
A. Correct.
Q. Was there a change in Alessi & Koenig's policy with respect to mailings of notices of default between the one we were discussing earlier and the October 2013 notice of default?
A. Well, there was with -- at least with regard to this file, but I am not sure. I don't have any specific recollection of a policy change at this time. Our position would be that both notices of default were mailed correctly.
Q. Is it accurate that in October of 2013, approximately six months after the HOA foreclosure, Alessi was looking to First Horizon for payment of the HOA assessments?
MS. EBRON: Form.
THE WITNESS: Yes, that is correct.

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BY MS. MORGAN:
Q. Okay. Turning to page -217, what is this document?
A. What is that?
Q. Yes.
A. What was that? What was the --
Q. Oh. -217.
A. Yes. I'm there.
Q. Uh-huh. What is this document?
A. Oh. This is a demand that was sent on behalf of Squire Village to First Horizon Home Loans. Well, the First Horizon Home Loans field says "to." That would have been pulled over from the program. It doesn't necessarily mean it went to First Horizon Home Loans. There is no fax number or e-mail, so I'm not really sure if this was just an internal document that was generated in May of 2014 or whether this was a document that was provided to First Horizon.
It could have been provided to SFR. It still would have put First Horizon's name in the "to" field, because the way our program works is, if the owner is listed as First Horizon and somebody such as SFR or the association or just internally, if we were to generate this document, that data field would pull over to the "to" column even if it wasn't going to that entity.

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And the fact that there is no e-mail or fax number would lead me to believe that it just maybe wasn't intended for First Horizon.

Q. Okay. That was a lot of information that didn't answer my question, but I appreciate that.

A. Okay.

Q. Regardless, is it accurate that, at least looking at this document, as of May 13, 2014, Alessi & Koenig was looking to First Horizon for payment of HOA assessments and other related costs?

A. So I would just apply my previous answer to that question.

Q. Okay.

A. I'm not sure.

Q. We know this letter was generated. We just don't know whether it was sent; is that accurate?

A. Whether it was sent or to whom it was sent, yeah.

Q. Okay. And turning to page -222.

A. And I'm not trying to be clever on that. That is just the way the program works, so. . .

Q. Okay. Page -222 appears to be some kind of a ledger. Is this a document generated by Alessi & Koenig?

A. Yes. -222. No, this would have been

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generated by the management company --

Q. Okay.

A. -- Mesa Management.

Q. And the -- it doesn't appear that this ledger's date -- well, there is a date at the bottom that says May 13, 2014. Do you see that?

A. Yeah.

Q. And it appears that the last entry on the ledger is from May of 2014.

A. Yes.

Q. Okay. So is it accurate by, at least, looking at this document that as of May of 2014, Mesa Management was looking to First Horizon Home Loans for payment of the assessments?

MS. EBRON: Calls for speculation. Form.

MR. LOIZZI: Join.

THE WITNESS: Oh, I would say actually no. As of May of 2014 -- and I'm just going through documents -- you can see that -- well, on May 22, 2014 there was a demand sent to SFR by our office.

BY MS. MORGAN:

Q. Right. But I'm just talking about --

A. On page -222?

Q. But I'm talking about this one document that I am looking at, page -222.

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A. I think this would have been sent to Alessi & Koenig. So as of May of 2013, I would -- I think it would be more accurate to say that the management company wasn't looking -- what didn't -- didn't send this to Alessi & Koenig because they were looking to First Horizon for payment. They just sent it to Alessi & Koenig. It happens that First Horizon's name is listed on it because they were -- or I believe they were the record owner at the time. But you would have to ask Mesa Management what their intent was.

Q. Sure. So --

A. But from our stand- -- for Alessi & Koenig, we were actually looking at this time, I think, to SFR for payment. We had sent SFR a breakdown.

Q. Right. There is no question pending right now. I'll get to that in a second.

A. Okay.

Q. Let's stay on page -222, if we can, for now, and then we'll turn to that other document that I know you're talking about.

A. Okay.

Q. So is this a ledger that Mesa Management would have provided to Alessi?

A. Yes.

Q. Okay. And does this document on -222

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reference SFR anywhere?

A. No.

Q. And then you were referring to, I believe, Bates No. -220 and -221, which appears to be a demand much like the one we saw on Bates -217, and that one says "to SFR"; is that accurate?

A. Yeah. And I am also referring to the e-mail on -219 addressed to Chris Harden.

Q. Who is on the "from" line, Sara Aslinger? Do you know who that is?

A. She is a legal assistant with Alessi & Koenig.

Q. Okay.

A. Was a legal assistant with Alessi & Koenig.

Q. Were there any communications between Mesa Management and Alessi & Koenig regarding First Horizon's connection to this property compared with SFR's connection to this property?

A. Not that I'm aware of.

Q. Would you agree that there seemed to be some confusion as to who the record owner was following the HOA foreclose sale with Mesa Management?

MS. EBRON: Form. Calls for a legal conclusion.

MR. LOIZZI: Join.

MS. EBRON: Calls for speculation.

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MR. LOIZZI: Join.
THE WITNESS: I'm not sure.
BY MS. MORGAN:
Q. Okay. Was there some -- was there some confusion as to the identity of the record owner following the HOA foreclosure sale on Alessi's behalf?
MS. EBRON: Form. Calls for a legal conclusion.
MS. LOIZZI: Join.
THE WITNESS: Well, I think that the record owner, as far as Alessi was concerned, was who the record owner was. I don't know that there was any confusion in that regard. The assessor's site, from what I just reviewed, showed the record owner to be First Horizon Home Loans. I don't think there were any documents -- yeah, that is all.
BY MS. MORGAN:
Q. Okay. So if we take a point in time, such as when the notice of default was recorded, that is just -- take that date, October 21, 2013, Alessi knew that it had sold the property to SFR a few months earlier; is that accurate?
A. I -- we certainly had the -- I don't -- I don't know if the employee of Alessi & Koenig at the time they recorded the subsequent notice of default --

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that is, the notice of default that was recorded after the trustee's sale -- was this same employee that handled the -- the first foreclosure or had any direct knowledge that there had been a foreclosure.
Q. Okay.
A. Certainly, the documents were in the public record to show that a trustee's deed had been recorded into SFR's name. Subsequently, a trustee's deed recorded the ownership, I believe, into either the bank or a third party's name, the bank's names. So I don't know what the employee of Alessi & Koenig was aware of at the time that they recorded the notice of default.
Q. Did Alessi have any communications with anyone at First Horizon at any point in time about the specific account?
A. I'm not sure. There was the one great demand that had First Horizon listed as the -- in the two-line -- I'm not sure if that is the same --
Q. Yeah. I'm not talking about any of the written documents we've looked at already. I mean like any e-mails, any phone calls.
A. Not that I'm aware of.
MS. EBRON: Are you talking about before litigation began or just anytime?
MS. MORGAN: From the date of the -- well, we

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can say from the date of the notice of delinquent assessment lien in 2012 through the litigation.
THE WITNESS: I haven't seen any communications with First Horizon. I'm not aware of any other than the ones we -- the possible ones we discussed.
MS. EBRON: And we are excluding the subpoena?
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. Did Alessi know, when it held the auction for this property, that the property had been foreclosed on and purchased by First Horizon?
THE WITNESS: Could you repeat that?
(The following record was read by the court reporter: "Question: Did Alessi know when it -- they would (sic) auction for this property that the property had been foreclosed on and purchased by First Horizon?")
MS. EBRON: Form.
THE WITNESS: I don't have any specific knowledge as to whether or not Alessi knew. My guess is that Alessi did not know.
BY MS. MORGAN:
Q. Why is that your guess?
A. My understanding is that the trustee's deed

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upon sale had not yet -- had not been recorded at the time it went to sale. I -- I'm assuming I believe that an NOD probably was, but there are a lot of NODs that are recorded by the bank that never go to sale, and we don't make it a practice of calling the bank to find out whether or not the NOD had been satisfied.
So inasmuch as there was no record of the sale, my guess is that we didn't know about it.
Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?
MS. EBRON: Calls for speculation, incomplete hypothetical.
MR. LOIZZI: Join. Go ahead.
THE WITNESS: I would answer the question that in general we would not.
BY MS. MORGAN:
Q. And why not?
A. Because there would have been a new -- well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that

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time.
Q. When you prepared for this deposition, did you specifically look for any payments made by First Horizon after the -- or after its foreclosure sale?
A. I did look for payments by First Horizon after its foreclosure sale. I didn't see any.
Q. Okay. Did you look for those payments with the thought in mind that they were tendering the super-priority amount, like we have seen in other cases, or did you look for payments that would typically be made following the bank's foreclosure as it pays off junior liens?
A. Not really for any reason in particular. Just to see if that would -- just in reviewing the file that -- I'm not sure I even specifically thought to look for those -- any payments. I just don't believe I saw any. I don't have any specific recollection that I said to myself, "I'm going to look for payments by the bank."
Q. Okay. So in this case, we have the HOA foreclosure on March 6, 2013 and the trustee's deed upon sale from the bank's foreclosure recorded on March 7, 2013, and I'm looking at page -170.
MS. EBRON: Can we repeat the question, please?
(The following record was read by the court

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reporter: "Question: So in this case, we have the HOA foreclosure on March 6, 2013 and the trustee's deed upon sale from the bank's foreclosure recorded on March 7, 2013, and I'm looking at page -170.")
THE WITNESS: That appears to be right. Yes.
BY MS. MORGAN:
Q. So had the lender recorded its trustee's deed upon sale a day earlier and Alessi had seen it, it would not have moved forward with the HOA foreclosure; is that accurate?
A. Yeah. That is my recollection of our policy at that time. Yes.
MS. MORGAN: That is all I have.
EXAMINATION
BY MS. EBRON:
Q. Good afternoon. I'm Diana Ebron. I represent SFR Investments Pool 1, LLC, in this matter.
Earlier you were talking about the notice of delinquent assessments and you testified that it was not to provide it to First Horizon or to MERS. Is there a reason why a notice of delinquent assessment was not provided to First Horizon or MERS?
A. Because our Nevada counsel does not feel that that is necessary to be in compliance with the statutes.

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Q. And it was recorded publicly, correct?
A. Yes.
Q. Is there a reason why the trustee's deed upon sale to SFR did not identify First Horizon as the former owner?
A. Because they were not the successful bidder at the sale.
Q. Oh, sorry. As the former owner.
A. As the former owner? Because First Horizon, it is my understanding, had not yet -- had not recorded a trustee's deed upon sale deeding the property into their name.
Q. Okay.
A. So we were not aware of the previous day's foreclosure.
Q. Okay. We've been through this before at several depositions, but just so we can have a complete transcript here, does anyone who has an interest or works for Alessi have any ownership interest in SFR Investments Pool 1, LLC?
A. No.
Q. Same question but for SFR Investment, LLC.
A. No.
Q. SFR Funding, LLC.
A. Same answer, no.

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Q. Does anyone who works at or has an interest in Alessi have any management control over SFR Investments Pool 1, LLC?
A. No.
MS. EBRON: Thank you.
MS. LOIZZI: Yay.
MS. MORGAN: All right.
COURT REPORTER: Do you need a transcript, Diana?
MS. EBRON: Please. E-tran.
COURT REPORTER: For both depositions?
MS. EBRON: Yes.
THE WITNESS: We don't want one.
(The deposition concluded at 4:42 p.m.)

-oOo-

CERTIFICATE OF COURT REPORTER

I, Cindy Johnson, a duly certified court reporter in and for the State of Nevada do hereby certify: That I reported the deposition of David Alessi, commencing on Monday, January 11, 2016, at 3:20 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. Transcript review pursuant to NRCP 30(e) was not requested.

I further certify that I am not a relative or employee of counsel or any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the state of Nevada, this 14th day of January 2016.

_____

Cindy K. Johnson, RPR, CCR No. 706

EXHIBIT N

EXHIBIT N

ELECTRONICALLY SERVED
10/06/2015 04:30:44 PM

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, v. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-679329-C Dept. No. XXVI **FIRST HORIZON HOME LOANS' INITIAL EXPERT DISCLOSURE**

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Defendant First Horizon Home Loans, a Division Of First Tennessee Bank, N.A., a national association (**FHHL**), by and through its attorneys of the law firm AKERMAN LLP, hereby designates the following expert witness pursuant to Nevada Rules of Civil Procedure 26(a)(2).

1. Certified General Appraiser
Matthew Lubawy, MAI
Valbridge Property Advisors/ Lubawy & Associates
3034 S. Durango Dr. #100
Las Vegas, NV 89117

. . .

. . .

Mr. Lubawy will provide his expert opinion concerning the market value at the time of the HOA's foreclosure sale. Mr. Lubawy's initial expert report, curriculum vitae with trial testimony and fee schedule are attached hereto as **Exhibit A,** (LUBAWY000001 – LUBAWY000030).

DATED this 6th day of October, 2015.

AKERMAN LLP

/s/ Melanie D. Morgan, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 6th day of October, 2015 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **FIRST HORIZON HOME LOANS' INITIAL EXPERT DISCLOSURE**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & 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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RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

SUBJECT

Property Address: 5069 Midnight Oil Drive City: Las Vegas State: NV Zip Code: 89122

County: Clark Legal Description: Silver Springs Unit A, Lot 46 (Book 91, Page 36)

Assessor's Parcel #: 161-26-111-017 Tax Year: 2013-14 R.E. Taxes: $ 594.75 Special Assessments: $ None known

Current Owner of Record: Ana Torres (as of March 6, 2013) Occupant: ☒ Owner ☐ Tenant ☐ Vacant ☐ Manufactured Housing

Project Type: ☐ PUD ☐ Condominium ☐ Cooperative ☐ Other (describe) HOA: $ 90 ☐ per year ☒ per month

Market Area Name: Southeast Map Reference: 926-3A (Thomas) Census Tract: 50.16

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☐ Market Value (as defined), or ☒ other type of value (describe) Fair Market Value

This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date) ☒ Retrospective ☐ Prospective

Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach (See Reconciliation Comments and Scope of Work)

Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)

Intended Use: Litigation

Intended User(s) (by name or type): Akerman, LLP

Client: Akerman, LLP Address: 1160 Town Center Dr, Suite 330, Las Vegas, NV 89144

Appraiser: Tammy L. Howard Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117

NEIGHBORHOOD AREA DESCRIPTION

				Predominant Occupancy	One-Unit Housing			Present Land Use		Change in Land Use
Location:	☐ Urban	☒ Suburban	☐ Rural		PRICE		AGE	One-Unit	65 %	☒ Not Likely
Built up:	☐ Over 75%	☒ 25-75%	☐ Under 25%		$(000)		(yrs)	2-4 Unit	%	☐ Likely * ☐ In Process *
Growth rate:	☐ Rapid	☒ Stable	☐ Slow	☒ Owner						
Property values:	☐ Increasing	☒ Stable	☐ Declining	☐ Tenant	27	Low	New	Multi-Unit	10 %	* To:
Demand/supply:	☐ Shortage	☒ In Balance	☐ Over Supply	☒ Vacant (0-5%)	190	High	25	Comm'l	10 %	
Marketing time:	☐ Under 3 Mos.	☒ 3-6 Mos.	☐ Over 6 Mos.	☐ Vacant (>5%)	90	Pred	10	Vacant	15 %	

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): The nbhd. is located in the east ptn. of Las Vegas Valley, +/- 8-10 miles from the Las Vegas Strip & downtown areas. It is bound on the north by the alignment of Harmon Ave, the Charleston Blvd., the east by Hollywood Blvd. or limits of development in that direction, the south by Russell Road and the west by Boulder Highway. This area includes a compatible mix of tract style SFR's with most new development occuring in the far SE ptn of the nbhd. Notable properties in the area include the Wetlands Park and Sam Boyd Stadium. The Clark County and City of Las Vegas sewage treatment plants border the nbhd to the north. Some industrial uses are located near the center of the nbhd. as well as along a portion of Boulder Hwy. The area has an adequate mix of public schools, parks, shops, & general conveniences. Access is average via Boulder Highway, US 95 & local streets. Prices over the past 12 months show an upward trend in the first couple of months of 2013. The average list price to sale price ratio during the prior year within the neighborhood is 102%. The reasonable exposure time for the subject property at the opinion of market value stated in this report is 60-90 days. Average overall appeal and marketability.

SITE DESCRIPTION

Dimensions: 39 x 87 Site Area: 3,393 Sq.Ft. ☐ Corner Lot ☒ Cul de Sac

Zoning Classification: R-3 Description: Multiple Family Residential, 18 units per acre

Zoning Compliance: ☒ Legal ☐ Legal nonconforming (grandfathered) ☐ Illegal ☐ No zoning

Utilities	Public	Other	Description
Electricity	☒	☐	
Gas	☒	☐	
Water	☒	☐	
Sanitary Sewer	☒	☐	
Storm Sewer	☐	☐	Unknown

Off-site Improvements	Type	Public	Private
Street	Asphalt	☐	☒
Curb/Gutter	Concrete	☐	☒
Sidewalk	Concrete	☐	☒
Street Lights	Electric	☐	☒
Alley	None	☐	☐

Topography	Level
Size	Typical for neighborhood
Shape	Rectangular
Drainage	Assume adequate
View	None, typical
Landscaping	Minimal front and rear

FEMA Spec'l Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 32003C 2585F FEMA Map Date 11/16/2011

Highest & Best Use as improved: ☒ Present use, or ☐ Other use (explain)

Actual Use as of Effective Date: Single family residential Use as appraised in this report: Single family residential

Summary of Highest & Best Use: The highest and best use is as it exists, a single family residence.

Site Comments: No apparent adverse easements, encroachment, environmental conditions, illegal or legal nonconforming zoning uses noted at the time of the inspection; however, inspection was made without the benefit of a title report or survey. The subject site is located at the rear of an 8 lot cul-de-sac.

DESCRIPTION OF THE IMPROVEMENTS

General Description		Exterior Description		Foundation		Basement ☒ None		Heating	
# of Units	1 ☐ Acc.Unit	Foundation	Concrete	Slab	Concrete	Area Sq. Ft.		Type	FAU
# of Stories	1	Exterior Walls	Stucco	Crawl Space	None	% Finished	N/A	Fuel	Gas
Type	☒ Det. ☐ Att. ☐	Roof Surface	Concrete tiles	Basement	None	Ceiling			
Design (Style)	Standard	Gutters & Dwnspts.	None	Sump Pump	☐ N/A	Walls		Cooling	
☒ Existing	☐ Proposed ☐ Und.Cons.	Window Type	Fixed/Sliding	Dampness	☐ NoneNoted	Floor		Central	Air
Actual Age (Yrs.)	12	Storm/Screens	WovenMesh	Settlement	NoneNoted	Outside Entry		Other	
Effective Age (Yrs.)	10			Infestation	NoneNoted				

Interior Description		Appliances		Attic		Amenities		Car Storage ☐ None	
Floors	Vinyl/carpet	Refrigerator	☐	None	☐	Fireplace(s) #	None	Garage # of cars (2 Tot.)	
Walls	Drywall/paint	Range/Oven	☒	Stairs	☐	Woodstove(s) #		Attach.	2
Trim/Finish	Wood/paint	Disposal	☒	Drop Stair	☐	Patio	Open	Detach.	
Bath Floor	Vinyl	Dishwasher	☒	Scuttle	☒	Deck	None	Blt.-In	
Bath Wainscot	Fiberglass	Fan/Hood	☒	Floor	☐	Porch	Covered	Carport	
Doors	Flat, hollow core	Microwave	☒	Heated	☐	Fence	Masonry block	Driveway	
		Washer/Dryer	☐	Finished	☐	Pool	None	Surface	Concrete

Finished area above grade contains: 5 Rooms 3 Bedrooms 2 Bath(s) 1,183 Square Feet of Gross Living Area Above Grade

Additional features: Assume vinyl/carpet flooring, standard cabinets with laminate countertops in kitchen and bathrooms, overhead lights/fans, front yard drought tolerant landscaping, masonry block enclosed rear yard. Silver Springs is an age restricted community.

Describe the condition of the property (including physical, functional and external obsolescence): As of the effective date of this appraisal, the subject property is assumed to be in average condition. At the time of inspection, there were no apparent major repairs, renovation, or remodeling evident. The effective age is based on the appraiser's exterior inspection of the property. **An exterior inspection of the property was performed from the public street. An extraordinary assumption is made that the interior is in similar condition as the exterior and that the condition was similar at the effective date of this appraisal. The use of the extraordinary assumption may have affected the assignment results.**

*Personal property items are not included herein. The interior description has been based on public records and MLS records.

GP RESIDENTIAL

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RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): County Records/MLS

1st Prior Subject Sale/Transfer	Analysis of Sale/Transfer History: MLS & County Records did not reveal any sale of the subject in the 3-year period preceding the date of value, March 6, 2013. The subject property was not listed for sale as of the effective date of value. It had been under the ownership of Ana Torres since July 25, 2008 at which time it was purchased as an REO for $142,000.
Date: None/Prior three years	
Price: N/A	
Source(s): County Records	
2nd Prior Subject Sale/Transfer	
Date:	
Price:	
Source(s):	

SALES COMPARISON APPROACH

SALES COMPARISON APPROACH TO VALUE (if developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	5069 Midnight Oil Drive Las Vegas, NV 89122	5110 Mascaro Drive Las Vegas, NV 89122		4986 Mascaro Drive Las Vegas, NV 89122		5154 Mascaro Drive Las Vegas, NV 89122	
Proximity to Subject		0.20 miles E		0.21 miles NE		0.20 miles SE	
Sale Price	$ 0.00	$ 89,900		$ 90,500		$ 104,900	
Sale Price/GLA	$ /sq.ft.	$ 82.63 /sq.ft.		$ 84.90 /sq.ft.		$ 76.18 /sq.ft.	
Data Source(s)	Exterior Inspection	MLS#1288664		MLS#1307338		MLS#1285679	
Verification Source(s)	County Rcrds	Clark County Records		Clark County Records		Clark County Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions	N/A 0.00	Cash Traditional sale		Conv. Traditional sale		FHA, sellers contrib. Traditional sale	-500
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Date of Sale/Time	N/A	10/18/2012 COE		02/04/2013 COE		02/27/2013 COE	
Location	Average/gated	Average/gated		Average/gated		Average/gated	
Site	3,393 SF	3,485 SF		3,920 SF		3,920 SF	
View	None, typical	Wetlands Park	-1,500	Wetlands park	-1,500	None	
Design (Style)	Standard	Standard		Standard		Standard	
Quality of Construction	Average, typical	Average		Average		Average	
Actual Age	12 years	11 years		11 years		14 years	
Condition	Assm. average	Average		Average		Average	
Above Grade Room Count	Total 5 / Bdrms. 3 / Baths 2	Total 5 / Bdrms. 2 / Baths 2		Total 5 / Bdrms. 2 / Baths 2		Total 5 / Bdrms. 3 / Baths 2	
Gross Living Area	1,183 sq.ft.	1,088 sq.ft.	+4,750	1,066 sq.ft.	+5,850	1,377 sq.ft.	-9,700
Basement & Finished Rooms Below Grade	0 N/A	0 N/A		0 N/A		0 N/A	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	FAU/Central	FAU/Central		FAU/Central		FAU/Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 car garage	2-car garage		2-car garage		2 Car Garage	
Porch/Patio/Deck	Patio	Superior patio	-500	Cov. patio	-500	Cov. patio	-500
Fireplace/Upgrades	None/standard	None/Similar		None/similar		None/similar	
Pool	None	None		None		None	
Site Improvements	L/S, block walls	Similar	-500	Similar		Similar	
Contract Date	N/A	01/10/2013		12/20/2012		01/19/2013	
Day on Market	N/A	48		55		162	
Net Adjustment (Total)		☒ + ☐ -	$ 2,250	☒ + ☐ -	$ 3,850	☐ + ☒ -	$ -10,700
Adjusted Sale Price of Comparables			$ 92,150		$ 94,350		$ 94,200

Summary of Sales Comparison Approach COE, Close of Escrow date indicates the date the transaction was recorded. The contract date is the date the contract for sale was signed. Information for the COE and contract sales dates was obtained from MLS and county records and has been provided to give the Client additional understanding of the market conditions as of the effective date of this appraisal.

For the purpose of this appraisal, when conflict between County Records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, when conflict between MLS and county records were noted, MLS was used.

The sales comparables were inspected from the exterior on October 3, 2015, however, GLVAR MLS photos were used from the time of the sale as they are more reflective of the condition at the time of sale and the retrospective effective date of this appraisal.

All of the sales are typical tract residences from the subject subdivision that have closed within 1-5 months of the effective date of value. Sale 1 is a smaller two bedroom residence in the subject subdivision. It was on the market for 48 days before selling at list as an all cash, traditional sale. It backs to the Wetlands park area and has a natural desert view rather than other houses. Downward adjustments are made for a larger patio and superior rear yard landscaping while upward is necessary for the smaller size. Previously, the property had been under several variations of the Gault (seller in this transaction) name since August 2001.

Sale 2 is a smaller residence in the subject subdivision also. This property was on the market for 55 days before selling $3,000 below list as a traditional sale. The buyer obtained Conventional financing. The property backs to the Wetlands park for which a downward adjustment is made. Adjustments are also made for the smaller size (upward) and the covered patio (downward). The property had been under variations of the seller's name, Pupeter, name since December 2006.

Sale 3 is a slightly larger residence in the subject subdivision. This property was on the market for 162 days before selling at list as a traditional sale. The buyer obtained FHA financing and the seller contributed $500 to the buyer's closing costs. This property is similar to the subject overall with adjustments necessary for living area and covered patio only. The seller had owned the property (several name variations) since November 2002.

Indicated Value by Sales Comparison Approach $ 94,000

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RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

COST APPROACH

COST APPROACH TO VALUE (if developed) ☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): The cost approach is not considered an accurate reflection of current market value for the subject property, and has not been developed.

ESTIMATED ☐ REPRODUCTION OR ☐ REPLACEMENT COST NEW	OPINION OF SITE VALUE			=$
Source of cost data:	DWELLING		Sq.Ft. @ $	=$
Quality rating from cost service: Effective date of cost data:			Sq.Ft. @ $	=$
Comments on Cost Approach (gross living area calculations, depreciation, etc.):			Sq.Ft. @ $	=$
			Sq.Ft. @ $	=$
			Sq.Ft. @ $	=$
				=$
	Garage/Carport		Sq.Ft. @ $	=$
	Total Estimate of Cost-New			=$
	Less Physical	Functional	External	
	Depreciation			=$( )
	Depreciated Cost of Improvements			=$
	"As-Is" Value of Site Improvements			=$
				=$
				=$
Estimated Remaining Economic Life (if required): Years	**INDICATED VALUE BY COST APPROACH**			**=$**

INCOME APPROACH

INCOME APPROACH TO VALUE (if developed) ☒ The Income Approach was not developed for this appraisal.

Estimated Monthly Market Rent $ X Gross Rent Multiplier = $ **Indicated Value by Income Approach**

Summary of Income Approach (including support for market rent and GRM): Single family homes are not typically sold on an income basis. The income approach is not required for credible results.

PUD

PROJECT INFORMATION FOR PUDs (if applicable) ☐ The Subject is part of a Planned Unit Development.

Legal Name of Project:

Describe common elements and recreational facilities: An association fee of approximately $90 per month is reportedly charged for maintenance of common area landscaping. This is an age restricted community with a clubhouse and pool.

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ 94,000 **Cost Approach (if developed) $** N/A **Income Approach (if developed) $** N/A

Final Reconciliation The sales comparison approach is considered the most reliable indicator of value, as it best reflects the actions of buyers & sellers in the market. Most homes are owner occupied & do not produce income, so the income approach is not applicable. The cost approach is not an accurate reflection of current market value for the subject property & was not developed. The adjusted range is from $92,150 to $94,350 with a retrospective value of $94,000 estimated for the subject by weighting Sale 3 as most recent & similar in 3 bedroom design. This value is reasonably above that indicated by Sale 1 in light of the upward trend that was noted after the date. This equates to a per square foot figure of $79.46 which falls within the unadjusted range established by the sales.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the Improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, ☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: The subject property is being appraised with a retrospective date of value as of March 6, 2013. We assume the condition noted from an exterior inspection is similar to the property's retrospective date.

☒ This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.

Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: $ 94,000 **, as of:** March 6, 2013 **, which is the effective date of this appraisal.**
If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.

ATTACHMENTS

A true and complete copy of this report contains 19 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:

☒ Scope of Work	☒ Limiting Cond./Certifications	☐ Hypothetical Conditions	☒ Extraordinary Assumptions	☒ Narrative Addendum
☐ Sketch Addendum	☒ Location Map(s)	☐ Flood Addendum	☒ Additional Sales	☐ Cost Addendum
☐ Manuf. House Addendum	☒ Supplemental Addendum	☐ GLB Privacy Act	☐	☐

SIGNATURES

Client Contact: Michele Pori Client Name: Akerman, LLP
E-Mail: michele.pori@akerman.com Address: 1160 Town Center Dr, Suite 330, Las Vegas, NV 89144

APPRAISER

Appraiser Name: Tammy L. Howard
Company: Valbridge Property Advisors
Phone: (702) 242-9369 Fax: (702) 242-6391
E-Mail: tlhoward@valbridge.com
Date of Report (Signature): October 06, 2015
License or Certification #: A.0000253-CG State: NV
Expiration Date of License or Certification: 06/30/2017
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None
Date of Inspection: October 3, 2015

SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)

Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI
Company: Valbridge Property Advisors
Phone: (702) 242-9369 Fax: (702) 242-6391
E-Mail: mlubawy@valbridge.com
Date of Report (Signature): October 06, 2015
License or Certification #: A.0000044-CG State: NV
Expiration Date of License or Certification: 04/30/2017
Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☒ None
Date of Inspection:

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Supplemental Addendum

File No. 15-1087

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				

Purpose: The purpose of this appraisal is to form an opinion of the fair market value for the subject property as of the effective date which is a retrospective date of March 6, 2013.

Intended User: Akerman, LLP. No other users are intended by the Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

Intended Use: Litigation. No other use is intended by the Appraiser. The intended use as stated shall be used by the Appraiser in determining the appropriate Scope of Work for the assignment.

Scope of Appraisal:

Upon receiving this assignment from the client we identified the intended users of the report, confirmed that the effective date of the appraisal is to be consistent with the date of inspection. Next the real property being appraised was identified and available property-specific data was collected through public records, various data services and or MLS database.

An exterior inspection of the property was completed as described herein; a visual observation of the unobstructed, exposed surfaces of accessible areas from standing height was performed on the exterior areas of the subject property for valuation purposes only. The appraiser is NOT a "home inspector" and can only report conditions based on the visual observation noted above. The appraiser DOES NOT warrant any part/whole of the subject property environmental conditions or other conditions that would require a licensed professional such as; identifying the existence of Lead Based paint, Mold, Soil Slippage, Hazardous Waste, Radon Gas etc. We did not test the subject's mechanical systems; the appraiser is not an expert with regard to mechanical issues or electrical, plumbing, roof, foundation systems, or State, City, County, Building Code compliance etc.

The appraiser's inspection included noting the apparent condition, quality, utility, amenities and architectural style. Measurements and room counts used in this report came from county records. Zoning data was obtained from public records, office files, and or city/county planning offices. The collected data was then used to develop a profile of the subject property and analyze the highest and best use of the subject property.

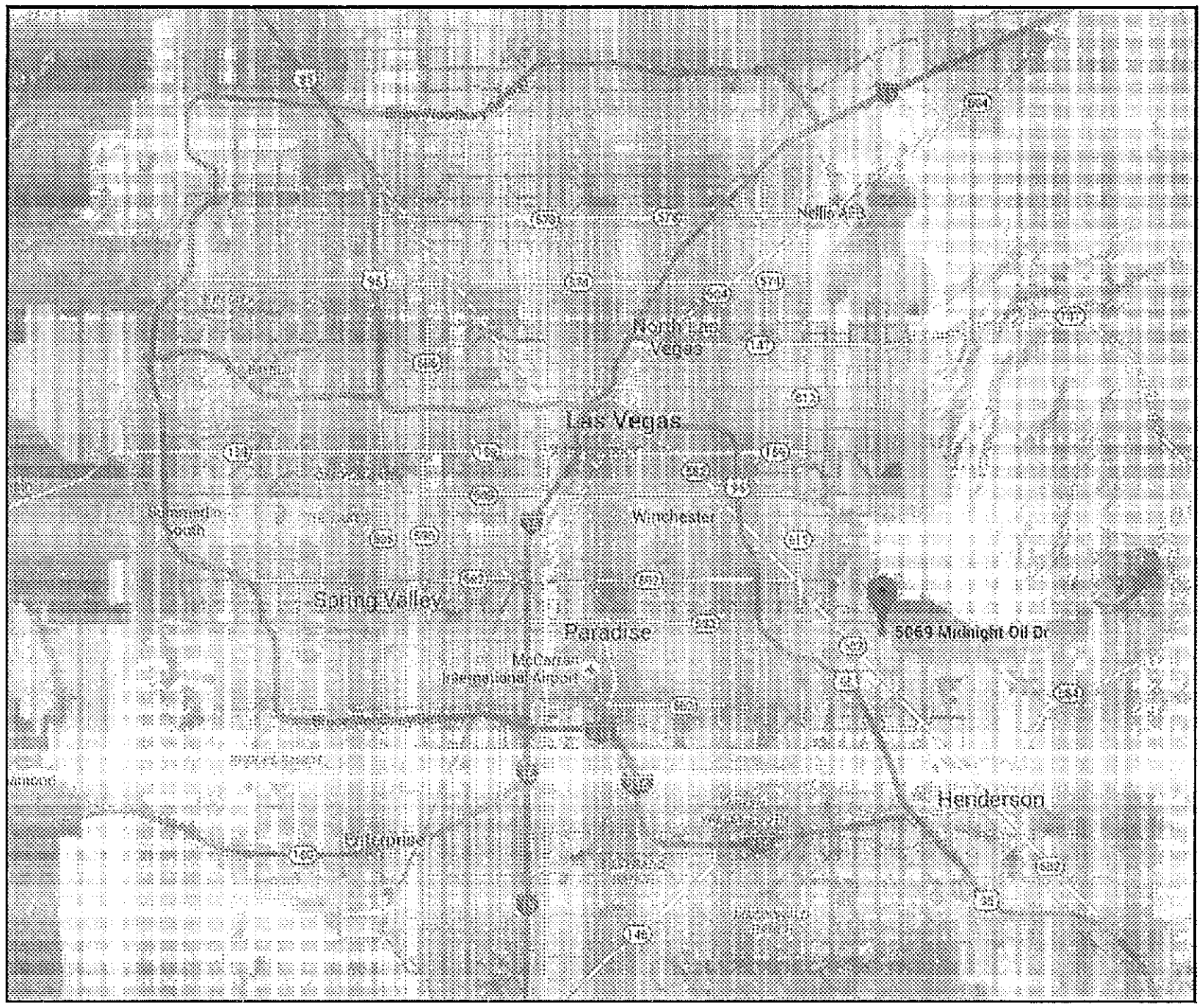
The appraiser performed a search of the local market area for the most similar closed comparable sales, pending/contingent sales and active listings. The accessible sales were inspected from the street and photos taken. MLS photos may be used when there is; obstruction, people are outside, when there is no access to the property, or when the MLS photo is considered a more accurate depiction of the properties condition at the time of sale. The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner, or the title company. Interior/exterior upgrade adjustments may be made to one or more of the comparables due to information obtained from the appraiser's exterior inspection of the property and/or information obtained from the multiple listing service (MLS). Where available, the appraiser has reviewed interior photographs provided by listing agents on the comparables to obtain a better understanding of these properties. The sales data was then analyzed and a value opinion derived.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Sales Comparison Analysis:
For the purpose of this appraisal, when conflict between County Records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, when conflict between MLS and county records were noted, MLS was used.

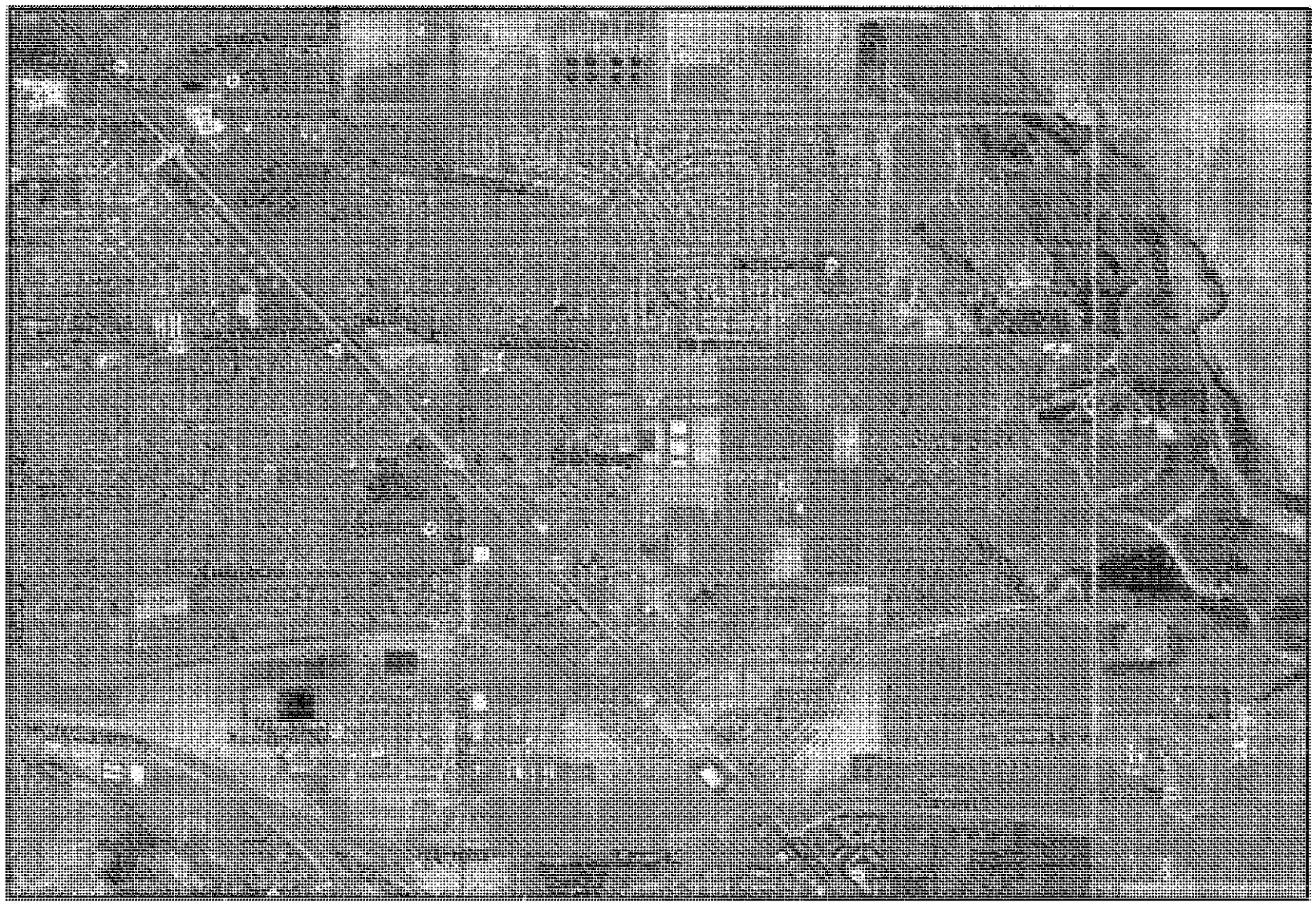
Location Map

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				



Neighborhood Map

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				



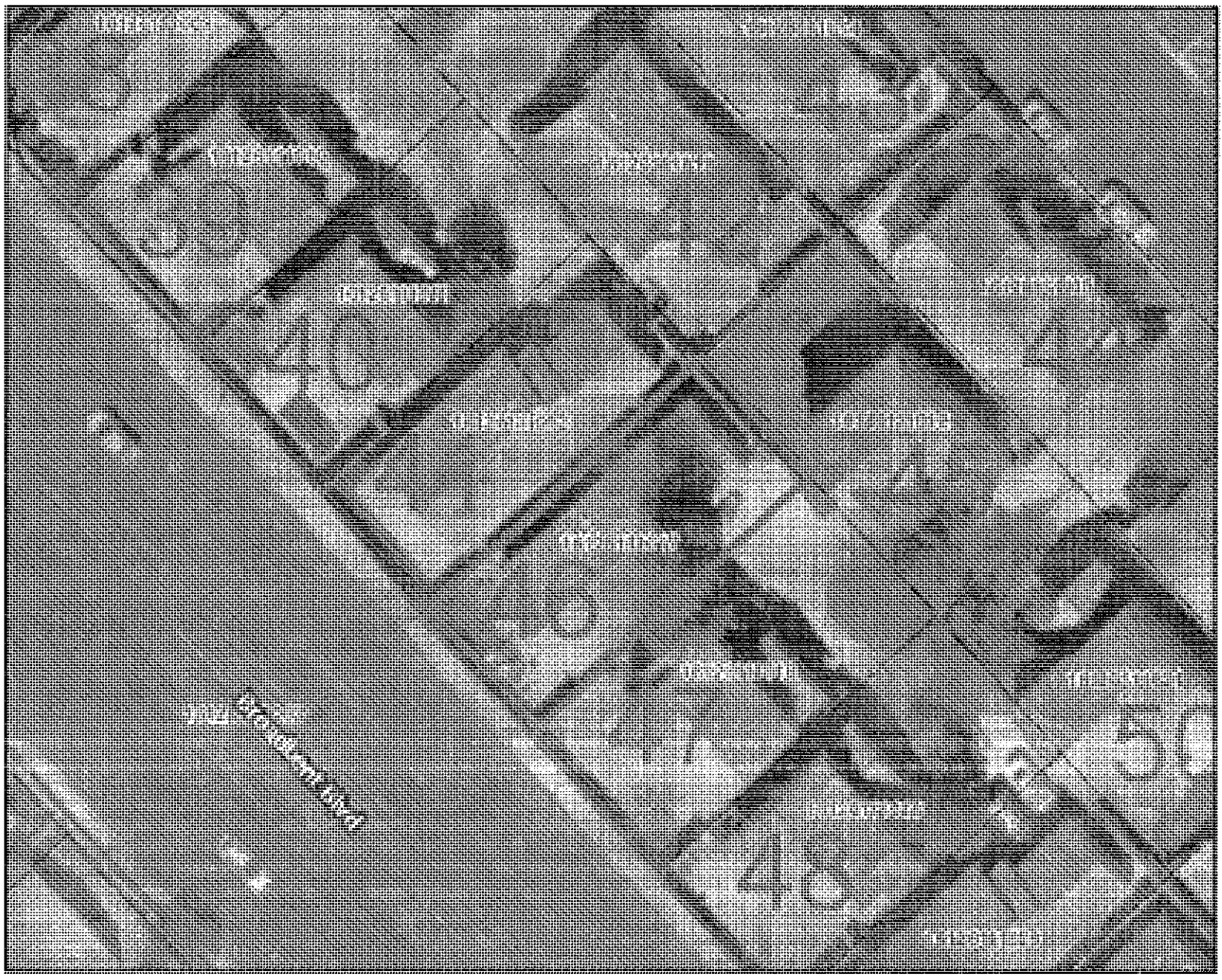
Aerial View

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				



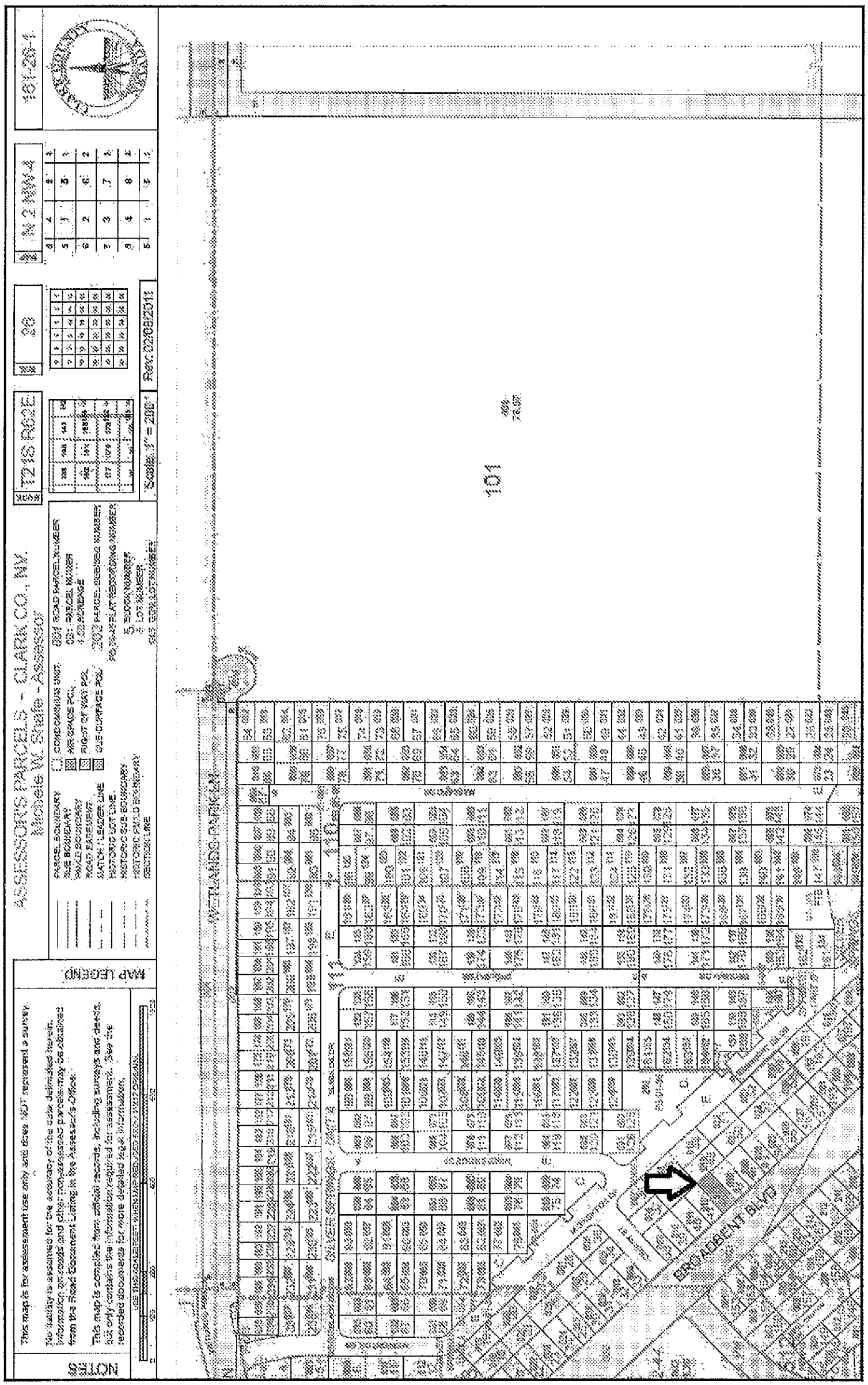
Aerial View Close Up

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				



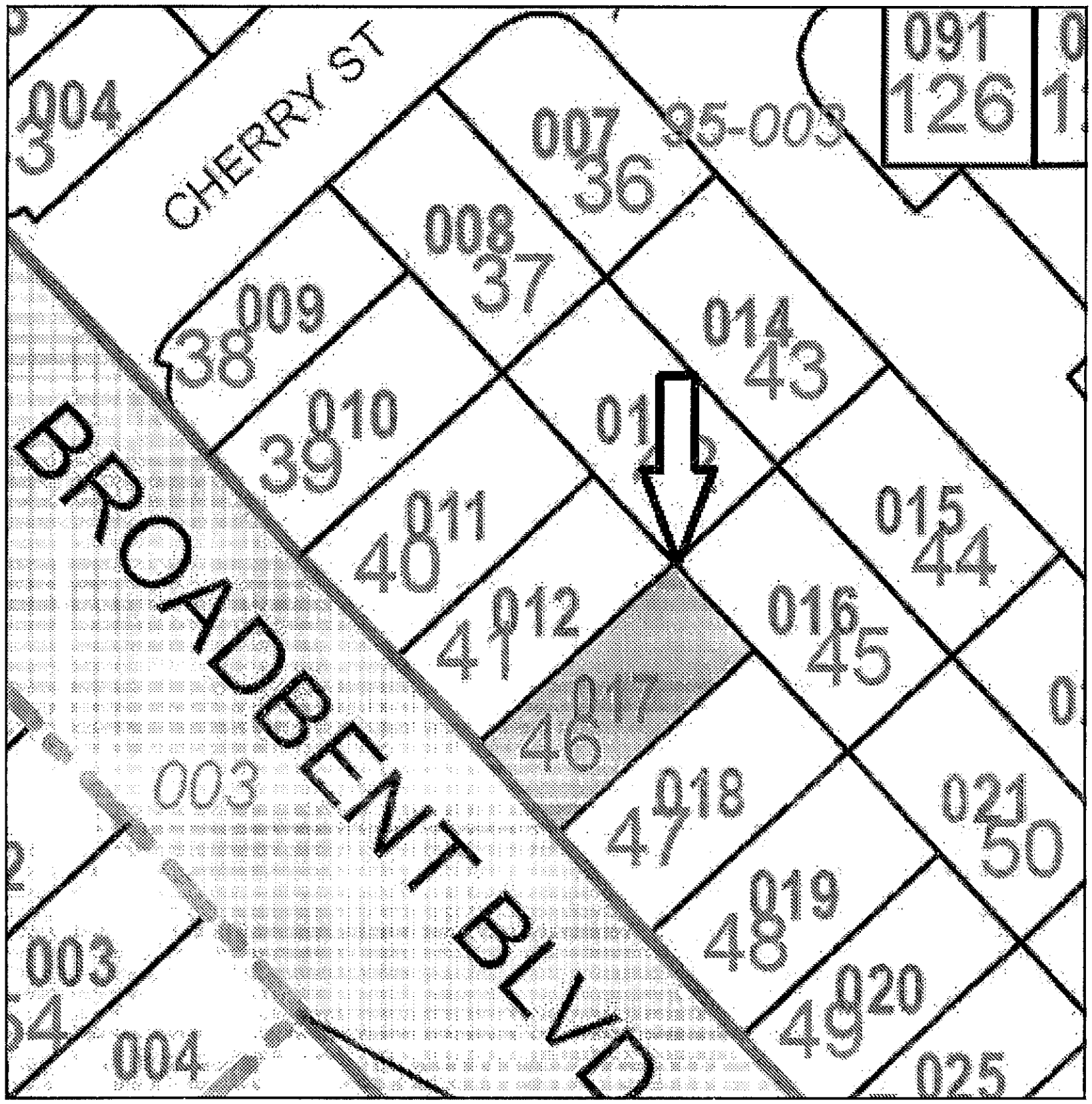
Assessor's Parcel Map

Owner	Ana Torres (as of March 6, 2013)						
Property Address	5069 Midnight Oil Drive						
City	Las Vegas	County	Clark	State	NV	Zip Code	89122
Client	Akerman, LLP						



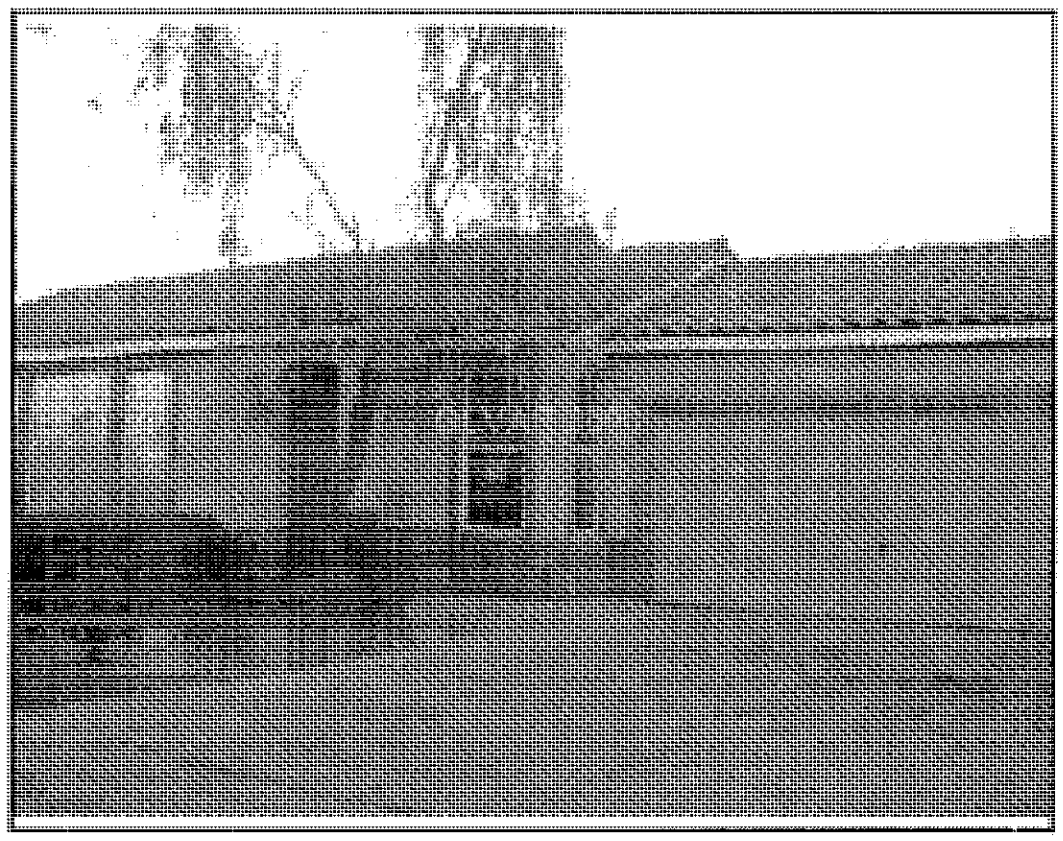
Assessor's Parcel Map Close Up

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark		State NV	Zip Code 89122
Client	Akerman, LLP				



Subject Photo Page

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				

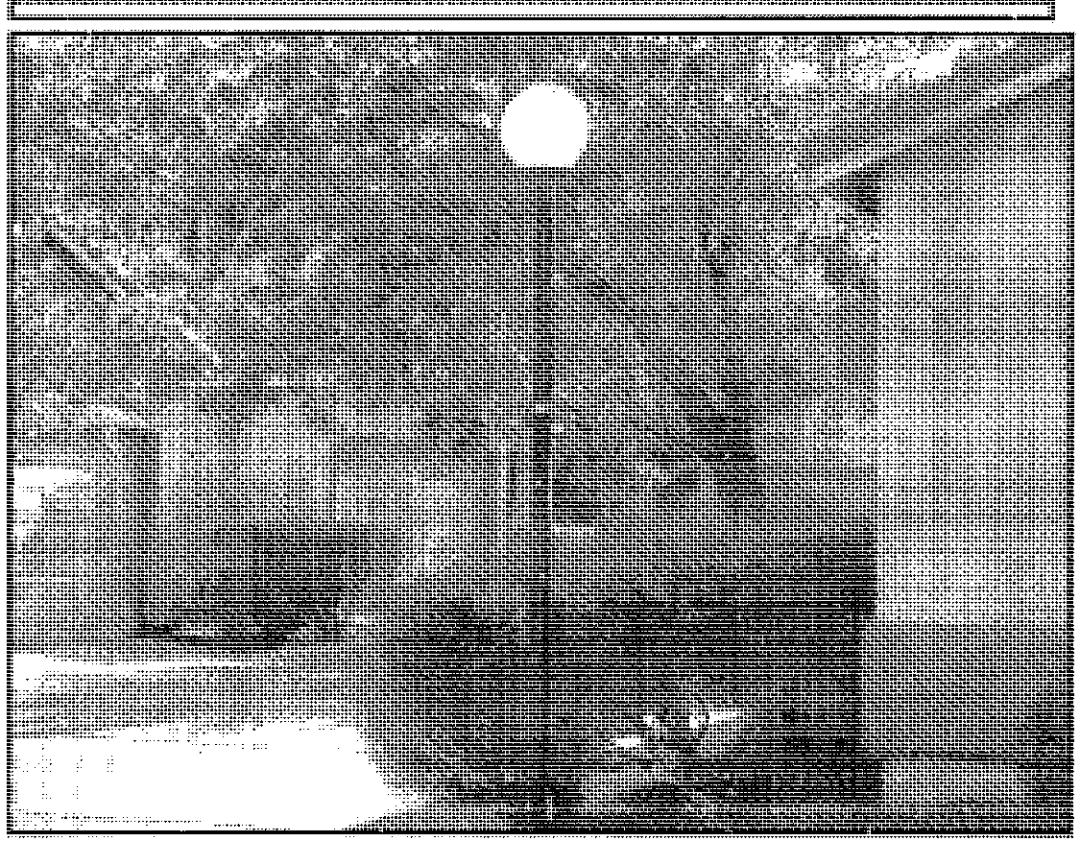


Subject Front

5069 Midnight Oil Drive

Sales Price	0.00
Gross Living Area	1,183
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Average/gated
View	None, typical
Site	3,393 SF
Quality	Average, typical
Age	12 years

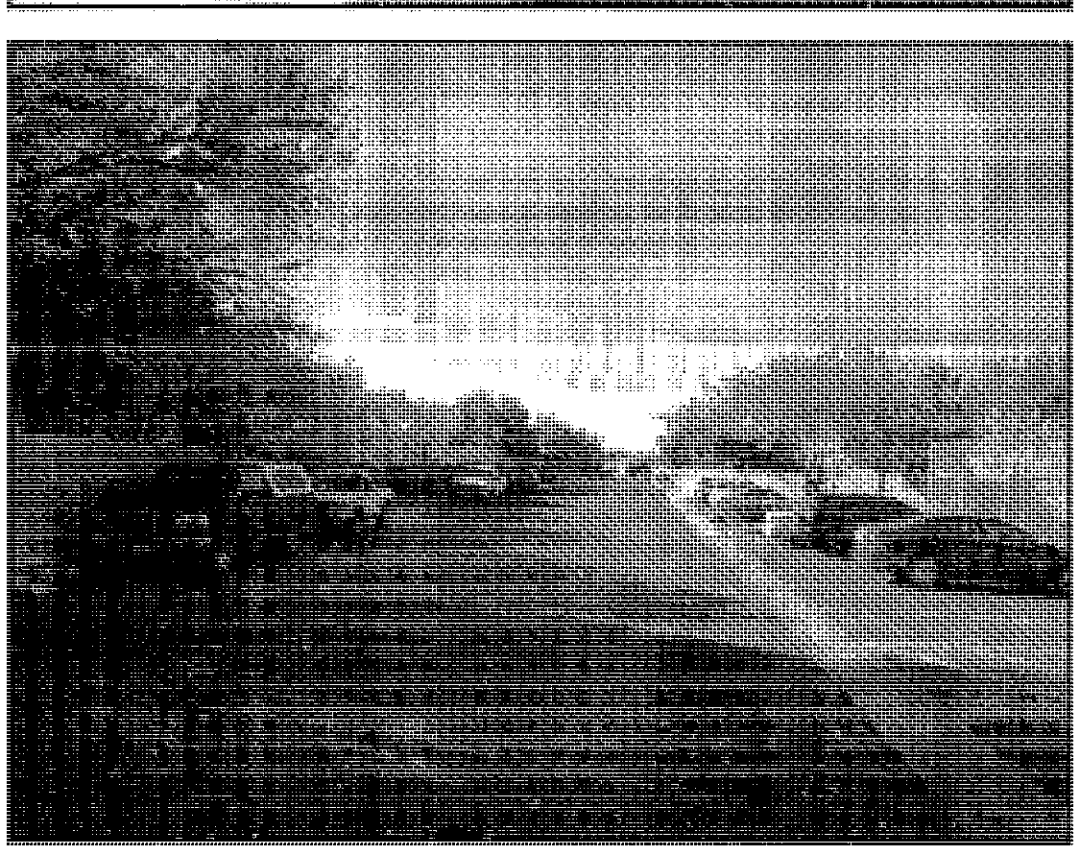
Photo from MLS



View of subject cul-de-sac

Photo taken 10/03/2015
by Tammy Howard

Subject is on the right in the back



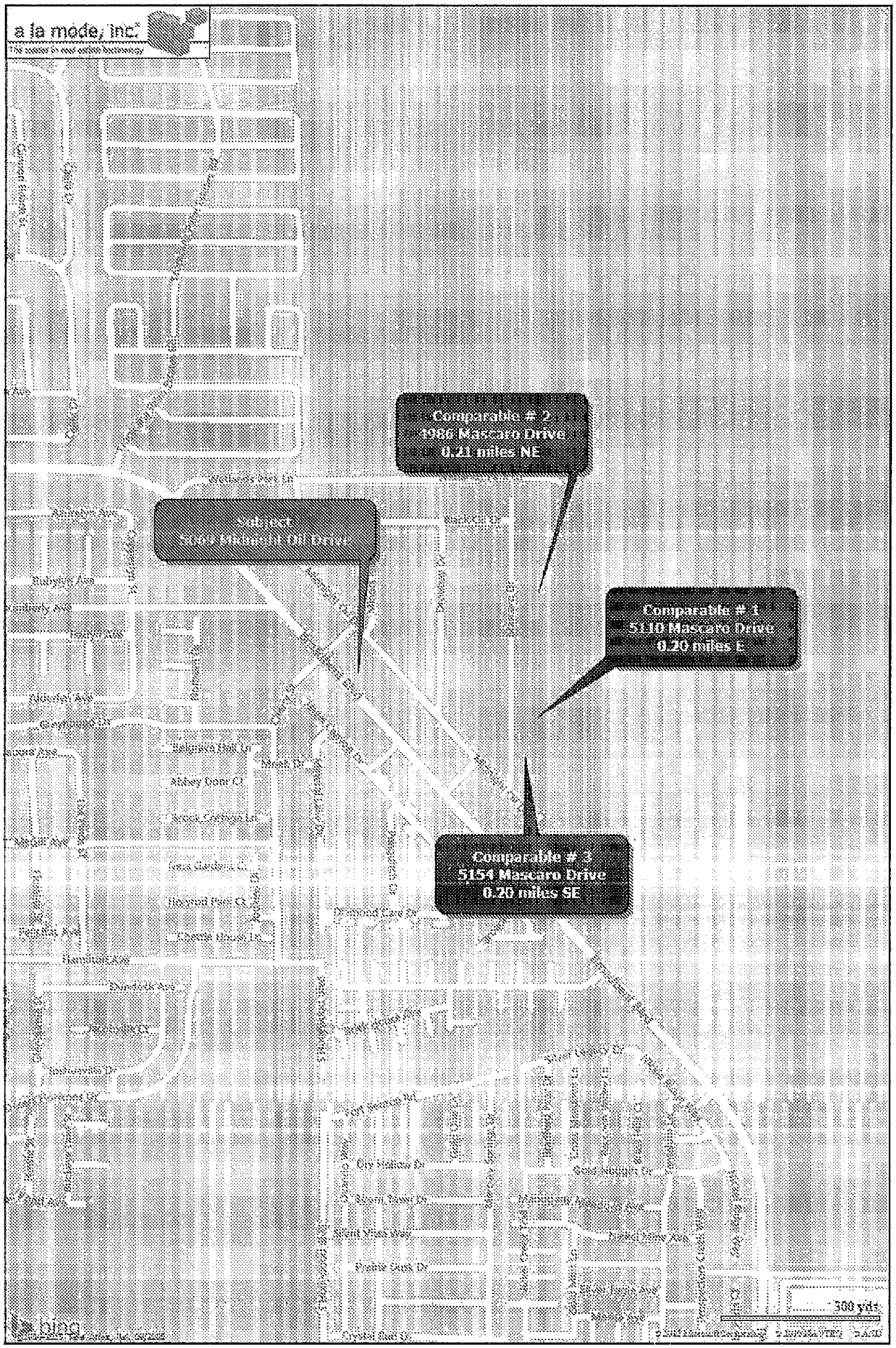
Street Scene

Looking NW
Photo taken 10/03/2015
by Tammy Howard

Subject cul-de-sac is on the left

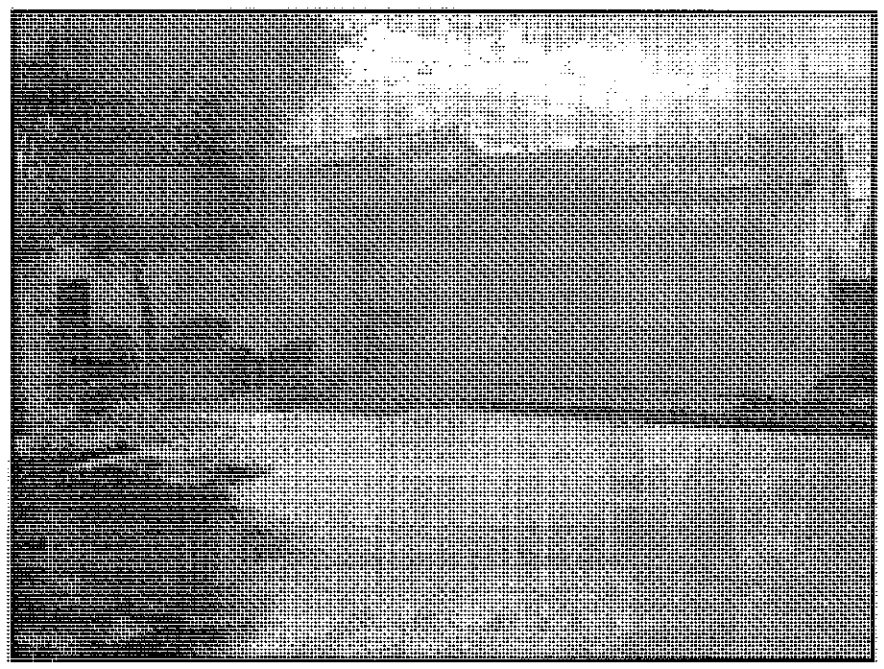
Comparable Sale Location Map

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				



Comparable Photo Page

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County Clark	State NV	Zip Code 89122	
Client	Akerman, LLP				

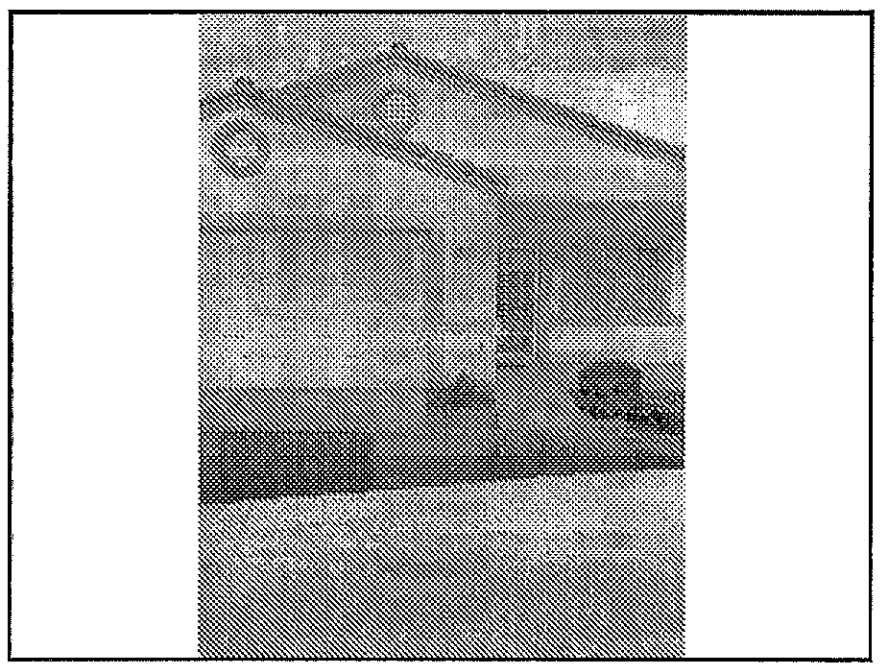


Comparable 1

5110 Mascaro Drive

Prox. to Subject	0.20 miles E
Sales Price	89,900
Gross Living Area	1,088
Total Rooms	5
Total Bedrooms	2
Total Bathrooms	2
Location	Average/gated
View	Wetlands Park
Site	3,485 SF
Quality	Average
Age	11 years

Photo from MLS listing

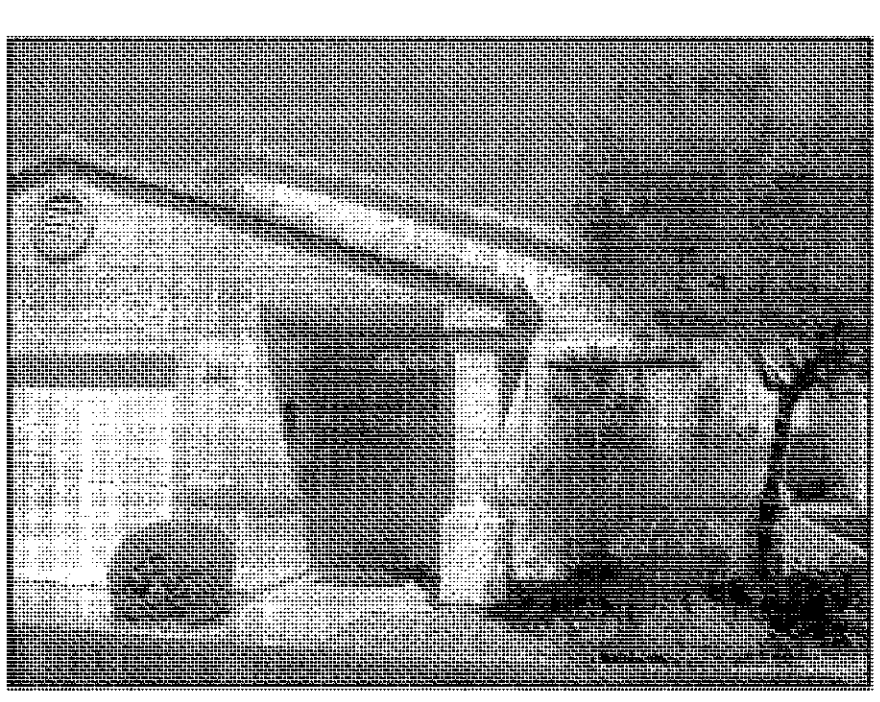


Comparable 2

4986 Mascaro Drive

Prox. to Subject	0.21 miles NE
Sales Price	90,500
Gross Living Area	1,066
Total Rooms	5
Total Bedrooms	2
Total Bathrooms	2
Location	Average/gated
View	Wetlands park
Site	3,920 SF
Quality	Average
Age	11 years

Photo from MLS listing



Comparable 3

5154 Mascaro Drive

Prox. to Subject	0.20 miles SE
Sales Price	104,900
Gross Living Area	1,377
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Average/gated
View	None
Site	3,920 SF
Quality	Average
Age	14 years

Photo from MLS listing

Assumptions, Limiting Conditions & Scope of Work

File No.: 15-1087

Property Address: 5069 Midnight Oil Drive	City: Las Vegas	State: NV	Zip Code: 89122
Client: Akerman, LLP	Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144		
Appraiser: Tammy L. Howard	Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117		

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):
An exterior inspection of the property was performed for the public street. An extraordinary assumption is made the interior is in similar condition as the exterior and that these conditions were similar on the retrospective date of value. The use of the extraordinary assumption may have affected the assignment results.

The purpose of this appraisal is for a "non lender" appraisal. It should be noted that the appraisers's data and comparables utilized were retrieved as of the inspection date noted within the body of the report. This report is intended for use by the Client that is named on page 1 of this report.

Measurements and room counts used in this report come from the appraisers interior/exterior inspection of the subject property, previous appraisal files and/or builder floor plans. These numbers may differ slightly with those recorded with Clark County records due to differences in measuring techniques.

The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner or the title company.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

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Certifications

File No.: 15-1087

Property Address: 5069 Midnight Oil Drive	City: Las Vegas	State: NV	Zip Code: 89122
Client: Akerman, LLP	Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144		
Appraiser: Tammy L. Howard	Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

— The statements of fact contained in this report are true and correct.

— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

— My engagement in this assignment was not contingent upon developing or reporting predetermined results.

— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.

— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.

— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.

— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.

-The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

-As of the date of this report, Matthew Lubawy, MAI has completed the continuing education program of the Appraisal Institute.

-The appraisers' state registration/certification has not been revoked, suspended, canceled or restricted.

Disclosure of Prior Appraisal and/or Other Services:

I certify that, to the best of my knowledge and belief:

I have not performed a prior appraisal or other service regarding the subject property within the 3 year period immediately preceding acceptance of this appraisal assignment.

DEFINITION OF FAIR MARKET VALUE *:

"The price which a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell, taking into consideration all the uses to which the property is adapted and might in reason be applied."

Source: Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247 (1980)

SIGNATURES

Client Contact: Michele Pori Client Name: Akerman, LLP

E-Mail: michele.pori@akerman.com Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144

APPRAISER	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)
Appraiser Name: Tammy L. Howard	Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI
Company: Valbridge Property Advisors	Company: Valbridge Property Advisors
Phone: (702) 242-9369 Fax: (702) 242-6391	Phone: (702) 242-9369 Fax: (702) 242-6391
E-Mail: tlhoward@valbridge.com	E-Mail: mlubawy@valbridge.com
Date Report Signed: October 6, 2015	Date Report Signed: October 6, 2015
License or Certification #: A.0000253-CG State: NV	License or Certification #: A.0000044-CG State: NV
Designation:	Designation: MAI
Expiration Date of License or Certification: 06/30/2017	Expiration Date of License or Certification: 04/30/2017
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None	Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☒ None
Date of Inspection: October 3, 2015	Date of Inspection:

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Qualifications of Tammy L. Howard
Senior Appraiser
Valbridge Property Advisors | Lubawy & Associates, Inc.

Independent Valuations for a Variable World

State Certifications

State of Nevada
License #A.0000253-CG

Education

Attended University of Nevada, Las Vegas, 1988-89
Graduated Plainwell High School, MI, 1980

Contact Details

702-242-9369 (p)
702-242-6391 (f)

Valbridge Property Advisors |
Lubawy & Associates
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Related Courses/Seminars:

Real Estate Appraisal Principles
Residential Valuation
Uniform Standards of Professional Appraisal Practice
Basic Valuation Procedures
Residential Case Studies
Case Studies in Law & Ethics
Forensic Real Property Appraising
FHA Appraisal Inspections from the Ground Up
Litigation Appraisal & Expert Testimony
Real Estate Law I and II
Income Property Analysis
Market Extraction
Factory Built Housing
Income Capitalization

Experience:

Senior Appraiser
Valbridge Property Advisors|Lubawy & Associates (2013-Present)

Senior Appraiser
Lubawy & Associates (June 2012-2013)

Senior Appraiser
Grubb & Ellis-Landauer Valuation (Oct 2010-May 2012)

Associate Appraiser
Integra Realty Resources| Shelli Lowe & Associates (1985-2010)

Appraisal/valuation and consulting assignments include: apartment buildings; retail buildings and shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools and houses of worship; residential subdivisions; and vacant industrial, commercial and residential land. Assignments have been concentrated in Nevada.

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE — REAL ESTATE DIVISION — NOT TRANSFERABLE

This is to Certify That : TAMMY L HOWARD — Certificate Number: A.0000253-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: June 30, 2015 — Expire Date: June 30, 2017

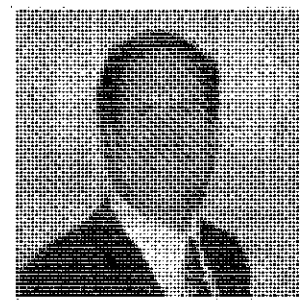
In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator

Qualifications of Matthew Lubawy, MAI, CVA, CMEA
Senior Managing Director
Valbridge Property Advisors | Lubawy & Associates, Inc.



Independent Valuations for a Variable World

State Certifications

Nevada License
A.0000044-CG

Arizona License
#31821

Education

Bachelor of Science
Business Administration
University of Nevada, Las Vegas

Contact Details

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702-242-6391 (f)

Valbridge Property Advisors |
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3034 S. Durango Dr. #100
Las Vegas, NV 89117
www.valbridge.com
mlubawy@valbridge.com

Membership/Affiliations:

Member:	Appraisal Institute - MAI Designation #10553
	Director – (2008 – 2011)
	President of Las Vegas Chapter (1998 – 1999)
	1st V.P. of Las Vegas Chapter (1997 – 1998)
	2nd V.P. of Las Vegas Chapter (1996 – 1997)
Member:	NACVA – CVA Designation (Certified Valuation Analyst for business valuation)
Member:	NEBB Institute – CMEA Designation for Machinery and Equipment
Board Member:	Valbridge Property Advisors - Vice-Chairman of the Board of Directors (2011 – Present)
Member:	International Right of Way Association
Member:	National Association of Realtors
Member:	GLVAR
Board Member:	Nevada State Development Corporation Chairman of the Board (2008-Present)

Experience:

Senior Managing Director
Valbridge Property Advisors | Lubawy & Associates (2013 to Present)

Principal
Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant
Timothy R. Morse and Associates (1992 – 1994)

Staff Appraiser/Assistant Vice President
First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant
The Clark Companies (1987 - 1988)

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE — REAL ESTATE DIVISION — NOT TRANSFERABLE

This is to Certify That: MATTHEW J LUBAWY — Certificate Number: A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: March 31, 2015 — Expire Date: April 30, 2017

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statues, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator

MATTHEW LUBAWY, MAI
DEPOSITIONS/TRIAL TESTIMONY

DEPOSITIONS

NEVADA STATE DISTRICT COURT

- **State of Nevada vs. Friendly Lounge, Inc.,** (Case #05-A-508773)
  Date: January 4, 2007
  Attorneys: Michael Chapman (Chapman Law Firm) and Kirby Gruchow (Santoro, Driggs, Walch, Kearney, Johnson & Thompson)
  Judge: Timothy Williams, District 16
  Our File Nos: 05-156 & 06-303

- **Nevada Power vs. Don & Paul, LLC** (Case #06-A-518730)
  Date: January 2007
  Attorney: Michael Chapman (Chapman Law Firm)
  Judge: Mark R. Denton, District 13
  Our File No: 06-266

- **Nevada Power vs. DFA, LLC** (Case #06-A-518732)
  Date: January 2007
  Attorney: Michael Chapman (Chapman Law Firm)
  Judge: Jennifer Togliatti, District 9
  Our File No: 06-263

- **Nevada Power vs. North Brown Properties, Inc.** (Case #05-A-508237)
  Date: February 2007
  Attorneys: Michael Chapman (Chapman Law Firm) and Bill Coulthard (Harrison, Kemp, Jones and Coulthard)
  Judge: Elizabeth Gonzalez, District 11
  Our File Nos: 05-324 & 06-380

- **Nevada Power vs. Steven P. Shearing (et al)** (Case #05-A-509849)
  Date: June 2007
  Attorneys: Joshua Reisman (Ballard Spahr Andrews & Ingersoll LLP
  Judge: Michael Villani, Dept. 17
  Our File No: 07-138

- **Peach vs. Warmington Homes-Nevada** (Case #03-A-466958)
  Date: January 31, 2008
  Attorneys: Andrew C. Green - McKay Law Firm; William J. Taylor
  Judge: Timothy C. Williams
  Our File No: 06-1034

- **NDOT vs. BDR South Parcel Investments LLC** (Case #06-A-527718)
  Date: April 22, 2008
  Attorneys: Thomas Rondeau - Goold Patterson Ales & Day; Charles Titus - Santoro, Driggs, Walch, Kearney, Holley & Thompson
  Judge: Mark R. Denton
  Our File No: 07-181

- **Vons Company vs. Del Webb Communities** (Case #05-A-501372)
  Date: June 5, 2008
  Attorneys: Rogelio M. Ruiz - Garcia, Calderon & Ruiz; Sean Thueson - Holland & Hart
  Judge: Mark R. Denton
  Our File No: 08-096

- **Nevada Power Company vs. Pardee Homes of Nevada** (Case #07-A-549636)
  Date: September 5, 2008
  Attorneys: P. Kyle Smith - Harrison, Kemp, Jones & Coulthard; Kirby Gruchow - Leach Johnson Song & Gruchow
  Judge: Michael Villani
  Our File No: 07-105

- **Nevada Power Company vs. Michael B. Phillips** (Case #07-A0549641)
  Date: October 21, 2008
  Attorneys: Charles M. Damus - Charles M. Damus & Associates; Kirby Gruchow - Leach Johnson Song & Gruchow
  Judge: Valorie J. Vega
  Our File No: 08-021

- **Nevada Power Company vs. Lucky Blue II LLC & Norman Family LP** (Case #07-A-549646-C)
  Date: October 22, 2008
  Attorneys: Mark Ferrario - Kummer Kaempfer Bonner Renshaw; Kirby Gruchow - Leach Johnson Song & Gruchow
  Judge: Jessie Walsh
  Our File No: 08-023

- **Nevada Power Company vs. Treasure Cove, LLC and Storybook Homes** (Case #07-A-549645-C)
  Date: October 23, 2008
  Attorneys: Kyle Smith - Harrison, Kemp, Jones & Coulthard; Kirby Gruchow - Leach Johnson Song & Gruchow
  Judge: Valorie J. Vega
  Our File No: 08-022

- **Nevada Power Company vs. Ernest A. and Kathleen C. Becker/Nevada State Bank** (Case #07-A-550071-C)
  Date: March 19, 2009
  Attorneys: John M. Netzorg - Law Offices of John M. Netzorg; Erich N. Storm, Chapman Law Firm
  Judge: Valorie J. Vega
  Our File No: 08-171

- **Albert D. Massi, et al vs. Clark County and City of Las Vegas** (Case #A555582)
  Date: July 9, 2009
  Attorneys: Philip Byrnes, City of Las Vegas Attorney's Office; Laura FitzSimmons, Sylvester & Polednak
  Our File No: 09-048

- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC** (Case #A575592)
  Date: May 25, 2010
  Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
  Our File No: 09-251

- **Nevada Power Company vs. Vegas Valley Investment, LLC, et al.** (Case #A-09-592829-C)
  Date: August 17, 2010
  Attorneys: Neil J. Beller - Law Office of Neil J. Beller, Ltd.
  Our File No: 10-194

- **Branch Banking and Trust Company, et al., v. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
  Date: August 9, 2013
  Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
  Our File No: 13-0108-000

U.S. DISTRICT COURT

- **George F. Tibsherany, Inc. vs. The Midby Companies, LLC** (Case #CV-S-05-0613-LDG-GWF
  Date: December 11, 2006
  Attorneys: Nicholas M. Wieczorek (Morris, Polich, and Purdy, LLPO), William L. Coulthard (Harrison, Kemp & Jones), John Wendland (Weil & Drage, APC), Scott R. Cook (Gordon & Rees), Aviva Gordon (Ellis & Gordon)
  Judge: Lloyd D. George
  Our File No: 06-301

- **OMRLV Property LLC vs. Earl W. Courtney, et al** (Case #2:07-CV-01523-PMP-RJJ)
  Date: August 12, 2009
  Attorneys: David Stoft (McDonald Carano Wilson LLP), Jeffrey S. Rugg (Brownstein Hyatt Farber Schreck)
  Our File No: 08-280

FEDERAL BANKRUPTCY COURT

- **Castaways Hotel/Casino**, 2800 E. Fremont Street (Bankruptcy Case #BK-S-0317939-LBR)
  Attorney: Candace Carlyon, Gordon and Silver
  Our File No: 04-240

- **Murano Apartments, LLC vs. Michael J. Mona, Jr., Rudolph Straat; and Maria Gudelis** (Case #BK-S-05-10067-BAM)
  Date: December 5, 2005
  Attorneys: Anthony Zmaila (Santoro, Driggs, Walch, Kearney, Johnson & Thompson and Shawn Mangano (Sylvester and Polednak)

- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
  Date: April 13, 2011
  Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins)

- **Marion Manor, LLC** (Case No. BK-S-11-28020-BAM)
  Date: February 24, 2012
  Attorneys: Chris Kaup and Lars Evensen with Holland & Hart; David J. Winterton & Associates, Ltd.

- **Desert Inn Management Company, LTD.** (Case No. BK-S-12-16719-LBR)
  Date: January 29, 2013
  Attorneys: Eric T. Gjerdingen, Gordon Silver & Jefrey Willis, Snell & Wilmer

TRIAL TESTIMONY

NEVADA STATE DISTRICT COURT

- **Clark County vs. Sepehri,** (Case #04-A-488474-C)
  Date: June 1, 2006
  Attorneys: Michael Mansfield and Brent Larsen
  Judge: Valorie Vega
  Our File No: 04-218

- **Becker vs Nevada Power** (Case #07-A-550071-C)
  Date: November 9, 2007
  Attorney: Michael Chapman
  Judge: Valorie Vega
  Our File Nos: Various

- **NDOT vs. BDR South Parcel Investments LLC** (Case #06-A-527718)
  Date: February 4, 2009
  Attorneys: Thomas Rondeau - Goold Patterson Ales & Day; Charles Titus - Santoro, Driggs, Walch, Kearney, Holley & Thompson
  Judge: Mark R. Denton
  Our File No: 07-181

- **Adaven Management, Inc. vs. Mountain Falls Acquisition Corporation** (Case #CV21737 - Fifth Judicial District Court, Dept. 2 - Pahrump)
  Date: August 13, 2009
  Attorneys: Paul Taggert - Taggert & Taggert, Ltd.; Jeremy J. Nork - Holland & Hart LLP
  Judge: Robert W. Lane
  Our File Nos: 09-144 & 09-145

- **Becker vs Nevada Power** (Case #07-A-550071-C)
  Date: August 25, 2009
  Attorney: Michael Chapman
  Judge: Valorie Vega
  Our File No: 08-171

- **Bank of Nevada vs. CSC Temple, LLC; Temple Development Corporation; and Aaron Temple** (Case #A572394)
  Date: February 10, 2010
  Attorneys: Gardner Jolley, David Malley – Jolley Urga Wirth Woodbury & Standish; Richard Scottie
  Judge: Jessie Walsh
  Our File No: 08-270

- **City National Bank vs. Vandoza Investments LLC and Charles Vanicek** (Case #A-10-611624-B)
  Date: August 20, 2010
  Attorneys: Justin L. Carley – Snell & Wilmer
  Judge: Elizabeth Gonzalez
  Our File No: 10-239

- **Bank of Nevada vs. Monterey Industrial, LLC; and Maria Guadalupe De Tostado,** (Case #A-10-623435-C)
  Date: March 15, 2011
  Attorney: Michael D. Mazur, ESQ
  Judge: Jessie Walsh

- **Alliance Homes LLC (Bank of NV) vs. N. Las Vegas II, LLC; Frank T. Ferraro, Jr.; Christopher Paskvan; Tom Fehrman,** (Case #A-10-610698-C)
  Date: April 15, 2011
  Attorneys: H. Stanley Johnson, CJD Law Group LLC; James B. Ball, Poli and Ball, PLC
  Judge: Nancy L. Allf

- **Bank of Nevada vs. Pebble Pines, LLC and Quiet Moon, LLC,** (Case #A-11-637410-C)
  Date: June 3, 2011
  Attorney: Stephanie Hardie Allen - Kaempfer Crowell Penshaw Gronauer & Fiorentino
  Judge: Jerry A. Wiese
  Our File No: 10-468

- **NV Energy v. Copperfield Investment & Development Co.**
  (Case # A-09-604760-C) testified on behalf of Plaintiff
  Date: October 27, 2011
  Attorneys: Plaintiff attorney: Kirby Gruchow (Leach, Johnson, Song & Gruchow)
  Defendant attorney: John M. Netzorg
  Judge: Susan Johnson

- **Bank of Nevada v. Classic Productions, LLC**
  (Case # A-10-626894-C) testified on behalf of Plaintiff
  Date: August 27, 2012
  Attorneys: Plaintiff attorney: Michael D. Mazur
  Defendant attorney: Lucas M. Gjovig
  Judge: Jerry A. Wiese

- **Taylor Emanuel v. Richard Jones, et al.**
  (Case # A-10-611339-B) testified on behalf Defendant/Counter Claimant - Bank of Las Vegas
  Date: August 28, 2012
  Attorneys: Defendant/Counter Claimant attorney: Nicole Lovelock (Holland & Hart, LLP)
  Plaintiff attorney: David J. Winterton
  Judge: Elizabeth Gonzalez

- **November 2005 Land Investors, LLC, et al. v. Nevada Power Co.**
  (Case # A-611150 - testified on behalf of Defendant - Nevada Power Company
  Date: June 28 & July 1, 2013
  Attorneys: Defendant: William E. Peterson & Janine C. Prupas, Snell & Wilmer (Snell & Wilmer, LLP)
  Plaintiff attorney: J. Randall Jones & Eric M. Pepperman (Kemp, Jones & Coulthard, LLP) & Mark E. Farrario (Greenberg Traurig)

- **Branch Banking and Trust Company, et al., v. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
  Date: September 9, 2013
  Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
  Our File No: 13-0108-000

U.S. DISTRICT COURT

- **Kohlrautz vs. Oilmen Participation Corp.** (Case #CV-S-00-0042-RLH-PAL)
  Date: December 18, 2007
  Attorney: Kenneth Hogan
  Judge: Roger L. Hunt
  Our File No: 06-002 & 06-341

- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC** (Case #A575592)
  Date: January 10, 2011
  Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
  Judge: Elizabeth Gonzales
  Our File No: 09-251

FEDERAL BANKRUPTCY COURT

- **International Bank of Commerce vs. Boulder Crossroads, LLC** (Bankruptcy Case #09-10381, Western District of Texas, Austin Division)
  Date: August 26-28, 2009
  Attorney: Sabrina L. Streusand, Streusand & Landon, LLP; Barbara M. Barron and Stephen W. Sather of Barron & Newburger, P.C.; Diann M. Bartek, Cox Smith Matthews Inc.
  Judge: Craig A. Gargotta
  Our File No: 09-129

- **Motion for Relief from Stay**
  (Bankruptcy Case #09-11113-LBR, Las Vegas, Nevada)
  Date: March 16, 2010
  Attorney: Michael H. Singer on behalf of Overland Financial; David A. Riggi on behalf of Toros Yeranosian
  Judge: Linda Riegel
  Our File No: 09-106

- **Celtic Bank vs. Braelynn Land, LLC** (Bankruptcy Case)
  Date: August 31, 2010
  Attorney: Karl Y. Olsen of Parsons Behle & Latimer
  Judge: Linda Riegel
  Our File No: 09-382

- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
  Date: November 9, 2010
  Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
  Chief Judge: Mike K. Nakagawa
  Our File No: 1007-001C (Residential)

- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
  Date: January 13, 2011
  Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
  Chief Judge: Mike K. Nakagawa
  Our File No: 1007-001C (Residential)

- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
  Date: June 3, 2011
  Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins); David Snyder and Brett Axelrod (Fox Rothschild)
  Judge: Bruce A. Markell

- **Marion Manor, LLC** (Bankruptcy Case No. BK-S-11-28020-BAM)
  Date: February 28-29, 2011 and March 9, 2011
  Attorneys: Tenille Pereira, (David J. Winterton & Associates, Ltd.) Debtor's Attorneys; Lars K. Evensen, (Holland & Hart, LLP) Creditor's Attorney
  Judge: Bruce A. Markell
  Our File No: 11-272

Valbridge
PROPERTY ADVISORS
Lubawy & Associates, Inc.

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Fee Schedule

Expert Witness Testimony	$400/hr.
Deposition and Court Testimony	$400/hr.
Supplemental Work, Research, Trial Preparation	$400/hr.

Three-hour minimum for deposition and testimony.

If deposition or Court Testimony is cancelled within 24 hours of scheduled appearance, client will be billed for 50% of the three-hour minimum, in addition to any preparation time.

EXHIBIT O

EXHIBIT O

2014
Community Association
Fact Book

FOUNDATION FOR
COMMUNITY ASSOCIATION
research

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The Foundation for Community Association Research (FCAR) was founded in 1975. FCAR is a 501(c)(3) organization that supports and conducts research and makes that information available to those involved in association development, governance and management.

FCAR provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions. Your support is essential to our research.

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—From *A Declaration of Principles*, jointly adopted by a Committee of the American Bar Association and a Committee of Publishers

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© Foundation for Community Association Research

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CAI Press
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California Law Revision Commission
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Connecticut Judicial Branch Law Libraries
Department of Agriculture – Rural Development
Department of Veterans Affairs (VA)
Federal Emergency Management Agency (FEMA)
Federal Home Loan Mortgage Corporation (Freddie Mac)
Federal Housing Administration (FHA)
Federal National Mortgage Association (Fannie Mae)
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Maryland Montgomery County Office of Common Ownership Communities
National Association of Homebuilders (NAHB)
National Association of Realtors (NAR)
Nevada Real Estate Division
Urban Land Institute
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2.3 Notes on Community Association Data: The *Fact Book* is based on information from six sources grouped in two categories:

- Public Data: (1) Census data, (2) State data, (3) Related housing industries data such as that from the National Association of Realtors (NAR) and the National Association of Homebuilders (NAHB),
- FCAR and CAI Data: (4) FCAR data accumulated over time, (5) CAI data, also, accumulated over time, and (6) Data provided by CAI members.

The public data is largely from the Census and the American Community Survey (ACS). This data has a lag time to publication, i.e., certain of the ACS 2014 data may not be available until late in 2015. Some public association data is available from individual states. This state data, also, may have a lag time from collection to publication. Usually, both the few states with association data and the ACS data lack specificity in critically identifying the three basic types of associations: condominiums, cooperatives and planned communities. Similarly, the public data may count certain association units, but not the entities (the associations) themselves. From a timing viewpoint, FCAR, CAI data and CAI member data are more readily available. Because of the timing issue, the *Fact Book* data generally will be one year ahead of public data.

3. Getting Started with the FCAR 2014 Fact Book

3.1 CAI and the Growth of Community Associations

It's been said that the growth of community associations (condominiums, planned communities and cooperatives) offers the greatest single extension of homeownership opportunities since the housing reforms of the New Deal and the provision of GI Bill benefits just after World War II. The Community Associations Institute estimates that in 1970 there were 10,000 community associations nationwide. In 2014, there are 333,600 associations housing more than 66 million Americans. **See the Statistical Review 2014**. From its inception, CAI has grown along with association housing, along with the homeowners and along with association professionals – to foster better communities based on fostering harmony, transparency and sustainability.

The **Community Associations Institute** (CAI) is a national nonprofit 501(c)(6) organization founded in 1973 to foster competent, responsive community associations through research, training and education.

The **Foundation for Community Association Research** (FCAR) is a national, nonprofit 501(c)(3) organization devoted to common interest community research, development, and scholarship. Incorporated in 1975, the Foundation supports and conducts research in the community association industry.

3.2 Community Association 2014 Fact Book – Key Features

The *Fact Book* is published by FCAR and it documents, in general, the history, current status, trends and future issues of U.S. community association housing. The *Fact Book*, also, provides community association information on a state-by-state basis in "State Summaries." The *Fact Book* and any one of the *State Summaries* will facilitate, demonstrate and provide an understanding of four points:

(1) **Evidence-Based Decisions**: Facilitate the creation, publication and analysis of credible data such that evidence-based decisions on various community association issues, regulations and laws can be made.

(2) **Contributions to the Economy and Society**: Demonstrate the role of community associations as part of the evolving *transformation of land development practices* and in maintaining housing as shelter, as a neighborhood benefit and as an investment.

(3) **Core Services:** Provide an understanding that there are three core services delivered by associations to residents (owners and renters)

- Governance Services,
- Community Services and
- Business Services

– and that these three core services are complimentary to a broad range of both local and national housing services, housing goals and of related public policy considerations.

(4) **Associations as a Housing Market**: Demonstrate that all three types of community associations in and of themselves, are an important housing market that needs to be understood and analyzed in a comprehensive manner.

3.3 ***Statistical Review 2014*:** The *Statistical Review 2014* is part of the *Fact Book*, but it is provided as a separate document available by a hyperlink. Like its predecessor, the *Statistical Review 2013* (also found by hyperlink), *Review 2014* provides national facts concerning community associations.

3.4 State Summaries: While the *Fact Book* and the ***Statistical Review 2014*** deal with community associations from a broad national perspective, there are 51 *State Summaries* (including the District of Columbia) that bring the national data to the state level. The format of the *State Summaries* generally follows the Fact Book, but without the emphasis on history, definitions and comparative matters.

4. Community Association National Trends and Issues

In *Democracy in America*, Alexis de Tocqueville reflected in differing ways on the constant activity that characterized American society in the 1830s as it strived for continuous improvement at all levels of society and government. Little has changed since that time. He would be right at home at a community association board meeting, at a CAI Chapter program or at a national CAI Conference or Law Seminar. The best way to keep up with association trends and issues (and the need for continuous improvement) at either or both the national or local level is through the links that follow.

4.1 At the National Level

CAI Issues and Advocacy

- From federal affairs, to state issues, to amicus briefs and more – this is constantly updated. Topics include regulatory issues with FHA and FEMA, new mortgage rules and CAI's Public Policies.

CAI Common Ground Magazine Key Issues

- From aging in place, to fostering participation, to manager licensing and more – key themes from the *Common Ground* articles. A subscription to **Common Ground** is part of CAI Membership, but separate subscriptions are available.

Chronological History of the Federal Involvement in Community Associations

- From the early Twentieth Century through today, you can track over 40 major federal initiatives and related issues and activities that have impacted community associations.

4.2 At the Local Level

CAI Local Chapters

- This will help you find and contact any of CAI's 60 U.S. Chapters and CAI's South African Chapter.

CAI Grass Roots Advocacy Center

- CAI's Government & Public Affairs provides political information and intelligence for the association industry.

4.3 At all Levels for All Interests

CAI Press: CAI Press, the publishing division of CAI, is dedicated to publishing the very best resources for community associations. We offer the largest collection of over 100 books on association governance, management and operations. Browse by category, view our most popular products and discover what's new. Check back frequently to see our Featured Products and to take advantage of our money-saving promotions.

Webinars: CAI webinars offer specialized, professional training without leaving your home or office. Conducted via internet and audio teleconference, the programs are hosted by industry experts to keep you up to date on the latest legislative activity, management trends, industry best practices and subjects of special interest to community managers and homeowners. More than 150 **on-demand webinars** are now available, and new live webinars are added every month. Continuing education credit for management credentials is available.

Snap Surveys: The Foundation for Community Association Research periodically conducts targeted surveys of key industry groups to produce interesting, intriguing, or newsworthy research.

If you are just interested in finding out more about community associations, this *Fact Book* and a *State Summary* is the place to start. If you live in an association or work in the association industry, this *Fact Book* will help keep you and your association current on the latest facts, trends and issues.

5. Getting Started with Community Associations

5.1 Community Association Basics: Community associations (condominiums, planned communities and cooperatives) are housing management organizations that deliver three core services to their residents (owners and tenants):

►Governance Services: Services designed to secure cooperation and compliance of residents based on fair and efficient adherence to association governing documents, local, state and federal laws;

►Community Services: Services designed to produce a harmonious living environment as well as a cooperative framework for working within the local governmental system; and,

►Business Services: Services designed to maintain and replace the common assets of the association based on sustainable and prudent practices that not only protect the value of the homes, but that are consistent with a broad range of local and national housing goals.

In delivering these three core services, a successful community association provides its residents with:

- Organized and productive business operations to control costs
- Transparent governance principles and practices
- Clear and timely communications
- Fair and effective rules notification and enforcement procedures
- Creative programs designed to foster a sense of community and enhance residents' enjoyment of their homes
- Efficient use of land and resources based on prudent budgeting and accumulation of reserves.

5.2 Community Association Contributions to the Economy: In the aggregate, community association housing was valued at just over $4.9 trillion dollars at 2014 Q4 [Estimate based on the **Federal Reserve Z.1 Financial Accounts**]. Further, the notion of **Housing Services** plays an important role in this country's Gross Domestic Product (GDP). According to a National Association of Home Builders (NAHB) **Report**: "Historically, residential investment has averaged roughly 5% of GDP while housing services have averaged between 12% and 13%, for a combined 17% to 18% of GDP. These shares tend to vary over the business cycle."

Community association housing is an important and growing component of both residential investment and "Housing Services." Using NAHB estimates, community associations contribute about 4.0% to 4.3% to GDP. Community associations are not only a place to live, but they are a place to work and for the creation of jobs.

By fairly and effectively delivering the three core services, community associations protect and enhance value:

- Value of the individual homes (and the lenders' interests in those homes),
- Value derived from accepting shared responsibilities, performing mutual obligations that impact the larger community, and the
- Value inherent in governance, collective participation, and collaborative decision making at a very essential level – the level of the home.

5.3 Community Association General Terms

- Community Association (CA): Used by the Community Associations Institute (CAI) and the **Division of Florida Condominiums, Timeshares and Mobile Homes**

- Common Interest Community (CIC): Used by the **Uniform Law Commission**, promulgator of the uniform real property acts: Uniform Condominium Act (UCA), Uniform Planned Community Act (UPA), Uniform Common Interest Ownership Act (UCIOA) and the Uniform Manufactured Housing Act (UMHA).

- Common Interest Realty Association (CIRA): Used only by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB), see the **AICPA CIRA Wiki**

- Common Interest Development (CID): Used by the **California Bureau of Real Estate** and in the Davis-Stirling Act which has been substantially recodified in **California Civil Code Division 4 Part 5** on January 1, 2014. Also, on that date a new statute was created for **Commercial and Industrial Common Interest Developments, Division 4 Part 5.3**.

5.4 Three Basic Types: Condominium, Planned Community & Cooperative

The *Fact Book* provides three ways to understand the three basic types of community associations. A fundamental point of all three ways is the reminder that you cannot tell which of three basic types of community associations you are looking at by their architectural style. For instance, a detached single family home could be in a regular subdivision without an association or it could be in a condominium association, in a cooperative association or in a planned community. The governing documents are critical to determining the type of association.

First Way: Different parts of the country have more of one of the three types than the other two. For instance, New York state (and, in particular, New York City) has many more cooperatives than other states. Many states in the southeast and southwest have many more planned communities than other regions.

All three types of associations are characterized by being predominately designed for residential use with possibly some nominal percentage devoted to non-residential use, typically commercial.

- Planned Communities: Around 51% to 55%
- Condominiums: Around 42% to 45%
- Cooperatives: Around 3% to 4%

In a planned community, each member (owner) owns a dwelling unit/home on a lot. A separate nonprofit corporation holds title to the common areas which are subject to recorded Covenants, Conditions & Restrictions (CC&Rs). The planned community is governed by a board of directors elected by the owners. The owner's deed requires membership in the corporation. There may or may not be a state enabling statute. Planned communities are referred to by a number of different names that reflect diverse architectural styles and regional nomenclature variations, such as Homeowner Association (HOA), Property Owner Association (POA), Townhome Association and Planned Unit Development (PUD). The recorded CC&Rs are determinative and not the architectural style.

In a condominium, each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" in the common elements. Unlike in a planned community or in a cooperative, the entity (the condominium association itself) does not own the common elements. These common elements generally include the structural components, the exterior of the building or buildings, the grounds, the amenities, and all portions of the property other than the units (as defined). The condominium is governed by a board of directors elected by the owners. The condominium is subject to a recorded Declaration of Condominium (Declaration). There is always a state enabling condominium statute.

In a cooperative, a corporation holds title to the entire project, both units and common elements. A proprietary lease or membership document gives each member of a cooperative exclusive use of a unit for a specified period of time. The cooperative is governed by a board of directors elected by the owners. There may or may not be a state enabling statute.

Most associations are nonprofit corporations under state corporation laws, but they are not nonprofit (tax exempt) under federal income tax laws. Condominium and cooperatives can never be tax-exempt.

All three types of associations have three essential characteristics:

- Automatic Membership: All owners automatically become members of the association when taking ownership of the unit and that membership ceases only when the unit is sold.

- Mutually Binding Obligations: Governing documents bind all owners to the community association and require mutual obligations by owners, the board of directors and the association itself.

- Mandatory Assessments: All owners pay mandatory lien-based assessments to fund the operation of the association and maintain the common elements. Cooperatives are different in their enforcement of collections.

Second Way: This diagram of a Hypothetical Community Association is the second way. It may be useful to review the chart below both before and after reviewing the commentary on each type of association provided in the Third Way, Appendix One.

Common Area/Common Elements						
Common Area/ Common Elements	Lot/Unit 1	Lot/Unit 2	Lot/Unit 3	Lot/Unit 4	Lot/Unit 5	Common Area/ Common Elements
	Lot/Unit 6	Lot/Unit 7	Lot/Unit 8	Lot Unit 9	Lot/Unit 10	
Common Area/Common Elements						

	Units/Lots 1-10	Common Area/Common Elements Lot		
	Unit Owner Title	Assn Title	Unit Owner Title	Assn Title
Condominium	X	.....	X*	.....
Cooperative	.....	X	.....	X
Planned Community	X	.....	.....	X

X* --- The unit owners in a condominium have an undivided interest in the common elements as tenants in common. This is a critical definition for a condominium: An association is not a condominium if there are no common elements. Unlike in a planned community or in a housing cooperative, the condominium association does not own the common elements (or common area), hence the early condominium property acts sometimes referred to the board of directors as the "board of managers" – who "managed" the common elements.

Third Way: See **Appendix One: Basic Types of Associations By Selected Characteristics**

5.5 Varieties on the Community Association Theme: The entities below appear with some regularity in discussions of community associations, but a number of them do not all fall within the more generally accepted definition of a primarily residential community association.

•**Cohousing:** Cohousing association living can be organized in one of the three basics types of community association, but it is usually more definably based on personal commitments, some degree of communal living and/or communal participation as well as the recorded governing documents.

•**Communities for 55 and Older**: Quoting from the HUD Factsheet - "The Housing for Older Persons Act (HOPA), signed into law by President Clinton on December 28, 1995, amended the housing for older persons exemption against familial status discrimination. The HOPA modified the statutory definition of housing for older persons as housing intended and operated for occupancy by at least one person 55 years of age or older per unit. It eliminated the requirement that housing for older persons have significant services and facilities specifically designed for its elderly residents. It required that facilities or communities claiming the exemption establish age verification procedures. It established a good faith reliance defense or exemption against monetary damages for persons who illegally act in good faith to exclude children based on a legitimate belief that the housing facility or community was entitled to the exemption."

While HOPA has been in place for some time, it has been subject to continuous discussion. 55+ Communities can be organized as rentals as well as community associations. Many states and local governments have similar statutes and regulations dealing with 55+ housing as well as other issues related to aging.

Residential community associations are subject to the various state and **Federal Fair Housing Laws and Executive Orders**. Generally, residential community associations are not subject to the **Americans with Disabilities Act** unless they have amenities and commercial space open for public use.

•**Gated Communities:** This type of community association, if carefully defined, has three characteristics: (i) restricted access usually by being fully enclosed by a fence, wall or separator of some sort, (ii) controlled entrance by a fully staffed front gate and (iii) full time 24x7 security for the common area. Without such a definition, all housing (rental or ownership) in the U.S. is "gated" or "locked down" by some measure. Many associations have restricted access because the building permits issued for construction only allow for one two curb cut for access to a thoroughfare. Using the definition above, there are perhaps 3,000 to 5,000 gated communities in the U.S. They are expensive to maintain.

•**Lake Communities:** In the EPA's most recent **Assessment of Lakes, Ponds and Reservoirs**, there were 41,666,049 acres of water in these entities. Of that amount, 17,904,199 acres were "assessed" for quality issues and of that amount 7.1 million acres had recreational use with a "good" attainment status rating. Generally, the body of water needs to be 10 acres or more to be assessed. This would put the number of "lake communities" with possible residential housing at between 710,000 and 1.8 million. A conservative sub-set of these "lake communities," probably 200,000 to 250,000, contain some combination of part-time and full-time housing depending on public infrastructure and the ability to obtain property insurance. These communities may have by-laws and operating Rules & Restrictions. Typically, they do not qualify as community associations by general standards; but they might be considered border-line communities.

•**Limited-Purpose Association (LPA):** This type of association is used and described by statute only in Nevada, see **NAC 116.095**

•**Live/Work Association:** There is no set definition for this type of community association except that a person lives where the person works. Therefore, the association combines both residential and commercial uses. FHA in **Mortgagee Letter 2012-18** requires that the non-residential part must be less that 25% of the floor area and the non-residential part must be subordinate to the unit's residential use and character.

•**Master Planned Community (MPC):** This is a planned community of some size that may be comprised of either sub-associations or cost-centers. The sub-associations may be any of the three basic types of associations. Cost centers are used to allocate revenue and expense liabilities more equitably. Since a MPC is basically a planned community, there usually is no enabling statute for the MPC although if a condominium is a sub-association, the condominium would have to be enabled by statute. MPCs, typically, exceed 1,000 lots or units and can range up to 50,000 lots or units. Other similar terms are Large Scale Association (LSA) and Large Scale Master Association (LSMA), and Large Scale Maser Planned Community (LSMPC).

•**Manufactured Housing Communities/Parks (MHC):** This refers to the type of construction which is regulated, as of 1976, by the **HUD Office of Manufactured Housing** and state agencies. See this list of **State Manufactured Housing Agencies**. The **Manufactured Housing Institute** maintains a **Summary of Manufactured Housing State Laws & Cases**.

Manufactured housing typically in found in rental communities and they were (and still are to some extent) referred to incorrectly as "mobile home parks. MHC associations can be found in a cooperative or condominium association. According to the **American Housing Survey 2013**, there are 8,600,000 manufactured housing units. Of that total, 154,000 manufactured homes are in a community association – cooperative (103,000 units) and condominium (51,000 units) association.

There are 18 states with manufactured housing laws that deal with some aspect of the conversion of a rental manufactured housing community/park to a cooperative or condominium. Those 18 states and links to those laws are found in the given individual *State Summary* at #5.4 "Community Association and Related Statutes."

•**Mixed Use Association:** This type of community association can be found in any of the three basic types and combines residential and commercial uses. The percentage of commercial use varies, but typically is less than 20% of the square footage (to be more readily acceptable for residential mortgage lending). The commercial uses may or may not be in an association. There usually is no enabling statute unless a condominium is involved.

•**Private Road Maintenance Agreements:** Individual properties or groups of properties may be bound by recorded covenants and/or state statutes to maintain streets and roads that might otherwise be maintained by local government. These can be borderline associations. Nevertheless, the **Fannie Mae Seller Guide** [B4-1.3-04, April 15, 2014] requires that if the street is community or privately owned that there must be an adequate, legally enforceable covenant or agreement for maintenance.

•**Business Park Association (BPA):** Common practice does not include business parks within the three basic types of community associations. There is usually no enabling statute unless a condominium is involved. The BPA is created by conventional real estate transactions. See also Business Improvement District below. See **NAIOP**

•**Business Improvement District (BID):** Outwardly, BIDs resemble commercial community associations. They are created by legislation, but they may or may not be supported by recorded covenants. BIDs are usually public/private partnerships arranged around additional tax assessments to fund operations. Common practice does not include a BID in the definition of a community association. See **The Business Improvement District Model**

•**Reciprocal Easement Agreement (REA):** A REA has a recorded declaration that provides for cost sharing, maintenance and similar duties among entities in a common development. Sometimes, the REA gives one of the entities in the development responsibility of the management of certain common areas used by all the entities. REAs are sometimes used in residential, commercial and mixed use associations. The REA itself is just an agreement and not an association.

•**Special Tax District (STD):** Special tax districts (also called Special Purpose Districts) are not community associations. STDs have been popular in California, Florida, Colorado and other states by developers of associations to **fund public improvements**. If the STD is part of the development of a community association, then much or all of the association's common area and amenities may be placed in the STD whose construction is then paid for by bond financing. The bonds, in turn, are repaid by separate assessments levied against the members of the association. In this instance, the STD is an overlay of the community association so that homeowners pay two assessments, one to the association and one to the STD (to repay the bond financing and to pay for operations of the STD). The latter assessment usually is tax deductible. If the development process falters or the association falters, the bond holders may step in to cure a default. Other similar terms are Community Facility District (CFD) and Special Purpose District (SPD). There are over 37,000 such Districts of all types in the U.S, but not all are connected in some manner with a community association. See **Census 2012 of All State Governments**

Also, see **Chronological History of Federal Involvement in Community Associations**

•**Timeshare Association (TS):** Common practice does not include timeshare associations (of any kind) within the three basic types of community associations even though the TS may be organized as a condominium. Timeshare **terminology** defines the concept in various ways. There is some type of TS legislation in every state. See **American Resort Development Association (ARDA)**

5.6 Varieties of Community Association Uses

The *Fact Book* is mainly focused on residential community associations although some commercial use may be present. Nevertheless, residential associations can be developed around special themes and uses. Similarly, there are associations, apart from residential ones, that serve a variety of ownership interests and use and, as mentioned, there are associations comprised solely of manufactured homes and of those aged 55+.

- Star Gazing Planned Community
- Winery Planned Community
- Equestrian Planned Community
- Docks & Dockominium (Condominium)
- Rackominium (for boats)
- Site and Land Condominium
- Airport and Airport Garage Condominium
- Garage Condominium
- Cruise Ship Condominium
- Silent Cooperative (for the Deaf)
- Three Dimensional Airspace Subdivisions
- Wheat Growers Condominium Storage
- Retail Condominium
- Industrial Condominium
- Office Condominium
- Medical Office Condominium
- Condotel (hotels with a condominium component)
- Nudist Resort Condominium

5.7 U.S. Condominium Unit Owners 55+

Like the rest of the U.S. population, owners in community associations are getting older. Some association owners are aging-place while others in age-restricted communities described in #5.5 above. The data next is specific to condominium unit owners that are 55+:

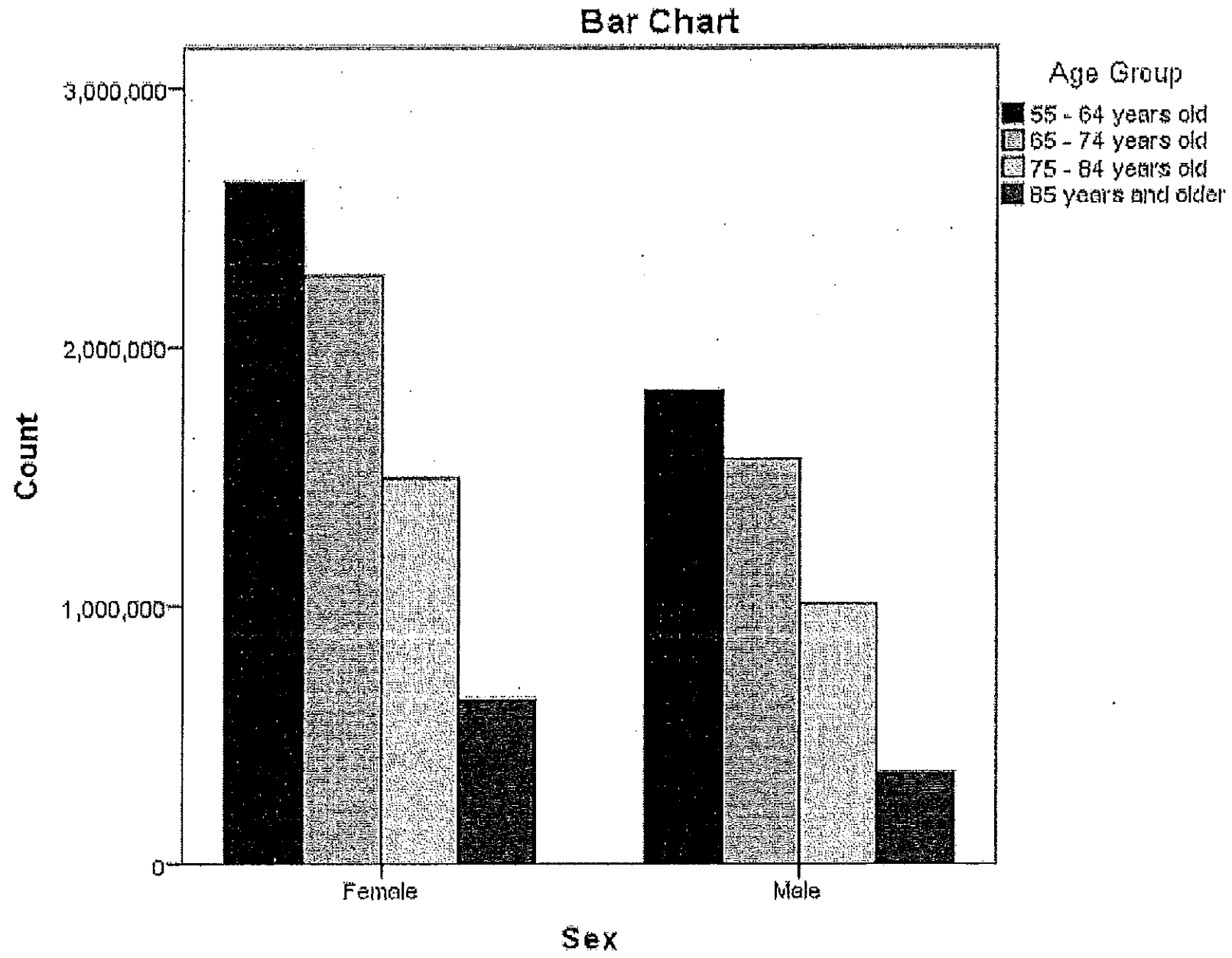
Table 1: *Persons Age 55 and Over Living in a Condominium by Age Group and Sex*

			Age Group				
			55 - 64 years old	65 - 74 years old	75 - 84 years old	85 years and older	Total
Sex	Female	Count	2,637,364	2,274,578	1,496,225	640,071	7,048,238
		% within Sex	37.4%	32.3%	21.2%	9.1%	100.0%
	Male	Count	1,832,541	1,570,225	1,009,276	353,770	4,765,812
		% within Sex	38.5%	32.9%	21.2%	7.4%	100.0%
Total		Count	4,469,905	3,844,803	2,505,501	993,841	11,814,050
		% within Sex	37.8%	32.5%	21.2%	8.4%	100.0%

Data above and chart below from American Community Survey (ACS) 2011 - 2013, and Integrated Public Use Microdata Series (IPUMS-USA). Created courtesy of Lynn Boergerhoff, MPH, **Community Association Atlas**.

See also the **Age of Housing by State** and **Housing Vacancies and Homeownership (CPS/HVS)**.

Figure 1
Persons Age 55 and Over Living in a Condominium by Age Group and Sex



In addition to the data above, the U.S. Condominium Unit Owner 55+ data contains information of the following categories:

- Table 2: *Race of Persons Age 55 and Over Living in a Condominium*
- Table 3: *Hispanic, Latino, or Spanish Origin of Persons Age 55 and Over Living in a Condominium*
- Table 4: *Mortgage Status of Households of Persons Age 55 and Over Living in a Condominium by Sex of Householder*
- Table 5: *Selected Monthly Owner Cost (SMOC) Burden by Mortgage Status of Households with Persons Age 55 and Over Living in a Condominium*
- Table 6: *Decade Housing Built of Persons Age 55 and Over Living in a Condominium*
- Table 7: *Household Size of Persons Age 55 and Over Living in a Condominium by Sex*
- Table 8: *Sex of Persons Age 55 and Over Living Alone in a Condominium*
- Table 9: *Physical, Mental, or Sensory Difficulty of Persons Age 55 and Over Living in a Condominium*

See **Part Four of the Fact Book 2014** for condominium unit owners 55+ data in each state and the District of Columbia.

Case No. 71325

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Appellant, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association, Respondent.

Electronically Filed
Jan 25 2017 02:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Judge
District Court Case No. District Court Case No. A-13-679329-C

JOINT APPENDIX VOLUME 1

Respectfully submitted by:

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@ KGElegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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Attorneys for Appellant
SFR Investments Pool 1, LLC

Docket 71325 Document 2017-02821

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	4	6/14/13	Affidavit of Service to Ana Torres	JA_0025
1	2	4/22/13	Affidavit of Service to First Horizon Home Loans	JA_0013
1	5	7/16/13	Application or Entry of Default Against Ana Torres	JA_0027
4	16	9/16/16	Case Appeal Statement	JA_0801
1	1	4/2/13	Complaint	JA_0001
1	6	4/30/14	Default Against Ana Torres	JA_0032
1	3	5/13/13	First Horizon Home Loans Answer to Complaint	JA_0015
1&2	7	3/2/16	First Horizon Home Loans Motion for Summary Judgment	JA_0037
3	11	3/21/16	First Horizon Home Loans Opposition to SFR's Motion for Summary Judgment	JA_0569
4	15	9/16/16	Notice of Appeal	JA_0797
4	14	8/19/16	Notice of Entry of Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0786
3	9	3/3/16	Notice on Hearing on SFR's Motion for Summary Judgment	JA_0543
4	13	8/17/16	Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0779
2&3	8	3/2/16	SFR's Motion for Summary Judgment	JA_0361

3	10	3/21/16	SFR’s Opposition to First Horizon Home Loans Motion for Summary Judgment	JA_0546
3&4	12	3/29/16	SFR’s Reply in Support of Motion for Summary Judgment	JA_0699
4	17	6/21/16	Transcript of Proceedings Motion for Summary Judgment	JA_0807
4	18	9/13/16	Transcript of Proceedings Status Check	JA_0873

CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	4/2/13	Complaint	JA_0001
1	2	4/22/13	Affidavit of Service to First Horizon Home Loans	JA_0013
1	3	5/13/13	First Horizon Home Loans Answer to Complaint	JA_0015
1	4	6/14/13	Affidavit of Service to Ana Torres	JA_0025
1	5	7/16/13	Application or Entry of Default Against Ana Torres	JA_0027
1	6	4/30/14	Default Against Ana Torres	JA_0032
1&2	7	3/2/16	First Horizon Home Loans Motion for Summary Judgment	JA_0037
2&3	8	3/2/16	SFR's Motion for Summary Judgment	JA_0361
3	9	3/3/16	Notice on Hearing on SFR's Motion for Summary Judgment	JA_0543
3	10	3/21/16	SFR's Opposition to First Horizon Home Loans Motion for Summary Judgment	JA_0546
3	11	3/21/16	First Horizon Home Loans Opposition to SFR's Motion for Summary Judgment	JA_0569
3&4	12	3/29/16	SFR's Reply in Support of Motion for Summary Judgment	JA_0699
4	13	8/17/16	Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0779

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4	15	9/16/16	Notice of Appeal	JA_0797
4	16	9/16/16	Case Appeal Statement	JA_0801
4	17	6/21/16	Transcript of Proceedings Motion for Summary Judgment	JA_0807
4	18	9/13/16	Transcript of Proceedings Status Check	JA_0873

TAB 1

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

A-13-679329-C

XXVI

I. Party Information

Plaintiff(s) (name/address/phone): SFR INVESTMENTS POOL1, LLC

Attorney (name/address/phone):

Howard C. Kim, Esq., Diana S. Cline, Esq., and Victoria L. Hightower; Howard Kim and Associates, 400 North Stephanie St., Suite 160, Henderson , Nevada 89014; (702) 485-3300

Defendant(s) (name/address/phone):

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☒ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☒ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only*.)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

03/26/2013

Date

/s/ *Diana S. Cline*

Signature of initiating party or representative

Electronically Filed
04/02/2013 12:18:31 PM

CLERK OF THE COURT

COMP
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company,

Plaintiff,

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

COMPLAINT

Arbitration Exemptions:
1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and requests injunctive relief against the above named defendants as follows:

/ / /

/ / /

/ / /

/ / /

/ / /

HOWARD KIM & ASSOCIATES
400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

HOWARD KIM & ASSOCIATES
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I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **5069 Midnight Oil Drive, Las Vegas, NV 89122; Parcel No. 161-26-111-017** (the "Property").

2. Upon information and belief, Defendant FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION, ("First Horizon"), is a foreign entity that may claim an interest in the Property via a 2013 Trustee's sale.

3. Upon information and belief, Defendant Ana Torres is an individual residing in Nevada and the former title owner of the Property.

4. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien

6. Plaintiff acquired the Property on March 6, 2013, by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("HOA foreclosure sale"). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

7. On or about March 18, 2013, the resulting foreclosure deed was recorded in the Official

Records of the Clark County Recorder as Instrument Number 201303180003508 ("HOA Foreclosure Deed").

8. The foreclosure sale was conducted by Alessi & Koenig, LLC, agent for Squire Village at Silver Springs Community Association ("Squire Village HOA"), pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Squire Village HOA governing documents (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on February 22, 2012 in the Official Records of the Clark County Recorder as Instrument Number 201202220001525 ("HOA Lien").

9. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

10. Plaintiff was not the only bidder to attend the HOA foreclosure sale.

11. Plaintiff's winning bid was in excess of the amount included in the HOA's notice of foreclosure sale as due and owing on the HOA Lien.

12. Pursuant to NRS 116.3116(2), the entire HOA Lien

> is prior to all other liens and encumbrances of unit except:
>
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

13. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even a first security interest in the Property:

> [the HOA Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the 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[.]

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14. Upon information and belief, the HOA took the necessary action to trigger the super-priority portion of the HOA Lien.

15. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating Squire Village HOA.

16. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

17. Upon information and belief, Squire Village HOA or its agent Alessi & Koenig, LLC distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

18. Upon information and belief, Defendants had actual or constructive notice of the HOA Lien, including the super-priority portion of the HOA Lien.

19. Upon information and belief, Defendants knew or should have known that the foreclosure of the HOA Lien, including the super-priority portion of the HOA Lien, would extinguish their security and ownership interests in the Property.

20. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the HOA Lien and the Notice of Default.

21. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

22. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff "without equity or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former owner, his or her heirs and assigns, and **all other persons**."

Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien

23. Upon information and belief, Defendant First Horizon obtained title to the Property on February 26, 2013 at a non-judicial foreclosure sale pursuant to the terms of a deed of trust and recorded against the Property on or about March 7, 2013 in the Official Records of the Clark

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County Recorder as Instrument No. 201303070003168. ("Bank foreclosure sale").

24. Upon acquiring the Property, First Horizon failed to satisfy the HOA Lien.

25. Defendant First Horizon's ownership interest in the Property was extinguished by the foreclosure of the HOA Lien.

26. Any interest in the Property via a deed of trust or other non-governmental lien was either extinguished by the Bank foreclosure sale or foreclosure of the super-priority portion of the HOA Lien.

27. Defendant Ana Torres' ownership interest in the Property was extinguished by foreclosure of the HOA lien.

III. FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq*. and 116.3116, *et. seq.* against First Horizon Home Loans and Ana Torres)

28. Plaintiff repeats and realleges the allegations of paragraphs 1-27 as though fully set forth herein and incorporate the same by reference.

29. Pursuant to NRS 30.010, *et. seq*., this Court has the power and authority to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in the Property.

30. Plaintiff acquired the Property on March 6, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq*. and the resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 18, 2013.

31. Ana Torres, as previous title owner of the Property may assert a claim adverse to Plaintiff.

32. Defendant First Horizon as previous title owner of the Property may assert a claim adverse to Plaintiff.

33. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

34. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority over all liens and encumbrances on the Property except for: (1) liens and encumbrances recorded

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before the recordation of the declaration and (2) liens for real estate taxes and other governmental assessments or charges.

35. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

36. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the HOA foreclosure sale extinguished Defendants' ownership and security interests in the Property; and (4) Plaintiff's rights and interest in the Property are superior to any adverse interest claimed by Defendants.

37. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

V. SECOND CLAIM FOR RELIEF
(Unjust Enrichment against First Horizon and Ana Torres)

38. Plaintiff repeats and realleges the allegations of paragraphs 1- 37 as though fully set forth herein and incorporate the same by reference.

39. Plaintiff has expended funds and resources in connection with the acquisition and maintenance of the Property.

40. Defendants will benefit from the funds and resources expended by Plaintiff.

41. Should Plaintiff's quiet title claim be denied, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

42. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the Property and the benefit of the funds and resources Plaintiff expended on the Property.

43. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

44. Plaintiff is entitled to general and special damages in excess of $10,000.00.

VI. THIRDCLAIM FOR RELIEF
(Preliminary and Permanent Injunction against First Horizon)

45. Plaintiff repeats and realleges the allegations of paragraphs 1- 44 as though fully set forth herein and incorporate the same by reference.

46. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 6,

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2013.

47. Defendant First Horizon may claim an interest in the Property through the First Horizon Deed of Trust which was extinguished by the HOA foreclosure sale.

48. Defendants improperly proceeded with the sale or transfer of title to the Property and/or eviction proceedings based on a purported transfer of title through the non-judicial foreclosure of the First Horizon Deed of Trust.

49. Any non-judicial foreclosure sale based on the First Horizon Deed of Trust is invalid as Defendants lost their interest in the Property, if any, at the HOA foreclosure sale.

50. Any further sale or transfer of title to the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

51. Any attempt to take or maintain possession of the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

52. On the basis of the facts described herein, Plaintiff has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

53. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from beginning or continuing any eviction proceedings that would affect Plaintiff's possession of the Property.

54. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from any sale or transfer that would affect the title to the Property.

VII. PRAYER FOR RELIEF

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing eviction proceedings, sale or transfer of the Property;

3. For general and special damages in excess of $10,000.00

4. For an award of attorney's fees and costs of suit; and

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5. For any further relief that the Court may deem just and proper.

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower

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Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. Dept. No. **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

/ / /

/ / /

/ / /

/ / /

SFR INVESTMENTS POOL 1, LLC	$270.00
TOTAL	**$270.00**

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
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Attorneys for Plaintiff

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TAB 2

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CLERK OF THE COURT

AFFT
Howard Kim & Associates, Attorneys at Law
Diana S. Cline, Esq.
400 N. Stephanie St., Suite 160
Henderson , NV 89014
State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

SFR Investments Pool 1, LLC a Nevada limited liability company
vs ***Plaintiff(s)***
First Horizon Home Loans, A Division of First Tennessee Bank, a National Association, et al.
Defendant(s)

Case No.: **A-13-679329-C**
Dept. No.: **XXVI**
Date:
Time:

AFFIDAVIT OF SERVICE

Sue Lynch, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the **Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure; Notice of Lis Pendens** on the **8th** day of **April**, **2013** and served the same on the **9th** day of **April**, **2013** at **9:39AM** by serving the **Defendant(s)**, **First Horizon Home Loans, a Division of First Tennessee Bank, a National Association** by personally delivering and leaving a copy at **3451 Prescott Rd., Memphis, TN 38118** with **Katrina Lamar** as **Legal Assistant** an agent lawfully designated by statute to accept service of process.

State of Tennessee **, County of** Shelby

SUBSCRIBED AND SWORN to before me on this
12th day of April, 2013

Notary Public

MATTHEW C. LYNCH
STATE OF TENNESSEE NOTARY PUBLIC
SHELBY COUNTY
My Commission Expires November 17, 2014

Affiant: **Sue Lynch**

WorkOrderNo **1302810**

TAB 3

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CLERK OF THE COURT

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Attorneys for First Horizon Home Loans, a division of First Tennessee Bank National Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-679329-C Dept. No. XXVI

FIRST HORIZON HOME LOANS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendant First Horizon Home Loans, a division of First Tennessee Bank National Association ("First Horizon") by and through its undersigned counsel, responds to the plaintiff's complaint ("Complaint") as follows.

I. PARTIES

1. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Complaint, and therefore denies them.

2. First Horizon admits that pursuant to the Trustee's Deed upon Sale dated February 27, 2013 and recorded March 7, 2013 as Instrument Number 20130307000316 8 in the Official Records of Clark County Recorder's Office (the "Official Records"), First Horizon is the grantee of certain real property as described in the Trustee's Deed upon Sale. First Horizon Home Loans is a division of First Tennessee Bank National Association. First Tennessee Bank National Association is a national banking association organized under the laws of the United States with its home office in the state of Tennessee. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 2 of the Complaint, and therefore denies them.

3. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint, and therefore denies them.

4. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint, and therefore denies them.

5. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Complaint, and therefore denies them.

II. GENERAL ALLEGATIONS

6. First Horizon admits that pursuant to the Trustee's Deed upon Sale dated March 11, 2013 and recorded March 18, 2013 as Instrument Number 20130318000350 8 in the Official Records ("HOA Foreclosure Deed"), plaintiff was the Grantee (Buyer) at public auction on March 6, 2013. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 6 of the Complaint, and therefore denies them.

7. First Horizon admits that the Trustee's Deed upon Sale was recorded March 18, 2013 as Instrument Number 20130318000350 8 in the Official Records.

8. First Horizon admits that the Notice of Delinquent Assessment (Lien) dated February 6, 2012 was recorded February 22, 2012 as Instrument Number 20120222000152 5 in the Official Records ("HOA Lien"). First Horizon is without

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sufficient information to admit or deny the remaining allegations contained in Paragraph 8 of the Complaint, and therefore denies them.

9. The HOA Foreclosure Deed speaks for itself. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 9 of the Complaint, and therefore denies them.

10. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint, and therefore denies them.

11. The HOA Foreclosure Deed speaks for itself. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 11 of the Complaint, and therefore denies them.

12. Paragraph 12 calls for a legal conclusion to which no response is necessary. First Horizon denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Paragraph 13 calls for a legal conclusion to which no response is necessary. First Horizon denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Complaint, and therefore denies them.

15. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint, and therefore denies them.

16. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint, and therefore denies them.

17. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Complaint, and therefore denies them.

18. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Complaint, and therefore denies them.

19. First Horizon denies the allegations contained in Paragraph 19 of the Complaint.

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20. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 20 of the Complaint, and therefore denies them.

21. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Complaint, and therefore denies them.

22. Paragraph 22 calls for a legal conclusion to which no response is necessary. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 22 of the Complaint, and therefore denies them.

23. First Horizon admits that pursuant to the Trustee's Deed upon Sale dated February 27, 2013 and recorded March 7, 2013 as Instrument Number 20130307000316 8 in the Official Records of Clark County Recorder's Office (the "Official Records"), First Horizon is the grantee of certain real property as described in the Trustee's Deed upon Sale. First Horizon was the highest bidder at public auction on February 26, 2013. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 23 of the Complaint, and therefore denies them.

24. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 24 of the Complaint, and therefore denies them.

25. First Horizon denies the allegations contained in Paragraph 25 of the Complaint.

26. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Complaint, and therefore denies them.

27. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Complaint, and therefore denies them.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against First Horizon Home Loans and Ana Torres)

28. First Horizon repeats and realleges the answers contained within paragraphs 1 through 27.

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29. Paragraph 29 calls for a legal conclusion to which no response is necessary. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 29 of the Complaint, and therefore denies them.

30. First Horizon admits that pursuant to the Trustee's Deed upon Sale dated March 11, 2013 and recorded March 18, 2013 as Instrument Number 20130318000350S in the Official Records, plaintiff was the Grantee (Buyer) at public auction on March 6, 2013. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 30 of the Complaint, and therefore denies them.

31. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 31 of the Complaint, and therefore denies them.

32. First Horizon admits the allegations contained in Paragraph 32 of the Complaint.

33. Paragraph 33 calls for a legal conclusion to which no response is necessary. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 33 of the Complaint, and therefore denies them.

34. Paragraph 34 calls for a legal conclusion to which no response is necessary. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 34 of the Complaint, and therefore denies them.

35. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Complaint, and therefore denies them.

36. First Horizon denies the allegations contained in Paragraph 36 of the Complaint.

37. First Horizon denies the allegations contained in Paragraph 37 of the Complaint.

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V. SECOND CLAIM FOR RELIEF
(Unjust Enrichment against First Horizon and Ana Torres)

38. First Horizon repeats and realleges the answers contained within paragraphs 1 through 37.

39. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 39 of the Complaint, and therefore denies them.

40. First Horizon is without sufficient information to admit or deny the allegations contained in Paragraph 40 of the Complaint, and therefore denies them.

41. First Horizon denies the allegations contained in Paragraph 41 of the Complaint.

42. First Horizon denies the allegations contained in Paragraph 42 of the Complaint.

43. First Horizon denies the allegations contained in Paragraph 43 of the Complaint.

44. First Horizon denies the allegations contained in Paragraph 44 of the Complaint.

VI. THIRD CLAIM FOR RELIEF
(Preliminary and Permanent Injunction against First Horizon)

45. First Horizon repeats and realleges the answers contained within paragraphs 1 through 44.

46. First Horizon admits that pursuant to the Trustee's Deed upon Sale dated March 11, 2013 and recorded March 18, 2013 as Instrument Number 20130318O003508 in the Official Records, plaintiff was the Grantee (Buyer) at public auction on March 6, 2013. First Horizon is without sufficient information to admit or deny the remaining allegations contained in Paragraph 46 of the Complaint, and therefore denies them.

47. First Horizon admits that it claims an interest in the Property. First Horizon denies that First Horizon's Deed of Trust was extinguished by the HOA foreclosure sale. First Horizon is without sufficient information to admit or deny the

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remaining allegations contained in Paragraph 47 of the Complaint, and therefore denies them.

48. First Horizon denies the allegations contained in Paragraph 48 of the Complaint.

49. First Horizon denies the allegations contained in Paragraph 49 of the Complaint.

50. First Horizon denies the allegations contained in Paragraph 50 of the Complaint.

51. First Horizon denies the allegations contained in Paragraph 51 of the Complaint.

52. First Horizon denies the allegations contained in Paragraph 52 of the Complaint.

53. First Horizon denies the allegations contained in Paragraph 53 of the Complaint.

54. First Horizon denies the allegations contained in Paragraph 54 of the Complaint.

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FIRST AFFIRMATIVE DEFENSE

Plaintiff failed to state claims or causes of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's alleged damages are the result of its own acts or omissions.

THIRD AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer, therefore Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, First Horizon pray for the following relief:

1. Plaintiff takes nothing by way of its Complaint;

2. An award of First Horizon's reasonable attorneys' fees and costs; and

3. For such other and further relief as the Court may deem just and proper.

Dated: May 13, 2013.

BALLARD SPAHR LLP

By: _____

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that, on the 8th day of May, 2013, a true and correct copy of the foregoing **First Horizon Home Loan's Answer to Plaintiff's Complaint** was served via U.S. Mail postage prepaid and addressed to the following:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014

Attorneys for Plaintiff

An employee of BALLARD SPAHR LLP

TAB 4

AFFT
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Diana S. Cline, Esq.
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State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR Investments Pool 1, LLC a Nevada limited liability company
vs *Plaintiff(s)*
First Horizon Home Loans, A Division of First Tennessee Bank, a National Association; et al.
Defendant(s)

Case No.: A-13-679329-C
Dept. No.: XXVI
Date:
Time:

AFFIDAVIT OF SERVICE

I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Notice of Lis Pendens on the 3rd day of June, 2013 and served the same on the 5th day of June, 2013 at 6:05 pm by delivering and leaving a copy with the Defendant(s), Ana Torres, an individual at 3751 S. Nellis Blvd., Spc 45, Las Vegas, NV 89121.

State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this 7th day of June 2013

Notary Public D. Watts

NOTARY PUBLIC STATE OF NEVADA County of Clark D. WATTS Appt. No. 10-2737-1 My Appt. Expires June 17, 2014

Affiant Joe Ricondo #: R-053662

Legal Process Service License # 604

WorkOrderNo 1304093

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TAB 5

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Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

APPLICATION FOR ENTRY OF DEFAULT AGAINST ANA TORRES

Plaintiff hereby requests and directs the entry of default on Defendant Ana Torres, based on the following.

It appearing from the files and records in the above-entitled action the Defendant, Ana Torres, being duly served with a copy of the Summons, Complaint, and Notice of Lis Pendens on the 5th day of June, 2013 (see proof of service, attached hereto as **Exhibit 1**), that more than twenty (20) days, exclusive of the day of service, having expired since service upon Defendant, that no answer or other response having been filed, and no further time having been granted, the default of the above-named Defendant for failing to answer or otherwise plead to the Complaint

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CLERK OF THE COURT

is hereby entered.

The undersigned hereby requests and directs the entry of default.

STEVEN D. GRIERSON
CLERK OF THE COURT

HOWARD KIM & ASSOCIATES

CLERK OF THE COURT

By: _____
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
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Attorneys for Plaintiff

By _____
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MICHELLE MCCARTHY

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EXHIBIT 1

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State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR Investments Pool 1, LLC a Nevada limited liability company
Plaintiff(s)

vs

First Horizon Home Loans, A Division of First Tennessee Bank, a National Association; et al.
Defendant(s)

Case No.: A-13-679329-C
Dept. No.: XXVI
Date:
Time:

AFFIDAVIT OF SERVICE

I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Notice of Lis Pendens on the 3rd day of June, 2013 and served the same on the 5th day of June, 2013 at 6:05 pm by delivering and leaving a copy with the Defendant(s), Ana Torres, an individual at 3751 S. Nellis Blvd., Spc 45, Las Vegas, NV 89121.

State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this 7th day of June 2013

Notary Public D. Watts

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
D. WATTS
No. 10-2737-1
My Appt. Expires Jun 17, 2014

Affiant Joe Ricondo #: R-053662

Legal Process Service License # 604

WorkOrderNo 1304093

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TAB 6

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-679329-C Dept. No. XXVI **DEFAULT AGAINST ANA TORRES**

Plaintiff hereby requests and directs the entry of default on Defendant Ana Torres based on the following.

It appearing from the files and records in the above-entitled action the Defendant, Ana Torres, being duly served with a copy of the Summons and Complaint on the 5th day of June, 2013 (*see* proof of service, attached hereto as **Exhibit 1**), that more than twenty (20) days, exclusive of the day of service, having expired since service upon Ana Torres, that no answer or other response having been filed, and no further time having been granted, the default of the above-named Defendant for failing to answer or otherwise plead to the Complaint is hereby entered.

///

The undersigned hereby requests and directs the entry of default.

STEVEN D. GRIERSON
CLERK OF THE COURT

HOWARD KIM & ASSOCIATES

By: _____

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CLERK OF THE COURT

By: _____
DEPUTY CLERK
DATE APR 25 2014

A679329
(Replevin)
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EXHIBIT 1

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State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR Investments Pool 1, LLC a Nevada limited liability company
vs *Plaintiff(s)*
First Horizon Home Loans, A Division of First Tennessee Bank, a National Association; et al.
Defendant(s)

Case No.: A-13-679329-C
Dept. No.: XXVI
Date:
Time:

AFFIDAVIT OF SERVICE

I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Notice of Lis Pendens on the 3rd day of June, 2013 and served the same on the 5th day of June, 2013 at 6:05 pm by delivering and leaving a copy with the Defendant(s), Ana Torres, an individual at 3751 S. Nellis Blvd., Spc 45, Las Vegas, NV 89121.

State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this 7th day of June 2013

Notary Public D. Watts

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
D. WATTS
Appt. No. 10-2732-1
My Appt. Expires Jun 17, 2014

Affian Joe Ricondo #: R-053662
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TAB 7

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Attorneys for First Horizon Home Loans

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, v. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-679329-C Dept. No. XXVI **FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT**

First Horizon Home Loans (**First Horizon**) moves for summary judgment against SFR Investments Pool 1, LLC's (**SFR**) claims for unjust enrichment, quiet title, and declaratory relief.

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the Court will hear **FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT** on the 05 day of APRIL, 2016, at the hour of 9:30A.m., or as soon thereafter as counsel may be heard in Department I of the above-entitled Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada.

DATED this 2nd day of March, 2016.

AKERMAN LLP

/s/ Melanie D. Morgan, Esq.

MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
CHRISTINE M. PARVAN, ESQ.
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Attorneys for First Horizon Home Loans

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1160 Town Center Drive, Suite 330
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TEL.: (702) 634-5000 – FAX: (702) 380-8572

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case is different. The HOA foreclosed on First Horizon, as owner of the property, based on stale, inaccurate foreclosure notices only applicable to the former owner. The HOA violated its own CC&Rs and every non-judicial foreclosure provision of NRS Chapter 116 in doing so. Once First Horizon became owner through its foreclosure on its deed of trust, all of the HOA foreclosure notices to the former owner were obsolete and inaccurate. First Horizon is entitled to notice and an opportunity to be heard. SFR's theory in this case, of foreclosure without notice, based on the fig leaf of deed recitals, violates *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016). Summary judgment is warranted for First Horizon.

II.

PLAINTIFF'S ALLEGATIONS

First Horizon owned the property at via a foreclosure sale on February 26, 2013. (**Ex. A** at ¶23). SFR alleges it purchased the property at a homeowner's association foreclosure sale that occurred on March 6, 2013. (*Id.* at ¶6). SFR asserts it paid a sufficient amount to pay the super priority portion of the homeowner's association lien and costs. (*Id.* at ¶16).

SFR does not allege that First Horizon, *as owner*, received a notice of delinquent assessment, a notice of default and election to sell, a notice of trustee's sale prior to First Horizon acquiring title. SFR does not allege that First Horizon, *as owner*, was in default on any assessments. SFR does not allege First Horizon was delinquent in any assessments demanded of First Horizon by the HOA. SFR does not allege that the HOA requested that First Horizon pay a super priority amount.

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LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

III.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Foreclosure on the Deed of Trust Occurred Prior to the HOA Foreclosure.

Ana Torres (**Torres**) obtained title in June 2008. (**Ex. B**, Deed). Torres borrowed $136,923 from First Horizon. (**Ex. C**, Deed of Trust). The loan was secured by a deed of trust recorded on July 25, 2008. (*Id.* at pg. 1). The loan is insured by the Federal Housing Administration, as is evident by the FHA Case Number (*Id.* at pg. 1) and the explanation of payments to HUD (*Id.* at pg. 3).

Torres defaulted on her home loan. A notice of default and election to sell was recorded on October 30, 2012. (**Ex. D**, NOD). A certificate of compliance with Nevada's Foreclosure Mediation Program was recorded on February 1, 2013. (**Ex. E**, Cert.). A notice of sale was recorded on February 7, 2013. (**Ex. F**, NOS). The notice of sale stated that the date for the public auction of the property was February 26, 2013. (*Id.*) The trustee's sale occurred on February 26, 2013, and the trustee's deed was recorded on March 7, 2013. (**Ex. G**, Trustee's Deed). First Horizon credit bid for the property and obtained it for $151,283.09. (*Id.*)

B. Foreclosure on the HOA Lien Occurred Subsequent to the Deed of Trust Foreclosure.

The homeowners association, Squire Village at Silver Springs Community Association (**HOA**), through their collection agent, Alessi & Koenig (**Alessi**) recorded a notice of delinquent (lien) on March 22, 2012 (**Ex. H**, Notice of Lien). Alessi then recorded a notice of default and election to sell on April 20, 2012. (**Ex. I**, Notice of Default). Alessi recorded a notice of sale on February 5, 2013. (**Ex. J**) Alessi then purportedly sold the property to SFR on March 6, 2013. (**Ex. K**, Trustee's Deed). SFR paid $7,000. (*Id.* at pg. 1).

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C. The CC&Rs, Sec. 7.7, Prohibit Foreclosure Against First Horizon, the New Owner, until First Horizon is Given Thirty Days' Notice of the Amount Owing.

Section 7.7 of the CC&Rs is called "Rules Regarding Billing and Collection Procedures." (**Ex. L**, CC&Rs at pg. 31). This section, in relevant part, provides as follows:

> The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that that the Assessment or any installation thereof is or will be due and of the amount owing.

(*Id.*).

D. Alessi Would Have Postponed the Sale Had it Read First Horizon's Notice of Sale.

David Alessi, testified as Alessi's person most knowledgeable. (**Ex. M**, Transcript of David Alessi's Deposition). He testified as to Alessi's procedures where a lender forecloses and becomes owner prior to a homeowner's association foreclosure:

> Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?
>
> Ms. Ebron: Calls for speculation, incomplete hypothetical.
>
> Mr. Loizzi: Join. Go Ahead.
>
> A. I would answer the question that in general we would not.
>
> Q. And why not.
>
> A. Because there would have been a new – well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably would have sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that time.

(*Id.* at 49:9-25 and 50:1).[1]

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[1] The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

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E. SFR Bought the Property for Less than 10% of the Property's Fair Market Value.

First Horizon disclosed an appraisal expert in this case, Matthew Lubawy. (**Ex. N**). Lubawy analyzed the property's fair market value on the date of the HOA's foreclosure. (*Id.* at Lubawy00003). The appraised value was $94,000. (*Id.*).

IV.

REQUEST FOR JUDICIAL NOTICE

1. The publicly recorded documents marked as **Exhibits B through L**. These documents are public record and not subject to reasonable dispute. *See* NRS 47.130.

2. **Exhibits O through P**. Published Articles Concerning Planned Unit Communities in the United States. *U.S. v. W.R. Grace*, 504 F.3d 745 (9th Cir. 2007); and

3. **Exhibits Q through R:** Legislative history compiled by Nevada's Legislative Counsel Bureau AB 204 in 2009 and AB 221 in 1991. *Aramark Facility Servs. v. SEIU, Local 1877*, 530 F.3d 817, 826 n.4 (9th Cir. 2008).

V.

LEGAL STANDARDS

Under Rule 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029, NRCP 56(c). Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.*

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VI.

LEGAL DISCUSSION

A. SFR's Claims for Unjust Enrichment and Quiet Title/ Declaratory Relief All Fail under Nevada State Law.

1. Unjust Enrichment Fails – SFR Conferred No Benefit on First Horizon.

The essential elements of unjust enrichment "are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit." *Unionamerica Mtg. v. McDonald,* 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981). Here, SFR has provided no admissible evidence to demonstrate it conferred a benefit of any kind on First Horizon. This lack of evidence is fatal to SFR's unjust enrichment claim. First Horizon is entitled to summary judgment.

2. Quiet Title/Declaratory Relief Fails.

(a) HOA Foreclosure Sale is Void under the CC&Rs.

CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). The burden of this association's CC&Rs is the obligation to pay assessments. The benefit of the CC&Rs is the HOA must comply with the notice provisions governing how the HOA enforces its right to collect assessments.

Here, the HOA's foreclosure collection activities were deficient under 7.7. The HOA had no power to foreclose against a member of the community without sending written notice to the community member. First Horizon was a member of HOA's community as of February 26, 2013 by virtue of foreclosure sale. (**Ex. G**, *supra*). SFR admitted as much in its complaint. (**Ex. A**, *supra*, at ¶23). First Horizon then is entitled to the benefits of its ownership. First Horizon is entitled under Section 7.7 to written notice of default and written notice of the amount supposedly due. (**Ex. L**, *supra*, at pg. 31). The HOA made these notice provisions mandatory by stating that the "Assessment Lien therefor shall not be foreclosed," if these notice provisions are not complied with by the HOA. (*Id.*) It is an undisputed material fact that the HOA did not comply with Section 7.7. The foreclosure sale is void.

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The Court in *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016) correctly determined that the recitals as to statutory compliance are **not** irrebuttable conclusions. Nevada's Supreme Court in *Shadow Wood* specifically held that trial court's retain equitable power to set aside a foreclosure sale. *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 14-15. The court correctly analogized foreclosures under NRS Chapter 116 to foreclosures under NRS Chapter 107. *Id.* at 14. "The conclusive recital provisions in NRS 107.030(8) have never been argued to carry the preemptive effect that [Appellants] attribute to NRS 116.31166." *Id.* at 12-13. So too the recitals in NRS 116.31166. Thus, a foreclosure cannot stand, for example, where no default occurred, despite the recitals in the deed. *Id.* at 11.

Here, First Horizon was not in default of any obligation to pay assessments. The HOA's CC&Rs mandated that First Horizon be given notice of the amount owed after First Horizon's foreclosure sale and 30 days' notice in order to pay that amount. SFR, contrary to *Shadow Wood*, is asking this Court to confirm a default by First Horizon where none exists. Summary judgment is warranted.

A senior mortgagee, like First Horizon prior to February 26, 2013, has no obligation to pay assessments prior to taking title. The CC&Rs provide that such assessments that became due prior to First Horizon's foreclosure sale are the personal obligation of the former owner, Torres. (**Ex. L**, supra, at pg. 33).[2] Chapter 116 certainly provides no such obligation. SFR certainly cites to no statutory provision. No such requirement exists.

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[2] Note, Section 7.8.3 is not a mortgage savings clause of the type ruled unenforceable in *SFR*. See *SFR Investments Pool 1, LLC,* 130 Nev. Adv. Op. 75 at 23-24. Indeed, Section 7.8.3 recites NRS 116.3116(2). Thus, the HOA, in contrast to the HOA in *SFR*, is not waiving its rights to a super priority of assessments. Sections 7.7 and 7.8.3, when read together, provide a procedure for the HOA to collect the super priority lien amount after the mortgagee's foreclosure through 7.7's notice procedure.

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(b) The Grossly Inadequate Price, Plus Lack of Notice, Justify Setting Aside the HOA's Foreclosure Sale.

The *Shadow Wood* court adopted the analysis of Restatement (Third) of Property: Mortgages §8.3 (1997). *Shadow Wood Homeowners Assoc*., 132 Nev. Adv. Opn. at 15. Section 8.3 provides:

> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **unless the price is grossly inadequate**.
>
> (b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

(Emphasis added).

The Restatement authors went on to define what it means by "grossly inadequate:"

> "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. **While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.**

Id. at cmt. b. (Emphasis added).

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Finally, the Restatement authors expressly embraced Nationstar's formula and method of proving gross inadequacy:

> This section articulates the traditional and widely held view that a foreclosure proceeding that otherwise complies with state law may not be invalidated because of the sale price unless that price is grossly inadequate. **The standard by which "gross inadequacy" is measured is the fair market value of the real estate.** For this purpose the latter means, not the fair "forced sale" value of the real estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

Id. (Emphasis added). No one would be so daft as to argue a foreclosure sale should bring a fair market value. Indeed, the Restatement's authors note that forced sales such as foreclosures typically sell for less than fair market value in their introductory discussion in Section 8.3. *See* Restatement (Third) of Property: Mortgages §8.3 cmt.a (1997). The point of the Restatement approach adopted by the *Shadow Wood* court is to compare the fair market value of the property versus what it actually sold for at the foreclosure sale. *Id.* at cmt. b, Illustration 2. If the forced sale price is less than 20% of the fair market value, then the court should set aside the foreclosure sale as "grossly inadequate." Id.; *see also Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15.

The Court should note that the Restatement author's formula for arriving at "fair market value" is identical to Nevada law under NRS §375.010(2), the statute that the Clark County Assessor used to formulate the property's assessed value that appears on the trustee's deeds' declaration of value page.

In *Shadow Wood,* the amount paid was 23 percent amount, which was, to quote the Court, "not obviously inadequate." However, in the instant matter, the sales price SFR was able to obtain the Property for was less than 10% of appraised value. The Court will recall from the Countermotion that Defendant pointed out the following:

(1) The appraised value of the property was $94,000;
(2) The amount paid by plaintiff in the foreclosure auction was $7,000.00.

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SFR paid less than 10% of the fair market value of the Property. This percentage of the property's fair market value is subject to judicial notice under NRS §47.130. This amount is a far cry from the 20 percent mandated by Section 8.3 of the Restatement and the *Shadow Wood* case.

In addition, there was a procedural flaws in the foreclosure sale. **First**, the HOA did not serve First Horizon with the notice required by Sec. 7.7 of the CC&Rs. **Second**, every HOA notice prior to First Horizon's foreclosure sale instantly became meaningless or stale once First Horizon foreclosed on February 26, 2013. First Horizon's foreclosure extinguished the sub-priority portion of the HOA's lien. **Third**, Alessi testified it was its policy to restart the collection process where it knows a bank has foreclosed. First Horizon's foreclosure at a public foreclosure sale was public information in the notice of sale. Alessi simply did not read the notice of sale. The Court is warranted under *Shadow Wood* to set aside the foreclosure sale on summary judgment.

B. SFR's Claims for Unjust Enrichment and Quiet Title/ Declaratory Relief All Fail under Federal Law.

1. HOA Foreclosure on First Horizon Without Actual Notice to First Horizon Frustrates the Objectives of the Single Family Mortgage Insurance Program.

Under the Supremacy Clause, state law that conflicts with federal law—including federal regulations—is preempted. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Fid. Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) (holding that federal regulations have same preemptive force as federal statutes). Federal conflict preemption applies if the challenged [state] law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Crosby*, 530 U.S. at 372–73 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). A state law stands as an "obstacle" to federal law, and is thus preempted under the Supremacy Clause, whenever it conflicts, interferes, or is inconsistent with "the full purposes and objectives of Congress." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) (quoting *Hines*, 312 U.S. at 67).

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Applying these principles immediately after the Nevada Supreme Court's *SFR* decision, Chief Judge Navarro of the U.S. District Court in Nevada held that, "[b]ecause a homeowners association's foreclosure under Nevada Revised Statute § 116.3116 on a Property with a mortgage insured under the FHA insurance program would have the effect of limiting the effectiveness of the remedies available to the United States, the Supremacy Clause bars such foreclosure sales." *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, 2014 WL 4798565, at *7 (D. Nev. Sept. 25, 2014). Similarly, Judge Mahan of the U.S. District Court in Nevada held that "[a]llowing an HOA foreclosure to wipe out a first deed of trust on a federally-insured property thus interferes with the purposes of the FHA insurance program." *Saticoy Bay LLC, Series 7342 Tanglewood Park v. SRMOF II 2012-1, et al*, 2015 WL 1990076, at *4 (D. Nev. April 30, 2015). Because the deed of trust was federally insured, Judge Mahan held that "the homeowners' association sale in the instant case is void." *Id.* at *5.

In this case, as in *Washington & Sandhill* and *Saticoy Bay*, the HOA foreclosed on First Horizon, as owner. First Horizon after it foreclosed on February 26, 2013 was then unable to convey title to HUD, as is required under the Single Family Mortgage Insurance Program. *See* 24 CFR §203.366. SFR's theory in this case is that First Horizon, once it became owner, was not entitled to any notices under Chapter 116. HOA foreclosure without actual notice to First Horizon, as owner, makes it impossible for First Horizon to convey title to HUD.

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2. As Applied to the Unique Facts of This Case, NRS Chapter 116's Foreclosure Scheme Violates First Horizon Federal Procedural Due Process Rights.

(a) Procedural Due Process Means Meaningful Notice and an a Meaningful Opportunity to be Heard.

Nevada's Legislature cannot enact a statute that strips First Horizon of its constitutional due process rights. *See, e.g.*, *Consolidated Edison Co. v. Pub. Serv. Comm'n*, 447 U.S. 530, 100 S. Ct. 2326, 65 L.Ed. 2d 319 (1980); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L.Ed. 2d 707 (1978). Procedural due process means at a minimum notice and an opportunity to be heard prior to the deprivation of the protected property interest. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). The definition of procedural due process is flexible and necessarily depends on the nature of the case. *Id.* at 314-315. "Parties whose rights are to be affected are entitled to be heard." *Fuentes v. Shevin*, 407 U.S. 67, 80 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).

(b) State Action is Met Here.

There is no simple line between state action and private action. The Ninth Circuit has recognized four different criteria, or tests, used to identify state action: "(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Sutton, Jr. v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-836 (9th Cir. 1999). Regardless of the label used, the challenged action must result from government policy. *Id.* at 835.

State action exists where the state has used coercive power, whether covert or overt, or provided significant encouragement to the private actor such that the challenged action can be fairly attributable to the state. *Blum v. Yaretsky*, 457 U.S. 991, 104, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982). The government compulsion test is met. The super priority portion of the HOA's lien that survived First Horizon's because of a statutory right that did not exist at common law. The super priority did not exist as a result of voluntary agreement as is typical of a debtor-creditor relationship.

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The state of Nevada has done more than acquiesce in the remedy of non-judicial foreclosure to enforce a private bargain between two private parties. The contrast between *Flagg Brothers, Inc v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) (warehouseman's lien statute) and *Apao v. Bank of New York*, 324 F.3d 1091, 1094-1095 (9th Cir. 2003) (deed of trust foreclosure statute) could not be more great. **First**, Nevada mandated the creation of this particular HOA, and all HOAs in Nevada, because they govern common open space. **Second**, HOAs had supplanted traditional state actors in providing services commonly enjoyed such as maintenance of private streets, providing recreational resources, and maintenance of common areas such as street lights and sidewalks. **Third**, the source of the super priority lien is not a private agreement. **Fourth**, Nevada barred HOAs and deed of trust beneficiary's from subordinating the HOA's super priority lien. **Fifth**, in 2009, Assemblyperson Spiegel stated that the super priority had to be lengthened to ensure that the HOAs, who had supplanted local governments in providing services, did not fail. **Sixth**, the scholarly authority concerning rise in the number of HOAs nationally can be explained in large part because HOAs supplanted public actors in providing commonly enjoyed services at no cost to local governments.

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The state is also intertwined with the creation of HOAs, the creation of HOA super priority, and the requirement that super priority not be subject to subordination. Nationally, private community associations have exploded in numbers over the past 40 years. In 1970, there were approximately 10,000 community associations. (**Ex. O**, Community Ass'n Institute, *Community Ass'n Fact Book*, p. 7 of 61 (2014)) Nationwide, there were 333,600 community associations governing 66,000,000 Americans as of 2014. *Id*. The savings to local governments are because of HOAs help explain the dramatic expansion:

> Local government gets developments that are significantly self-financing, often have additional amenities, and add to the local tax base. At the same time, RCA development relieves local government and, thereby, existing taxpayers of much of the responsibility for financing infrastructure and services.

(**Ex. P**, Residential Community Associations: Private Governments in the Intergovernmental System?, p. 5 (1989). Statistics may, in fact, underestimate, the savings to local government of the privatization of government services:

> Public finance statistics do not include estimates of how much money RCAs are spending on "public" services, or of the precise extent to which RCA members are subsidizing the public services provided to non-RCA homeowners. The increasing number of RCA communities and the fact that they are estimated to include as many as 29 million people suggest that public finance statistics seriously understate expenditures for community facilities and services. In all probability, RCAs account for the most significant privatization of local government responsibilities in recent times, as measured by the amount of expenditure relief given to the public sector for capital investment and operations.

Id. at p. 18. Recently, the Foundation for Community Research estimated the savings to local government of services provided by homeowners associations as "between $2 to $4 billion a year by minimizing the need for building and health code enforcement and other public safety services." (**Ex. O**, *supra*, Community Association Fact Book, Community Services as an Association Core Function, p. 26 (2014).

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Nevada adopted HOA super priority to serve a state interest. This is patent because the same assembly bill, AB 221, that created HOA super priority also mandated the creation of HOAs to govern the planned community's common open space. That Nevada's super priority is intended to serve a governmental purpose was made plain by AB 204 in 2009 when super priority was lengthened from 6 months to 9 months. Assembly Person Ellen Spiegel testified about the legislature's purpose in extending the period of priority in her March 6, 2009 testimony:

> Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

(**Ex. Q**, Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Legislature, p. 34 (2009) (Statement of Assemblyperson Ellen Spiegel). Assemblyperson Spiegel then explained the legislature's policy goals in expanding the time period applicable to the super priority lien:

> The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, **prevent cost-shifting from common-interest communities to local governments**.

(*Id.*; see also **Ex. R**, Document Submitted by Assemblyperson Spiegel in conjunction with her testimony on March 6, 2009, at pgs. U-3 and U-13). (Emphasis added).

In sum, Nevada is overtly involved every aspect of HOA super priority lien foreclosure. State action is met.

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(c) Actual Notice is First Horizon's Due.

The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the] deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (emphasis added). An "elementary and fundamental requirement of due process … is notice reasonably calculated, *under all circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314) (emphasis added). Put more simply, state action may not extinguish an interest in real property unless the holder of that interest is afforded notice of that action.

(d) HOA Deprived First Horizon of Actual Notice.

First Horizon, as owner, did not receive any of the foreclosure notices required by NRS Chapter 116. First Horizon did not receive a notice of delinquent assessment. NRS 116.31162(1)(a). First Horizon did not receive a notice of default and election to sell. NRS 116.31162(1)(b). First Horizon did not receive a notice of sale. NRS 116.31165.

The foreclosure notices sent to the former owner, Torres, were made inaccurate once First Horizon became owner. First Horizon's February 26, 2013 foreclosure necessarily had the effect of making the information contained in the prior foreclosure notices stale. First Horizon's February 26, 2013 foreclosure extinguished the sub priority piece of the HOA's lien. First Horizon received none of the statutory notices that the former owner, Torres, received. First Horizon was deprived of the opportunity to be heard and to pay the remaining portion of the HOA's lien.

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VII.

CONCLUSION

Based on the foregoing, this Court should grant summary judgment to First Horizon.

DATED this 2nd day of March, 2016.

AKERMAN LLP

/s/ Melanie D. Morgan, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 2nd day of March, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & 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.

Howard C. Kim, Esq.
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Attorneys for Plaintiff

/s/ Allen G. Stephens
An employee of AKERMAN LLP

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EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company,

Plaintiff,

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

COMPLAINT

Arbitration Exemptions:
1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and requests injunctive relief against the above named defendants as follows:

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(702) 485-3300 FAX (702) 485-3301

I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **5069 Midnight Oil Drive, Las Vegas, NV 89122; Parcel No. 161-26-111-017** (the "Property").

2. Upon information and belief, Defendant FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION, ("First Horizon"), is a foreign entity that may claim an interest in the Property via a 2013 Trustee's sale.

3. Upon information and belief, Defendant Ana Torres is an individual residing in Nevada and the former title owner of the Property.

4. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien

6. Plaintiff acquired the Property on March 6, 2013, by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("HOA foreclosure sale"). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

7. On or about March 18, 2013, the resulting foreclosure deed was recorded in the Official

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HENDERSON, NEVADA 89014
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Records of the Clark County Recorder as Instrument Number 201303180003508 ("HOA Foreclosure Deed").

8. The foreclosure sale was conducted by Alessi & Koenig, LLC, agent for Squire Village at Silver Springs Community Association ("Squire Village HOA"), pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Squire Village HOA governing documents (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on February 22, 2012 in the Official Records of the Clark County Recorder as Instrument Number 201202220001525 ("HOA Lien").

9. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

10. Plaintiff was not the only bidder to attend the HOA foreclosure sale.

11. Plaintiff's winning bid was in excess of the amount included in the HOA's notice of foreclosure sale as due and owing on the HOA Lien.

12. Pursuant to NRS 116.3116(2), the entire HOA Lien

> is prior to all other liens and encumbrances of unit except:
>
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

13. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even a first security interest in the Property:

> [the HOA Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the 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[.]

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14. Upon information and belief, the HOA took the necessary action to trigger the super-priority portion of the HOA Lien.

15. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating Squire Village HOA.

16. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

17. Upon information and belief, Squire Village HOA or its agent Alessi & Koenig, LLC distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

18. Upon information and belief, Defendants had actual or constructive notice of the HOA Lien, including the super-priority portion of the HOA Lien.

19. Upon information and belief, Defendants knew or should have known that the foreclosure of the HOA Lien, including the super-priority portion of the HOA Lien, would extinguish their security and ownership interests in the Property.

20. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the HOA Lien and the Notice of Default.

21. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

22. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff "without equity or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former owner, his or her heirs and assigns, and **all other persons**."

Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien

23. Upon information and belief, Defendant First Horizon obtained title to the Property on February 26, 2013 at a non-judicial foreclosure sale pursuant to the terms of a deed of trust and recorded against the Property on or about March 7, 2013 in the Official Records of the Clark

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County Recorder as Instrument No. 201303070003168. ("Bank foreclosure sale").

24. Upon acquiring the Property, First Horizon failed to satisfy the HOA Lien.

25. Defendant First Horizon's ownership interest in the Property was extinguished by the foreclosure of the HOA Lien.

26. Any interest in the Property via a deed of trust or other non-governmental lien was either extinguished by the Bank foreclosure sale or foreclosure of the super-priority portion of the HOA Lien.

27. Defendant Ana Torres' ownership interest in the Property was extinguished by foreclosure of the HOA lien.

III. FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against First Horizon Home Loans and Ana Torres)

28. Plaintiff repeats and realleges the allegations of paragraphs 1-27 as though fully set forth herein and incorporate the same by reference.

29. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in the Property.

30. Plaintiff acquired the Property on March 6, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 18, 2013.

31. Ana Torres, as previous title owner of the Property may assert a claim adverse to Plaintiff.

32. Defendant First Horizon as previous title owner of the Property may assert a claim adverse to Plaintiff.

33. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

34. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority over all liens and encumbrances on the Property except for: (1) liens and encumbrances recorded

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before the recordation of the declaration and (2) liens for real estate taxes and other governmental assessments or charges.

35. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

36. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the HOA foreclosure sale extinguished Defendants' ownership and security interests in the Property; and (4) Plaintiff's rights and interest in the Property are superior to any adverse interest claimed by Defendants.

37. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

V. SECOND CLAIM FOR RELIEF
(Unjust Enrichment against First Horizon and Ana Torres)

38. Plaintiff repeats and realleges the allegations of paragraphs 1- 37 as though fully set forth herein and incorporate the same by reference.

39. Plaintiff has expended funds and resources in connection with the acquisition and maintenance of the Property.

40. Defendants will benefit from the funds and resources expended by Plaintiff.

41. Should Plaintiff's quiet title claim be denied, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

42. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the Property and the benefit of the funds and resources Plaintiff expended on the Property.

43. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

44. Plaintiff is entitled to general and special damages in excess of $10,000.00.

VI. THIRDCLAIM FOR RELIEF
(Preliminary and Permanent Injunction against First Horizon)

45. Plaintiff repeats and realleges the allegations of paragraphs 1- 44 as though fully set forth herein and incorporate the same by reference.

46. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 6,

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HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

2013.

47. Defendant First Horizon may claim an interest in the Property through the First Horizon Deed of Trust which was extinguished by the HOA foreclosure sale.

48. Defendants improperly proceeded with the sale or transfer of title to the Property and/or eviction proceedings based on a purported transfer of title through the non-judicial foreclosure of the First Horizon Deed of Trust.

49. Any non-judicial foreclosure sale based on the First Horizon Deed of Trust is invalid as Defendants lost their interest in the Property, if any, at the HOA foreclosure sale.

50. Any further sale or transfer of title to the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

51. Any attempt to take or maintain possession of the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

52. On the basis of the facts described herein, Plaintiff has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

53. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from beginning or continuing any eviction proceedings that would affect Plaintiff's possession of the Property.

54. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from any sale or transfer that would affect the title to the Property.

VII. PRAYER FOR RELIEF

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing eviction proceedings, sale or transfer of the Property;

3. For general and special damages in excess of $10,000.00

4. For an award of attorney's fees and costs of suit; and

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5. For any further relief that the Court may deem just and proper.

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
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Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

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HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. Dept. No. **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

///

///

///

///

SFR INVESTMENTS POOL 1, LLC	$270.00
TOTAL	**$270.00**

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower

Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
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Attorneys for Plaintiff

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HENDERSON, NEVADA 89014
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EXHIBIT B

EXHIBIT B

I hereby affirm that this document submitted for recording does not contain a social security number.

Deborah Kiss

Signature DEBORAH KISS
Printed name & title AUDITOR

C5-1

APN# 161-26-111-017 (1) 9

20080725-0003027

Fee: $17.00 RPTT: $724.20
N/C Fee: $25.00

07/25/2008 12:47:16
T20080155742
Requestor:
RECORD SEARCHING SERVICES

Debbie Conway BRT
Clark County Recorder Pgs: 5

Recording Requested By: CHICAGO TITLE

Name: CHICAGO TITLE/SERVICELINK DIVISION

Address: 400 CORPORATION DRIVE

City/State/Zip: ALIQUIPPA, PA 15001

Document Title: SPECIAL WARRANTY DEED

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from (type of document), Book Page Document # recorded (date) in the County Recorder office.

If Surveyor, please provide name and address.

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

NV Affirmation cover Sheet – 2/06

VMP ® -368C(NV) (0602)

PROPERTY
TAX ID#
161-26-111-017

[this space for recording information

After Recording Return to:
Loan No. 331627256
SL# 1548917
ServiceLink
4000 Industrial Blvd
Aliquippa, PA 15001

Mail Tax Statements To:
Ana Torres
5069 Midnight Oil Drive
Las Vegas, Nevada 89122

Property Address:
5069 Midnight Oil Drive
Las Vegas, Nevada 89122

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED, executed this 13 day of June 2008, by FEDERAL HOME LOAN MORTGAGE CORPORATION, with a business address of 5000 Plano Parkway, Carrollton, Texas 75010, hereinafter called **GRANTOR**, grants to ANA TORRES, a single woman, residing at 5069 Midnight Oil Drive, Las Vegas, Nevada 89122, hereinafter called **GRANTEE**:

Wherever used herein the terms "GRANTOR" AND "GRANTEE" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.

Witnessed: That GRANTOR, for and in consideration of the sum of ONE HUNDRED FORTY TWO THOUSAND and 00/100 DOLLARS ($142,000.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells aliens, remiss, releases, conveys and confirms unto the GRANTEE, all that certain land, situated in Clark County, Nevada, viz:

PARCEL I:

LOT FORTY-SIX (46) OF SILVER SPRINGS - UNIT A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 36, AND AS AMENDED BY CERTIFICATE OF AMENDMENTS RECORDED APRIL 27, 2001 IN BOOK 20010427 AS DOCUMENT NO. 00272 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT UPON AND OVER THAT PORTION OF SAID SUBDIVISION DELINEATED ON PLATS AS "PRIVATE STREET AND P.U.E. AND COMMON ELEMENT LOTS" AND AS FURTHER DESCRIBED IN THE COVENANTS, CONDITIONS AND RESTRICTION RECORDED SEPTEMBER 17, 2001 IN BOOK 2001 AS DOCUMENT NO. 01331 OF OFFICIAL RECORDS AND AS SAME MAY BE AMENDED FROM TIME TO TIME.

THIS CONVEYANCE IS MADE SUBJECT TO ALL RESTRICTIONS, EASEMENTS, RIGHTS OF WAY, COVENANTS AND CONDITIONS CONTAINED IN THE DEEDS FORMING THE CHAIN OF TITLE TO THIS PROPERTY.

SOURCE OF TITLE IS BOOK _____, PAGE _____ /INSTRUMENT NO. 2008 0109. 0002440 **(RECORDED** 1-9-08 **)**

PROPERTY ADDRESS: 5069 Midnight Oil Drive, Las Vegas, Nevada 89122
The legal description was obtained from a previously recorded instrument.

SUBJECT TO:

1. TAXES FOR THE FISCAL YEAR 2008-2009
2. COVENANTS, CONDITIONS, RESERVATIONS, RIGHTS, RIGHTS OF WAY AND EASEMENTS NOW OF RECORD.

This deed warrants title only against claims held by, through, or under the grantor, or against encumbrances made or suffered by the grantor, and it cannot be held to warrant title generally against all persons.

Grantor does further covenant and bind itself, and its successors and assigns to warrant and forever defend the title to the property to the said Grantee against the lawful claims of all persons claiming by, through or under the Grantor, but no further or otherwise.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; and that said land is free of all encumbrances.

WITNESS the following signature and seal this 13 day of June, 2008.

ATTEST

Stephanie Babik
First Witness

Stephanie Babik
Print Name

Deborah Giss
Second Witness

Deborah Giss
Print Name

STATE OF PA }

FEDERAL HOME LOAN MORTGAGE CORPORATION by Chicago Title Insurance Company doing business as ServiceLink as Attorney-in-Fact

BY: Sheri L York

ITS: VP

It's Attorney-in-fact, pursuant to Power of Attorney recorded on 06/28/2007 in Official Records as Document No. 20070628-0003276 of the Public Records of Clark County.

COUNTY OF Beaver }

ACKNOWLEDGED BEFORE ME, on this 13 day of June, 2008, the undersigned authority, personally appeared Sheri L York, who is the VP of Chicago Title Insurance Company doing business as ServiceLink as Attorney-in-Fact for FEDERAL HOME LOAN MORTGAGE CORPORATION, and is appearing on behalf of said corporation, with full authority to act for said corporation in this transaction, who is known to me or has shown _____ as identification, who after being by me first duly sworn, deposes and says that he/she has the full legal authority to sign this deed on behalf of the aforementioned corporation.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Marsha L. Hancock, Notary Public
Hopewell Twp., Beaver County
My Commission Expires Oct. 10, 2010
Member, Pennsylvania Association of Notaries

NOTARY PUBLIC
My Commission Expires 10-10-10
Marsha L Hancock

The preparer has not had any contact with the Grantor(s) nor Grantee(s) herein No title search was performed on the subject property by the preparer. The preparer of this deed makes no representation as to: the status of the title; property use; any zoning regulations concerning described property herein conveyed; or any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantor/Grantee and /or their agents, no boundary survey was made at the time of this conveyance. **PREPARER NOT RESPONSIBLE FOR CLOSING**

Prepared under the supervision of:
P. Desantis, Esq.
By: Law's Specialty Group, Inc.
235 West Brandon Blvd., #191 Brandon, Florida 33511 1-866-755-6300

STATE OF NEVADA
DECLARATION OF VALUE

FOR RECORDERS OPTIONAL USE ONLY	
Document/Instrument#:	
Book:	Page:
Date of Recording:	
Notes:	

1. **Assessor Parcel Number (s)**
   a) 161-26-111-017
   b)
   c)
   d)

2. **Type of Property:**
   a) ☐ Vacant Land b) ☒ Single Fam Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other

3. **Total Value/Sales Price of Property:** $ 142 000.00
   Deed in Lieu of Foreclosure Only (value of property) $ 0
   Transfer Tax Value: $ 142000.00
   Real Property Transfer Tax Due: $ 724.20

4. If Exemption Claimed:
   a. Transfer Tax Exemption, per NRS 375.090, Section: -
   b. Explain Reason for Exemption: -

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ **Capacity** grantor
Signature _____ **Capacity** _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		**BUYER (GRANTEE) INFORMATION** (REQUIRED)	
Print Name:	Federal Home Loan Mortgage	**Print Name:**	Ana Torres
Address:	5000 Plano Pkwy	**Address:**	5069 midnight Oil Drive
City:	Carrollton	**City:**	Las Vegas
State:	TX **Zip:** 75010	**State:**	NV **Zip:** 89122

COMPANY/PERSON REQUESTING RECORDING
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: ServiceLink **Escrow #** 1548917
Address: 400 Corporation Drive
City: Aliquippa **State:** PA **Zip:** 15001

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

EXHIBIT C

EXHIBIT C

I hereby affirm that this document submitted for recording does not contain a social security number.

Signature DEBORAH KISS
Printed name & title AUDITOR

APN# 161-26-111-017 (2) 10 (C13)

20080725-0003028

Fee: $26.00
N/C Fee: $25.00

07/25/2008 12:47:16
07/25/2008 12:47:16
T20080155742
Requestor:
RECORD SEARCHING SERVICES
Debbie Conway BRT
Clark County Recorder Pgs: 13

Recording Requested By: CHICAGO TITLE

Name: CHICAGO TITLE/SERVICELINK DIVISION

Address: 400 CORPORATION DRIVE

City/State/Zip: ALIQUIPPA, PA 15001

Document Title: DEED OF TRUST

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from (type of document), Book Page Document # recorded (date) in the County Recorder office.

If Surveyor, please provide name and address.

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

NV Affirmation cover Sheet – 2/06

VMP ® -368C(NV) (0602)

FHHL0004

Assessor's Parcel Number:
Assessor's Parcel Number:
County: 161-26-111-017 City: N/A
Return To: ~~FHHL - POST CLOSING MAIL ROOM~~
Chicago Title/Service Link Division
~~1555 W WALNUT HILL LN #200 MC 6712~~
~~IRVING, TX 75038~~ 1548917
400 Corporate Drive
Aliquippa PA 15001
Prepared By: FIRST HORIZON HOME LOANS,
A DIVISION OF FIRST TENNESSEE BANK N.A.
7375 PRAIRIE FALCON DR STE 120
LAS VEGAS, NV 89128

Recording Requested By:
FIRST HORIZON HOME LOANS
4000 HORIZON WAY
IRVING, TX 75063

[Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No.
332-4647084-703

MIN 100085200641519139

THIS DEED OF TRUST ("Security Instrument") is made on July 15, 2008
The Grantor is ANA TORRES, An Unmarried Woman

("Borrower"). The trustee is ~~SERVICE LINK~~ United Title of Nevada
3980 Howard Hughes Pkwy Las Vegas NV 89109
("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A., ("Lender")
0064151913
FHA Nevada Deed of Trust with MERS - 4/96
VMP-4N(NV) (0510) Amended 2/98
Page 1 of 9 Initials: AGT
VMP Mortgage Solutions, Inc.

FHHL0005

is organized and existing under the laws of THE UNITED STATES OF AMERICA
and whose address is 4000 HORIZON WAY,
IRVING, TEXAS 75063 . Borrower owes Lender the principal sum of
ONE HUNDRED THIRTY SIX THOUSAND NINE HUNDRED TWENTY THREE & 00/100
Dollars (U.S. $ 136,923.00).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on AUGUST 1, 2038 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in Clark
County, Nevada:
All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

which has the address of 5069 MIDNIGHT OIL DRIVE [Street]
LAS VEGAS [City], Nevada 89122 [Zip Code]
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In

any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later

sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and imposition that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C.

Initials: RGT

1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums

secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

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18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by applicable law to Borrower and to the persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ dollars not to exceed the maximum allowable per HUD.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider	☐ Growing Equity Rider	☐ Other [specify]
☒ Planned Unit Development Rider	☐ Graduated Payment Rider	

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

Ana Gloria Torres (Seal)
ANA TORRES -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on 07-16-08 by ANA TORRES

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
NICOLE D. PINERO
Appt. No. 04-86860-1
My Appt. Expires Feb. 4, 2012

Nicole D Pinero

Mail Tax Statements To:

TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

PLANNED UNIT DEVELOPMENT RIDER

0064151913

FHA Case No.
332-4647084-703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of July 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A.

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

5069 MIDNIGHT OIL DRIVE, LAS VEGAS, NV 89122

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

SILVER SPRINGS- UNIT A

[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned

and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Ana Coloria Torres (Seal)
ANA TORRES -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Exhibit "A"
Exhibit "A"

Legal Description

All that certain parcel of land situated in the County of Clark, State of Nevada, being known and designated as follows:

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendments recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restriction recorded September 17, 2001 in Book 2001 as Document No. 01331 of Official Records and as same may be amended from time to time.

Tax ID: 161-26-111-017

EXHIBIT D

EXHIBIT D

Inst #: 201210300002798
Fees: $224.00
N/C Fee: $0.00
10/30/2012 11:25:50 AM
Receipt #: 1362782
Requestor:
PREMIER AMERICAN TITLE
Recorded By: STN Pgs: 8
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 12-00029-NS-NV
Title Order No. : 61200062

APN: 161-26-111-017

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 07/15/2008, executed by ANA TORRES, AN UNMARRIED WOMAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., ITS SUCCESSORS AND ASSIGNS as beneficiary recorded 07/25/2008 as Instrument No. 20080725-0003028 (or Book, Page) of the Official Records of CLARK County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of $136,923.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

The installments of principal and interest which became due on 09/01/2011 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Nationstar Mortgage, LLC
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: www.ndscorp.com/sales/

Loss Mitigation Contact: Michael Nguyen / 8888115281 Ext 73062
michael.nguyen@NationstarMail.com

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at: http://portal.hud.gov/portal/page/portal/HUD/localoffices.

The Property Address: 5069 MIDNIGHT OIL DRIVE , LAS VEGAS NV 89122

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated : October 29, 2012

National Default Servicing Corporation, As Trustee for Nationstar Mortgage, LLC, as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association

By: Julie Good, Trustee Sale Supervisor

State of: Arizona
County of: Maricopa

On October 29, 2012, before me, the undersigned, a Notary Public for said State, personally appeared Julie Good personally known to me be (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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature

This is an attempt to collect a debt and any information obtained will be used for that purpose.

TS No: 12-00029-NS-NV
APN: 161-26-111-017

AB284 Affidavit

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Borrower/Trustor:
ANA TORRES, A SINGLE WOMAN

Property Address:
5069 MIDNIGHT OIL DRIVE
LAS VEGAS NV 89122

Trustee Address:
7720 N. 16th Street, Suite 300
Phoenix AZ 85020

Deed of Trust Document Instrument Number
20080725-0003028

STATE OF TEXAS)
) ss:
COUNTY OF DENTON)

The Affiant, Blaze Randazzo, being first duly sworn upon oath, attest that I am an individual over the age of eighteen years and an employee of NATIONSTAR MORTGAGE LLC and am employed in the capacity of Limited Vice President. I have obtained personal knowledge of the information stated herein based upon my review of loan servicing records, and/or recorded documents or public records. I am familiar with the manner that the records are kept and maintained by employees of Nationstar Mortgage LLC.

To the best of my knowledge, the following is true and accurate:

A. All records have been maintained in the ordinary course of business, updated at, or near the time of the events recorded and/or described therein;

B. First Horizon Home Loans, a division of First Tennessee Bank, National Association is the current Beneficiary of the Deed of Trust or the authorized representative of the Beneficiary of the Deed of Trust described above, and described in the Notice of Default and Election to Sell to which this affidavit is attached;

C. Pursuant to NRS 107.080(c):

1. The full name and business address of the current Trustee or the Trustee's representative or assignee is:

National Default Servicing Corporation	7720 N. 16th Street, Suite 300 Phoenix, Maricopa County, AZ 85020
Full Name	Street, City, County, State, Zip

The full name and business address of the current holder (or constructive holder) of the Note secured by the Deed of Trust is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

The full name and business address of the current Beneficiary of record of the Deed of Trust is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

Nationstar Mortgage LLC	350 Highland Drive, Lewisville, Denton County, TX 75067
Full Name	Street, City, County, State, Zip

2. The full name and last known business address of the current and every prior known Beneficiary of the Deed of Trust, is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

(List additional known Beneficiaries in the same format)

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a division of First Tennessee Bank, National Association	1818 Library Street, Suite 300, Reston, Fairfax County, VA 20190
Full Name	Street, City, County, State, Zip

3. The Beneficiary, successor in interest of the Beneficiary has actual or constructive possession of the note secured by the Deed of Trust.

4. The Trustee has been authorized to exercise the power of sale under Chapter 107 of NRS with respect to the property encumbered by the Deed of Trust, pursuant to the instruction of the Beneficiary of record (or the authorized representative of the same) and the current holder of the Note secured by the Deed of Trust (or the authorized representative of the same).

5. The following is information regarding the amount in default, the principal amount secured by the Deed of Trust, a good faith estimate of fees imposed and to be imposed because of the default and the costs and fees charged to the Debtor in connection with the exercise of the power of sale:

I. ACTUAL

Original Principal Balance	$136,923.00	
Current Unpaid Principal Balance		$132,014.81
Amount of Missed Payment (PITI)	$13,017.90	
# of Payments:8	$1,003.80	
# of Payments:5	$997.50	
Interest Rate at 6.50% from 8/1/11 to 9/4/12 (14 Months at $715.08 Per Month)		$10,011.12

Actual Fees Charged:

Late Charges	$0.00
NSF Fees	$0.00
Attorney's Fees	$0.00
Foreclosure or Trustee Fees	$0.00
Legal Costs (Non-Judicial Foreclosure)	$0.00
Legal Costs	$0.00
Title Costs	$0.00
Recorder Costs	$0.00
Appraisal or BPO Costs	$0.00
Property Inspection Costs	$96.00
Tax Advances	$472.25
Home Owners Insurance Advances	$249.00
Mortgage Insurance	$699.26
HOA Advances	$0.00

Other	$0.00
Suspense	$0.00
Total	$143,542.44

ESTIMATE

II. Good faith estimate of all fees and costs to be imposed by the Beneficiary or its representative because of the default is **$8,400.00.**

III. Good faith estimate of the total costs and fees to be imposed in connection with the exercise of the power of sale is **$2,830.95**.

6. Exhibit "A" contains the date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

Dated this 6 day of September, 2012.

Affiant Name: Blaze Randazzo Title - ~~Assistant Secretary~~ OR Limited Vice President

Signature: 9/6/12 (RWS)

Nationstar Mortgage LLC as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association.

STATE OF Texas)
) ss:
COUNTY OF Denton)

On this 6th day of September, 2012, personally appeared before me, a Notary Public, in and for said County and State, Blaze Randazzo, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

ROBERT WARNER SHARP
Notary Public, State of Texas
My Commission Expires
December 16, 2014

Exhibit "A"

TS #: 12-00029-NS-NV
Title Order # 61200062

Subject Deed of Trust Information:

Deed of Trust Dated: July 15, 2008

Deed of Trust Recorded: 07-25-2008 as 20080725-0003028, Official Records

Original Loan Amount: $136,923.00

Original Trustor:

Ana Torres, an Unmarried Woman

Original Beneficiary:

Mortgage Electronic Registration Systems, Inc. MERS, solely as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns

Original Trustee:

United Title of Nevada

Assignments:

The beneficial interest in the Deed of Trust was purportedly assigned by an assignment recorded 08-17-2012 as 201208170001261, of Official Records.

Assignor: Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns
Assignee: First Horizon Home Loans, a Division of First Tennessee Bank, National Association

EXHIBIT E

EXHIBIT E

APN: **161-26-111-017**
Alt. APN:
Recording requested by:

National Default Servicing Corporation
7720 N 16 Street, Suite 300
Phoenix, AZ 85020

When recorded, mail to:

National Default Servicing Corporation
7720 N 16 Street, Suite 300
Phoenix, AZ 85020

612000062

Inst #: 201302010003558
Fees: $17.00
N/C Fee: $0.00
02/01/2013 03:13:13 PM
Receipt #: 1482864
Requestor:
PREMIER AMERICAN TITLE
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

CERTIFICATE

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

Property Owner(s):
Torres, Ana

Property Address:
5069 Midnight Oil Dr
Las Vegas, NV 89122
Clark Co.
Instrument Number:

Trustee: 13-0089-NS-NV
National Default Servicing Corporation
7720 N 16th St, Ste 300
Phoenix, AZ 85020

Deed of Trust Doc Number:
20080725-0003028
Book: Page:

☐ **Mediation Waived:** The Beneficiary may proceed with the foreclosure process.

■ **Non-Applicable Property:** The Beneficiary may proceed with the foreclosure process.

☐ **No Agreement:** A Foreclosure Mediation Conference was held on N/A. The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with the foreclosure process.

☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on N/A. The parties agreed homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.

☐ **Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference or failed to produce the necessary disclosure forms. The Beneficiary may proceed with the foreclosure process.

☐ **Certificate Reissuance:** The Beneficiary may proceed with the foreclosure process.

☐ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 10-30-2013 Proof of Service Date: 11-07-2012

Certificate Issued Date: 01-11-2013

FMP CERT: 2013-01-11-0089

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM
VERISE V. CAMPBELL
DEPUTY DIRECTOR

EXHIBIT F

EXHIBIT F

Inst #: 201302070001593
Fees: $19.00
N/C Fee: $0.00
02/07/2013 12:23:48 PM
Receipt #: 1489406
Requestor:
PREMIER AMERICAN TITLE
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No.	:	12-00029-NS-NV
Title Order No.	:	61200062
APN No.	**:**	**161-26-111-017**

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 07/15/2008 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY; IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **ANA TORRES, AN UNMARRIED WOMAN,** dated **07/15/2008** and recorded **07/25/2008** as Instrument No. **20080725-0003028** (or Book, Page) and Re-Recorded on **01/11/2013** as Instrument No. **201301110003297** (or Book, Page) for the reason of **'Correct legal'** of the Official Records of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **10/30/2012** as Instrument No. **201210300002798** (or Book , Page) of said Official Records.

Date and Time of Sale: 02/26/2013 at **10:00 A.M.**
Place of Sale: At the front entrance to the Nevada Legal News 930 S. 4th St., Las Vegas, NV 89101

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

5069 MIDNIGHT OIL DRIVE
LAS VEGAS, NV 89122

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **$148,344.78**. The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and /or the fair market of the property.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 02/05/2013

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

By: _____
Nichole Alford, Trustee Sales Representative

State of: Arizona
County of: Maricopa

On 25, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Nichole Alford personally known to me be (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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature _____

Exhibit A

NDSC Notice of Sale Addendum

NDSC No.	:	12-00029-NS-NV
PROP. ADDRESS	:	5069 MIDNIGHT OIL DRIVE LAS VEGAS, NV 89122
COUNTY	:	CLARK

LEGAL DESCRIPTION :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

EXHIBIT G

EXHIBIT G

Inst #: 201303070003168
Fees: $18.00 N/C Fee: $0.00
RPTT: $772.65 Ex: #
03/07/2013 01:32:46 PM
Receipt #: 1525066
Requestor:
PREMIER AMERICAN TITLE
Recorded By: DHG Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067
FORWARD TAX STATEMENTS TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067

APN: **161-26-111-017**

NDSC File No.: 12-00029-NS-NV
Loan No.: 0596965595
Title Order No.: 61200062

TRUSTEE'S DEED UPON SALE

Transfer Tax : **$ 772.65**
The Grantee herein **WAS** the Beneficiary
The amount of the unpaid debt was **$151,283.09**
The amount paid by the Grantee was **$151,283.09**
The property is in the city of **LAS VEGAS**, County of **CLARK**, State of **NV.**

National Default Servicing Corporation, an Arizona Corporation, as the duly appointed Trustee (or successor Trustee or Substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without any covenant or warranty to :

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, NATIONAL ASSOCIATION

herein called Grantee, the following described real property situated in CLARK County :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

This conveyance is made pursuant to the powers conferred upon Trustee by said Deed of Trust executed by **ANA TORRES, AN UNMARRIED WOMAN** , as Trustor, recorded on **07/25/2008** as Instrument No. **20080725-0003028** (or Book, Page) and Re-Recorded on **01/11/2013** as Instrument No. **201301110003297** (or Book, Page) for the reason of **'Correct legal'** of the Official Records of **CLARK** County, NV.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **02/26/13** Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, which amount was **$151,283.09.**

Dated : 2/27/13

National Default Servicing Corporation, an Arizona Corporation

By: Carmen Navejas

Carmen Navejas, Trustee Sales Officer

State of: Arizona
County of: Maricopa

On 2-27, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Carmen Navejas personally known to me be (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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature

STATE OF NEVADA
DECLARATION OF VALUE FORM

1 Assessor Parcel Number(s)
a) 161-26-111-017
b) _____
c) _____
d) _____

2 Type of Property:

a)	[ ]	Vacant Land	b)	[x]	Single Fam. Res.
c)	[ ]	Condo/Twnhse	d)	[ ]	2-4 Plex
e)	[ ]	Apt. Bldg	f)	[ ]	Comm'l/Ind'l
g)	[ ]	Agricultural	h)	[ ]	Mobile Home
	[ ]	Other _____			

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a Total Value/Sales Price of Property $151,283.09
b Deed in Lieu of Foreclosure Only (value of property) (_____)
c Transfer Tax Value: $151,283.09
d Real Property Transfer Tax Due $ 772.65

4. **If Exemption Claimed:**
a Transfer Tax Exemption per NRS 375.090, _____.
b Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____%

The undersigned declare and acknowledges, under penalty of perjury, pursuant to NRS, 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Grantor
Carmen Navejas, 12-00029-NS-NV

Signature _____ Capacity Grantee

SELLER (GRANTOR) INFORMATION

National Default Servicing Corp.
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

BUYER (GRANTEE) INFORMATION

First Horizon Home Loans
350 Highland Drive
Lewisville TX 75067

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: _____ **Escrow #:** 12000662

Address: Premier American Title Agency
400 N. Stephanie St Suite 140

City: Henderson, NV 89014 _____ **Zip:** _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT H

EXHIBIT H

Inst #: 201202220001525
Fees: $17.00
N/C Fee: $0.00
02/22/2012 09:17:26 AM
Receipt #: 1073345
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 161-26-111-017 Trustee Sale # **30478-5069**

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Squire Village at Silver Springs Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122** and more particularly legally described as: **PLAT BOOK 91 PAGE 36 LOT 46** Book **91** Page **36** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **ANA TORRES**

The mailing address(es) is: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122**

The total amount due through today's date is: **$1,055.00**. Of this total amount **$980.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **February 6, 2012**

By: _____
Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Squire Village at Silver Springs Community Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me **February 17, 2012**

(Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

(Signature) _____
NOTARY PUBLIC

EXHIBIT I

EXHIBIT I

Inst #: 201204200000434
Fees: $17.00
N/C Fee: $0.00
04/20/2012 08:27:12 AM
Receipt #: 1136966
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. **161-26-111-017** Trustee Sale No. **30478-5069**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **$2,089.00** as of **March 28, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Squire Village at Silver Springs Community Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on as document number , of Official Records in the County of **Clark**, State of Nevada. Owner(s): **ANA TORRES,** of **PLAT BOOK 91 PAGE 36 LOT 46**, as per map recorded in Book **91**, Pages **36**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated , on behalf of **Squire Village at Silver Springs Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **October 1, 2011** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **March 28, 2012**

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Squire Village at Silver Springs Community Association**

EXHIBIT J

EXHIBIT J

Inst #: 201302050002551
Fees: $17.00
N/C Fee: $0.00
02/05/2013 04:01:46 PM
Receipt #: 1486476
Requestor:
ALESSI & KOENIG LLC
Recorded By: CYV Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: **161-26-111-017** TSN **30478-5069**

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **March 6, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **February 22, 2012**, as instrument number **0001525**, of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122.** The owner of the real property is purported to be: **ANA TORRES**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$4,109.00.** Payment must be in made in the form of certified funds.

Date: **January 16, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenlg LLC on behalf of Squire Village at Silver Springs Community Association

EXHIBIT K

EXHIBIT K

Inst #: 201303180003508
Fees: $17.00 N/C Fee: $0.00
RPTT: $35.70 Ex: #
03/18/2013 03:14:46 PM
Receipt #: 1538706
Requestor:
ALESSI & KOENIG LLC
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
LAS VEGAS, NV 89119

A.P.N. No.**161-26-111-017**

TS No. **30478-5069**

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **Squire Village at Silver Springs Community Association**
The amount of unpaid debt together with costs: $5,342.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$7,000.00**
The Documentary Transfer Tax: $35.70
Property address: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122-8124**
Said property is in [ ] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ANA TORRES**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001525**, in **Clark** County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SILVER SPRINGS-UNIT A LOT 46**, as per map recorded in Book **91**, Pages **36** as shown in the Office of the County Recorder of **Clark** County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 6, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for **Alessi & Koenig, Llc.**

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 3/11/13

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 161-26-111-017
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 7,000.00
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: $ 7,000.00
d. Real Property Transfer Tax Due $ 35.70

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi & Koenig LLC	Print Name: SFR Investments Pool 1, LLC
Address: 9500 W Flamingo Rd., Ste. 205	Address: 5030 Paradise Road, St. B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi & Koenig LLC	Escrow #N/A Foreclosure
Address: 9500 W Flamingo Rd., Ste. 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT L

EXHIBIT L

APNs: 161-26-111-015 thru 030
161-26-111-039 thru 044

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WHEN RECORDED, RETURN TO:

Steven L. Lisker
Bryan Cave LLP
Two North Central Avenue
Suite 2200
Phoenix, Arizona 85004-4406

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

[illegible]

[illegible]

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SQUIRE VILLAGE AT SILVER SPRINGS, a planned community (this "Declaration") is made as of this 14th day of September, 2001, by Beazer Homes Holdings Corp., a Delaware corporation (the "Declarant").

ARTICLE 1

DEFINITIONS

1.1 **General Definitions.** Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Uniform Common-Interest Ownership Act, N.R.S. § 116.1101, et seq., as amended from time to time.

1.2 **Defined Terms.** The following capitalized terms shall have the general meanings described in the Act and for purposes of this Declaration shall have the specific meanings set forth below.

1.2.1 **"Act"** means the Uniform Common-Interest Ownership Act, N.R.S. § 116.1101, et seq., as amended from time to time.

1.2.2 **"Additional Property"** means the real property located in Clark County, Nevada, which is described on **Exhibit B** attached to this Declaration, together with all buildings and other Improvements located thereon.

1.2.3 **"Architectural Committee"** means the committee of the Association to be created pursuant to **Section 6.11** of this Declaration.

1.2.4 **"Architectural Committee Rules"** means the rules and guidelines adopted by the Architectural Committee pursuant to **Section 6.11** of this Declaration, as amended or supplemented from time to time.

1.2.5 **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.2.6 **"Assessments"** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to **Article 7** of this Declaration.

1.2.7 **"Assessment Lien"** means the lien granted to the Association by the Act to secure the payment of Assessments, fines and other charges owed to the Association.

1.2.8 **"Association"** means Squire Village at Silver Springs Community Association, a Nevada nonprofit corporation, its successors and assigns.

1.2.9 **"Board of Directors"** means the Board of Directors of the Association.

1.2.10 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.2.11 **"Common Elements"** means any real estate within the Community owned or leased by the Association, other than the Units.

1.2.12 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, including (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon, including clustered mailboxes, private streets, gated entryways, street lights and recreational facilities; (ii) the cost of maintenance, repair and replacement of the parts of the Units for which the Association has the responsibility of maintaining; (iii) the cost of centrally metered utilities which serve the Units and or the Common Elements and the cost of trash removal for the Units if so elected by the Board of Directors, (iv) the cost of all obligations of the Association pursuant to the Easement and Maintenance Agreement; (v) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, the costs of bonding the members of the Board of Directors, and the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Association, including fees, charges and costs payable to any governmental entity pursuant to law; (vi) the costs of rendering to the Units' Owners all services required to be rendered by the Association under the Governing Documents; (vii) such amount as is established by the Association as a reserve for the cost of repair and replacement for the major components of the Common Elements, which may be used only for Common Expenses that involve major repairs or replacement, including repairing and replacing roads and sidewalks and which may not be used for daily maintenance, (viii) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (ix) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community for the common benefit of the Units' Owners.

1.2.13 **"Common Expense Assessment"** means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.14 **"Common Expense Liability"** means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.15 "Community" means the real property located in Clark County, Nevada, which is described in **Exhibit A** attached to this Declaration, together with all Improvements located thereon, and any portion of the Additional Property which is annexed by the Declarant pursuant to **Section 2.8** of this Declaration, together with all Improvements located thereon.

1.2.16 "Declarant" means Beazer Homes Holdings Corp., a Delaware corporation, and its successors and any person or entity to whom it may transfer any Special Declarant's Right.

1.2.17 "Declarant Party" or "Declarant Parties" means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

1.2.18 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.2.19 "Developmental Rights" means any right or combination of rights reserved by the Declarant in this Declaration to do any of the following:

(i) Add real estate to the Community;

(ii) Create Units, Common Elements and Limited Common Elements within the Community;

(iii) Subdivide Units or convert Units into Common Elements; or

(iv) Withdraw real estate from the Community.

1.2.20 "Dewatering System" means the underground drainage pipes and other drainage facilities installed within the Common Elements, those portions of the Units encumbered by a "10' Dewatering Easement" as shown on the Plat and the Sterling Community.

1.2.21 "Dwelling" means any building, or portion of a building, situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence.

1.2.22 "Easement and Maintenance Agreement" means that certain Easement and Maintenance Agreement Recorded on September 14, 2001, in Book 20010914 as Instrument No. 001052, between and among the Association, the Sterling at Silver Springs Homeowners Association, a Nevada nonprofit corporation, Declarant and Plaster Development Company, Inc., a Nevada corporation, the declarant under that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463, as described in **Section 3.8** of this Declaration.

1.2.23 **"First Mortgage"** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.2.24 **"First Mortgagee"** means the holder of any First Mortgage.

1.2.25 **"Governing Documents"** means this Declaration and the Articles, Bylaws, Rules and the Architectural Committee Rules.

1.2.26 **"Identifying Numbers"** means the number assigned to a particular Unit which identifies only that one Unit in the Community and which is shown on the Plat as a "Lot Number".

1.2.27 **"Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Community, including buildings, basketball hoops and poles, play equipment, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

1.2.28 **"Include" or "including"** means include or including, without limitation.

1.2.29 **"Limited Private Utility and Access Easement"** means the easements shown on the Plat and described in **Subsections 3.1.2 and 3.2.2** which provide for the placement of utilities within Units and vehicular and pedestrian ingress and egress to a Unit over a portion of one or more other Units.

1.2.30 **"Member"** means any Person who is or becomes a member of the Association.

1.2.31 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of:

(i) Sixty (60) days after the conveyance of seventy-five percent (75%) of the Units that may be created to Units' Owners other than the Declarant; or

(ii) Five (5) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) Five (5) years after any right to add new Units was last exercised.

1.2.32 **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.2.33 "Plans" means the plans referred to in Subsection 5 of N.R.S. 116.2109, including drawings of improvements which are filed with agencies which issue permits but do not need to be Recorded.

1.2.34 "Plat" means the Final Map of Silver Springs - Unit A, which plat has been Recorded in Book 91, page 36 of Plats, and any amendments, supplements or corrections thereto.

1.2.35 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit's Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant's Right.

1.2.36 "Recording" means placing an instrument of public record in the office of the County Recorder of Clark County, Nevada, and **"Recorded"** means having been so placed of public record.

1.2.37 "Resident" means each individual occupying or residing in any Unit.

1.2.38 "Rules" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.39 "Special Assessment" means any assessment levied against the Units pursuant to **Section 7.4** of this Declaration.

1.2.40 "Special Declarant's Rights" means rights reserved for the benefit of the Declarant in this Declaration or by the Act to do any of the following:

(i) Construct Improvements provided for in this Declaration or shown on the Plat or the Plans;

(ii) Exercise any Developmental Right;

(iii) Maintain sales offices, management offices, models and signs advertising the Community;

(iv) Use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property;

(v) Make the Community subject to a master association;

(vi) Merge or consolidate the Community with another common-interest community of the same form of ownership; or

(viii) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.41 "Sterling Community" means all real property located in Clark County, Nevada, lying within the Final Map of Silver Springs - Unit B, as shown by the plat Recorded in Book 85, page 96 of Plats, which has been encumbered by that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservations of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463.

1.2.42 "Unit" means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in **Section 2.5** of this Declaration.

1.2.43 "Unit's Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit's Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit's Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of a Unit, the fee simple title to which is vested in a trustee under a deed of trust, the Trustor shall be deemed to be the Unit's Owner. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit's Owner.

1.2.44 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of such neighboring property; provided, however, that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person six (6) feet tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron fence were a solid fence.

ARTICLE 2

SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES

2.1 **Submission of Property.** Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Act for the purpose of creating

a planned community in accordance with the provisions of the Act and hereby declare that the real property described on **Exhibit A** attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, and any part of the Additional Property annexed pursuant to **Section 2.8** of this Declaration, together with all Improvements situated thereon and easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 **Name of Planned Community**. The name of the planned community created by this Declaration is Squire Village at Silver Springs.

2.3 **Name of Association**. The name of the Association is Squire Village at Silver Springs Community Association.

2.4 **Identifying Numbers of Units**. The Identifying Numbers of the Units are as set forth on **Exhibit A**.

2.5 **Unit Boundaries.**

2.5.1 The boundaries of each Unit are as shown on the Plat.

2.5.2 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's votes in the Association and Common Expense Liabilities subject to and in accordance with the Act.

2.6 **Allocation of Common Expense Liabilities**. The liability for the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Expenses of the Association shall be 1/22. If the Community is expanded by the annexation of all or any part of the Additional Property pursuant to **Section 2.8** of this Declaration, the votes in the Association and the liability for the Common Expenses of the Association shall be reallocated in the manner set forth in **Subsection 2.8.1(iv)** of this Declaration. The maximum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/22. The minimum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/238. Nothing contained in this **Section 2.6** shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under **Articles 5, 7** and other provisions of this Declaration.

2.7 **Allocation of Votes in the Association**. The total votes in the Association shall be equal to the number of Units in the Community. The votes in the Association shall be allocated equally among all the Units, with each Unit having one (1) vote.

2.8 **Expansion of the Planned Community.**

2.8.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the planned community created by this Declaration, without the consent of any other Unit's Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the planned community by preparing and Recording in the records of every county in which any portion of the Community is located an amendment to this Declaration containing the following:

(i) a legal description of the portion of the Additional Property being annexed;

(ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit;

(iii) a description of the Common Elements created;

(iv) a reallocation to each Unit of a percentage liability in the Common Expenses of the Association and in the votes in the Association, all of which shall be allocated equally to each Unit; and

(v) a description of any Developmental Rights reserved by the Declarant within the Additional Property being annexed.

2.8.2 Unless otherwise provided in the amendment adding Additional Property, the effective date for reallocating to each Unit a percentage undivided interest in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing additional Units is Recorded in the records of every county in which any portion of the Community is located.

2.8.3 This option to expand the planned community shall expire seven (7) years from the date of the Recording of this Declaration.

2.8.4 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property submitted to the Community need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

2.8.5 There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

2.8.6 The Additional Property, when and if added to the Community, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Governing Documents

2.8.7 Any Improvements placed, constructed, replaced, or reconstructed on the Additional Property will be consistent with the existing Units in the Community as to quality of construction.

2.8.8 Declarant reserves the right to create and develop, directly or through merchant builders to which the various Units may be conveyed, up to an aggregate maximum of two hundred thirty-eight (238) improved Units in the Community to wit: twenty-two (22) Units on the real property described in **Exhibit A** and two hundred sixteen (216) Units on the Additional Property described in **Exhibit B**, in the event Declarant exercises its right of annexation pursuant to the terms of this Declaration Declarant makes no representations, assurances or warranties whatsoever that (i) all of such Units and Improvements will be created or developed, nor that the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is Recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the sequence, timing or location of further development; (iv) the use of any property subject to this Declaration will not be changed in the future. Unless otherwise expressly provided elsewhere herein, any "Developmental Rights" or "Special Declarant's Rights" (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Community or Additional Property at different times, and the exercise of such rights in a portion of the Community or Additional Property shall not necessitate the exercise of any such right in all or any portion of the remaining Community or Additional Property.

ARTICLE 3

EASEMENTS

3.1 Utility Easement.

3.1.1 There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors This easement shall in no way affect any other Recorded easements on the Common Elements

3.1.2 Limited Private Utility and Access Easements have been granted and conveyed on the Plat to the utility providers named therein over, under and across Units for the construction and maintenance of utilities together with the right of ingress and egress to such utilities.

3.2 **Easements for Ingress and Egress.**

3.2.1 There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Units' Owners and occupants of the Units and their guests, families, tenants and invitees.

3.2.2 Every Unit Owner, for the benefit of such Unit's Owner and occupants of the Unit and their guests, families, tenants and invitees, shall have a right and easement for ingress and egress for pedestrian and vehicular traffic over, through and across any Limited Private Utility and Access Easement necessary to gain access to the Unit's Owner's Unit, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Limited Private Utility and Access Easements, and

(ii) All rights and easements set forth in this Declaration and the Plat, including the rights and easements granted to the Declarant by **Sections 3.4 and 3.5** of this Declaration.

A Unit's Owner's right and easement for ingress and egress as set forth in this **Subsection 3.2.2** shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.3 **Unit Owners' Easements of Enjoyment.**

3.3.1 Every Unit's Owner shall have a right and easement of enjoyment in and to the Common Elements (including the right to use any private streets for ingress and egress to the Unit's Owner's Unit), which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements.

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Act and in **Section 6.12** of this Declaration;

(iii) All rights and easements set forth in this Declaration, including the rights and easements granted to the Declarant by **Sections 3.4 and 3.5** of this Declaration; and

(iv) The right of the Association to suspend the right of a Unit's Owner and any Resident of the Unit to use the Common Elements for any period during which the Unit's Owner or any Resident of the Unit is in violation of any provision of the Governing Documents, provided, however, that any such suspension shall not affect the easement granted pursuant to **Section 3.2** of this Declaration nor the right of a Unit's Owner and such Unit's Owner's family, Residents and guests to use any private streets for ingress or egress to the Unit's Owner's Unit, including any area used for parking as permitted under this Declaration.

3.3.2 If a Unit is leased or rented, the lessee and the Residents residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit's Owner shall have no right to use the Common Elements until the termination or expiration of the lease, except for the right to use any private streets for ingress and egress to the Unit's Owner's Unit.

3.3.3 The guests and invitees of any Unit's Owner or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1** of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to **Subsection 3.3.2** of this Declaration may use the Common Elements provided they are accompanied by a Unit's Owner, lessee or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1 or 3.3.2** of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.3.4 A Unit's Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4 <u>Declarant's Use for Sales And Leasing Purposes.</u>

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, a design center, construction offices, model homes and parking areas (collectively, "Sales and Construction Facilities") throughout the Community and to maintain one or more advertising, identification or directional signs on the Common Elements. Declarant

reserves the right to place Sales and Construction Facilities on any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate Sales and Construction Facilities to different locations within the Community. Upon the relocation of Sales and Construction Facilities from a portion of the Community constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as Declarant is marketing Units in the Community, Declarant shall have the right to restrict the use of the parking spaces, including the right to reserve such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.4.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Community any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.5 The Declarant reserves the right to allow the gated entrances to remain open during business and construction hours for the period of time necessary to sell and construct all Units and other Improvements in the Community.

3.5 Declarant's Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat, the Plans and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Community.

3.5.2 Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 The Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

3.5.4 The Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant's Rights whether arising under the Act or reserved in this Declaration.

3.6 **Common Elements Easement in Favor of the Association.** The Common Elements shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.7 **Units Easement in Favor of Association.** The Units are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.7.1 For inspection of the Units in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

3.7.2 For inspection, maintenance, repair and replacement of the Common Elements situated in or accessible from such Units;

3.7.3 For inspection, maintenance, repair and replacement of those portions of Units to be maintained by the Association as set forth in **Section 5.1** of this Declaration.

3.7.4 For correction of emergency conditions in one or more Units or casualties to the Common Elements or the Units.

3.7.5 For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Governing Documents and the Easement and Maintenance Agreement; and

3.7.6 For inspection, at reasonable times and upon reasonable notice to the Units' Owners, of the Units in order to verify that the provisions of the Governing Documents and the Easement and Maintenance Agreement are being complied with by the Units' Owners, their guests, tenants, invitees and the other occupants of the Units.

3.8 **Easement Over Common Elements and Units in Favor of Others.** Pursuant to the Easement and Maintenance Agreement, certain portions of the Common Elements and Units shall be subject to an easement in favor of the Sterling at Silver Springs Homeowners Association, a Nevada non-profit corporation, for the purpose of maintaining certain common improvements described in the Easement and Maintenance Agreement, including the Dewatering System, and allocating between the Community and the Sterling Community the cost of potable

water delivered through two master water meters. The easements, rights and obligations granted and imposed by the Easement and Maintenance Agreement are incorporated herein and made a part hereof.

3.9 **Easement Data**. The Recording data, required to be contained herein pursuant to N.R.S. 116.2105(1)(m), for any easements or licenses appurtenant to or included in this common-interest community or to which any portion of this common-interest community is or may become subject by means of a reservation of this Declaration is as follows: The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by the Plat is the same as the Recording data for the Plat.

3.10 **Easement for Unintended Encroachments**. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of the original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on the Common Elements or any Unit by a Unit's Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 **Architectural Control**.

4.1.1 All Improvements constructed on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

4.1.2 No excavation or grading work shall be performed on any Unit without the prior written approval of the Architectural Committee.

4.1.3 No Improvement shall be constructed or installed on any Unit without the prior written approval of the Architectural Committee.

4.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme of any Unit, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

4.1.5 Any Unit's Owner desiring approval of the Architectural Committee for excavation or grading, or for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of such Unit, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other

work which the Unit's Owner desires to perform. Any Unit's Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Unit's Owner who had requested approval of such plans.

4.1.6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

4.1.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Unit's Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

4.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

4.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

4.1.10 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

4.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

4.1.12 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such

construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation

4.2 **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee

4.3 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Unit or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 **Diseases and Insects.** No person shall permit any thing or condition to exist upon any Unit or other property which shall induce, breed or harbor infectious plant diseases or noxious insects

4.5 **Repair of Building.** No Dwelling, building or structure on any Unit shall be permitted to fall into disrepair and each such Dwelling, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling, building or structure is damaged or destroyed, then, subject to the approvals required by Section 4.1 of this Declaration, such Dwelling, building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.6 **Antennas** Except as permitted by law or as set forth in the Architectural Committee Rules, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including satellite or microwave dishes, shall be erected, used, or maintained on any Unit without the prior written approval of the Architectural Committee

4.7 **Mineral Exploration**. No Unit shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.8 **Trash Containers and Collection**. No garbage or trash shall be placed or kept on any Unit, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Units and other property and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Unit The Board of Directors shall have the right to contract with one or more third parties (including a municipality) for the collection of garbage, trash or recyclable materials for the benefit of the Units' Owners and Residents, with any costs to be Common Expenses or billed separately to the Units' Owners The Board of Directors shall have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection

4.9 **Clothes Drying Facilities**. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Unit so as to be Visible From Neighboring Property

4.10 **Utility Service**. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Unit unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee

4.11 **Overhead Encroachments**. No tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

4.12 **Residential Use**. All Dwellings shall be used, improved and devoted exclusively to residential use No trade or business may be conducted on any Unit or in or from any Dwelling,