

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 U.S. BANK, NATIONAL ASSOCIATION  
3 AS TRUSTEE FOR MERRILL LYNCH  
4 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

CASE NO.: 79235

Electronically Filed  
Aug 15 2019 04:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

5                   Appellant,  
6                   vs.

7 SFR INVESTMENTS POOL 1, LLC,

8                   Respondent.

9                   **DOCKETING STATEMENT CIVIL APPEALS**

10           1. **Judicial District:** Eighth

**Department:** 31

11           **County:** Clark

**Judge:** Hon. Joanna S. Kishner

12           **District Ct. Case No.** A-16-739867-C

13           2. **Attorney filing this Docketing Statement:**

14           Attorney: Matthew S. Carter, Esq. and Natalie C. Lehman, Esq.

15           Telephone: (702) 475-7964

16           Firm Address: Wright, Finlay & Zak, LLP

17                           7785 W. Sahara Ave., Suite 200

18                           Las Vegas, NV 89117

19           Client: U.S. Bank, National Association As Trustee For Merrill  
20                           Lynch Mortgage Investors Trust, Mortgage Loan Asset-  
Backed Certificates, Series 2005-A8

1       **3. Attorneys Representing Respondent:**

2           Attorneys:           DIANA S. EBRON, ESQ.  
3                               JACQUELINE A. GILBERT, ESQ.  
4                               KAREN L. HANKS, ESQ.  
5                               JASON G. MARTINEZ, ESQ.

6           Telephone:       (702) 485-3300

7           Firm Address:     KIM GILBERT EBRON  
8                               7625 Dean Martin Dr., Suite 110  
9                               Las Vegas, Nevada 89139

10          Client:            SFR Investments Pool 1, LLC

11       **4. Nature of Disposition Below:**

12           After a six-day bench trial, the district court issued Findings of Fact,  
13   Conclusions of Law and Judgment in favor of SFR Investments Pool 1, LLC.

14       **5. Does this Appeal Raise Issues Concerning Any of the Following?**

15           Child Custody - NO

16           Venue - NO

17           Termination of Parental Rights – NO

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1       **6. Pending and Prior Proceedings in this Court.** List the case name and  
2       docket number of all appeals or original proceedings presently or  
3       previously pending before this court which are related to this appeal:

4       None.

5       **7. Pending and Prior Proceedings in Other Courts.** List the case name,  
6       number and court of all pending and prior proceedings in other courts  
7       which are related to this appeal (e.g. bankruptcy, consolidated or bifurcated  
8       proceedings) and their dates of disposition:

9       None.

10      **8. Nature of the Action.** Briefly describe the nature of the action and the  
11      result below:

12      This appeal arises out of a quiet title and declaratory relief action related to  
13      a homeowners association non-judicial foreclosure sale (“HOA Sale”) concerning  
14      real property located in Clark County, Nevada. Appellant U.S. Bank, National  
15      Association As Trustee For Merrill Lynch Mortgage Investors Trust, Mortgage  
16      Loan Asset-Backed Certificates, Series 2005-A8 (“U.S. BANK”), the beneficiary  
17      under the recorded deed of trust on the property, filed an action for quiet  
18      title/declaratory relief (among other claims) against SFR INVESTMENTS POOL  
19      1, LLC (“SFR”), the entity that purchased the subject property at the HOA Sale,  
20      and ANTELOPE HOMEOWNERS’ ASSOCIATION (“HOA”), the homeowners

1 association that foreclosed on the property. SFR filed a counterclaim against U.S.  
2 , MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"),  
3 the nominee beneficiary of Universal American Mortgage Company, LLC, the  
4 originating Lender, and HENRY E. IVY and FREDDIE S. IVY, ("the Ivys") the  
5 borrowers on the Note secured by the Deed of Trust and title holders at the time  
6 of the HOA Sale. SFR dismissed its claims against MERS and the Ivys. U.S.  
7 BANK dismissed its claims against the HOA without prejudice pursuant to a  
8 tolling agreement. Following a trial, the district court granted judgment in favor  
9 of SFR.

#### 10 **9. Issues on Appeal.**

11 a. Whether the district court committed error by failing to admit the records  
12 of Miles Bauer, counsel for the beneficiary of record and U.S. Bank's predecessor  
13 in interest, when the affidavit of the custodian of records and other testimony  
14 established the business record exception to the hearsay rule.

15 b. Whether the district court committed error by failing to admit the records  
16 of the HOA – particularly the statements of account – when the testimony of the  
17 HOA's custodian of records established the business record exception to the  
18 hearsay rule.

19 c. Whether the district court committed error by failing to admit the records  
20 of the Alessi & Koenig, the HOA's foreclosure trustee, which included the

1 statements of account of the HOA when the affidavit of the custodian of records  
2 and other testimony established the business record exception to the hearsay rule.

3 d. Whether the district court committed error by failing to recognize  
4 payments by Miles Bauer on behalf of the beneficiary of record were sufficient to  
5 satisfy and discharge the superpriority portion of the lien and SFR purchased the  
6 Property subject to Appellant's Deed of Trust.

7 e. Whether the district court committed error by excluding the testimony of  
8 Harrison Whitaker, as the corporate designee and custodian of records of U.S.  
9 BANK, who would have established that U.S. BANK owned the Loan at the time  
10 of the HOA Sale and is the current beneficiary of the Deed of Trust and holder of  
11 the Note.

12 f. Whether the district court committed error by excluding the Note and its  
13 Allonge to Mortgage Note endorsed in blank, and held by U.S. BANK at the time  
14 of the HOA Sale.

15 g. Whether the district court committed error by concluding U.S. BANK  
16 was not the real party in interest with standing to protect the Deed of Trust, when  
17 U.S. BANK is the current beneficiary of the Deed of Trust and holder of the Note.

18 h. Whether the district court committed error by concluding that the  
19 defensive assertion of tender as a response to SFR's claim of superior title was  
20

1 governed by a three year statute of limitations, and that U.S. BANK's assertion of  
2 tender was untimely under that three-year limitation period.

3 i. Whether the district court committed error by concluding the tender was  
4 not sufficient in amount, was not delivered and did not discharge the superpriority  
5 component of the lien, leaving SFR with a subpriority interest.

6 j. Whether the district court committed error by excluding the deposition of  
7 Katherine Ortwerth, Rule 30(b)(6) corporate designee U.S. BANK.

8 **10. Pending Proceedings in this Court Raising the Same or Similar Issues.**

9 If you are aware of any proceedings presently pending before this court  
10 which raises the same or similar issues raised in this appeal, list the case  
11 name and docket numbers and identify the same or similar issue raised:

12 Christiana Trust, A Division Of Wilmington Savings Fund Society, FSB,  
13 Not In Its Individual Capacity But As Trustee Of ARLP Trust 3 v. SFR  
14 Investments Pool 1, LLC (Case No. 75871)

15 This case involves the sufficiency of tender and the standing of the current  
16 beneficiary to protect its deed of trust.

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1 **11. Constitutional Issues.** If this appeal challenges the constitutionality of a  
2 statute, and the state, any state agency, or any officer or employee thereof is  
3 not a party to this appeal, have you notified the clerk of this court and the  
4 attorney general in accordance with NRAP 44 and NRS 30.130.

5 Not applicable.

6 **12. Other Issues.** Does this appeal involve any of the following issues:

7  X  Reversal of well-settled Nevada precedent

8     An issue arising under the U.S. and/or Nevada Constitutions

9  X  A substantial issue of first impression

10     An issue of public policy

11     An issue where en banc consideration is necessary to maintain  
12 uniformity of this court's decisions.

13     A ballot question

14 **If so, explain:**

15 The appeal involves issues regarding what evidence is sufficient to prove  
16 the sufficiency of the amount of tender and delivery of tender to the HOA or its  
17 agent, and what a beneficiary of record must prove to establish its standing to  
18 protect its deed of trust.

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1       **13. Assignment to the Court of Appeals or retention in the Supreme Court.**

2           The matter is presumptively retained by the Supreme Court pursuant to  
3 NRAP 17(a)(11) and (12).

4       **14. Trial.**

5           If this action proceeded to trial, how many days did the trial last? 6 days  
6           (April 16, 17, 18, 23, 24 and May 20, 2019).

7           Was it a bench or jury trial? Bench trial.

8       **15. Judicial Disqualification.** Do you intend to disqualify or have a justice  
9           recuse him/herself from participation in this appeal? If so, which Justice?  
10          No.

11                           **TIMELINESS OF NOTICE OF APPEAL**

12       **16. Date of Entry of Written Judgment or Order Appealed from:**

13           The Findings of Fact, Conclusions of Law and Judgment entered on June  
14 19, 2019.

15       **17. Date Written Notice of Entry of Judgment or Order was Served:**

16           Notice of Entry of Findings of Fact, Conclusions of Law and Judgment  
17 filed and served on June 19, 2019.

18                   **Was service by:**

19           \_\_\_ Delivery

20            X  Mail/electronic/fax



1 **18. Was the Time for Filing the Notice of Appeal Tolled by Post-Judgment**  
2 **Motion (N.R.C.P. 50(b), 52(b), or 59)?**

3 No.

4 **19. Date Notice of Appeal Filed:**

5 June 19, 2019.

6 **20. Specify Statute or Rule Governing Time Limit for Filing Notice of**  
7 **Appeal:**

8 NRAP 4(a) & NRAP 26(a).

9 **SUBSTANTIVE APPEALABILITY**

10 **21. Specify the Statute or other Authority Granting Jurisdiction to Review**  
11 **Judgment or Order Appealed from:**

12 (a) NRAP 3A(b)(1).

13 (b) Explain how each authority provides a basis for appeal from the  
14 judgment or order:

15 The district court granted judgment in favor of SFR, quieting title to the  
16 property in its favor, and permanently enjoining Appellant from asserting any  
17 estate, right, title, interest, or claim in the real property. NRAP 3A(b)(1)  
18 specifically allows for an appeal after final judgment has been entered.

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1       **22.List All Parties Involved in the Action or Consolidated Actions in the**

2       **District Court:**

3               **(a) Parties:**

4       Plaintiff /Counter-Defendant: U.S. Bank, National Association As Trustee  
5       For Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed  
6       Certificates, Series 2005-A8

7       Defendant: Antelope Homeowners' Association

8       Defendant/Counterclaimant: SFR Investments Pool 1, LLC

9       Counterdefendant: HENRY E. IVY

10      Counterdefendant: FREDDIE S. IVY

11      Counterdefendant:   MORTGAGE   ELECTRONIC   REGISTRATION  
12      SYSTEMS, INC.

13               **(b) If all parties in the district court are not parties to this appeal,**  
14               **explain in detail why those parties are not involved in this**  
15               **appeal:**

16      Defendants: Henry E. Ivy and Freddie S. Ivy: Dismissed

17      Defendant: Antelope Homeowners' Association: Dismissed

18      Counterdefendant:   MORTGAGE   ELECTRONIC   REGISTRATION  
19      SYSTEMS, INC: Dismissed

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1       **23. Give a Brief Description (3 to 5 words) of Each Party's Separate**  
2       **Claims, Counterclaims, Cross-Claims, or Third-Party Claims and the**  
3       **date of formal disposition of each Claim.**

4       **A. U.S. Bank's Complaint**

- 5           • Quiet Title/Declaratory Relief Pursuant to NRS 30.010, *et seq.* and  
6           NRS 40.010 , *et seq.* versus SFR: June 19, 2019 Preliminary  
7           Injunctions versus SFR: June 19, 2019
- 8           • Wrongful/Defective Foreclosure versus Antelope HOA: April 23,  
9           2019
- 10          • Breach of Contract versus Antelope HOA: April 23, 2019
- 11          • Breach of the Covenant of Good Faith and Fair Dealing versus  
12          Antelope HOA: April 23, 2019
- 13          • Unjust Enrichment versus SFR: June 19, 2019; and versus Antelope  
14          HOA: April 23, 2019

15       **B. SFR's Counterclaim**

- 16           • Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et seq.*, NRS  
17           40.010 & NRS 116.3116 versus U.S. Bank: June 19, 2019; and  
18           versus MERS: September 26, 2017
- 19           • Preliminary and Permanent Injunction versus U.S. Bank: June 19,  
20           2019

- Slander of Title: October 5, 2017
- Award of Attorney's fees and costs: pending

**24. Did the Judgment or Order Appealed from Adjudicate ALL the Claims Alleged Below and the Rights and Liabilities of ALL the Parties to the Action or Consolidated Actions Below?**

Yes.

**25. If You Answered "No" to Question 24, Complete the Following:**

(a) Specify the claims remaining pending below: Not applicable.

(b) Specify the parties remaining below: Not applicable.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? Not applicable.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Not applicable.

**26. If You Answered "No to Any Part of Question 24, Explain the Basis for Seeking Appellate Review:**

Not applicable.

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**27. Attach File-Stamped Copies of the Following Documents:**

- The latest filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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Dated this 15<sup>th</sup> day of August, 2019 in Clark County, Nevada.

WRIGHT, FINLAY & ZAK, LLP

/s/ Matthew S. Carter, Esq.  
Matthew S. Carter, Esq.  
Nevada Bar No. 9524  
Natalie C. Lehman, Esq.  
Nevada Bar No. 12995  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV, 89117  
*Attorneys for Appellant, U.S. Bank,  
National Association As Trustee For  
Merrill Lynch Mortgage Investors Trust,  
Mortgage Loan Asset-Backed Certificates,  
Series 2005-A8*

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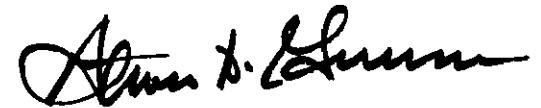
[X] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

Stephen Haberfeld  
8224 Blackburn Ave #100  
Los Angeles, CA 90048

**Service via electronic notification will be sent to the following:**

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Page 15 of 15



CLERK OF THE COURT

**AACC**

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

E-mail: diana@kgelegal.com

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

E-mail: jackie@kgelegal.com

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

E-mail: karen@kgelegal.com

KIM GILBERT EBRON

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; DOE INDIVIDUALS  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a

Case No. A-16-739867-C

Dept. No. XXXI

**SFR INVESTMENTS POOL 1, LLC'S  
ANSWER TO COMPLAINT,  
COUNTERCLAIM AND CROSS-CLAIM**

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301



Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. a foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

SFR Investments Pool 1, LLC (“SFR”) hereby answers U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 (“U.S. Bank” or “Bank”) Complaint as follows.

### **INTRODUCTION**

1. The allegations in paragraph 1 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, SFR denies the allegation that plaintiff is authorized to bring this action under NRS 40.430.

2. In answering paragraph 2, SFR admits that the property located at **7868 Marbledoe Street, Las Vegas, NV 89149; Parcel No. 125-18-112-069** (the “Property”) is the subject property of this litigation.

### **JURISDICTION AND VENUE**

3. The allegations in paragraph 3 concerning jurisdiction and venue call for a legal conclusion to which no response is required. To the extent a response is required, SFR admits the Property is located in Clark County, Nevada.

### **PARTIES**

4. The allegations in paragraph 4 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, SFR upon information and belief, admits U.S. Bank, with headquarters in Ohio, is a subsidiary of U.S. Bancorp, a Delaware registered corporation with its headquarters in Minnesota.

5. The recorded Deed of Trust referenced in paragraph 5 of the Complaint speaks for itself, and SFR denies any allegations inconsistent with said document. To the extent paragraph 5 alleges that Henry and Freddie Ivy (“the Ivys”) were the title owners of record of the Property at times prior to the Association foreclosure sale, SFR, upon information and belief, admits the allegations

1 in paragraph 5. SFR specifically denies said deed of trust presently encumbers the Property. SFR  
2 is without sufficient knowledge or information to form a belief as to the truth of the allegation  
3 contained in paragraph 5 of the Complaint that “U.S. Bank is the assigned beneficiary under the  
4 Deed of Trust” and therefore denies said allegation.

5 6. In answering paragraph 6, SFR admits it is a Nevada limited liability company doing  
6 business in the State of Nevada. SFR further admits a non-judicial publicly-held HOA foreclosure  
7 auction sale occurred on July 25, 2012, at which time SFR was the highest bidder and purchased  
8 the property for \$5,950.00. SFR further admits it owns the property free and clear of the Bank’s  
9 purported deed of trust which was extinguished as a matter of law on July 25, 2012 as a result of  
10 the HOA foreclosure sale.

11 7. In answering paragraph 7 to the extent the Bank alleges that it does not know the true name  
12 and capacity of the foreclosing homeowner’s association or the foreclosing homeowner’s  
13 association’s foreclosure agent, SFR denies the allegations in paragraph 7 of the Complaint. SFR  
14 is without sufficient knowledge or information to form a belief as to the truth of any remaining  
15 factual allegations contained in paragraph 7 of the Complaint, and therefore denies said allegations.

### **GENERAL ALLEGATIONS**

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17 8. The allegations contained in paragraph 8 of the Complaint call for a legal conclusion,  
18 therefore, no answer is required. To the extent an answer is required, SFR admits, upon  
19 information and belief, that Antelope Homeowners’ Association (“Association” or “HOA”), is a  
20 Nevada registered non-profit corporation.

21 9. In answering paragraph 9, upon information and belief, SFR admits the Ivys purchased the  
22 Property on or about May 23, 2005. The recorded Grant Bargain Sale Deed referenced in  
23 paragraph 9 speaks for itself, and SFR denies any allegations inconsistent with said document.

24 10. The recorded Deed of Trust referenced in paragraph 10 of the Complaint speaks for itself,  
25 and SFR denies any allegations inconsistent with said document. To the extent paragraph 10  
26 alleges that the Ivys were the title owners of record of the Property at times prior to the Association  
27 foreclosure sale, SFR, upon information and belief, admits the allegations in paragraph 10.

28 11. The recorded Notice of Delinquent Assessment referenced in paragraph 11 of the

1 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

2 12. The recorded Notice of Delinquent Violation referenced in paragraph 12 of the Complaint  
3 speaks for itself, and SFR denies any allegations inconsistent with said document.

4 13. The recorded Notice of Default and Election to Sell referenced in paragraph 13 of the  
5 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

6 14. The recorded Notice of Trustee's Sale referenced in paragraph 14 of the Complaint speaks  
7 for itself, and SFR denies any allegations inconsistent with said document.

8 15. The second recorded Notice of Trustee's Sale referenced in paragraph 15 of the  
9 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

10 16. The third recorded Notice of Trustee's Sale referenced in paragraph 16 of the Complaint  
11 speaks for itself, and SFR denies any allegations inconsistent with said document.

12 17. In answering paragraphs 17 and 18 SFR admits a non-judicial publicly-held HOA  
13 foreclosure auction sale occurred on July 25, 2012, at which time SFR was the highest bidder and  
14 purchased the property for \$5,950.00. SFR further admits it owns the property free and clear of  
15 the Bank's purported deed of trust which was extinguished as a matter of law on July 25, 2012 as  
16 a result of the HOA foreclosure sale. The recorded Trustee's Deed Upon Sale referenced in  
17 paragraph 18 of the Complaint speaks for itself, and SFR denies any allegations inconsistent with  
18 said document.

19 18. The allegations contained in paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of  
20 the Complaint call for a legal conclusion, therefore, no answer is required. Additionally, the  
21 statutes referenced in paragraphs 19, 21, and 29 of the Complaint speak for themselves, and SFR  
22 denies any allegations inconsistent with said statutes. To the extent a response is required, SFR  
23 specifically denies the HOA Sale was an invalid sale.

24 19. The allegations contained in paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of the  
25 Complaint call for a legal conclusion, therefore, no answer is required. Additionally, the statutes  
26 referenced in paragraphs 30, 33, 34, 35, 36, 37, 38, and 39 of the Complaint speak for themselves,  
27 and SFR denies any allegations inconsistent with said statutes.

28 20. The allegations contained in paragraphs 40, 41, and 42 of the Complaint call for a legal

1 conclusion, therefore, no answer is required. Additionally, the statutes referenced in paragraph  
2 40 of the Complaint speak for themselves, and SFR denies any allegations inconsistent with said  
3 statutes.

4 21. Answering paragraph 43, SFR is without sufficient knowledge or information regarding  
5 interactions between the Ivys and the Bank to form a belief as to the truth of the factual allegations  
6 contained in paragraph 43, and therefore denies said allegations.

7 22. In answering paragraph 44, SFR specifically denies that at the time of the HOA Sale on  
8 July 25, 2012, the fair market value of the Property exceeded \$5,950.00.

9 23. In answering paragraph 45, SFR further admits a non-judicial publicly-held HOA  
10 foreclosure auction sale occurred on July 25, 2012, at which time SFR was the highest bidder and  
11 purchased the property for \$5,950.00. SFR further admits it owns the property free and clear of  
12 the Bank's purported deed of trust which was extinguished as a matter of law on July 25, 2012 as  
13 a result of the HOA foreclosure sale.

14 24. The allegations contained in paragraphs 46, 47, 48, and 49 of the Complaint call for a  
15 legal conclusion, therefore, no answer is required. To the extent a response is required, SFR  
16 specifically denies the HOA Sale was commercially unreasonable. SFR specifically denies the  
17 HOA Sale was an invalid sale. SFR specifically denies the HOA Sale did not extinguish the  
18 Bank's deed of trust as a matter of law on July 25, 2012.

19 25. The recorded CC&Rs referenced in paragraphs 50, 51, 52, 53, and 54 of the Complaint  
20 speak for themselves, and SFR denies any allegations inconsistent with said document and  
21 applicable law. To the extent that paragraphs 50, 51, 52, 53, and 54 allege the "Mortgage  
22 Protection Clause" within the CC&Rs is valid or otherwise waives the Association's lien priority  
23 rights under NRS 116.3116(2), SFR specifically denies such allegations. The remaining  
24 allegations in paragraphs 50, 51, 52, 53, and 54 call for a legal conclusion, therefore, no answer  
25 is required. SFR specifically denies it knew that U.S. Bank or its predecessors would rely on the  
26 Mortgage Protection Clause, and that U.S. Bank or its predecessors would not know that the HOA  
27 was foreclosing on super-priority amounts. SFR specifically denies it knew that prospective  
28 bidders would be less likely to attend the HOA Sale because the public at large believed that the

1 Bank was protected under the Mortgage Protection Clause in the CC&Rs of public record. SFR  
2 also specifically denies that it knew the public at large did not receive notice, constructive or  
3 actual, that the HOA was foreclosing on the super-priority portion of its lien because the HOA  
4 and the HOA Trustee improperly failed to provide such notice.

5 26. The allegations in paragraphs 55, 56, 57, 58, and 59 of the Complaint call for a legal  
6 conclusion to which no response is required. The statutes referenced in paragraph 55 speak for  
7 themselves and SFR denies any allegations inconsistent with said statutes. SFR specifically  
8 denies it is precluded "from being deemed a bona fide purchaser for value" at the foreclosure  
9 auction sale on July 25, 2012. SFR specifically denies it is prevented "from being deemed a bona  
10 fide purchaser for value."

11 **FIRST CAUSE OF ACTION**

12 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.  
13 versus Buyer and all fictitious Defendants)**

14 27. SFR repeats and realleges its answers to paragraphs 1 through 59 of the Complaint as  
15 though fully set forth herein.

16 28. The allegations in paragraphs 61, 62, 63, and 64 of the Complaint call for a legal  
17 conclusion to which no response is required. The statutes referenced in paragraphs 61, 62, and  
18 63 of the Complaint speak for themselves, and SFR denies any allegations inconsistent with said  
19 statutes. To the extent a response is required, SFR denies the allegations in paragraphs 61, 62,  
20 63, and 64 of the Complaint. SFR specifically denies the deed of trust at issue "is a first secured  
21 interest on the Property." SFR specifically denies the deed of trust at issue "still encumbers the  
22 Property." SFR specifically denies the deed of trust at issue "retains its first position status." SFR  
23 specifically denies the deed of trust at issue "is superior to the interest acquired by SFR"

24 29. In answering paragraph 65, SFR admits a non-judicial publicly-held HOA foreclosure  
25 auction sale occurred on July 25, 2012, at which time SFR was the highest bidder and purchased  
26 the property for \$5,950.00. SFR further admits it owns the property free and clear of the Bank's  
27 purported deed of trust which was extinguished as a matter of law on July 25, 2012 as a result of  
28 the HOA foreclosure sale. SFR specifically denies the deed of trust at issue was not extinguished  
as a matter of law by the HOA foreclosure sale. Additionally, SFR specifically denies that the

1 Bank has an interest which still encumbers the real property at issue.

2 30. The allegations in paragraphs 66, 67, 68, and 69, of the Complaint call for a legal  
3 conclusion to which no response is required. The statutes referenced in paragraphs 68 and 69 of  
4 the Complaint speak for themselves, and SFR denies any allegations inconsistent with said  
5 statutes. To the extent a response is required, SFR denies the allegations in paragraphs 66, 67,  
6 68, and 69.

7 31. SFR denies the allegations contained in paragraph 70 of the Complaint.

8 **SECOND CAUSE OF ACTION**

9 **(Preliminary and Permanent Injunctions versus Buyer and fictitious Defendants)**

10 32. SFR repeats and realleges its answers to paragraphs 1 through 70 of the Complaint as  
11 though fully set forth herein.

12 33. Answering paragraph 72 of the Complaint, SFR admits that it is the current title holder of  
13 the Property and that its position is adverse to the Bank. SFR further admits a non-judicial  
14 publicly-held HOA foreclosure auction sale occurred on July 25, 2012, at which time SFR was  
15 the highest bidder and purchased the property for \$5,950.00. SFR further admits it owns the  
16 property free and clear of the Bank's purported deed of trust which was extinguished as a matter  
17 of law on July 25, 2012 as a result of the HOA foreclosure sale.

18 34. The allegations in paragraphs 73, 74, 75, 76, 77, 78, and 79 of the Complaint call for a  
19 legal conclusion to which no response is required. To the extent a response is required, SFR  
20 denies the allegations in paragraphs 73, 74, 75, 76, 77, 78, and 79 of the Complaint.

21 35. SFR denies the allegations contained in paragraph 80 of the Complaint.

22 **THIRD CAUSE OF ACTION**

23 **(Unjust Enrichment versus Buyer and fictitious Defendants)**

24 36. SFR repeats and realleges its answers to paragraphs 1 through 80 of the Complaint as  
25 though fully set forth herein.

26 37. The allegations in paragraphs 82, 83, 84, 85, 86, 87, and 88 of the Complaint call for a  
27 legal conclusion to which no response is required. To the extent a response is required, SFR  
28 denies the allegations in paragraphs 82, 83, 84, 85, 86, 87, and 88 of the Complaint.

1 38. SFR denies the allegations contained in paragraph 89.

2 **AFFIRMATIVE DEFENSES**

3 1. The Bank fails to state a claim upon which relief may be granted.

4 2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any  
5 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

6 3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting  
7 therefrom, were caused by the acts or omissions of the Bank.

8 4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting  
9 therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had  
10 no control.

11 5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

12 6. The Bank failed to mitigate its damages, if any.

13 7. The Bank's claims are barred because SFR complied with applicable statutes and with the  
14 requirements and regulations of the State of Nevada.

15 8. The Bank's claims are barred because the Association and its agents complied with  
16 applicable statutes and regulations.

17 9. The Bank's causes of action are barred in whole or in part by the applicable statutes of  
18 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and  
19 unclean hands.

20 10. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

21 11. The Bank has no standing to enforce the first deed of trust and/or the underlying  
22 promissory note.

23 12. The Bank has no standing to enforce the statutes and regulations identified in the  
24 Complaint.

25 13. The Bank has no standing to challenge the constitutionality of NRS 116.

26 14. The first deed of trust and other subordinate interests in the Property were extinguished  
27 by the Association foreclosure sale held in accordance with NRS Chapter 116.

28 15. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is

1 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was  
2 properly noticed and conducted.

3 16. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

4 17. The Bank's Unjust Enrichment claim is barred by the Voluntary Payment Doctrine which  
5 precludes such a claim on the facts alleged here.

6 18. The Bank's Complaint and all claims for relief therein should be dismissed on the ground  
7 that the Bank has failed to join necessary or indispensable parties.

8 19. The Bank's Complaint and all claims for relief therein are barred for the Bank's failure  
9 to serve proper notice to the Attorney General of the State of Nevada pursuant to NRS 30.130.

10 20. The Bank's Complaint and all claims for relief therein should be dismissed on the ground  
11 that any assignment of the bank's deed of trust after the association foreclosure sale is ineffective.

12 21. Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative  
13 defenses may not have been alleged herein insofar as sufficient facts were not available after  
14 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend  
15 this Answer to assert any affirmative defenses if subsequent investigation warrants.

16 **COUNTERCLAIM AND CROSS-CLAIM**  
17 **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

18 SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title, and requests  
19 injunctive relief and alleges slander of title against Counter-Defendant U.S. BANK, NATIONAL  
20 ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST,  
21 MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8; and Cross-  
22 Defendants MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware  
23 corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY,  
24 LLC, a foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S. IVY,  
25 an individual, as follows:

26 ///

27 ///

28 **I.**



## **PARTIES**

1           1. SFR is a Nevada limited liability company with its principal place of business in Clark  
2 County, Nevada, and the current title owner of the property located at **7868 Marbledoe Street,**  
3 **Las Vegas, NV 89149; Parcel No. 125-18-112-069** (the "Property").

4           2. Upon information and belief, Counter-defendant U.S. BANK, NATIONAL  
5 ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST,  
6 MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8, with headquarters  
7 in Ohio, is a subsidiary of U.S. Bancorp, a Delaware registered corporation with its headquarters  
8 in Minnesota, ("U.S. Bank" or "Bank") that claims an interest in the Property via a Deed of Trust  
9 originated by Universal American Mortgage Company, LLC ("Universal American") in 2005,  
10 and purportedly assigned to it.

11           3. Upon information and belief, MORTGAGE ELECTRONIC REGISTRATION  
12 SYSTEMS, INC., ("MERS") is a Delaware corporation named as nominee beneficiary for  
13 UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC ("Universal American"), a foreign  
14 limited liability company. Universal American, it successors or assigns may claim an interest in  
15 the Property via a Second Deed of Trust (MIN 100059600066507828) it originated in 2005.

16           4. Upon information and belief, Cross-Defendants HENRY E. IVY and FREDDIE S. IVY,  
17 husband and wife, ("the Ivys") are Nevada residents who may claim an interest in the Property as  
18 former title owners. SFR does not seek any money damages against the Ivys.

## **II.**

### **GENERAL ALLEGATIONS**

19           ***SFR Acquired Title to the Property through the Foreclosure of an Association Lien with Super***  
20 ***Priority Amounts***

21           5. SFR acquired the Property on July 25, 2012, by successfully bidding on the Property at a  
22 publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("Association  
23 foreclosure sale").

24           6. On or about August 3, 2012, the resulting Foreclosure Deed was recorded in the Official  
25 Records of the Clark County Recorder as Instrument Number 201208030003275 ("Association  
26 Foreclosure Deed").  
27  
28

1 7. In addition to the bid amount, SFR was required to spend money and resources litigating  
2 the interpretation of NRS 116.3116.

3 8. The Antelope Homeowners' Association ("Association") had a lien pursuant to NRS  
4 116.3116(1) ("Association Lien") that was perfected at the time the Association recorded its  
5 declaration of CC&Rs in the Official Records of the Clark County Recorder on June 23, 2004 as  
6 Instrument Number 200406230002016.

7 9. The foreclosure sale was conducted by Alessi & Koenig, LLC, ("Alessi"), agent for the  
8 Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,  
9 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of  
10 Delinquent Assessments, recorded on November 12, 2009, in the Official Records of the Clark  
11 County Recorder as Instrument Number 200911120004474.

12 10. As recited in the Association Foreclosure Deed, all requirements of law regarding the  
13 mailing of copies of notices and the posting and publication of the copies of the Notice of sale  
14 were complied with.

15 11. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and  
16 encumbrances of unit except:

- 17 (a) Liens and encumbrances recorded before the recordation of the declaration and,  
18 in a cooperative, liens and encumbrances which the association creates, assumes or  
19 takes subject to;  
20 (b) A first security interest on the unit recorded before the date on which the  
21 assessment sought to be enforced became delinquent or, in a cooperative, the first  
22 security interest encumbering only the unit's owner's interest and perfected before  
23 the date on which the assessment sought to be enforced became delinquent; and  
24 (c) Liens for real estate taxes and other governmental assessments or charges  
25 against the unit or cooperative.

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

28 [the Association 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[.]

13. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot be

1 waived by agreement or contract, including any subordination clause in the CC&Rs.

2 14. According to NRS 116.1108, real Property law principles supplement the provisions of  
3 NRS 116.

4 15. Upon information and belief, the Association took the necessary action to trigger the super-  
5 priority portion of the Association Lien.

6 16. Upon information and belief, no party still claiming an interest in the Property recorded a  
7 lien or encumbrance prior to the declaration creating the Association.

8 17. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
9 constructive notice of the requirement to pay assessments to the Association and of the Association  
10 Lien.

11 18. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
12 constructive notice of the Association's foreclosure proceedings.

13 19. Upon information and belief, prior to the Association foreclosure sale, no individual or  
14 entity paid the full amount of delinquent assessments described in the Notice of Default.

15 20. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
16 constructive notice of the super-priority portion of the Association Lien.

17 21. Upon information and belief, at all relevant times, the Bank had internal policies and  
18 procedures relating to super-priority liens.

19 22. Upon information and belief, the Bank knew or should have known that its interest in the  
20 Property could be extinguished through foreclosure if it failed to cure the super-priority portion of  
21 the Association Lien representing 9 months of assessments for common expenses based on the  
22 periodic budget adopted by the association which would have become due in the absence of  
23 acceleration for the relevant time period.

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

28 24. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or

1 right of redemption,” and the Association Foreclosure Deed is conclusive against the Property’s  
2 “former owner, his or her heirs and assigns, and **all other persons.**”

3 25. When SFR purchased the Property, no release of the super priority portion of the  
4 Association lien was recorded against the Property.

5 26. In addition, no lis pendens was recorded against the Property indicating a challenge to the  
6 Association lien and/or foreclosure.

7 27. Before the Association foreclosure sale, SFR was not on notice of any purported  
8 irregularities with the Association foreclosure sale process.

9 28. SFR is entitled to rely on the recitals contained in the Association foreclosure deed as  
10 conclusive proof of the matters asserted.

11 ***Interests, Liens and Encumbrances Extinguished by the Association Foreclosure Sale***

12 29. Upon information and belief, the Ivys obtained title to the Property in May 2005 through  
13 a Grant, Bargain, Sale Deed from the developer, Greystone Nevada, LLC, which was recorded in  
14 Official Records of the Clark County Recorder as Instrument No. 200505230004227.

15 30. On or about May 23, 2005, Universal American recorded a deed of trust against the  
16 Property in the Official Records of the Clark County Recorder as Instrument No.  
17 200505230004228 (“First Deed of Trust”).

18 31. On or about May 23, 2005, Universal American recorded a second deed of trust against the  
19 Property in the Official Records of the Clark County Recorder as Instrument No.  
20 200505230000429 (“Second Deed of Trust”) that names MERS as nominee beneficiary for  
21 Universal American.

22 32. The First Deed of Trust and the Second Deed of Trust each contain a Planned Unit  
23 Development Rider recognizing the applicability of Association’s declaration of CC&Rs that were  
24 recorded.

25 33. Upon information and belief, Universal American had actual and/or constructive notice of  
26 the Association Lien, NRS 116.3116 and the amount of periodic assessments owed to the  
27 Association before it originated the First and Second Deeds of Trust.

28 34. On or about October 20, 2005, Universal American re-recorded the First Deed of Trust

1 against the Property in the Official Records of the Clark County Recorder as Instrument No.  
2 200510200003872, in order to add a corrected Adjustable Rate Rider.

3 35. Upon information and belief, on or about August 26, 2009, Recontrust Company, N.A.  
4 ("Recontrust"), as trustee for the First Deed of Trust, on behalf of the Bank, executed and then  
5 recorded a Notice of Default and Election to Sell under deed of trust for amounts that became due  
6 on February 1, 2009, in Official Records of the Clark County Recorder as Instrument No.  
7 200908260000352.

8 36. On January 17, 2013, Recontrust, as trustee for the First Deed of Trust, recorded a  
9 Rescission of Election to Declare Default in Official Records of the Clark County Recorder as  
10 Instrument No. 201301170002014.

11 37. On September 18, 2014, the Nevada Supreme Court issued its opinion in *SFR Investments*  
12 *Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 419 (2014), *reh'g denied* (Oct. 16, 2014), ruling that  
13 a non-judicial foreclosure of an associations' lien containing super-priority amounts extinguishes  
14 a first deed of trust.

15 38. Upon information and belief, despite knowledge of the foreclosure sale, the Foreclosure  
16 Deed, and the *SFR* ruling, on or about November 5, 2014, Universal American, through its  
17 attorneys, at Wright, Finley & Zak, LLP, filed a Request For Notice Under NRS Chapters 107 116  
18 against the Property in the Official Records of the Clark County Recorder as Instrument No.  
19 201411050003181.

20 39. On or about July 12, 2016, the Bank filed a Complaint for quiet title, declaratory relief,  
21 and injunctive relief against SFR.

22 40. The Ivys' ownership interest in the Property, if any, was extinguished by the foreclosure  
23 of the Association Lien.

24 41. U.S. Bank's security interest in the Property, if any, was extinguished as a matter of law  
25 by the foreclosure of the Association Lien, which contained super-priority amounts.

26 42. Universal American security interest in the Property, if any, was extinguished by the  
27 foreclosure of the Association Lien, which contained super-priority amounts.

28

**III.**

**FIRST CLAIM FOR RELIEF**

**(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.*, NRS 40.010 & NRS 116.3116)**

43. SFR repeats and realleges the allegations of paragraphs 1-42 as though fully set forth herein and incorporates the same by reference.

44. Pursuant to NRS 30.010, *et. seq.* and NRS 40.010, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Bank's adverse claims in the Property.

45. Upon information and belief, the Bank claims and cross-defendant may claim an interest in the Property, even after the Association foreclosure sale.

46. A foreclosure sale conducted pursuant to NRS 116.31162-116.31168, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

47. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

48. Bank and cross-defendant were duly notified of the Association foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

49. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; and (3) SFR's rights and interest in the Property are superior to any adverse interest claimed by the Bank and cross-defendant.

50. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

**IV.**

**SECOND CLAIM FOR RELIEF**

**(Preliminary and Permanent Injunction)**

51. SFR repeats and realleges the allegations of paragraphs 1-50 as though fully set forth herein and incorporate the same by reference.

52. As set forth above, the Bank now claims and cross-defendant may claim an interest in the Property.

3        54. Any attempt to take or maintain possession of the Property by the Bank or cross-defendant,  
4        would be invalid because their interests in the Property, if any, were extinguished by the  
5        Association foreclosure sale.

6        55. Any attempt to sell, transfer, encumber or otherwise convey the Property would be invalid  
7        because the Bank and cross-defendant's interests in the Property, if any, were extinguished by the  
8        Association foreclosure sale.

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

11        57. SFR is entitled to a preliminary injunction and permanent injunction prohibiting the Bank  
12        and/or cross-defendant from any sale or transfer that would affect the title to the Property.

**V.**  
**THIRD CLAIM FOR RELIEF**  
**(Slander of Title against the Bank)**

15           58. SFR repeats and realleges the allegations of paragraphs 1-57 as though fully set forth herein  
16           and incorporate the same by reference.

59. As discussed above, the Bank recorded a Request For Notice Under NRS Chapters 107  
116 on November 5, 2014, against the Property in the Official Records of the Clark County  
Recorder as Instrument No. 201411050003181.

60. Since the *SFR* ruling of September 2014 had previously ruled that that the Association's non-judicial foreclosure of the Association's super-priority lien extinguishes a first deed of trust as a matter of law, the statements by the Bank that the Property was encumbered by the First Deed of Trust, were false communications casting doubt on SFR's ownership of the Property.

61. Since SFR had been the Property owner of record since July 25, 2012, and since the First Deed of Trust had previously been extinguished as a matter of law on July 25, 2012, (according to the *SFR* decision), the Bank knew, or should have known, the statements were false.

62. The Bank's acts of improperly and unjustifiable recording of the statements in reckless  
disregard of the statements' truth or falsity, were malicious and designed to cloud SFR's title to

1 the Property.

2 63. The Bank's intentional, reckless, and spurious actions have caused special damages to SFR.

3 64. As a direct and proximate cause of the Bank's conduct, SFR has incurred special damages  
4 by way of attorney's fees and costs in order to protect its rights in the Property and to pursue this  
5 action.

6  
7 **PRAYER FOR RELIEF**

8 SFR requests judgment against the Bank and Cross-Defendants as follows:

9 1. For a declaration and determination that the Association foreclosure sale and the  
10 resulting foreclosure deed are valid; that SFR Investments Pool 1, LLC is the rightful owner of  
11 title to the Property; and that the Bank and Cross-defendants have no right, title or interest in the  
12 Property.

13 2. For a preliminary and permanent injunction that the Bank, cross-defendants and  
14 their successors, assigns and agents are prohibited from initiating or continuing foreclosure  
15 proceedings, and from selling or transferring the Property.

16 3. For general and special damages against the Bank in excess of \$10,000.00.

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

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

19 DATED this 19th day of October, 2016.

20 **KIM GILBERT EBRON**

21 /s/ Diana Cline Ebron  
22 DIANA CLINE EBRON, ESQ.  
23 Nevada Bar No. 10580  
24 7625 Dean Martin Drive, Suite 110  
25 Las Vegas, Nevada 89139  
26 *Attorneys for SFR Investments Pool 1, LLC*  
27  
28



**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

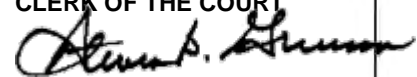
**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of October, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO CROSS-COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM** to the following parties:

| <b>Wright, Finlay &amp; Zak, LLP</b> |  |                                     |
|--------------------------------------|--|-------------------------------------|
| <b>Name</b>                          | <b>Email</b>   | <b>Select</b>                       |
| Natalie C. Lehman                    | <a href="mailto:nlehman@wrightlegal.net">nlehman@wrightlegal.net</a>     | <input checked="" type="checkbox"/> |
| Marissa Resnick                      | <a href="mailto:mresnick@wrightlegal.net">mresnick@wrightlegal.net</a>   | <input checked="" type="checkbox"/> |
| Tonya Sessions                       | <a href="mailto:tsessions@wrightlegal.net">tsessions@wrightlegal.net</a> | <input checked="" type="checkbox"/> |

*Attorneys for U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8*

*/s/ Alan G. Harvey*  
An employee of KIM GILBERT EBRON



Robin E. Perkins (Nevada Bar No. 9891)  
Jennifer L. McBee (Nevada Bar No. 9110)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252  
Email: rperkins@swlaw.com  
jmcbec@swlaw.com

*Attorneys for Mortgage Electronic Registration  
Systems, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER  
DISMISSING MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC. WITHOUT  
PREJUDICE**

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC, a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

09-22-17 P02:34 IN

JC 31

09-25-17 P02:05 IN

JCW  
31

IT IS HEREBY STIPULATED AND AGREED between Cross-Claimant SFR INVESTMENTS POOL 1, LLC ("SFR") and Cross-Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, and its successors and assigns ("MERS," and together with SFR, the "Parties"), by and through their counsel, as follows:


1. On May 23, 2005, Universal American Mortgage Company, LLC (the "Lender") recorded a deed of trust with the Clark County Recorder's Office on the real property commonly known as 7868 Marbledoe Street, Las Vegas, NV 89149-3740, APN 125-18-112-069 (the "Property"), as Book and Instrument No. 20050523-0004229 ("Deed of Trust"). MERS was designated in the Deed of Trust as the beneficiary "solely as nominee for Lender . . . and Lender's successors and assigns."

2. Pursuant to Nevada Revised Statute ("NRS") 120.220, MERS, as the beneficiary of record as nominee for the Lender and its successors and assigns, expressly disclaims any and all right, title, and interest in the Property through the Deed of Trust. MERS does not disclaim or waive any other rights or remedies to which it may legally be entitled.

3. SFR hereby stipulates and agrees, based on MERS's disclaimer of property interest set forth herein, that MERS should be dismissed from this action, without prejudice, with each party to bear their own attorney's fees and costs.

Dated this 22 day of August 2017.


**KIM GILBERT EBRON**

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

Dated this \_\_\_\_ day of August, 2017.

**SNELL & WILMER L.L.P.**

  
Robin E. Perkins (NV Bar No. 9891)  
Jennifer L. McBee (NV Bar No. 9110)  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, Nevada 89169

*Attorneys for Mortgage Electronic  
Registration Systems, Inc.*

IT IS HEREBY STIPULATED AND AGREED between Cross-Claimant SFR INVESTMENTS POOL 1, LLC ("SFR") and Cross-Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, and its successors and assigns ("MERS," and together with SFR, the "Parties"), by and through their counsel, as follows:

1. On May 23, 2005, Universal American Mortgage Company, LLC (the "Lender") recorded a deed of trust with the Clark County Recorder's Office on the real property commonly known as 7868 Marbledoe Street, Las Vegas, NV 89149-3740, APN 125-18-112-069 (the "Property"), as Book and Instrument No. 20050523-0004229 ("Deed of Trust"). MERS was designated in the Deed of Trust as the beneficiary "solely as nominee for Lender . . . and Lender's successors and assigns."

2. Pursuant to Nevada Revised Statute ("NRS") 120.220, MERS, as the beneficiary of record as nominee for the Lender and its successors and assigns, expressly disclaims any and all right, title, and interest in the Property through the Deed of Trust. MERS does not disclaim or waive any other rights or remedies to which it may legally be entitled.

3. SFR hereby stipulates and agrees, based on MERS's disclaimer of property interest set forth herein, that MERS should be dismissed from this action, without prejudice, with each party to bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of August 2017.

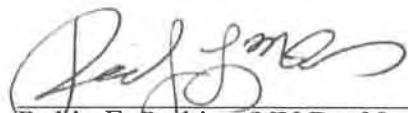
**KIM GILBERT EBRON**

DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

Dated this \_\_\_\_ day of August, 2017.

**SNELL & WILMER LLP.**



Robin E. Perkins (NV Bar No. 9891)  
Jennifer L. McBee (NV Bar No. 9110)  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, Nevada 89169

*Attorneys for Mortgage Electronic  
Registration Systems, Inc.*

**ORDER**

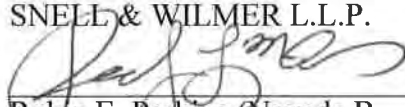
IT IS HEREBY ORDERED that the foregoing *Stipulation and Order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice* is approved.

DATED this 22<sup>nd</sup> day of September, 2017.

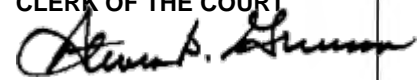
  
DISTRICT COURT JUDGE

Respectfully submitted by:

SNELL & WILMER L.L.P.

  
Robin E. Perkins (Nevada Bar No. 9891)  
Jennifer L. McBee (Nevada Bar No. 9110)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252

*Attorneys for Mortgage Electronic Registration Systems, Inc.*



Robin E. Perkins (Nevada Bar No. 9891)  
Jennifer L. McBee (Nevada Bar No. 9110)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252  
Email: rperkins@swlaw.com  
jmcbec@swlaw.com

*Attorneys for Mortgage Electronic Registration  
Systems, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**NOTICE OF ENTRY OF  
STIPULATION AND ORDER**

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

Counter/Cross Claimant,

vs.

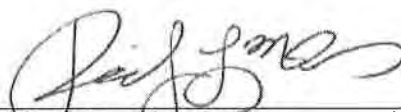
U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC, a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

PLEASE TAKE NOTICE that a *Stipulation and order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice* ("Order") was entered in the above-referenced case on September 26, 2017. A copy of said Order is attached as **Exhibit 1**.

Dated this 27th day of September 2017.

**SNELL & WILMER L.L.P.**



Robin E. Perkins (NV Bar No. 9891)  
Jennifer L. McBee (NV Bar No. 9110)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252

*Attorneys for Mortgage Electronic  
Registration Systems, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On September 27, 2017, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER** upon the following by the method indicated:

X

**BY ELECTRONIC FILING & ELECTRONIC SERVICE:** Pursuant to NRCP 5(b) and Administrative Order 14-2, by submitting to the above-entitled Court for electronic filing and service upon the Court's e-service list for the above-referenced case.

Diana S. Ebron diana@kgelegal.com  
Diana Cline Ebron - diana@kgelegal.com  
KGE E-Service List eservice@kgelegal.com  
KGE Legal Staff staff@kgelegal.com  
Michael L. Sturm mike@kgelegal.com  
Kim Gilbert Ebron . eservice@kgelegal.com  
NVEfile . nvefile@wrightlegal.net  
Sara Aslinger . saslinger@wrightlegal.net  
Shadd Wade . swade@wrightlegal.net  
Tomas Valerio . staff@kgelegal.com

Dated: September 27, 2017

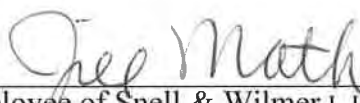
  
An Employee of Snell & Wilmer L.L.P.



EXHIBIT 1

EXHIBIT 1



Robin E. Perkins (Nevada Bar No. 9891)  
Jennifer L. McBee (Nevada Bar No. 9110)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252  
Email: rperkins@swlaw.com  
jmcbee@swlaw.com

*Attorneys for Mortgage Electronic Registration  
Systems, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC, a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER  
DISMISSING MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC. WITHOUT  
PREJUDICE**

09-22-17 P02:34 IN

*JC 31*

*31*

IT IS HEREBY STIPULATED AND AGREED between Cross-Claimant SFR INVESTMENTS POOL 1, LLC ("SFR") and Cross-Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, and its successors and assigns ("MERS," and together with SFR, the "Parties"), by and through their counsel, as follows:


1. On May 23, 2005, Universal American Mortgage Company, LLC (the "Lender") recorded a deed of trust with the Clark County Recorder's Office on the real property commonly known as 7868 Marbledoe Street, Las Vegas, NV 89149-3740, APN 125-18-112-069 (the "Property"), as Book and Instrument No. 20050523-0004229 ("Deed of Trust"). MERS was designated in the Deed of Trust as the beneficiary "solely as nominee for Lender . . . and Lender's successors and assigns."

2. Pursuant to Nevada Revised Statute ("NRS") 120.220, MERS, as the beneficiary of record as nominee for the Lender and its successors and assigns, expressly disclaims any and all right, title, and interest in the Property through the Deed of Trust. MERS does not disclaim or waive any other rights or remedies to which it may legally be entitled.

3. SFR hereby stipulates and agrees, based on MERS's disclaimer of property interest set forth herein, that MERS should be dismissed from this action, without prejudice, with each party to bear their own attorney's fees and costs.

Dated this 28 day of August 2017.

**KIM GILBERT EBRON**

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

Dated this \_\_\_\_ day of August, 2017.

**SNELL & WILMER LLP.**

Robin E. Perkins (NV Bar No. 9891)  
Jennifer L. McBee (NV Bar No. 9110)  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, Nevada 89169

*Attorneys for Mortgage Electronic  
Registration Systems, Inc.*

IT IS HEREBY STIPULATED AND AGREED between Cross-Claimant SFR INVESTMENTS POOL 1, LLC ("SFR") and Cross-Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, and its successors and assigns ("MERS," and together with SFR, the "Parties"), by and through their counsel, as follows:

1. On May 23, 2005, Universal American Mortgage Company, LLC (the "Lender") recorded a deed of trust with the Clark County Recorder's Office on the real property commonly known as 7868 Marbledoe Street, Las Vegas, NV 89149-3740, APN 125-18-112-069 (the "Property"), as Book and Instrument No. 20050523-0004229 ("Deed of Trust"). MERS was designated in the Deed of Trust as the beneficiary "solely as nominee for Lender . . . and Lender's successors and assigns."

2. Pursuant to Nevada Revised Statute ("NRS") 120.220, MERS, as the beneficiary of record as nominee for the Lender and its successors and assigns, expressly disclaims any and all right, title, and interest in the Property through the Deed of Trust. MERS does not disclaim or waive any other rights or remedies to which it may legally be entitled.

3. SFR hereby stipulates and agrees, based on MERS's disclaimer of property interest set forth herein, that MERS should be dismissed from this action, without prejudice, with each party to bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of August 2017.

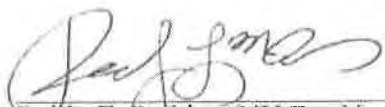
**KIM GILBERT EBRON**

DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

Dated this \_\_\_\_ day of August, 2017.

**SNELL & WILMER LLP.**

  
Robin E. Perkins (NV Bar No. 9891)  
Jennifer L. McBee (NV Bar No. 9110)  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, Nevada 89169

*Attorneys for Mortgage Electronic  
Registration Systems, Inc.*

**ORDER**

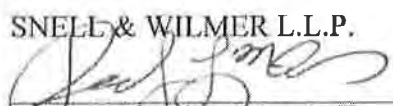
IT IS HEREBY ORDERED that the foregoing *Stipulation and Order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice* is approved.

DATED this 22<sup>nd</sup> day of September, 2017.

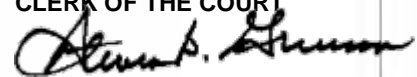
  
DISTRICT COURT JUDGE

Respectfully submitted by:

SNELL & WILMER L.L.P.

  
Robin E. Perkins (Nevada Bar No. 9891)  
Jennifer L. McBee (Nevada Bar No. 9110)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252

*Attorneys for Mortgage Electronic Registration Systems, Inc.*



1 **SAO**  
2 DIANA CLINE EBRON, ESQ.  
3 Nevada Bar No. 10580  
4 E-mail: diana@kgelegal.com  
5 JACQUELINE A. GILBERT, ESQ.  
6 Nevada Bar No. 10593  
7 E-mail: jackie@kgelegal.com  
8 KAREN L. HANKS, ESQ.  
9 Nevada Bar No. 9578  
10 E-mail: karen@kgelegal.com  
11 KIM GILBERT EBRON  
12 7625 Dean Martin Drive, Suite 110  
13 Las Vegas, Nevada 89139  
14 Telephone: (702) 485-3300  
15 Facsimile: (702) 485-3301  
16 *Attorneys for SFR Investments Pool 1, LLC*

10 **DISTRICT COURT**  
11 **CLARK COUNTY NEVADA**

12 U.S. BANK, NATIONAL ASSOCIATION AS  
13 TRUSTEE FOR MERRILL LYNCH  
14 MORTGAGE INVESTORS TRUST,  
15 MORTGAGE LOAN ASSET-BACKED  
16 CERTIFICATES, SERIES 2005-A8,

16 Plaintiff,

17 vs.

18 SFR INVESTMENTS POOL 1, LLC, a  
19 Nevada limited liability company; DOE  
20 INDIVIDUALS I through X, inclusive; and  
21 ROE CORPORATIONS I through X,  
22 inclusive,

21 Defendants.

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

24 Counter/Cross Claimant,

25 vs.

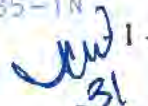
26 U.S. BANK, NATIONAL ASSOCIATION  
27 AS TRUSTEE FOR MERRILL LYNCH  
28 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER TO  
DISMISS SFR INVESTMENTS POOL 1,  
LLC'S SLANDER OF TITLE CLAIM  
AGAINST U.S. BANK, NATIONAL  
ASSOCIATION**

10-02-17 A10:35-1N



1 MORTGAGE ELECTRONIC  
2 REGISTRATION SYSTEMS, INC., a  
3 Delaware corporation, as nominee beneficiary  
4 for UNIVERSAL AMERICAN MORTGAGE  
5 COMPANY, LLC, a foreign limited liability  
6 company; HENRY E. IVY, an individual; and  
7 FREDDIE S. IVY, an individual,

Counter-Defendant/Cross-Defendants.

8 Defendant/Counterclaimant/Cross-Claimant, SFR INVESTMENTS POOL 1, LLC  
9 ("SFR"); and Plaintiff/Counterdefendant U.S. BANK, NATIONAL ASSOCIATION AS  
10 TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE  
11 LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 ("U.S. Bank"), by and through  
12 their respective undersigned counsel, hereby stipulate and agree as follows:

- 13 1. The subject property is located at 7868 Marbledoe Street, Las Vegas, NV 89149; and  
14 bears Assessor's Parcel No. 125-18-112-069;

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2. SFR and U.S. Bank hereby agree that SFR's slander of title claim against U.S. Bank shall be dismissed without prejudice with each party to bear its own fees and costs.


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

KIM GILBERT EBRON

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

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

WRIGHT, FINLAY & ZAK, LLP

 for  
DANA JONATHAN NITZ, ESQ.  
Nevada Bar No. 0050  
CHRISTINA V. MILLER, ESQ.  
Nevada Bar No. 12448  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank, National  
Association as Trustee for Merrill Lynch  
Mortgage Investors Trust, Mortgage Loan  
Asset-Backed Certificates, Series 2005-A8*

**ORDER**


IT IS SO ORDERED.

DATED this 2<sup>nd</sup> day of October 2017.

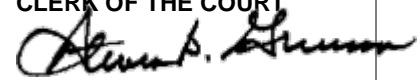
  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

Respectfully Submitted By:

KIM GILBERT EBRON

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*





**NTSO**  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MARRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Case No. A-16-739867-C

Dept. No. XXXI

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X,  
inclusive,

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER TO DISMISS SFR  
INVESTMENTS POOL 1, LLC'S  
SLANDER OF TITLE CLAIM AGAINST  
U.S. BANK, NATIONAL ASSOCIATION**

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC, a foreign limited liability

company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter-Defendant/Cross-Defendants.

PLEASE TAKE NOTICE that on October 5, 2017, a **Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association** was entered. A copy of said Stipulation and Order is attached hereto.

DATED this 9<sup>th</sup> day of October, 2017.

**KIM GILBERT EBRON**

/s/ Diana S. Ebron

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorney for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of October, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS SFR INVESTMENTS POOL 1, LLC'S SLANDER OF TITLE CLAIM AGAINST U.S. BANK, NATIONAL ASSOCIATION** to the following parties:

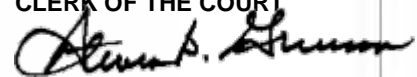
NVEfile . (nvefile@wrightlegal.net)

Sara Aslinger . (saslinger@wrightlegal.net)

Shadd Wade . (swade@wrightlegal.net)

/s/ Tomas Valerio

An Employee of Kim Gilbert Ebron



1 **SAO**  
2 DIANA CLINE EBRON, ESQ.  
3 Nevada Bar No. 10580  
4 E-mail: diana@kgelegal.com  
5 JACQUELINE A. GILBERT, ESQ.  
6 Nevada Bar No. 10593  
7 E-mail: jackie@kgelegal.com  
8 KAREN L. HANKS, ESQ.  
9 Nevada Bar No. 9578  
10 E-mail: karen@kgelegal.com  
11 KIM GILBERT EBRON  
12 7625 Dean Martin Drive, Suite 110  
13 Las Vegas, Nevada 89139  
14 Telephone: (702) 485-3300  
15 Facsimile: (702) 485-3301  
16 *Attorneys for SFR Investments Pool 1, LLC*

10 **DISTRICT COURT**  
11 **CLARK COUNTY NEVADA**

12 U.S. BANK, NATIONAL ASSOCIATION AS  
13 TRUSTEE FOR MERRILL LYNCH  
14 MORTGAGE INVESTORS TRUST,  
15 MORTGAGE LOAN ASSET-BACKED  
16 CERTIFICATES, SERIES 2005-A8,

16 Plaintiff,

17 vs.

18 SFR INVESTMENTS POOL 1, LLC, a  
19 Nevada limited liability company; DOE  
20 INDIVIDUALS I through X, inclusive; and  
21 ROE CORPORATIONS I through X,  
22 inclusive,

21 Defendants.

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

24 Counter/Cross Claimant,

25 vs.

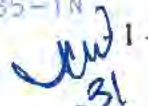
26 U.S. BANK, NATIONAL ASSOCIATION  
27 AS TRUSTEE FOR MERRILL LYNCH  
28 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER TO  
DISMISS SFR INVESTMENTS POOL 1,  
LLC'S SLANDER OF TITLE CLAIM  
AGAINST U.S. BANK, NATIONAL  
ASSOCIATION**

10-02-17 A10:35-1N



1 MORTGAGE ELECTRONIC  
2 REGISTRATION SYSTEMS, INC., a  
3 Delaware corporation, as nominee beneficiary  
4 for UNIVERSAL AMERICAN MORTGAGE  
5 COMPANY, LLC, a foreign limited liability  
6 company; HENRY E. IVY, an individual; and  
7 FREDDIE S. IVY, an individual,

Counter-Defendant/Cross-Defendants.

8 Defendant/Counterclaimant/Cross-Claimant, SFR INVESTMENTS POOL 1, LLC  
9 ("SFR"); and Plaintiff/Counterdefendant U.S. BANK, NATIONAL ASSOCIATION AS  
10 TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE  
11 LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 ("U.S. Bank"), by and through  
12 their respective undersigned counsel, hereby stipulate and agree as follows:

- 13 1. The subject property is located at 7868 Marbledoe Street, Las Vegas, NV 89149; and  
14 bears Assessor's Parcel No. 125-18-112-069;

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KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

2. SFR and U.S. Bank hereby agree that SFR's slander of title claim against U.S. Bank shall be dismissed without prejudice with each party to bear its own fees and costs.


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

KIM GILBERT EBRON

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

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

WRIGHT, FINLAY & ZAK, LLP

 for  
DANA JONATHAN NITZ, ESQ.  
Nevada Bar No. 0050  
CHRISTINA V. MILLER, ESQ.  
Nevada Bar No. 12448  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank, National  
Association as Trustee for Merrill Lynch  
Mortgage Investors Trust, Mortgage Loan  
Asset-Backed Certificates, Series 2005-A8*

**ORDER**


IT IS SO ORDERED.

DATED this 2<sup>nd</sup> day of October 2017.

  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

Respectfully Submitted By:

KIM GILBERT EBRON

  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*



ACOM

WRIGHT, FINLAY & ZAK, LLP

Regina A. Habermas, Esq.

Nevada Bar No. 8481

Jamie S. Hendrickson, Esq.

Nevada Bar No. 12770

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

(702) 475-7964; Fax: (702) 946-1345

[rhobermas@wrightlegal.net](mailto:rhobermas@wrightlegal.net)

[jhendrickson@wrightlegal.net](mailto:jhendrickson@wrightlegal.net)

*Attorneys for Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for  
Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-  
A8*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED

Case No.: A-16-739867-C

Dept. No.: XXXI

**FIRST AMENDED COMPLAINT**

**EXEMPT FROM ARBITRATION:  
ACTION FOR QUIET TITLE AND  
DECLARATORY RELIEF**



CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC. a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (hereinafter “Plaintiff” or “U.S. Bank”), by and through its attorneys of record, Regina A. Habermas, Esq. and Jamie S. Hendrickson, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby asserts its claims against the above-named Defendants as follows:

### **INTRODUCTION**

1. Plaintiff is authorized to bring this action in the State of Nevada by NRS 40.430.

2. The real property at issue is known as 7868 Marbledoe Street, Las Vegas, NV 89149, APN No. 125-18-112-069 (hereinafter “Property”).

### **JURISDICTION AND VENUE**

3. Venue and jurisdiction is proper in this judicial district because Defendants reside in this district; a substantial part of the events or omissions giving rise to U.S. Bank’s claims occurred in this district; and the property that is the subject of this action is situated in this district, in Las Vegas, Clark County, Nevada.

### **PARTIES**

4. U.S. Bank is a national banking association chartered under the laws of the United States with its main office in the State of Ohio.

5. U.S. Bank is the assigned Beneficiary under the Deed of Trust signed by Henry E. Ivy and Freddie S. Ivy (hereinafter “Ivy”) recorded on May 23, 2005 (hereinafter “Deed of Trust”), which encumbers the Property and secures repayment of a promissory note.

**6.** Upon information and belief, Defendant, SFR Investments Pool 1, LLC (hereinafter “Buyer”), is a Nevada limited liability company and claims it is the current titleholder of the Property.

7. Upon information and belief, Defendant Antelope Homeowners' Association (hereinafter the "HOA") is a Nevada non-profit corporation, licensed to do business in the State of Nevada.

8. U.S. Bank does not know the true names, capacities or bases of liability of fictitious Defendants sued as DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive (collectively “fictitious Defendants”). Each fictitious Defendant is in some way liable to U.S. Bank or claims some rights, title, or interest in the subject Property that is subsequent to or subject to the interests of U.S. Bank, or both. U.S. Bank will amend this Complaint to reflect the true names of said Defendants when the same have been ascertained.

## GENERAL ALLEGATIONS

9. On or about May 23, 2005, Ivy purchased the Property.<sup>1</sup>

**10.** On or about May 18, 2005, Ivy executed the Deed of Trust, which identified Universal American Mortgage Company, LLC as the Lender and Beneficiary and Stewart Title Company as the Trustee, securing a loan in the amount of \$212,750.00 (hereinafter the “Ivy Loan”).<sup>2</sup>

**11.** Public records show that on November 12, 2009, a Notice of Delinquent Assessment (Lien) was recorded against the Property by Alessi & Koenig, LLC (“HOA Trustee”) on behalf of the HOA.<sup>3</sup>

**12.** Public records show that on October 19, 2010, a Notice of Delinquent Violation

<sup>1</sup> A true and correct copy of the Grant, Bargain, Sale Deed recorded in the Clark County Recorder's Office as Book and Instrument Number 20050523-0004227 is attached hereto as **Exhibit 1**. All other recordings stated hereafter are recorded in the same manner.

2 A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20050523-0004228 is attached hereto as **Exhibit 2**.

<sup>3</sup> A true and correct copy of the Notice of Delinquent Assessment (Lien) recorded as Book and Instrument Number 20091112-0004474 is attached hereto as **Exhibit 3**.



1 Lien was recorded against the Property by the HOA.<sup>4</sup>

2       **13.** Public records show that on February 17, 2011, a Notice of Default and Election  
3 to Sell Under Homeowners Association Lien was recorded against the Property on behalf of the  
4 HOA by the HOA Trustee.<sup>5</sup>

5       **14.** On or about December 16, 2011, Bank of America, N.A., the prior servicer,  
6 through prior counsel Miles, Bauer, Bergstrom & Winters, LLP (hereinafter “MBBW”),  
7 tendered the super-priority lien amount totaling \$405.00 to the HOA Trustee.

8       **15.** MBBW’s tender, on behalf of Bank of America, N.A., satisfied the statutory  
9 super-priority lien amount that could be claimed against the Property by the HOA.

10       **16.** On or about December 30, 2011, the HOA Trustee refused to accept Bank of  
11 America, N.A.’s tender of the super-priority lien amount.

12       **17.** The HOA Trustee, on behalf of the HOA, had no legal right to reject the tender  
13 of the super-priority amount by Bank of America, N.A.

14       **18.** Public records show that on August 11, 2011, a Notice of Trustee’s Sale was  
15 recorded against the Property by the HOA Trustee.<sup>6</sup>

16       **19.** Public records show that on April 16, 2012, a second Notice of Trustee’s Sale  
17 was recorded against the Property by the HOA Trustee.<sup>7</sup>

18       **20.** Public records show that on July 2, 2012, a third Notice of Trustee’s Sale was  
19 recorded against the Property by the HOA Trustee.<sup>8</sup>

20       **21.** Upon information and belief, pursuant to the third Notice of Trustee’s Sale, a  
21 non-judicial foreclosure sale occurred on July 25, 2012 (hereinafter the “HOA Sale”), whereby  
22

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23 <sup>4</sup> A true and correct copy of the Notice of Delinquent Violation Lien recorded as Book and  
Instrument Number 20101019-0001557 is attached hereto as **Exhibit 4.**

24 <sup>5</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
Association Lien recorded as Book and Instrument Number 20110217-0001289 is attached  
hereto as **Exhibit 5.**

25 <sup>6</sup> A true and correct copy of the Notice of Trustee’s Sale recorded as Book and Instrument  
Number 20110811-0003087 is attached hereto as **Exhibit 6.**

26 <sup>7</sup> A true and correct copy of the second Notice of Trustee’s Sale recorded as Book and  
Instrument Number 20120416-0000922 is attached hereto as **Exhibit 7.**

27 <sup>8</sup> A true and correct copy of the third Notice of Trustee’s Sale recorded as Book and Instrument  
28 Number 20120702-0001432 is attached hereto as **Exhibit 8.**

1 Buyer acquired its interest in the Property, if any, for the sum of \$5,950.00.

2       **22.** Public records show that on August 3, 2012, a Trustee's Deed Upon Sale was  
3 recorded by which Buyer claims its interest from the HOA.<sup>9</sup>

4       **23.** A homeowner's association sale conducted pursuant to NRS Chapter 116 must  
5 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168.

6       **24.** A lender or holder of a beneficial interest in a senior deed of trust, such as U.S.  
7 Bank and its predecessors-in-interest in the Deed of Trust, has a right to cure a delinquent  
8 homeowner's association lien in order to protect its interest.

9       **25.** Upon information and belief, the HOA and HOA Trustee did not comply with all  
10 mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

11       **26.** A recorded notice of default must "describe the deficiency in payment."

12       **27.** The HOA Sale occurred without adequate notice to U.S. Bank and/or its  
13 predecessors-in-interest.

14       **28.** The HOA Sale occurred without notice to U.S. Bank or its predecessors-in-  
15 interest what portion of the lien, if any, that the HOA and HOA Trustee claimed constituted a  
16 "super-priority" lien.

17       **29.** The HOA Sale occurred without notice to U.S. Bank or its predecessors whether  
18 the HOA was foreclosing on the "super-priority" portion of its lien, if any, or under the non-  
19 super-priority portion of the lien.

20       **30.** The HOA Sale occurred without notice to U.S. Bank or its predecessors of a right  
21 to cure the super-priority lien, if any.

22       **31.** The HOA Sale violated U.S. Bank's or its predecessors' rights to due process  
23 because it was not given proper, adequate notice and the opportunity to cure the deficiency or  
24 default in the payment of the super-priority lien, if any.

25       **32.** The HOA Sale was an invalid sale and could not have extinguished U.S. Bank's  
26 secured interest because of defects in the notices given to U.S. Bank, or its predecessors.

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27 <sup>9</sup> A true and correct copy of the Trustee's Deed Upon Sale recorded as Book and Instrument  
28 Number 20120803-0003275 is attached hereto as **Exhibit 9**.

1           **33.** Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs  
2 and fees that are specifically enumerated in the statute.

3           **34.** A homeowner's association may only collect as a part of the super priority lien  
4 (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)  
5 nine months of common assessments which became due prior to the institution of an action to  
6 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not  
7 less than six months).

8           **35.** Upon information and belief, the HOA Foreclosure notices included improper  
9 fees and costs in the amount required to cure, thus invalidating the lien.

10          **36.** The attorney's fees and the costs of collecting on a homeowner's association lien  
11 cannot be included in the lien or super-priority lien.

12          **37.** Upon information and belief, the HOA assessment lien and foreclosure notices  
13 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not  
14 properly included in an HOA lien or super-priority lien under Nevada law and that are not  
15 permissible under NRS 116.3102 *et seq.*

16          **38.** The HOA Sale is unlawful and void under NRS 116.3102 *et seq.*

17          **39.** NRS 116.31162 through NRS 116.31168 do not contain any provision requiring  
18 notice of a foreclosure to the lender, beneficiary or holder of a first mortgage or deed of trust,  
19 thus violating their constitutional right to due process.

20          **40.** The HOA Sale deprived U.S. Bank or its predecessors of its right to due process  
21 because the foreclosure notices failed to identify the super-priority amount, to adequately  
22 describe the deficiency in payment, to provide U.S. Bank or its predecessors notice of the  
23 correct super-priority amount, or to provide a reasonable opportunity for U.S. Bank or its  
24 predecessors to protect its priority by payment to satisfy that amount.

25          **41.** With respect to the HOA Sale, U.S. Bank's predecessor/servicer exercised its  
26 right to cure the HOA deficiency by tendering the super-priority portion of the lien.

27          **42.** The HOA Trustee's wrongful rejection of tender of the super-priority lien  
28 extinguished the super-priority lien.

1           **43.**   U.S. Bank's predecessor/servicer's tender of the super-priority portion of the lien  
2 eliminated the super-priority portion of the HOA lien and as such, any interest the Buyer  
3 purchased in the Property was subject to U.S. Bank's Deed of Trust.

4           **44.**   Because U.S. Bank's predecessor/servicer tendered the nine months super-  
5 priority portion of the lien, the HOA Sale is ineffective to displace U.S. Bank's first priority  
6 position under its Deed of Trust.

7           **45.**   A homeowner's association sale must be done in a commercially reasonable  
8 manner.

9           **46.**   At the time of the HOA Sale, the amount owed on the Ivy Loan exceeded  
10 \$208,000.

11          **47.**   Upon information and belief, at the time of the HOA Sale, the fair market value  
12 of the Property exceeded \$90,000.

13          **48.**   The amount paid by Buyer at the HOA Sale allegedly totaled \$5,950.00.

14          **49.**   The HOA Sale was not commercially reasonable, and not done in good faith, in  
15 light of the sales price, the market value of the property, the debt owed to U.S. Bank on the Ivy  
16 Loan, and the errors alleged above.

17          **50.**   The HOA Sale by which Buyer took its interest was commercially unreasonable  
18 if it extinguished U.S. Bank's Deed of Trust.

19          **51.**   In the alternative, the HOA Sale was an invalid sale and could not have  
20 extinguished U.S. Bank's secured interest because it was not a commercially reasonable sale.

21          **52.**   Without providing U.S. Bank or its predecessors notice of the correct super-  
22 priority amount and a reasonable opportunity to tender payment to satisfy that amount,  
23 including the failure to set out the super-priority amount and the failure to adequately describe  
24 the deficiency in payment as required by Nevada law, the HOA Sale is commercially  
25 unreasonable and deprived U.S. Bank or its predecessors of its right to due process.

26          **53.**   The CC&Rs for the HOA provide in Section 5.08 that "no lien...nor the  
27 enforcement of any provision of this Declaration, shall defeat or render invalid the rights of the  
28 beneficiary under any Recorded Mortgage of first and senior priority now or hereafter upon a

1 Lot...perfected before the date on which the Assessment sought to be enforced became  
2 delinquent” (hereinafter referred to as the “Mortgagee Protection Clause”).<sup>10</sup>

3 **54.** Because the CC&Rs contained a Mortgagee Protection Clause in Section 5.08,  
4 and because U.S. Bank or its predecessors was not given proper notice that the HOA intended to  
5 foreclose on the super-priority portion of the dues owing, U.S. Bank or its predecessors did not  
6 know that it had to attend the HOA Sale to protect its security interest.

7 **55.** Because the CC&Rs contained a Mortgagee Protection Clause, and because  
8 proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing  
9 was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale  
10 commercially unreasonable.

11 **56.** Buyer, HOA, and HOA Trustee knew that U.S. Bank or its predecessors would  
12 rely on the Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that U.S.  
13 Bank or its predecessors would not know that HOA was foreclosing on super-priority amounts  
14 because of the failure of HOA and HOA Trustee to provide such notice. U.S. Bank’s or its  
15 predecessors’ absence from the HOA Sale allowed Buyer to appear at the HOA Sale and  
16 purchase the Property for a fraction of market value, making the HOA Sale commercially  
17 unreasonable.

18 **57.** Buyer, HOA, and HOA Trustee knew that prospective bidders would be less  
19 likely to attend the HOA Sale because the public at large believed that U.S. Bank or its  
20 predecessors was protected under the Mortgagee Protection Clause in the CC&Rs of public  
21 record, and that the public at large did not receive notice, constructive or actual, that HOA was  
22 foreclosing on a super-priority portion of its lien because the HOA and HOA Trustee  
23 improperly failed to provide such notice. The general public’s belief therefore was that a buyer  
24 at the HOA Sale would take title to the Property subject to U.S. Bank’s Deed of Trust. This  
25 general belief resulted in the absence of prospective bidders at the HOA Sale, which allowed  
26

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27 <sup>10</sup> A true and correct copy of the pertinent portion of the Declaration of Covenants, Conditions,  
28 and Restrictions for Antelope Homeowners’ Association recorded as Book and Instrument  
Number 20040623-0002016 on June 23, 2004 is attached hereto as **Exhibit 10**.

1 Buyer to appear at the HOA sale and purchase the Property for a fraction of market value,  
2 making the HOA Sale commercially unreasonable.

3       **58.** The circumstances of the HOA Sale of the Property breached the HOA's and the  
4 HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a  
5 commercially reasonable manner.

6       **59.** Upon information and belief, Buyer was a professional foreclosure sale property  
7 purchaser.

8       **60.** The circumstances of the HOA Sale of the Property and its status as a  
9 professional property purchaser preclude Buyer from being deemed a bona fide purchaser for  
10 value.

11       **61.** Upon information and belief, Buyer had actual, constructive and/or inquiry  
12 notice of the first Deed of Trust, which prevents Buyer from being deemed a bona fide  
13 purchaser or encumbrancer for value.

14       **62.** In the event U.S. Bank's interest in the Property is not reaffirmed nor restored,  
15 U.S. Bank suffered damages in the amount of the fair market value of the Property or the unpaid  
16 balance of the Ivy Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater, as  
17 a proximate result of Defendants' acts and omissions.

18                                   **FIRST CAUSE OF ACTION**

19       **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 *et seq.* and NRS 40.010 *et seq.***  
20                                   **versus Buyer, HOA, and all fictitious Defendants)**

21       **63.** U.S. Bank incorporates and re-alleges all previous paragraphs, as if fully set  
22 forth herein.

23       **64.** Pursuant to NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and  
24 authority to declare U.S. Bank's rights and interests in the Property and to resolve Defendants'  
25 adverse claims in the Property.

26       **65.** Further, pursuant to NRS 30.010 *et seq.*, this Court has the power and authority  
27 to declare the rights and interest of the parties following the acts and omissions of the HOA and  
28 HOA Trustee in foreclosing the Property.

1           **66.**     U.S. Bank's Deed of Trust is a first secured interest on the Property as intended  
2 by NRS 116.3116(2)(b).

3           **67.**     As the current beneficiary under the Deed of Trust and the lender entitled to  
4 enforce the Ivy Loan, U.S. Bank's interest still encumbers the Property and retains its first  
5 position status in the chain of title for the Property after the HOA Sale and is superior to the  
6 interest, if any, acquired by Buyer, or held or claimed by any other party, for the reasons alleged  
7 herein.

8           **68.**     Upon information and belief, Buyer, the HOA, and the fictitious Defendants  
9 dispute U.S. Bank's claims and assert priority, so that their claims are adverse to U.S. Bank's  
10 claims.

11           **69.**     Upon information and belief, the HOA, the HOA Trustee and the fictitious  
12 Defendants failed to provide proper, adequate and sufficient notices required by Nevada statutes  
13 to assure due process to U.S. Bank or its predecessors, and therefore the HOA Sale is void and  
14 should be set aside or rescinded.

15           **70.**     Based on the adverse claims being asserted by the parties, U.S. Bank is entitled  
16 to a judicial determination regarding the rights and interests of the respective parties to the case.

17           **71.**     For all the reasons set forth, U.S. Bank is entitled to a determination from this  
18 Court, pursuant to NRS 40.010, that U.S. Bank is the beneficiary of a Deed of Trust that still  
19 encumbers the Property as of the date of the court's determination, and that U.S. Bank's rights  
20 under the Deed of Trust are superior in the chain of title to the interest of all Defendants.

21           **72.**     In the alternative, if it is found under state law that U.S. Bank's interest could  
22 have been extinguished by the HOA sale, for all the reasons set forth above, U.S. Bank is  
23 entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that the  
24 HOA Sale is unlawful and void and conveyed no legitimate interest to Buyer.

25           **73.**     U.S. Bank has furthermore been required to retain counsel and is entitled to  
26 recover reasonable attorney's fees for having brought the underlying action.

27                           **SECOND CAUSE OF ACTION**

28                   **(Preliminary and Permanent Injunctions versus Buyer and fictitious Defendants)**

1           **74.**     U.S. Bank incorporates by reference the allegations of all previous paragraphs, as  
2 if fully set forth herein.

3           **75.**     As set forth above, Buyer may claim an ownership interest in the Property that is  
4 adverse to U.S. Bank.

5           **76.**     Any sale or transfer of the Property, prior to a judicial determination concerning  
6 the respective rights and interests of the parties to the case, may be rendered invalid if U.S.  
7 Bank's Deed of Trust still encumbered the Property in first position and was not extinguished  
8 by the HOA Sale.

9           **77.**     U.S. Bank has a reasonable probability of success on the merits of the  
10 Complaint, for which compensatory damages will not compensate U.S. Bank for the irreparable  
11 harm of the loss of title to a bona fide purchaser or loss of the first position priority status  
12 secured by the Property.

13           **78.**     U.S. Bank has no adequate remedy at law due to the uniqueness of the Property  
14 involved in the case.

15           **79.**     U.S. Bank is entitled to a preliminary and permanent injunction prohibiting  
16 Buyer, its successors, assigns, and agents from conducting a sale, transfer or encumbrance of  
17 the Property if Buyer or its transferee claims or will claim the sale, transfer or encumbrance to  
18 be made free and clear of U.S. Bank's Deed of Trust.

19           **80.**     U.S. Bank is entitled to a preliminary injunction requiring Buyer to pay all taxes,  
20 insurance and homeowner's association dues during the pendency of this action.

21           **81.**     U.S. Bank is entitled to a preliminary injunction requiring Buyer to segregate and  
22 deposit all rents with the Court or a Court-approved trust account over which Buyer has no  
23 control during the pendency of this action.

24           **82.**     U.S. Bank is entitled to a mandatory injunction that the HOA and HOA Trustee  
25 be compelled to deliver to the Clerk of the Court and deposit all funds collected at the HOA  
26 Sale pending determination by the Court of the validity of the sale and the respective rights of  
27 the parties to the sale proceeds.

28           **83.**     U.S. Bank has been required to retain counsel to prosecute this action and is



entitled to recover reasonable attorney's fees to prosecute this action.

### **THIRD CAUSE OF ACTION**

#### **(Wrongful Foreclosure versus the HOA and fictitious Defendants)**

**84.** U.S. Bank incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

**85.** Upon information and belief, the HOA, the HOA Trustee, and all fictitious Defendants did not comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

**86.** The HOA, the HOA Trustee, and all fictitious Defendants failed to provide notice pursuant to the CC&Rs.

**87.** Because the HOA Sale was wrongfully conducted and should be set aside because the HOA or the HOA Trustee refused U.S. Bank's predecessor/servicer's tender and effectively deprived U.S. Bank the opportunity to cure the deficiency or default by way of payment of the HOA's assessments as required by the Nevada Statutes and due process.

**88.** Because the HOA Sale was not commercially reasonable, it was invalid, wrongful, and should be set aside.

**89.** Because the HOA, HOA Trustee, and fictitious Defendants' did not give U.S. Bank, or its agents, servicers or predecessors in interest, the proper, adequate notice and the opportunity to cure the deficiency or default in the payment of the HOA's assessments required by Nevada statutes, the CC&Rs and due process, the HOA Sale was wrongfully conducted and should be set aside.

**90.** As a proximate result of HOA, HOA Trustee, and fictitious Defendants' wrongful foreclosure of the Property by the HOA Sale, as more particularly set forth above and in the General Allegations, U.S. Bank has suffered general and special damages in an amount not presently known. U.S. Bank will seek leave of court to assert said amounts when they are determined.

**91.** If it is determined that U.S. Bank's Deed of Trust has been extinguished by the HOA Sale, as a proximate result of HOA, HOA Trustee, and fictitious Defendants' wrongful

1 foreclosure of the Property by the HOA Sale, U.S. Bank has suffered special damages in the  
2 amount equal to the fair market value of the Property or the unpaid balance of the Borrower's  
3 Loan, plus interest, at the time of the HOA Sale, whichever is greater, in an amount not  
4 presently known. U.S. Bank will seek leave of court to assert said amounts when they are  
5 determined.

6 **92.** U.S. Bank has been required to retain counsel to prosecute this action and is  
7 entitled to recover reasonable attorney's fees to prosecute this action.

#### 8 **FOURTH CAUSE OF ACTION**

##### 9 **(Unjust Enrichment versus Buyer, HOA, and fictitious Defendants)**

10 **93.** U.S. Bank incorporates and re-alleges all previous paragraphs, as if fully set  
11 forth herein.

12 **94.** U.S. Bank has been deprived of the benefit of its secured deed of trust by the  
13 actions of Buyer, the HOA, the HOA Trustee and fictitious Defendants.

14 **95.** Buyer, the HOA and fictitious Defendants have benefitted from the unlawful  
15 HOA Sale and nature of the real property.

16 **96.** Buyer, the HOA and fictitious Defendants have benefitted from U.S. Bank's  
17 payment of taxes, insurance or homeowner's association assessments since the time of the HOA  
18 Sale.

19 **97.** Should U.S. Bank's Complaint be successful in quieting title against Buyer and  
20 setting aside the HOA Sale, Buyer and fictitious Defendants will have been unjustly enriched by  
21 the HOA Sale and usage of the Property.

22 **98.** U.S. Bank will have suffered damages if Buyer, the HOA and fictitious  
23 Defendants are allowed to retain their interests in the Property and the funds received from the  
24 HOA Sale.

25 **99.** U.S. Bank will have suffered damages if Buyer, the HOA and fictitious  
26 Defendants are allowed to retain their interests in the Property and U.S. Bank's payment of  
27 taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

28 **100.** U.S. Bank is entitled to general and special damages in excess of \$10,000.00.

1           **101.** U.S. Bank has furthermore been required to retain counsel and is entitled to  
2 recover reasonable attorney's fees for having brought the underlying action.

3                                   **FIFTH CAUSE OF ACTION**

4                           **(Breach of Contract versus the HOA and fictitious Defendants)**

5           **102.** U.S. Bank incorporates by reference the allegations of all previous paragraphs, as  
6 if fully set forth herein.

7           **103.** U.S. Bank was an intended beneficiary of the HOA's CC&Rs.

8           **104.** The HOA, the HOA Trustee, and fictitious Defendants breached the obligations,  
9 promises, covenants and conditions of the CC&Rs owed to U.S. Bank by the circumstances  
10 under which they conducted the HOA Sale of the Property.

11           **105.** The HOA, the HOA Trustee, and fictitious Defendants' breaches of the  
12 obligations, promises, covenants and conditions of the CC&Rs proximately caused U.S. Bank  
13 general and special damages in an amount in excess of \$10,000.00.

14           **106.** U.S. Bank has been required to retain counsel to prosecute this action and is  
15 entitled to recover reasonable attorney's fees to prosecute this action.

16                                   **SIXTH CAUSE OF ACTION**

17                   **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and the fictitious**  
18                                   **Defendants)**

19           **107.** U.S. Bank incorporates by reference the allegations of all previous paragraphs, as  
20 if fully set forth herein.

21           **108.** Implicit in every contract in the state of Nevada is an implied covenant of good  
22 faith and fair dealing.

23           **109.** U.S. Bank was an intended beneficiary of the HOA's CC&Rs.

24           **110.** The HOA, the HOA Trustee, and fictitious Defendants breached the duties,  
25 obligations, promises, covenants and conditions, express and implied, in the CC&Rs owed to  
26 CHRISTIANA TRUST by the circumstances under which they conducted the HOA Sale of the  
27 Property.

28           **111.** The HOA, the HOA Trustee, and fictitious Defendants took affirmative action to

1 convey the Property a third party without disclosing the sale was subject to U.S. Bank's Deed of  
2 Trust, in direct contravention of the HOA's duties to U.S. Bank as promised in the CC&Rs.

3 **112.** The HOA, the HOA Trustee, and fictitious Defendants' breaches of the  
4 obligations, promises, covenants and conditions of the CC&Rs, and to act in good faith  
5 regarding same, proximately caused U.S. Bank general and special damages in an amount in  
6 excess of \$10,000.00.

7 **113.** U.S. Bank has been required to retain counsel to prosecute this action and is  
8 entitled to recover reasonable attorney's fees to prosecute this action.

9  
10 **PRAYER**

11 Wherefore, U.S. Bank prays for judgment against the Defendants, jointly and severally,  
12 as follows:

- 13 1. For a declaration and determination that U.S. Bank's interest is secured against  
14 the Property, and that U.S. Bank's first Deed of Trust was not extinguished by  
15 the HOA Sale;
- 16 2. For a declaration and determination that U.S. Bank's interest is superior to the  
17 interest of Buyer, and all fictitious Defendants;
- 18 3. For a declaration and determination that all transfers of title to the Property are  
19 and were subject to U.S. Bank's Deed of Trust, and that the Deed of Trust  
20 continues to encumber title in senior position in the chain of title;
- 21 4. For a declaration and determination that the HOA Sale was invalid to the extent  
22 it purports to convey the Property free and clear to Buyer;
- 23 5. In the alternative, for a declaration and determination that the HOA Sale was  
24 invalid and conveyed no right, title or interest to Buyer, or its encumbrancers,  
25 successors and assigns;
- 26 6. For a preliminary and permanent injunction that Buyer, and its successors,  
27 assigns, and agents are prohibited from conducting a sale or transfer of the  
28 Property, or from encumbering the title to the Property;

7. For a preliminary injunction that Buyer, its successors, assigns, and agents pay all taxes, insurance and homeowner's association dues during the pendency of this action;
8. For a preliminary injunction that Buyer, its successors, assigns, and agents be required to segregate and deposit all rents with the Court or a Court-approved trust account over which Buyer has no control during the pendency of this action;
9. For a mandatory injunction that the HOA and/or the HOA Trustee be compelled to deliver to the Clerk of the Court and deposit all funds collected at the HOA Sale pending determination by the Court of the validity of the sale and the respective rights of the parties to the sale proceeds;
10. For general and special damages in excess of \$10,000.00;
11. For attorney's fees;
12. For costs of suit incurred herein, including post-judgment costs;
13. For any and all further relief deemed appropriate by this Court.

DATED this 8<sup>th</sup> day of May, 2018.

WRIGHT, FINLAY & ZAK, LLP

/s/ Jamie S. Hendrickson, Esq.

Regina A. Habermas, Esq.

Nevada Bar No. 8481

Jamie S. Hendrickson, Esq.

Nevada Bar No. 12770

7785 W. Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

*Attorneys for Plaintiff/Counter-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8*

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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 8th day of May, 2018, I did cause a true copy of the foregoing **FIRST AMENDED COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9.

KIM GILBERT EBRON  
Diana S. Ebron, Esq.: [diana@kgelegal.com](mailto:diana@kgelegal.com)

/s/ Dekova Huckaby  
An Employee of WRIGHT, FINLAY & ZAK, LLP

## **Exhibit 1**

## **Exhibit 1**

## **Exhibit 1**

20050523-0004227

APN: 125-18-112-069

ESCROW NUMBER: NV204-4275984

RPTT: 1,356.60

Recording Requested by:  
NORTH AMERICAN TITLE COMPANY

Please mail tax statements to:

When recorded please mail to:

Henry E. Ivy  
1668 Marble Dr

Las Vegas, NM 89149 33

Fee: \$17.00 RPTT: \$1,356.60  
N/C Fee: \$0.00

05/23/2005 14:40:47  
T20050095701

Requestor:  
NORTH AMERICAN TITLE COMPANY

Frances Deane ADF  
Clark County Recorder Pas. 4

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

**GREYSTONE NEVADA LLC., A DELAWARE LIMITED LIABILITY COMPANY**

In consideration of \$10.00 and other valuable consideration, the receipt of which hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to:

Henry E. Ivy and Freddie S Ivy, husband and  
wife with rights of survivorship

all that real property situated in the County of CLARK, State of NEVADA, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE  
COMPLETE LEGAL DESCRIPTION

- Subject to:
1. Taxes for the fiscal year 20 04 - 2005.
  2. Conditions, covenants, restrictions, reservations, rights, rights of way now of record, if any.

Together with all tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversions, remainder and remainders, rents, issues of profits thereof.

Dated this 17th day of May, 20 05.

**GREYSTONE NEVADA LLC., A**  
**Delaware Limited Liability Company**  
**BY: Greystone Homes of Nevada, Inc., a**  
**Delaware Corporation**

[Signature]  
by: Tim Kent, Authorized Agent



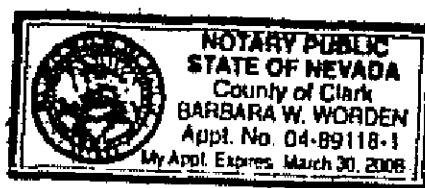
State of Nevada  
County of Clark

On May 17, 2008 before me, the undersigned, a Notary Public in and for said County and State, personally appeared TIM KENT, AUTHORIZED AGENT FOR GREYSTONE HOMES OF NEVADA, INC. A DELAWARE CORPORATION personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that be his/her/their signature (s) on the instrument the person (s), or WITNESS my and official seal.



(Notary Public)

My Commission Expires: 3-30-2008



File No.: NV204-04275GRY

**EXHIBIT A****PARCEL ONE (1):**

LOT 139 IN BLOCK B OF ANTELOPE - UNIT 1 (A COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 115 OF PLATS, PAGE 89, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ANTELOPE HOMEOWNERS ASSOCIATION RECORDED JUNE 23, 2004 IN BOOK 20040623 AS DOCUMENT NO. 2016 OF OFFICIAL RECORDS.

**PARCEL TWO (2):**

A NON-EXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ANTELOPE - UNIT 1 RECORDED JUNE 23, 2004 IN BOOK 20040623 AS DOCUMENT NO. 2016 AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a) 125-18-112-069  
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 RECORDER'S OPTIONAL USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

**3. Total Value/Sales Price of Property**

Deed in Lieu of Foreclosure Only (value of property) \$ 265,999.00

Transfer Tax Value: \_\_\_\_\_

Real Property Transfer Tax Due \$ 1,356.60

**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 [Signature]

Capacity Authorized Agent

Signature [Signature]

Capacity Individual

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

Print Name: Greystone Nevada LLC  
Address: 3765 East Sunset Road  
City: Las Vegas  
State: Nevada Zip: 89120

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: Harry E. J. [Signature]  
Address: 7600 S. Durango Drive #1095  
City: LAS VEGAS  
State: NEVADA Zip: 89139

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: North American Title Company  
Address: 4955 S. Durango Drive Ste 111  
City: Las Vegas

Escrow #: NV 204-4275924  
State: Nevada Zip: 89113

**AN ADDITIONAL RECORDING FEE OF \$1.00 WILL APPLY FOR EACH DECLARATION OF VALUE FORM PRESENTED TO CLARK COUNTY, EFFECTIVE JUNE 1, 2004.**

## **Exhibit 2**

## **Exhibit 2**

## **Exhibit 2**

20050523-0004228

Assessor's Parcel Number:

**125-18-112-069**

Return To: Universal American Mortgage Company, LLC  
Secondary Marketing Ops  
311 Park Place Blvd, Suite 500  
Clearwater, FL 33759-3999

Prepared By: Nancy Sykora

Universal American Mortgage Company, LLC  
3765 East Sunset Road Suite B1  
LAS VEGAS, NEVADA 89120

Recording Requested By:

Nancy Sykora

Universal American Mortgage Company, LLC  
3765 East Sunset Road Suite B1  
LAS VEGAS, NEVADA 89120

*204-04275 GRY*

[Space Above This Line For Recording Data]

Fee: \$35.00

N/C Fee: \$25.00

05/23/2005

14:40:47

T20050095701

Requestor:

NORTH AMERICAN TITLE COMPANY

Frances Deane

Clark County Recorder

ADF

Pos: 22

Loan # 0006650683

## DEED OF TRUST

A1918

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **May 13, 2005** together with all Riders to this document.

(B) "Borrower" is **HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE**

*With Rights of Survivorship*

Borrower is the trustor under this Security Instrument.

(C) "Lender" is **Universal American Mortgage Company, LLC**

Lender is a **limited liability company** organized and existing under the laws of **Florida**

NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

VMP-6(NV) (0307)

Page 1 of 15

Initials: *7/21. LLD*

VMP Mortgage Solutions (800)521-7291

Loan # 0006650683

A1918

Lender's address is **700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139**

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is **Stewart Title Company**(E) "Note" means the promissory note signed by Borrower and dated **May 13, 2005**The Note states that Borrower owes Lender **Two Hundred Twelve Thousand Seven Hundred Fifty and 00/100** Dollars(U.S.\$ **212,750.00** ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **June 01, 2035**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

|   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider                    | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider                    | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.


(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard

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Initials: 

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Loan # 0006650683

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to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

**County** of **CLARK** ;  
 [Type of Recording Jurisdiction] [Name of Recording Jurisdiction]  
**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

Parcel ID Number: **125-18-112-069**  
**7868 MARBLE DOE STREET**  
**LAS VEGAS**

which currently has the address of  
 [Street]  
 [City], Nevada **89149** [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 COVENANTS that Borrower is lawfully seised 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.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items

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Initials: 

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Loan # 0006650683

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pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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Initials: 

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Loan # 0006650683

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.


The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

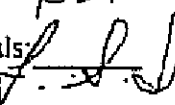
**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

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, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; 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 can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to 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 any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer'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 can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

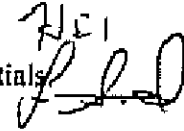
If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. 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.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

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one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes 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; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. 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 (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) 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, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, 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 persons legally entitled to it.

**23. 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 to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

**24. 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.

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ **0.00**

 -6(NV) (0307)

Page 13 of 15

Initials: 

Form 3029 1/01

A1918

**Witnesses:**

Henry E. Ivy (Seal)  
HENRY E. IVY -Borrower

*Freddie S. Ivy* (Seal)  
FREDDIE S IVY -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

Loan # 0006650683

A1918

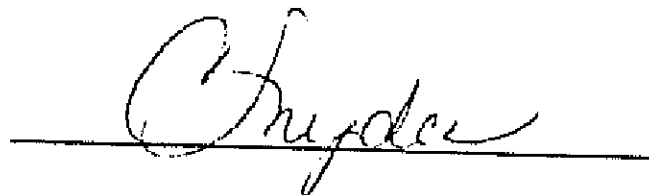
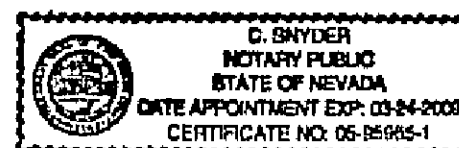
STATE OF NEVADA  
COUNTY OF

Clark

This instrument was acknowledged before me on  
HENRY E IVY, FREDDIE S IVY

5/18/05

by

Mail Tax Statements To:  
Universal American Mortgage Company, LLC  
Loan Servicing Department  
700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139

-6(NV) (0307)

Page 15 of 15

7/18/05  
Initials: 

Form 3029 1/01

File No.: NV204-04275GRY

**EXHIBIT A**

**PARCEL ONE (1):**

LOT 139 IN BLOCK B OF ANTELOPE - UNIT 1 (A COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 115 OF PLATS, PAGE 89, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ANTELOPE HOMEOWNERS ASSOCIATION RECORDED JUNE 23, 2004 IN BOOK 20040623 AS DOCUMENT NO. 2016 OF OFFICIAL RECORDS.

**PARCEL TWO (2):**

A NON-EXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ANTELOPE - UNIT 1 RECORDED JUNE 23, 2004 IN BOOK 20040623 AS DOCUMENT NO. 2016 AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

Loan # 0006650683

C06D057

**ADJUSTABLE RATE RIDER**

**(LIBOR Six-Month Index (As Published by the Wall Street Journal) - Rate Caps Accrued Interest Only for Fixed Rate Period)**

THIS ADJUSTABLE RATE RIDER is made this 13th day of May, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note ("the Note") to Universal American Mortgage Company, LLC, a Florida limited liability company ("Lender") of the same date and covering the property described in the Security Instrument and located at:

7868 MARBLE DOE STREET, LAS VEGAS, NEVADA 89149

[Property Address]

**THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an Initial interest rate of 5.500% . The Note provides for changes in the interest rate and the monthly payments, as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may change on the first day of December, 2005 and on that day every six months thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market as published by the Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, or is no longer published, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two percentage points ( 2.000 % ) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4 (D) below, this rounded amount will be my new interest rate until the next Change Date.

GRPT56R1.UFF

Page 1 of 3

00275MTJ 04/02  
Revision 02/25/04

Loan # 0000650683

C06D057

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 5.500 % or less than 5.500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than Zero percentage points ( 0.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.000 %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

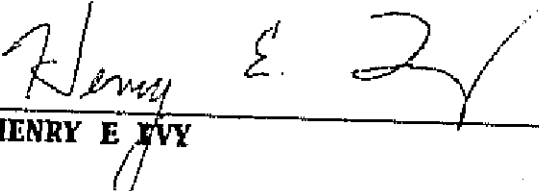
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

Loan # 0006650683

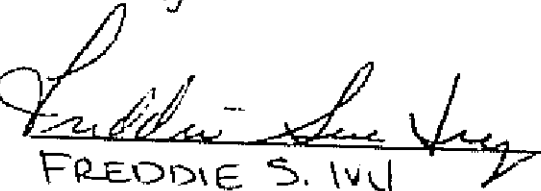
C06D057

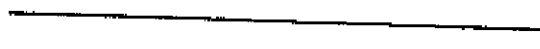
If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

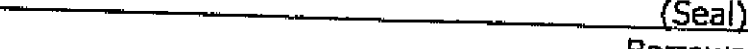
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

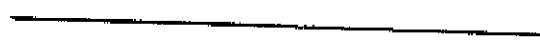
  
 HENRY E IVY (Seal)  
 Borrower

  
 FREDDIE S IVY (Seal)  
 Borrower

  
 FREDDIE S. IVY (Seal)  
 Borrower

  
 (Seal)  
 Borrower

  
 (Seal)  
 Borrower

  
 (Seal)  
 Borrower

[Sign Original Only]

Loan # 0006650683

3150/FNMA

MIN #

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **13th** day of **May, 2005**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **Universal American Mortgage Company, LLC, a Florida limited liability company**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **7868 MARBLE DOE STREET, LAS VEGAS, NEVADA 89149**

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in **Declaration of Restrictions and Protective Covenants, as recorded in, OF RECORD**

(the "Declaration"). The Property is a part of a planned unit development known as **ANTELOPE- UNIT 1**

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:


**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MERS Phone: (888) 679-6377

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

Page 1 of 3

Initials: \_\_\_\_\_

 -7R (0411)

VMP Mortgage Solutions, Inc. (800) 521-7291



Loan # 0006650683

3150/FNMA

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property 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. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F 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.

VMP-7R (0411)

Page 2 of 3

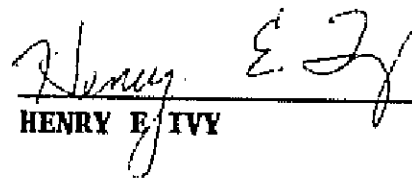
Initials: \_\_\_\_\_

Form 3150 1/01

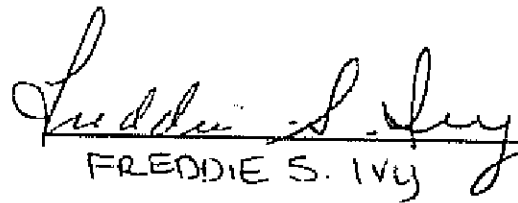
Loan # 0006650683

3150/FNMA

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

  
HENRY E. IVY (Seal)  
-Borrower

\_\_\_\_\_  
FREDDIE S. IVY (Seal)  
-Borrower

  
FREDDIE S. IVY (Seal)  
-Borrower


\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

 -7R (0411)

Page 3 of 3

Form 3150 1/01

## **Exhibit 3**

## **Exhibit 3**

## **Exhibit 3**

Inst #: 200911120004474  
Fees: \$14.00  
N/C Fee: \$0.00  
11/12/2009 03:00:22 PM  
Receipt #: 125960  
Requestor:  
JUNES LEGAL SERVICES  
Recorded By: BGN Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite 100  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

A.P.N. 125-18-112-069

Trustee Sale # 18842-7868

### 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, **Antelope Homeowners Association HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **7868 Marbledoe Ct., Las Vegas, NV 89149** and more particularly legally described as: **Lot 139 Block B Book 115 Page 89** in the County of **Clark**.

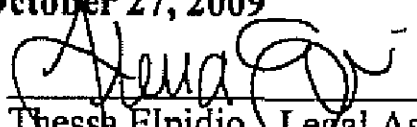
The owner(s) of record as reflected on the public record as of today's date is (are): **Henry & Freddie Ivy**

The mailing address(es) is: **7868 Marbledoe Ct., Las Vegas, NV 89149**

The total amount due through today's date is: **\$692.36**. Of this total amount **\$642.36** represent Collection and/or Attorney fees and **\$50.00** represent collection costs, late fees, service charges and interest. 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: **October 27, 2009**

By:

  
Thessa Elpidio - Legal Assistant

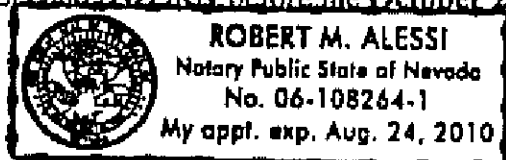
Alessi & Koenig, LLC on behalf of **Antelope Homeowners Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **October 27, 2009**

(Seal)



(Signature)



NOTARY PUBLIC

## **Exhibit 4**

## **Exhibit 4**

## **Exhibit 4**

Inst #: 201010190001557

Fees: \$15.00

N/C Fee: \$0.00

10/19/2010 11:25:47 AM

Receipt #: 545547

Requestor:

CAMCO

Recorded By: SCA Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:

Attn: Kelly Mitchell

ANTELOPE HOA

PO Box 12117

Las Vegas, NV 89112

APN # 125-18-112-069

**NOTICE OF DELINQUENT VIOLATION LIEN**

This **NOTICE OF DELINQUENT VIOLATION** is being given pursuant to N.R.S. 117.70 et seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and the provisions of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the Homeowners Association as follows:

Association Claimant: **ANTELOPE HOA**Declarations of CC&Rs recorded **6/23/04** Instrument No:0002016Book No.:**20040623**, Page No:\_\_\_ County of CLARK, and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is as follows: Legal Unit No.: **7868 Marbledoe St. Antelope-Unit 1, Plat Book 115, Page 89, Lot 139, Block B**

The reputed owner is: Henry &amp; Freddie Ivy

Common address: 7868 Marbledoe St. Las Vegas, NV 89149

Owner's mailing address: 14389 Madonna Ct. Magalia, CA 95954

**DELINQUENCY FOR ACCT #111931**

|                                |            |
|--------------------------------|------------|
| Total Amount due as of 10/5/10 | \$3,010.00 |
|--------------------------------|------------|

Additional monies shall accrue under this claim at the rate of the claimant's periodic violations, plus permissible late charges, costs of collection and interest and other charges, if any, that shall accrue subsequent to the date of this notice.

The acting agency for enforcement on this lien is:

**ANTELOPE HOA**

C/O CAMCO  
PO BOX 12117  
LAS VEGAS NV 89112  
(702) 531-3382

DATED: 10/5/2010

Nelda Mitaly  
NELDA MITALY, HOA Account Manager

STATE OF NEVADA  
COUNTY OF CLARK

On 10/5/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, NELDA MITALY personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

Kelly Mitchell  
KELLY MITCHELL, Notary Public



## **Exhibit 5**

## **Exhibit 5**

## **Exhibit 5**



Inst #: 201102170001289

Fees: \$14.00

N/C Fee: \$0.00

02/17/2011 09:33:20 AM

Receipt #: 680059

Requestor:

ALESSI &amp; KOENIG LLC (JUNES

Recorded By: KXC Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033


A.P.N. 125-18-112-069

Trustee Sale No. 18842-7868

**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 **\$2,522.33** as of **January 7, 2011** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Antelope Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **November 12, 2009** as document number **0004474**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Henry & Freddie Ivy, of Lot 139 Block B**, as per map recorded in Book **115**, Pages **89**, as shown on the Condominium Plan, Recorded on as document number **Pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **7868 Marbledoe Ct., Las Vegas, NV 89149**. 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 The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **November 12, 2009**, executed by **Antelope Homeowners 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 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs. Dated: **January 7, 2011**

  
\_\_\_\_\_  
Naomi Eden, Alessi & Koenig, LLC on behalf of **Antelope Homeowners Association**

## **Exhibit 6**

## **Exhibit 6**

## **Exhibit 6**

Inst #: 201108110003087

Fees: \$14.00

N/C Fee: \$0.00

08/11/2011 09:59:58 AM

Receipt #: 875604

Requestor:

ALESSI &amp; KOENIG LLC (JUNES

Recorded By: CDE 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: 125-18-112-069

TSN 18842-7868

### 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 The 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 September 14, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on November 12, 2009, as instrument number 0004474, 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: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 7868 Marbledoe Ct., Las Vegas, NV 89149. The owner of the real property is purported to be: Henry & Freddie Ivy

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 \$3,798.39. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank 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.

Date: June 20, 2011



---

By: Branko Jestic on behalf of Antelope Homeowners Association

## **Exhibit 7**

## **Exhibit 7**

## **Exhibit 7**

Inst #: 201204160000922  
Fees: \$17.00  
N/C Fee: \$0.00  
04/16/2012 09:12:04 AM  
Receipt #: 1130892  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: RNS 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: 125-18-112-069

TSN 18842-7868

### 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 May 9, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on November 12, 2009, as instrument number 0004474, 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, NV 89147 (Alessi & Koenig, LLC Office Building, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 7868 Marbledoe Ct., Las Vegas, NV 89149. The owner of the real property is purported to be: HENRY E & FREDDIE S IVY

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 \$4,161.61. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank 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.

Date: April 4, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Antelope Homeowners Association

## **Exhibit 8**

## **Exhibit 8**

## **Exhibit 8**

Inst #: 201207020001432

Fees: \$17.00

N/C Fee: \$0.00

07/02/2012 01:57:36 PM

Receipt #: 1219673

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: GILKS 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: 125-18-112-069

TSN 18842-7868

### 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.

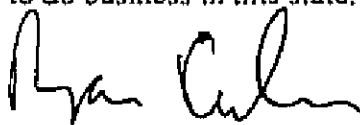
#### NOTICE IS HEREBY GIVEN THAT:

On July 25, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on November 12, 2009, as instrument number 0004474, 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, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 7868 Marbledoe Ct., Las Vegas, NV 89149. The owner of the real property is purported to be: HENRY E & FREDDIE S IVY

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 \$5,071.87. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank 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.

Date: June 7, 2012



---

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Antelope Homeowners Association

## **Exhibit 9**

## **Exhibit 9**

## **Exhibit 9**



Inst #: 201208030003275  
 Fees: \$17.00 N/C Fee: \$0.00  
 RPTT: \$30.60 Ex: #  
 08/03/2012 03:46:48 PM  
 Receipt #: 1259901  
 Requestor:  
 ALESSI & KOENIG LLC  
 Recorded By: COJ Pgs: 2  
 DEBBIE CONWAY  
 CLARK COUNTY RECORDER

When recorded mail to and  
 Mail Tax Statements to:  
**SFR Investments Pool I, LLC**  
 2920 N. Green Valley Parkway  
 Building 5, St 525  
 Henderson, NV 89014

A.P.N. No.125-18-112-069

TS No. 18842-7868

**TRUSTEE'S DEED UPON SALE**

The Grantee (Buyer) herein was: **SFR Investments Pool I, LLC**  
 The Foreclosing Beneficiary herein was: **Antelope Homeowners Association**  
 The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$5,950.00**  
 The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$5,950.00**  
 The Documentary Transfer Tax: **\$30.60**  
 Property address: **7868 Marbledoe Ct., Las Vegas, NV 89149**  
 Said property is in [ ] unincorporated area: **City of Las Vegas**  
 Trustor (Former Owner that was foreclosed on): **HENRY E & FREDDIE S IVY**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded November 12, 2009 as instrument number 0004474, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool I, LLC (Grantee)**, all its right, title and interest in the property legally described as: **Lot 139 Block B**, as per map recorded in Book 115, Pages 89 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 July 25, 2012 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi&amp;Koenig, LLC

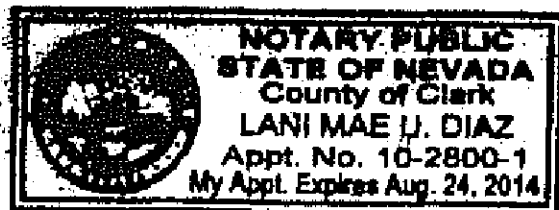
State of Nevada )  
 County of Clark )

SUBSCRIBED and SWORN to before me

Aug. 3, 2012

WITNESS my hand and official seal.

(Seal)



(Signature)

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

a. 125-18-112-069  
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 \$ 5,950.00  
b. Deed in Lieu of Foreclosure Only (value of property ( \_\_\_\_\_ ))  
c. Transfer Tax Value: \$ 5,950.00  
d. Real Property Transfer Tax Due \$ 30.60

**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)**

Print Name: Alessi&Koenig, LLC  
Address: 9500 W Flamingo 205  
City: Las Vegas  
State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: SFR Investments Pool I, LLC  
Address: 2920 N.Green Valley, Buil 5, #525  
City: Henderson  
State: NV Zip: 89014

**COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)**

Print Name: Alessi&Koenig, LLC  
Address: 9500 W Flamingo 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

## **Exhibit 10**

## **Exhibit 10**

## **Exhibit 10**



20040623-0002016

Fee \$72.00

06/23/2004 10:37:00 T20040043959

Req: NORTH AMERICAN TITLE COMPANY

Frances Deane

Clark County Recorder - Pos: 59

APN: 125-18-112-00544008  
079 thru 098  
107 thru 118

WHEN RECORDED RETURN TO:

SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON  
400 S. Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Attention: David G. Johnson, Esq.

59

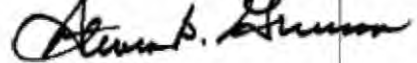
**DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
ANTELOPE HOMEOWNERS' ASSOCIATION**

to any declaration of homestead, and except as provided in Section 5.08 hereof, such lien shall survive and not be affected by the conveyance of the Lot subject to the delinquent Assessment to a third-party purchaser. Such lien shall be created in accordance with NRS § 116.3116 and shall be foreclosed in the manner provided for in NRS § 116.31162-116.31168 as is now or hereafter may be in effect. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate in favor of all Persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee not to exceed Ten Dollars (\$10.00). In addition to foreclosure of the Assessment lien, the Association may, but is not obligated to, bring an action to recover judgment against the Member personally obligated to pay the delinquent regular or special Assessment after having provided to that Member thirty (30) days' written notice of the delinquency. The Board may suspend the voting rights in the Association and right to use any of the recreational facilities of the Common Area of any Owner during any period any Assessment due from such Owner is unpaid. Assessments may be payable in installments; but a lien in the full amount of the Assessment shall be a lien against the Lot from the time the first installment becomes due. In the event an Assessment is past due more than fifteen (15) days, the Board may declare immediately due and payable the total amount assessed against the Owner and the Lot for that fiscal year. The Association may foreclose a lien by sale for the failure to pay Assessments as provided in the Act.

**5.08 Mortgage Protection.** Notwithstanding any other provision of this Declaration, no lien created under this Article V or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration, nor the enforcement of any provision of this Declaration, shall defeat or render invalid the rights of the beneficiary under any Recorded Mortgage of first and senior priority now or hereafter upon a Lot, made in good faith and for value, perfected before the date on which the Assessment sought to be enforced became delinquent. However, after the foreclosure of any such first Mortgage, such Lot shall remain subject to this Declaration and shall be liable for all regular Assessments and all special Assessments levied subsequent to the date six (6) months prior to the institution of an action to foreclose on any such first Mortgage.

**5.09 Effect of Amendments on Mortgages.** Notwithstanding the provisions of Section 10.03 hereof, no amendment of Section 5.08 of this Declaration shall affect the rights of any beneficiary whose Mortgage has senior priority as provided in Section 5.08 and who does not join in the execution thereof, provided that its Mortgage is Recorded in the real property records of Clark County, Nevada, prior to the Recordation of such amendment; provided, however, that after foreclosure or conveyance in lieu of foreclosure, the property that was subject to such Mortgage shall be subject to such amendment.

**5.10 Annual Assessments Paid By Declarant.** Declarant shall pay all Assessments on all Lots owned by Declarant (but not on any Lots in any Annexable Area until both of the following shall occur: (a) such Annexable Area is actually annexed to and becomes a part of the Property; and (b) the first day of the month following the close of the first sale



SAO  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER DISMISSING  
HENRY E. IVY AND FREDDIE S. IVY  
WITHOUT PREJUDICE**



**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 for UNIVERSAL AMERICAN MORTGAGE  
2 COMPANY, LLC, a foreign limited liability  
3 company; HENRY E. IVY, an individual; and  
4 FREDDIE S. IVY, an individual,

5 Counter-Defendant/Cross-Defendants.

6 Cross-Defendants Henry E. Ivy and Freddie S. Ivy ("the Ivys") stipulate and agree that  
7 they no longer have any interest, ownership or otherwise, in the real property commonly  
8 known as **7868 Marbledoe Street, Las Vegas, NV 89149; Parcel No. 125-18-112-069**  
9 ("Property"). The Ivys have been informed that the Property was sold on July 25, 2012 by the  
10 foreclosure sale conducted by Alessi & Koenig, LLC ("Alessi"), agent for Antelope  
11 Homeowners Association. The Ivys further stipulate and agree that they will not contest the  
12 validity of the resulting foreclosure deed recorded in the Official Records of the Clark County  
13 Recorder, Instrument Number 201208030003275, or SFR Investments Pool 1, LLC's ("SFR")  
14 ownership interest in the Property based on the foreclosure deed.

15 Based on these representations, SFR Investments Pool 1, LLC and the Ivys stipulate and

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

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24 ///

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26 ///

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28 ///



KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 agree that the Ivys shall be dismissed from this action with prejudice, each party to bear its own  
2 fees and costs.

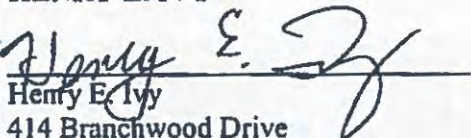
3  
4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

5 KIM GILBERT EBRON

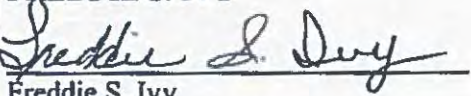
6   
DIANA CLINE EBRON, ESQ.  
7 Nevada Bar No. 10580  
7625 Dean Martin Dr., Suite 110  
8 Las Vegas, Nevada 89139  
Phone: (702) 485-3300  
9 Fax: (702) 485-3301  
Attorneys for SFR Investments Pool I, LLC

Dated this 29th day of December, 2016.

HENRY E. IVY

10   
Henry E. Ivy  
414 Branchwood Drive  
Rio Vista, CA 94517  
Cross-Defendant

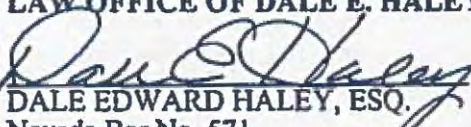
FREDDIE S. IVY

11   
Freddie S. Ivy  
414 Branchwood Drive  
Rio Vista, CA 94517  
Cross-Defendant

Dated this 29th day of December, 2016.

Approved as to form and content:

LAW OFFICE OF DALE E. HALEY

17   
DALE EDWARD HALEY, ESQ.  
18 Nevada Bar No. 571  
1810 E. Sahara Ave., Suite 1312  
20 Las Vegas, Nevada 89104  
Phone: (702) 307-5963  
Fax: (702) 307-5966  
Attorney for Cross-Defendants Henry E. Ivy  
and Freddie S. Ivy



KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

ORDER

UPON STIPULATION of the parties, and good cause appearing therefore, it is hereby ORDERED that Cross-Defendants Henry E. Ivy and Freddie S. Ivy shall be dismissed from this action with prejudice, each party to bear its own fees and costs.

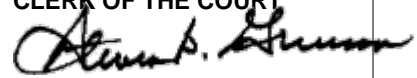
DATED this 12<sup>th</sup> day of July, 2018.

  
DISTRICT COURT JUDGE

Respectfully submitted:



Diana S. Ebron, Esq.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Phone: (702) 485-3300  
Fax: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*



**NTSO**

DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company, DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Counter/Cross-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee  
beneficiary for UNIVERSAL AMERICAN  
MORTGAGE COMPANY, LLC, a foreign

Case No. A-16-739867-C

Dept. No. XXXI

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER DISMISSING HENRY E.  
IVY AND FREDDIE S. IVY WITHOUT  
PREJUDICE**

1 limited liability company; HENRY E. IVY,  
2 an individual; and FREDDIE S. IVY, an  
3 individual,

4 Counter-Defendant/Cross-Defendants.

5 PLEASE TAKE NOTICE that on July 17, 2018 a **Stipulation and Order Dismissing**  
6 **Henry E. Ivy and Freddie S. Ivy Without Prejudice** was entered. A copy of said Stipulation  
7 and Order is attached hereto.

8  
9 DATED this 18<sup>th</sup> day of July, 2018.

**KIM GILBERT EBRON**

/s/ Diana S. Ebron

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorney for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of July, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER DISMISSING HENRY E. IVY AND FREDDIE S. IVY WITHOUT PREJUDICE** to the following parties:

DEFAULT ACCOUNT (NVefile@wrightlegal.net)

Dekova Huckaby (dhuckaby@wrightlegal.net)

Jamie Hendrickson (jhendrickson@wrightlegal.net)

Karen Kao (kkao@lipsonneilson.com)

Sydney Ochoa (sochoa@lipsonneilson.com)

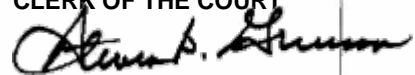
NVEfile . (nvefile@wrightlegal.net)

Sara Aslinger . (saslinger@wrightlegal.net)

Shadd Wade . (swade@wrightlegal.net)

/s/ Tomas Valerio

An Employee of KIM GILBERT EBRON



SAO  
DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL I, LLC, a  
Nevada limited liability company; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary

Case No. A-16-739867-C

Dept. No. XXXI

**STIPULATION AND ORDER DISMISSING  
HENRY E. IVY AND FREDDIE S. IVY  
WITHOUT PREJUDICE**



**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 for UNIVERSAL AMERICAN MORTGAGE  
2 COMPANY, LLC. a foreign limited liability  
3 company; HENRY E. IVY, an individual; and  
4 FREDDIE S. IVY, an individual,

5 Counter-Defendant/Cross-Defendants.

6 Cross-Defendants Henry E. Ivy and Freddie S. Ivy ("the Ivys") stipulate and agree that  
7 they no longer have any interest, ownership or otherwise, in the real property commonly  
8 known as 7868 Marbledoe Street, Las Vegas, NV 89149; Parcel No. 125-18-112-069  
9 ("Property"). The Ivys have been informed that the Property was sold on July 25, 2012 by the  
10 foreclosure sale conducted by Alessi & Koenig, LLC ("Alessi"), agent for Antelope  
11 Homeowners Association. The Ivys further stipulate and agree that they will not contest the  
12 validity of the resulting foreclosure deed recorded in the Official Records of the Clark County  
13 Recorder, Instrument Number 201208030003275, or SFR Investments Pool 1, LLC's ("SFR")  
14 ownership interest in the Property based on the foreclosure deed.

15 Based on these representations, SFR Investments Pool 1, LLC and the Ivys stipulate and

16 ///

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KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 agree that the Ivys shall be dismissed from this action with prejudice, each party to bear its own  
2 fees and costs.

3  
4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

5 **KIM GILBERT EBRON**

6   
DIANA CLINE EBRON, ESQ.

7 Nevada Bar No. 10580  
8 7625 Dean Martin Dr., Suite 110  
9 Las Vegas, Nevada 89139  
10 Phone: (702) 485-3300  
11 Fax: (702) 485-3301  
12 Attorneys for SFR Investments Pool 1, LLC

Dated this 29th day of December, 2016.

**HENRY E. IVY**

13   
Henry E. Ivy  
414 Branchwood Drive  
Rio Vista, CA 94517  
Cross-Defendant

**FREDDIE S. IVY**

14   
Freddie S. Ivy  
414 Branchwood Drive  
Rio Vista, CA 94517  
Cross-Defendant

Dated this 29th day of December, 2016.

15  
16 *Approved as to form and content:*

**LAW OFFICE OF DALE E. HALEY**

17   
18 DALE EDWARD HALEY, ESQ.  
19 Nevada Bar No. 571  
20 1810 E. Sahara Ave., Suite 1312  
21 Las Vegas, Nevada 89104  
22 Phone: (702) 307-5963  
23 Fax: (702) 307-5966  
24 Attorney for Cross-Defendants Henry E. Ivy  
25 and Freddie S. Ivy  
26  
27  
28

KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

ORDER

UPON STIPULATION of the parties, and good cause appearing therefore, it is hereby ORDERED that Cross-Defendants Henry E. Ivy and Freddie S. Ivy shall be dismissed from this action with prejudice, each party to bear its own fees and costs.

DATED this 12<sup>th</sup> day of July, 2018.

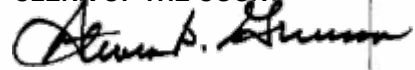
  
DISTRICT COURT JUDGE

Respectfully submitted:



Diana S. Ebron, Esq.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Phone: (702) 485-3300  
Fax: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*





1 DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
2 E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
3 Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
4 KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
5 E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
6 *fka Howard Kim & Associates*  
7625 Dean Martin Drive, Suite 110  
7 Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
8 Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 U.S. BANK, NATIONAL ASSOCIATION AS  
13 TRUSTEE FOR MERRILL LYNCH  
14 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Case No. A-16-739867-C

Dept. No. XXXI

15 Plaintiff,  
16 vs.

**ORDER GRANTING SFR'S COUNTER-  
MOTION TO STRIKE AND GRANTING  
IN PART AND DENYING IN PART SFR'S  
MOTION FOR SUMMARY JUDGMENT**

17 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
18 ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
19 corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
20 through X, inclusive,

21 Defendants.

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

24 Counter/Cross Claimant,

25 vs.

26 U.S. BANK, NATIONAL ASSOCIATION AS  
27 TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
28 MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;



MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC. a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

SFR Investments Pool 1, LLC's Motion for Summary Judgment, U.S. Bank, National Association's ("Bank") Opposition and Counter-Motion for Summary Judgment, and SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment came before this Court for hearing on August 14, 2018. Jason G. Martinez, Esq. appeared for SFR, Karen Kao, Esq. appeared for Antelope Homeowners Association ("Association"), and Jamie S. Hendrickson, Esq. appeared for Bank, and the Court having reviewed the moving papers and oppositions thereto, and being fully apprised in the premises, and good cause appearing found as follows:

**IT IS HEREBY ORDERED** that SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment is **GRANTED**. The Court finds that the Bank violated NRCP 16.1(f) by failing to file its Counter-Motion for Summary Judgment on or before July 9, 2018, the deadline set forth in the scheduling order. As a result, pursuant to NRCP 37(b)(2)(C), the Bank's Counter-Motion for Summary Judgment is stricken, leaving the Opposition intact.

**IT IS HEREBY ORDERED** that SFR's Motion for Summary Judgment is **GRANTED IN PART**. SFR's Motion for Summary Judgment is granted as to the Bank's unjust enrichment claim, pursuant to EDCR 2.20 and on the merits. The Bank failed to provide any evidence in opposition to SFR's Motion on the unjust enrichment claim.

KIM GILBERT EBRON  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is DENIED  
2 IN PART WITHOUT PREJUDICE. The Court finds that there are genuine issues of  
3 material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

4 IT IS SO ORDERED.

5  
6 DISTRICT COURT JUDGE

7 Submitted by:

8 KIM GILBERT EBRON

Approved as to form and content:

WRIGHT, FINLAY, & ZAK, LLP

9  
10 DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

11 JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

12 KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

13 JASON G. MARTINEZ, ESQ.

Nevada Bar No. 13375

14 7625 Dean Martin Dr. Ste 110

15 Las Vegas, NV 89139

Attorneys for SFR Investments Pool 1, LLC

DANA J. NITZ, ESQ.

Nevada Bar No. 0050

JAMIE S. HENDRICKSON, ESQ.

Nevada Bar No. 12770

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

Attorneys for U.S. Bank, National  
Association as Trustee for Merrill Lynch  
Investors Trust, Mortgage Loan Asset-  
Backed Certificates, Series 2005-A8

16  
17 Approved as to form and content:

18 LIPSON NEILSON P.C.

19 By:

J. WILLIAM EBERT, ESQ.

Nevada Bar No. 2697

21 KAREN KAO, ESQ.

Nevada Bar No. 14386

22 9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Attorneys for Defendant Antelope  
Homeowners' Association

1 IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is DENIED  
2 IN PART WITHOUT PREJUDICE. The Court finds that there are genuine issues of material  
3 fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

4 IT IS SO ORDERED.

5  JOANNA S. KISHNER  
6 me DISTRICT COURT JUDGE 10-2-18

7 Submitted by:

Approved as to form and content:

8 KIM GILBERT EBRON  
9 


WRIGHT, FINLAY, & ZAK, LLP

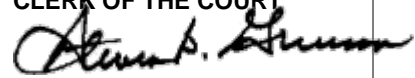
10 DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
11 JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
12 KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
13 JASON G. MARTINEZ, ESQ.  
Nevada Bar No. 13375  
14 7625 Dean Martin Dr. Ste 110  
15 Las Vegas, NV 89139  
16 Attorneys for SFR Investments Pool 1, LLC

DANA J. NITZ, ESQ.  
Nevada Bar No. 0050  
JAMIE S. HENDRICKSON, ESQ.  
Nevada Bar No. 12770  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Attorneys for U.S. Bank, National  
Association as Trustee for Merrill Lynch  
Investors Trust, Mortgage Loan Asset-  
Backed Certificates, Series 2005-A8

17 Approved as to form and content:

18 LIPSON NEILSON P.C.

19 By:   
20 J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
21 KAREN KAO, ESQ.  
Nevada Bar No. 14386  
22 9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
23 Attorneys for Defendant Antelope  
Homeowners' Association



**NEOJ**

DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

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

Counter/Cross-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee  
beneficiary for UNIVERSAL AMERICAN

Case No.: A-16-739867-C

Dept. No.: XXXI

**NOTICE OF ENTRY OF ORDER  
GRANTING SFR'S COUNTER-MOTION  
TO STRIKE AND GRANTING IN PART  
AND DENYING IN PART SFR'S MOTION  
FOR SUMMARY JUDGMENT**

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

MORTGAGE COMPANY, LLC, a foreign  
limited liability company; HENRY E. IVY,  
an individual; and FREDDIE S. IVY, an  
individual,

Counter/Cross-Defendants.

PLEASE TAKE NOTICE that on October 10<sup>th</sup>, 2018 the **Order Granting SFR's  
Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for  
Summary Judgment** was entered. A copy of said Order is attached hereto.

DATED this 11<sup>th</sup> day of October, 2018.

**KIM GILBERT EBRON**

/s/Diana S. Ebron

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorney for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of October, 2018, pursuant to NRCP 5(b), I served  
via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF  
ENTRY OF ORDER GRANTING SFR'S COUNTER-MOTION TO STRIKE AND  
GRANTING IN PART AND DENYING IN PART SFR'S MOTION FOR SUMMARY  
JUDGMENT** to the following parties:

Aaron Lancaster (alancaster@wrightlegal.net)

Anna Luz (aluz@wrightlegal.net)

DEFAULT ACCOUNT (NVefile@wrightlegal.net)

Karen Kao (kkao@lipsonneilson.com)

Sydney Ochoa (sochoa@lipsonneilson.com)

NVEfile . (nvefile@wrightlegal.net)

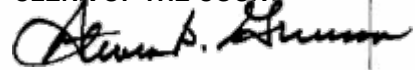
Sara Aslinger . (saslinger@wrightlegal.net)

Shadd Wade . (swade@wrightlegal.net)

J. William Ebert (bebert@lipsonneilson.com)

/s/ Tomas Valerio

An Employee of KIM GILBERT EBRON



1 DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
2 E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
3 Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
4 KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
5 E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
6 *fka Howard Kim & Associates*  
7625 Dean Martin Drive, Suite 110  
7 Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
8 Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 U.S. BANK, NATIONAL ASSOCIATION AS  
13 TRUSTEE FOR MERRILL LYNCH  
14 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Case No. A-16-739867-C

Dept. No. XXXI

15 **Plaintiff,**  
16 vs.

**ORDER GRANTING SFR'S COUNTER-  
MOTION TO STRIKE AND GRANTING  
IN PART AND DENYING IN PART SFR'S  
MOTION FOR SUMMARY JUDGMENT**

17 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
18 ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
19 corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
20 through X, inclusive,

21 **Defendants.**

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

24 **Counter/Cross Claimant,**

25 vs.

26 U.S. BANK, NATIONAL ASSOCIATION AS  
27 TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
28 MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;



MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation, as nominee beneficiary  
for UNIVERSAL AMERICAN MORTGAGE  
COMPANY, LLC. a foreign limited liability  
company; HENRY E. IVY, an individual; and  
FREDDIE S. IVY, an individual,

Counter/Cross Defendants.

SFR Investments Pool 1, LLC's Motion for Summary Judgment, U.S. Bank, National Association's ("Bank") Opposition and Counter-Motion for Summary Judgment, and SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment came before this Court for hearing on August 14, 2018. Jason G. Martinez, Esq. appeared for SFR, Karen Kao, Esq. appeared for Antelope Homeowners Association ("Association"), and Jamie S. Hendrickson, Esq. appeared for Bank, and the Court having reviewed the moving papers and oppositions thereto, and being fully apprised in the premises, and good cause appearing found as follows:

**IT IS HEREBY ORDERED** that SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment is **GRANTED**. The Court finds that the Bank violated NRCP 16.1(f) by failing to file its Counter-Motion for Summary Judgment on or before July 9, 2018, the deadline set forth in the scheduling order. As a result, pursuant to NRCP 37(b)(2)(C), the Bank's Counter-Motion for Summary Judgment is stricken, leaving the Opposition intact.

**IT IS HEREBY ORDERED** that SFR's Motion for Summary Judgment is **GRANTED IN PART**. SFR's Motion for Summary Judgment is granted as to the Bank's unjust enrichment claim, pursuant to EDCR 2.20 and on the merits. The Bank failed to provide any evidence in opposition to SFR's Motion on the unjust enrichment claim.



**IT IS HEREBY ORDERED** that SFR's Motion for Summary Judgment is **DENIED IN PART WITHOUT PREJUDICE**. The Court finds that there are genuine issues of material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

**IT IS SO ORDERED.**

DISTRICT COURT JUDGE

Submitted by:

Approved as to form and content:

KIM GILBERT EBRON

WRIGHT, FINLAY, & ZAK, LLP

DIANA S. EBRON, ESQ.

DANA J. NITZ, ESQ.

Nevada Bar No. 10580

Nevada Bar No. 0050

JACQUELINE A. GILBERT, ESQ.

**JAMIE S. HENDRICKSON, ESQ.**

Nevada Bar No. 10593

Nevada Bar No. 12770

KAREN L. HANKS, ESQ.

7785 W. Sahara Ave., Suite 200

Nevada Bar No. 9578

Las Vegas, NV 89117

JASON G. MARTINEZ, ESQ.

*Attorneys for U.S. Bank, National Association as Trustee for Merrill Lynch Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8*

Nevada Bar No. 13375

7625 Dean Martin Dr. Ste 110

Las Vegas, NV 89139

Attorneys for SFR Investments Pool 1, LLC

Approved as to form and content:

LIPSON NEILSON P.C.

By:

J. WILLIAM EBERT, ESQ.

Nevada Bar No. 2697

KAREN KAO, ESQ.

Nevada Bar No. 14386

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Attorneys for Defendant Antelope  
Homeowners' Association

1 IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is DENIED  
2 IN PART WITHOUT PREJUDICE. The Court finds that there are genuine issues of material  
3 fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

4 IT IS SO ORDERED.

5  JOANNA S. KISHNER  
6 DISTRICT COURT JUDGE 10-2-18

7 Submitted by:

Approved as to form and content:

8 KIM GILBERT EBRON  
9 


WRIGHT, FINLAY, & ZAK, LLP

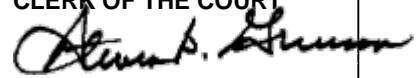
10 DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
11 JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
12 KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
13 JASON G. MARTINEZ, ESQ.  
Nevada Bar No. 13375  
14 7625 Dean Martin Dr. Ste 110  
15 Las Vegas, NV 89139  
16 Attorneys for SFR Investments Pool 1, LLC

DANA J. NITZ, ESQ.  
Nevada Bar No. 0050  
JAMIE S. HENDRICKSON, ESQ.  
Nevada Bar No. 12770  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Attorneys for U.S. Bank, National  
Association as Trustee for Merrill Lynch  
Investors Trust, Mortgage Loan Asset-  
Backed Certificates, Series 2005-A8

17 Approved as to form and content:

18 LIPSON NEILSON P.C.

19 By:   
20 J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
21 KAREN KAO, ESQ.  
Nevada Bar No. 14386  
22 9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
23 Attorneys for Defendant Antelope  
Homeowners' Association



LIPSON NEILSON P.C.  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
KAREN KAO, ESQ.  
Nevada Bar No. 14386  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[kkao@lipsonneilson.com](mailto:kkao@lipsonneilson.com)

*Attorneys for Defendant Antelope Homeowners Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C  
DEPT. NO.: XXXI

**STIPULATION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE AS  
TO CLAIMS BETWEEN ANTELOPE  
HOMEOWNERS ASSOCIATION AND  
U.S. BANK NATIONAL ASSOCIATION**

**LIPSON NEILSON P.C.**  
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

APR 16 '19 08:33W

TL31

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

**STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE  
AS TO CLAIMS BETWEEN ANTELOPE HOMEOWNERS ASSOCIATION AND  
U.S. BANK NATIONAL ASSOCIATION**

Defendant Antelope Homeowners Association ("Antelope") and Plaintiff / Counter / Cross Defendant U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("US Bank") files this joint Stipulation and Order for Dismissal Without Prejudice as to all claims by and between them, and request that this court dismiss each and every claim by US Bank against Antelope without prejudice. It is further stipulated that each party shall bear its own costs and fees with respect to the claims dismissed pursuant to this stipulation.

In association with this Stipulation, Antelope and US Bank agreed to enter into a Tolling Agreement as of February 2019 ("Agreement"), the terms of which have been agreed upon, and which will be, executed by Antelope and US Bank. The Agreement provides, among other terms, that:

- (1) The parties agree that the claims US Bank asserted against the HOA in the litigation (the "Tolling Claims") are tolled as of the Tolling Date (May 8, 2018) and remain tolled until this Tolling Agreement is terminated, that any statute of limitations, statute of repose, or similar defense based upon the lapse of time or not asserting a claim related to the Tolled Claims shall be tolled and suspended as of the Tolling Date and will remain tolled until this Tolling Agreement is terminated, and that the HOA agrees not to raise, plead or assert such defense

1 relating to the Tolloed Claims for any period from the Tolling Date until this Tolling  
2 Agreement is terminated.

3 (2) Notwithstanding anything to the contrary herein, this Tolling Agreement shall  
4 not operate to revive any claims or causes of action that were otherwise barred  
5 for any applicable limitations period (whether legal, equitable, statutory,  
6 contractual, or otherwise) prior to the Tolling Date, and the HOA may assert any  
7 applicable limitations period or similar time barred defense which existed in its  
8 favor prior to the Tolling Date.

9 (3) All other rights, claims, counterclaims, and defenses existing in favor of the  
10 parties are fully preserved.

11 (4) This Tolling Agreement shall terminate 90 days after the earliest date that any  
12 of the following occur:

13 a. The Litigation is dismissed in the District Court; or

14 b. Final judgment is entered in the Litigation in District Court, and the time for  
15 appellate review expires with no party taking an appeal; or

16 c. If an appeal is taken, the date that either the appeal is dismissed or that date  
17 any remittitur or remand is issued by the Court hearing the appeal, or that the appeal  
18 is otherwise terminated.

19 (5) Nothing contained in this Tolling Agreement is intended to be, or shall be  
20 treated as, an admission of (a) any liability; (b) facts upon which liability could be  
21 based; or (c) the validity or waiver of any claim or defense other than the tolling  
22 described above.

23 (6) The parties further stipulate that SFR signs this stipulation, only pursuant to  
24 NRCP 41(a)(1) and that by signing this stipulation SFR does not waive or is not  
25 estopped from asserting U.S. Bank's "claims" are barred because availability of a  
26 legal remedy bars an equitable remedy.

27 (7) The parties further stipulate that any and all claims and defenses of  
28 whatsoever kind and nature that may exist as between SFR and the HOA are fully

preserved.

IT IS SO STIPULATED.

Dated this \_\_\_\_\_ day of April, 2019.

**LIPSON NEILSON, P.C.**

J. William Ebert, Esq.  
 NV Bar No. 2697  
 Karen Kao, Esq.  
 NV Bar No. 11876  
 9900 Covington Cross Dr., Suite 120  
 Las Vegas Nevada 89144  
*Attorneys for Antelope Homeowners Association*


Dated this \_\_\_\_\_ day of April, 2019.

**WRIGHT FINLAY & ZAK, LLP**

Dana Jonathon Nitz, Esq.  
 NV Bar No. 00050  
 Natalie C. Lehman, Esq.  
 NV Bar No. 12995  
 7785 W. Sahara Ave., Suite 200  
 Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank National Association*

Dated this 15<sup>th</sup> day of April, 2019.

**KIM GILBERT EBRON**

  
 Diana S. Ebron, Esq.  
 NV Bar No. 10580  
 Jacqueline A. Gilbert, Esq.  
 NV Bar No. 10593  
 Karen L. Hanks, Esq.  
 NV Bar No. 9578  
 7625 Dean Martin Dr., Suite 110  
 Las Vegas, Nevada 89139

preserved.

IT IS SO STIPULATED.


|  |  |
|--|--|
| Dated this _____ day of April, 2019.<br><br><b>LIPSON NEILSON, P.C.</b>  | Dated this <u>15<sup>th</sup></u> day of April, 2019.<br><br><b>WRIGHT FINLAY &amp; ZAK, LLP</b><br><i>Natalie C. Lehman</i>   |
| J. William Ebert, Esq.<br>NV Bar No. 2697<br>Karen Kao, Esq.<br>NV Bar No. 11876<br>9900 Covington Cross Dr., Suite 120<br>Las Vegas Nevada 89144<br><i>Attorneys for Antelope Homeowners Association</i>  | Dana Jonathon Nitz, Esq.<br>NV Bar No. 00050<br>Natalie C. Lehman, Esq.<br>NV Bar No. 12995<br>7785 W. Sahara Ave., Suite 200<br>Las Vegas, Nevada 89117<br><i>Attorneys for U.S. Bank National Association</i><br><i>Case No. A-16-739867-C</i> |
| Dated this _____ day of April, 2019.<br><br><b>KIM GILBERT EBRON</b><br><br>Diana S. Ebron, Esq.<br>NV Bar No. 10580<br>Jacqueline A. Gilbert, Esq.<br>NV Bar No. 10593<br>Karen L. Hanks, Esq.<br>NV Bar No. 9578<br>7625 Dean Martin Dr., Suite 110<br>Las Vegas, Nevada 89139 | <i>SAO for Dismissal without<br/>         Prejudice of Antelope HOA</i>  |

1 preserved.

2 IT IS SO STIPULATED.

3  
4 Dated this 15<sup>th</sup> day of April, 2019.

5 **LIPSON NEILSON, P.C.**

6   
7 J. William Ebert, Esq.  
8 NV Bar No. 2697  
9 Karen Kao, Esq.  
10 NV Bar No. 11876  
11 9900 Covington Cross Dr., Suite 120  
12 Las Vegas Nevada 89144  
13 *Attorneys for Antelope Homeowners*  
14 *Association*

12 Dated this \_\_\_\_\_ day of April, 2019.

13 **KIM GILBERT EBRON**

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15 Diana S. Ebron, Esq.  
16 NV Bar No. 10580  
17 Jacqueline A. Gilbert, Esq.  
18 NV Bar No. 10593  
19 Karen L. Hanks, Esq.  
20 NV Bar No. 9578  
21 7625 Dean Martin Dr., Suite 110  
22 Las Vegas, Nevada 89139

Dated this \_\_\_\_\_ day of April, 2019.

**WRIGHT FINLAY & ZAK, LLP**

Dana Jonathon Nitz, Esq.  
NV Bar No. 00050  
Natalie C. Lehman, Esq.  
NV Bar No. 12995  
7785 W. Sahara Ave., Suite 200  
Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank National Association*



U.S. Bank, National Association, Plaintiff(s) vs.  
SFR Investments Pool 1, LLC  
Case No.: A-16-739867-C

**ORDER**

IT IS SO ORDERED.

  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

Dated: April 16, 2019

Case No. A-16-739867-C  
U.S. Bank v. SFR Investments Pool 1, LLC

Submitted by:

**LIPSON NEILSON, P.C.**

  
J. William Ebert, Esq.

NV Bar No. 2697

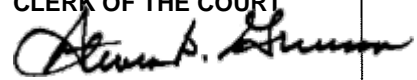
Karen Kao, Esq.

NV Bar No. 11876

9900 Covington Cross Dr., Suite 120

Las Vegas Nevada 89144

*Attorneys for Antelope Homeowners Association*



LIPSON | NEILSON P.C.  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
KAREN KAO, ESQ.  
Nevada Bar No. 14386  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[kkao@lipsonneilson.com](mailto:kkao@lipsonneilson.com)

*Attorneys for Defendant Antelope Homeowners Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C  
DEPT. NO.: XXXI

**NOTICE OF ENTRY OF ORDER**

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

**NOTICE OF ENTRY OF ORDER**

Please take notice that the Stipulation and Order for Dismissal without Prejudice as to Claims Between Antelope Homeowners Association and U.S. Bank National Association was filed with this court on the 23<sup>rd</sup> day of April, 2019, a copy of which is attached.

DATED this 23<sup>rd</sup> day April, 2019.

LIPSON NEILSON P.C.

By: 

J. William Ebert, Esq. (Bar No. 2697)

Karen Kao, Esq. (Bar No. 14386)

9900 Covington Cross Dr., Suite 120

Las Vegas, NV 89148

*Attorneys for Defendant Antelope Homeowners Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 23<sup>rd</sup> day of April, 2019, I served the foregoing **NOTICE OF ENTRY OF ORDER** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

**WRIGHT, FINLAY & ZAK, LLP**  
Regina A. Habermas, Esq.  
Jamie S. Hendrickson, Esq.  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
[rhabermas@wrightlegal.net](mailto:rhabermas@wrightlegal.net)  
[jhendrickson@wrightlegal.net](mailto:jhendrickson@wrightlegal.net)

**KIM GILBERT EBRON**  
Diana Cline Ebron, Esq.  
7626 Dean Martin Drive, Suite 110  
Las Vegas, NV 89139  
[diana@kgelegal.com](mailto:diana@kgelegal.com)

*/s/ Renee M. Rittenhouse*

An Employee of LIPSON NEILSON P.C.



LIPSON NEILSON P.C.  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
KAREN KAO, ESQ.  
Nevada Bar No. 14386  
9900 Covington Cross Drive, Suite 120  
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(702) 382-1512 - Facsimile  
[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[kkao@lipsonneilson.com](mailto:kkao@lipsonneilson.com)

*Attorneys for Defendant Antelope Homeowners Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
ANTELOPE HOMEOWNERS'  
ASSOCIATION, a Nevada non-profit  
corporation; DOE INDIVIDUALS I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INV., a

CASE NO.: A-16-739867-C  
DEPT. NO.: XXXI

**STIPULATION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE AS  
TO CLAIMS BETWEEN ANTELOPE  
HOMEOWNERS ASSOCIATION AND  
U.S. BANK NATIONAL ASSOCIATION**

**LIPSON NEILSON P.C.**

9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

APR 16 '19 AM 08:38W

7031

Delaware corporation, as nominee beneficiary for UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC. A foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S IVY, an individual,

Counter/ Cross Defendants.

**STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE  
AS TO CLAIMS BETWEEN ANTELOPE HOMEOWNERS ASSOCIATION AND  
U.S. BANK NATIONAL ASSOCIATION**

Defendant Antelope Homeowners Association ("Antelope") and Plaintiff / Counter / Cross Defendant U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("US Bank") files this joint Stipulation and Order for Dismissal Without Prejudice as to all claims by and between them, and request that this court dismiss each and every claim by US Bank against Antelope without prejudice. It is further stipulated that each party shall bear its own costs and fees with respect to the claims dismissed pursuant to this stipulation.

In association with this Stipulation, Antelope and US Bank agreed to enter into a Tolling Agreement as of February 2019 ("Agreement"), the terms of which have been agreed upon, and which will be, executed by Antelope and US Bank. The Agreement provides, among other terms, that:

- (1) The parties agree that the claims US Bank asserted against the HOA in the litigation (the "Tolling Claims") are tolled as of the Tolling Date (May 8, 2018) and remain tolled until this Tolling Agreement is terminated, that any statute of limitations, statute of repose, or similar defense based upon the lapse of time or not asserting a claim related to the Tolled Claims shall be tolled and suspended as of the Tolling Date and will remain tolled until this Tolling Agreement is terminated, and that the HOA agrees not to raise, plead or assert such defense

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9 (3) All other rights, claims, counterclaims, and defenses existing in favor of the  
10 parties are fully preserved.

11 (4) This Tolling Agreement shall terminate 90 days after the earliest date that any  
12 of the following occur:

13 a. The Litigation is dismissed in the District Court; or

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17 any remittitur or remand is issued by the Court hearing the appeal, or that the appeal  
18 is otherwise terminated.

19 (5) Nothing contained in this Tolling Agreement is intended to be, or shall be  
20 treated as, an admission of (a) any liability; (b) facts upon which liability could be  
21 based; or (c) the validity or waiver of any claim or defense other than the tolling  
22 described above.

23 (6) The parties further stipulate that SFR signs this stipulation, only pursuant to  
24 NRCP 41(a)(1) and that by signing this stipulation SFR does not waive or is not  
25 estopped from asserting U.S. Bank's "claims" are barred because availability of a  
26 legal remedy bars an equitable remedy.

27 (7) The parties further stipulate that any and all claims and defenses of  
28 whatsoever kind and nature that may exist as between SFR and the HOA are fully

1 preserved.

2 IT IS SO STIPULATED.

3  
4 Dated this \_\_\_\_\_ day of April, 2019.

5 **LIPSON NEILSON, P.C.**

6  
7 J. William Ebert, Esq.  
NV Bar No. 2697  
8 Karen Kao, Esq.  
NV Bar No. 11876  
9 9900 Covington Cross Dr., Suite 120  
Las Vegas Nevada 89144  
10 *Attorneys for Antelope Homeowners*  
11 *Association*


Dated this \_\_\_\_\_ day of April, 2019.

**WRIGHT FINLAY & ZAK, LLP**

Dana Jonathon Nitz, Esq.  
NV Bar No. 00050  
Natalie C. Lehman, Esq.  
NV Bar No. 12995  
7785 W. Sahara Ave., Suite 200  
Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank National Association*

12 Dated this 15<sup>th</sup> day of April, 2019.

13 **KIM GILBERT EBRON**

14   
15 Diana S. Ebron, Esq.  
NV Bar No. 10580  
16 Jacqueline A. Gilbert, Esq.  
NV Bar No. 10593  
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NV Bar No. 9578  
18 7625 Dean Martin Dr., Suite 110  
19 Las Vegas, Nevada 89139



**LIPSON NEILSON P.C.**

9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

preserved.

IT IS SO STIPULATED.

Dated this \_\_\_\_\_ day of April, 2019.

**LIPSON NEILSON, P.C.**

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9900 Covington Cross Dr., Suite 120  
Las Vegas Nevada 89144  
Attorneys for Antelope Homeowners  
Association

Dated this \_\_\_\_\_ day of April, 2019.

**KIM GILBERT EBRON**

Diana S. Ebron, Esq.  
NV Bar No. 10580  
Jacqueline A. Gilbert, Esq.  
NV Bar No. 10593  
Karen L. Hanks, Esq.  
NV Bar No. 9578  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139

Dated this 15<sup>th</sup> day of April, 2019.

**WRIGHT FINLAY & ZAK, LLP**


*Natalie C. Lehman*  
Dana Jonathon Nitz, Esq.  
NV Bar No. 00050  
Natalie C. Lehman, Esq.  
NV Bar No. 12995  
7785 W. Sahara Ave., Suite 200  
Las Vegas, Nevada 89117  
Attorneys for U.S. Bank National Association  
Case No. A-16-739867-C  
SRO for Dismissal without  
Prejudice of Antelope HOA

1 preserved.

2 IT IS SO STIPULATED.

3  
4 Dated this 15<sup>th</sup> day of April, 2019.

5 **LIPSON NEILSON, P.C.**

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7 J. William Ebert, Esq.  
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13 *Attorneys for Antelope Homeowners*  
14 *Association*

15 Dated this \_\_\_\_\_ day of April, 2019.

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24 Las Vegas, Nevada 89139

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Las Vegas, Nevada 89117  
*Attorneys for U.S. Bank National Association*

U.S. Bank, National Association, Plaintiff(s) vs.  
SFR Investments Pool 1, LLC  
Case No.: A-16-739867-C

**ORDER**

IT IS SO ORDERED.

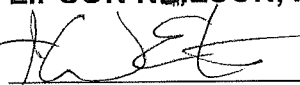
  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

Dated: April 16, 2019

Case No. A-16-739867-C  
U.S. Bank v. SFR Investments Pool 1, LLC

Submitted by:

**LIPSON NEILSON, P.C.**

  
J. William Ebert, Esq.

NV Bar No. 2697

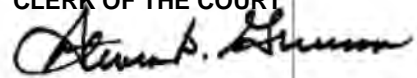
Karen Kao, Esq.

NV Bar No. 11876

9900 Covington Cross Dr., Suite 120

Las Vegas Nevada 89144

*Attorneys for Antelope Homeowners Association*



1 FFCL

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 U.S. BANK, NATIONAL ASSOCIATION AS  
7 TRUSTEE FOR MERRILL LYNCH  
8 MORTGAGE INVESTORS TRUST,  
9 MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

10 Plaintiff,

11 vs.

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

13 Defendants.

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

16 Counter/Cross Claimant,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION AS  
19 TRUSTEE FOR MERRILL LYNCH  
20 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

21 Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

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

22 This matter came before the Court for trial on April 16, 17, 18, 23, 24,  
23 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq.  
24 appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman,  
25 Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association  
26 as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-  
27 Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

1 considered the facts, testimony of witnesses and arguments of counsel, for the  
2 reasons stated on the record, and good cause appearing, the Court makes the  
3 following Findings of Fact and Conclusions of Law:<sup>1</sup>

4 **I. FINDINGS OF FACT**

5 Some of the following facts were stipulated to by the parties by way of  
6 their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated,  
7 the Court takes such facts and unrefuted and undisputed:

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership  
9 Act as NRS 116, including NRS 116.3116(2).

10 2. On June 23, 2004, the Antelope Homeowners Association  
11 ("Association") perfected and gave notice of its lien by recording its Declaration of  
12 Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the  
13 Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).<sup>2</sup>  
14 Thereafter the Association recorded a Second Amendment to CC&Rs as  
15 Instrument No. 200609140003739. (Ex. 2.)

16 3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real  
17 property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada  
18 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies")  
19 was recorded in the Official Records of the Clark County Recorder as Instrument  
20 No. 200610030004304. (Ex. 3.)

21 4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic  
22 Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating  
23

24  
25 <sup>1</sup> Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by  
26 June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so  
27 deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so  
28 deemed.

<sup>2</sup> The Parties stipulated to this fact.

1 lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument  
2 No. 200505230004228 ("Deed of Trust"). (Ex. 5.)<sup>3</sup>

3 5. On November 12, 2009, the Association, through its agent, Alessi &  
4 Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien  
5 ("NODAL") in the Official Records of the Clark County Recorder as Instrument  
6 No. 200911120004474. (Ex. 9.)<sup>4</sup>

7 6. On February 17, 2011, Alessi recorded a Notice of Default and  
8 Election to Sell Under Homeowners Association Lien ("NOD") in the Official  
9 Records of the Clark County Recorder as Instrument No. 201102170001289.  
10 (Ex. 11.)<sup>5</sup>

11 7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in  
12 the Official Records of the Clark County Recorder as Instrument No.  
13 201108110003087. (Ex. 12.)<sup>6</sup>

14 8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in  
15 the Official Records of the Clark County Recorder as Instrument No.  
16 201204160000922. (Ex. 13.)<sup>7</sup>

17 9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the  
18 Official Records of the Clark County Recorder as Instrument No.  
19 201207020001432. (Ex. 14.)<sup>8</sup>

20  
21  
22 <sup>3</sup> The parties stipulated to this fact.

23 <sup>4</sup> The parties stipulated to this fact.

24 <sup>5</sup> The parties stipulated to this fact.

25 <sup>6</sup> The parties stipulated to this fact.

26 <sup>7</sup> The parties stipulated to this fact.

27 <sup>8</sup> The parties stipulated to this fact.

1           10. Alessi, on behalf of the Association, mailed the NOD, NOS #1,  
2 NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its  
3 agent(s).<sup>9</sup>

4           11. Universal, the then recorded beneficiary of the Deed of Trust,  
5 and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.<sup>10</sup>

6           12. The Association foreclosure sale occurred on July 25, 2012  
7 ("Sale").<sup>11</sup>

8           13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed")  
9 was recorded in the Official Records of the Clark County Recorder, conveying  
10 the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)<sup>12</sup>

11           14. SFR paid Alessi \$5,950.00 in exchange for the Trustee's Deed.

12           15. At the time of the Association Sale, Universal was the owner of the  
13 Ivy Note and beneficiary of record of the Deed of Trust.<sup>13</sup>

14           16. On June 1, 2018, a Corporate Assignment of Deed of Trust was  
15 recorded in which all beneficial interest in the Deed of Trust was purportedly  
16 assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)<sup>14</sup>

17           17. On July 2, 2018, a Corporate Assignment of Deed of Trust was  
18 recorded in which all beneficial interest in the Deed of Trust was purportedly  
19 assigned to U.S. Bank National Association, as trustee, successor in interest to  
20 Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage  
21

22           <sup>9</sup> The parties stipulated to this fact.

23           <sup>10</sup> The parties stipulated to this fact.

24           <sup>11</sup> The parties stipulated to this fact.

25           <sup>12</sup> The parties stipulated to this fact.

26           <sup>13</sup> The parties stipulated to this fact.

27           <sup>14</sup> The parties stipulated to this fact.

1 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.  
2 Bank"). (Ex. 42.)<sup>15</sup>

3 18. On July 12, 2016, U.S. Bank filed a complaint against SFR.  
4 Nowhere in the complaint does U.S. Bank plead tender or any facts related to  
5 tender.

6 19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the  
7 first pleading where U.S. Bank pleads tender.  
8

## 9 **II. CONCLUSIONS OF LAW**

### 10 **A. Evidentiary Rulings Re Witnesses Made During Trial**

11 1. U.S. Bank attempted to call a witness from Universal American  
12 Mortgage Company, LLC. The Court granted SFR's objection to the same for  
13 the following reasons: U.S. Bank never identified a witness by name for Universal  
14 in violation of NRCP 16.1. There was no good cause presented for the failure to  
15 name the witness. SFR raised timely objection(s). SFR also established that it  
16 would be prejudiced if the Court allowed the unnamed witness to testify as they  
17 had no opportunity to depose or have knowledge of what the witness would  
18 state. After a full opportunity for oral argument by the parties the Court found the  
19 Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3)  
20 combined with the prejudice meant that the witness was precluded from  
21 testifying at trial.

22 2. U.S. Bank attempted to call a witness from the Nevada Real Estate  
23 Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's  
24 objection to the same after a full hearing on the merits. The Court's reasoning  
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27 <sup>15</sup> The parties stipulated to this fact.  
28



1 included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under  
2 NRCP 16.1 as required. There was no good cause cited for the failure to name  
3 her. Likewise, the documents for which the witness was expected to testify were  
4 never disclosed as required by Rule 16.1. The first time these documents were  
5 asserted to have been mentioned was the day before trial, via email to counsel  
6 for SFR. The Court finds this to be a per se violation. Both the witness and the  
7 documents were readily available during the discovery period, and the Bank was  
8 aware of NRED's involvement by virtue of the NRED mediation; notice of  
9 completion of which was filed on January 9, 2018. The Court further found that  
10 the Bank had not shown good cause why the Bank failed to disclose the witness  
11 and documents or sought relief from the Court to extend discovery. SFR raised  
12 timely objection(s). The Court further found that SFR was prejudiced by the  
13 failure to disclose as it could not depose the witness; did not prepare to have the  
14 documents taken into account in the case; and thus, it would not be proper to  
15 allow the witness to testify or have the documents introduced for the first time at  
16 trial.

17 3. U.S. Bank attempted to call Harrison Whitaker, an employee of  
18 Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as  
19 custodian of records. After a full hearing on the merits, the Court granted SFR's  
20 objection to the same for the following reasons: Neither Mr. Whittaker nor  
21 Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and  
22 the Court finds this is a per se violation. SFR raised timely objection(s). The  
23 Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan  
24 servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the  
25 Bank could have disclosed an Ocwen witness. The Court acknowledges the  
26 Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and  
27 took the fact that she left Ocwen into account. Given she left Ocwen's employ in  
28

1 or around February 2019, and the trial was several months later, the Court found  
2 that the Bank never named another witness for Ocwen or disclosed Ocwen  
3 overall as a potential witness despite having time to do so. The Bank also chose  
4 not to file a pre-trial motion to handle this issue despite knowing that SFR had  
5 timely objected. The Court also found that SFR established it would be  
6 prejudiced and thus in light of the totality of the circumstances, the Court found it  
7 proper to sustain SFR's objection.

8 **B. Rule 52(c) Motions**

9 4. At the close of U.S. Bank's case in chief, SFR brought several Rule  
10 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-  
11 trial memorandum.

12 5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale  
13 was wrongful and/or complied with the provisions of NRS Chapter 116, to the  
14 extent tender is alleged, the Court denied the Motion without prejudice.

15 6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale  
16 should be set aside, and within that inquiry: (a) whether the price paid at the  
17 foreclosure sale was inadequate; and (b) whether there were elements of fraud,  
18 unfairness, and/or oppression in the HOA foreclosure process and resulting sale,  
19 the Court granted this Motion. The only evidence U.S. Bank proffered for value  
20 was the Assessor's taxable value for 2008 and 2010. There being no value from  
21 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the  
22 Court cannot determine whether the price paid was grossly inadequate. But  
23 even if the Court could compare the price paid to the proffered values, price  
24 alone is not enough. There must be additional evidence of fraud, unfairness, and  
25 oppression that accounted for or brought about the price paid, and the Court  
26 finds no such evidence. See *Nationstar Mortgage, LLC v. Saticoy Bay, LLC*  
27 *Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79

1 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis  
2 added).

3 7. As to the Motion Re: Issue #7, whether the mortgage protection  
4 clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien  
5 to the Deed of Trust or preclude extinguishment of the Deed of Trust by a  
6 foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court  
7 granted this Motion. No CC&Rs were admitted into evidence, so the Court  
8 cannot determine whether a mortgage protection clause even existed in the  
9 Association's CC&Rs.

10 8. As to the Motion Re: Issue #8, whether the recitals in the  
11 Foreclosure Deed are conclusive proof of any matter contained therein, the Court  
12 granted this Motion in part. The Motion is granted with respect to those recitals  
13 contained in the Foreclosure Deed. As to the equity portion, the Motion is denied  
14 without prejudice.

15 9. As to the Motion Re: Issue #9, whether the HOA lien and Notices  
16 of Default and Sale included items and amounts not permitted by the CC&Rs and  
17 NRS Chapter 116, the Court grants the Motion in part. It is granted as to the  
18 CC&Rs as these were never admitted, so there is no proof the notices included  
19 amounts not permitted by the CC&Rs. The Motion is also granted as to NRS  
20 116. There is no evidence the Notices included amounts not permitted by NRS  
21 116. The Court denies, without prejudice, as to the superpriority amount.

22 10. As to the Motion Re: Issue #10, whether SFR was a bona fide  
23 purchaser of the Property as a matter of Nevada law, the Court denied this  
24 Motion without prejudice.  
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**C. Subject Matter Jurisdiction**

11. At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank was not the real party in interest and lacked standing; and therefore, under NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

12. Under NRCP 17(a), "[a]n action must be prosecuted in the name of the real party in interest."

13. "A real party in interest is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations omitted).

14. In short, the determination is whether the plaintiff is the correct party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 771 (1988) ("appellants are asserting someone else's potential legal problem; they are not the proper party to assert [this claim]"); see also *Hammes v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the person who is the true owner of the right sought to be enforced).

15. Here, the parties stipulated that at the time of the Association sale, Universal was owner of the Ivy Note and beneficiary of record of the Deed of Trust.

16. Also, at the time U.S. Bank filed its Complaint (July 12, 2016), Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is another stipulated fact by the parties.

17. As such, Universal was the real party in interest on July 12, 2016, not U.S. Bank.

18. "The inquiry into whether a party is a real party in interest overlaps



1 with the question of standing.” *Arguello*, 252 P.3d at 208. The question of  
2 standing “focuses on the party seeking adjudication rather than on the issues  
3 sought to be adjudicated.” *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498  
4 (1983). In order to have standing, the party must also have suffered a legally  
5 redressable harm and the suit must be “ripe” and not “moot” (at least as to the  
6 particular plaintiff) at the time of the lawsuit. See *Schwartz v. Lopez*, 382 P.3d  
7 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of  
8 an injury that is personal to him and not merely a generalized grievance.)  
9 (emphasis added.)

10 19. Whether a party has standing is a question that goes to the court’s  
11 jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194  
12 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d  
13 506, 515-16 (2002).

14 20. A court lacks the power to grant relief when (1) an indispensable  
15 party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have  
16 the legal right to seek or receive the requested relief. See *State Indus. Ins. Sys.*  
17 *v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) (“There can be no  
18 dispute that lack of subject matter jurisdiction renders a judgment void”). See  
19 generally John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke  
20 L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential*  
21 *Element of the Separation of Powers*, 17 Suffolk U.L.Rev. 881, 881 (1983).

22 21. “Nevada has a long history of requiring an actual justiciable  
23 controversy as a predicate to judicial relief” i.e. standing. *In re Amerco Derivative*  
24 *Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted)  
25 (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

26 22. Further, “a justiciable controversy [is] a preliminary hurdle to an  
27 award of declaratory relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444  
28

1 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190  
2 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*,  
3 65 Nev. 1, 189 P.2d 352 (1948) as:

4  
5 (1) there must exist a justiciable controversy; that is to say, a  
6 controversy in which a claim of right is asserted against one  
7 who has an interest in contesting it; (2) the controversy must be  
8 between persons whose interests are adverse; (3) the party  
9 seeking declaratory relief must have a legal interest in the  
10 controversy, that is to say, a legally protectable interest; and (4)  
11 the issue involved in the controversy must be ripe for judicial  
12 determination.

13  
14 23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank  
15 had no claim of right at the time of filing the Complaint because it did not become  
16 the recorded beneficiary until July 2, 2018, nearly two years after the filing of the  
17 Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the  
18 Complaint filed. Second, in order for U.S. Bank's interest to be adverse to  
19 SFR's, U.S. Bank would actually have to have an interest in the first place. But  
20 at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust.  
21 Third, because U.S. Bank had no interest at the time it sued SFR, it follows that  
22 U.S. Bank did not have a legally protectable interest at the time of filing. Finally,  
23 because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank  
24 asserted against SFR were not ripe for judicial determination.

25  
26 24. Based on the above, U.S. Bank has failed to show a justiciable  
27 controversy and failed to show any injury. As such, U.S. Bank lacked standing at  
28 the time the claims were filed against SFR.

29  
30 25. Nor can the later assignment to U.S Bank in July 2018, while this  
31 case was pending, cure the lack of subject matter jurisdiction at the outset. This

1 is so because subject matter jurisdiction "cannot be conferred by the parties."  
2 *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

3 26. Under NRCP 12(h)(3), "[i]f the court determines at any time that it  
4 lacks subject-matter jurisdiction, the court must dismiss the action."

5 27. Because the Court finds that U.S. Bank was neither the real party in  
6 interest, nor did it have standing at the time it filed its Complaint, the Court finds it  
7 lacked subject matter jurisdiction from the outset. As such, under NRCP  
8 12(h)(3), this Court dismisses U.S. Bank's action.

9 **D. Statute of Limitations**

10 28. U.S. Bank alleges "quiet title" against SFR. In Nevada, "quiet title"  
11 is just a slang term to identify any action where one party claims an interest in  
12 real property adverse to another. Thus, the title of U.S. Bank's claim does  
13 nothing to assist the Court in determining which statute of limitations applies. In  
14 order to determine this, the Court must look at the nature of the grievance to  
15 determine the character of the action, rather than the labels in the pleadings.  
16 *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

17 29. Here, when the nature of U.S. Bank's grievance is analyzed,  
18 tender, i.e. the Association lacked authority to foreclose because the default of  
19 the superpriority portion was cured, it becomes readily apparent that a three-year  
20 statute of limitations applies under NRS 11.190(3)(a).

21 30. As the Nevada Supreme Court noted in *Torrealba*, "[t]he phrase  
22 'liability created by statute' means a liability which would not exist but for the  
23 statute." *Torreabla*, 178 P.3d at 722. The Court further noted, "[w]here a duty  
24 exists only by virtue of a statute ... the obligation is one created by statute." *Id.*  
25 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015  
26 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969,  
27 976 (D.Cal.1942)) (internal citations and quotations omitted).

1           31. Here, the “character” of U.S. Bank’s tender claim is simple: the  
2 Association had a duty to accept BANA’s tender, and it unjustifiably refused it.  
3 U.S. Bank even pled as much: “[t]he HOA trustee refused to accept [BANA’s]  
4 tender.” By virtue of this “rejection” U.S. Bank claims the “liability” is a void sale  
5 resulting in SFR taking subject to the deed of trust. This duty to accept tender  
6 arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it  
7 is the statute, i.e. NRS 116.3116 that governs liens against units for HOA  
8 assessments and details the portion of the lien that has superpriority status.”  
9 *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev.  
10 2018) (“*SFR III*”).

11           32. In other words, but for the statute, there would be no superpriority  
12 portion and, in turn, no duty on the part of the Association to accept payment of  
13 this portion from a bank, like BANA. Moreover, but for the Association’s  
14 rejection, there would be no liability on the part of SFR by way of taking, subject  
15 to the Deed of Trust. All told, the Association’s lien is created by statute; the  
16 superpriority mechanism of that lien is created by statute; the superpriority  
17 portion is fixed by statute; and the Association’s implicit duty to accept payment  
18 of the superpriority portion is created by statute. See *Torrealba*, 178 P.3d at 723.

19           33. Based on this, U.S. Bank’s tender claim is subject to the three-year  
20 statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on  
21 July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was  
22 July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank’s  
23 tender claim is time-barred.

24           34. The Court rejects U.S. Bank’s argument that a five-year statute of  
25 limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes  
26 are time-bar statutes; they are standing statutes. Regardless, neither statute  
27 could ever apply to U.S. Bank as it never possessed the subject property, which  
28



1 both statutes require. But even if a five-year statute of limitations did apply, U.S.  
2 Bank would still be time-barred as it did not plead tender until nearly six years  
3 after the sale.

4 35. The Court rejects U.S. Bank's argument that its Amended  
5 Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12,  
6 2016). For one, because a three-year statute of limitations applies, relation-back  
7 does not save the bank as the original Complaint is time-barred. But even if the  
8 Court applied a longer statute of limitations, relation-back would not apply.

9 36. NRCP 15(c) states "[w]henever the claim or defense asserted in the  
10 amended pleading arose out of the conduct, transaction, or occurrence set forth  
11 or attempted to be set forth in the original pleading, the amendment relates back  
12 to the date of the original pleading." However, "where the original pleading does  
13 not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the  
14 grounds upon which it rests,' the purpose of the statute of limitations has not  
15 been satisfied and it is 'not an original pleading that [can] be rehabilitated by  
16 invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147,  
17 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover*  
18 *v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

19 37. In other words, the analysis under NRCP 15(c) is "whether the  
20 original complaint adequately notified the defendants of the basis for liability the  
21 plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail*  
22 *Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada  
23 law will not allow a new claim based upon a new theory of liability asserted in an  
24 amended pleading to relate-back under NRCP 15(c) after the statute of  
25 limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d  
26 1141, 1146 (1983).

1           38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never  
2       pled tender or any allegations related to tender. It made no allegations  
3       whatsoever that the super-priority portion was cured. Simply put, anyone reading  
4       the original Complaint would have no idea U.S. Bank would later claim it  
5       tendered the superpriority portion of the lien. Compare this to U.S. Bank's  
6       Amended Complaint, U.S. Bank completely changed the basis for which it was  
7       challenging the sale i.e. tender. Because of this there is no relation-back. See  
8       *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an  
9       independent basis for U. S. Bank's claims to fail.

10           **E. U.S. Bank Failed to Prove a Deliver of a Valid Tender**

11           39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427  
12       P.3d 113 at 117.

13           40. Under NRS 116.31162(b), the superpriority portion of the  
14       Association's lien is comprised of (1) nine-months of common assessments; and  
15       (2) charges incurred for nuisance-abatement and maintenance under NRS  
16       116.310312.

17           41. In Nevada, "[t]he burden of demonstrating that the delinquency was  
18       cured presale, rendering the sale void, [is] on the party challenging the  
19       foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437  
20       P.3d 154, 156 (Nev. 2019).

21           42. Thus, under Nevada law U.S. Bank bears the burden of proving  
22       what the superpriority amount was at the time of the sale, and that it delivered a  
23       full payment of this amount prior to the sale.

24           43. At trial, U.S. Bank offered a letter with a check written from Miles  
25       Bauer's Trust Account in the amount of \$405.00, dated December 16, 2011, (Ex.  
26       24), but there was no evidence the check was in fact delivered to Alessi. Mr.  
27       Jung only testified about general practices of the firm in terms of delivering  
28

1 similar checks like the one at Ex. 24, but had no personal knowledge about Ex.  
2 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R.  
3 Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

4 45. Mr. Jung was asked if he recalled sending a tender check in this  
5 case, and his answer was, "[i]ndependently, I don't." (*Id.* at 26:17-19.)

6 44. U.S. Bank offered no run slip or testimony from any runner that Ex.  
7 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court  
8 in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver  
9 said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's  
10 testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

11 55. U.S. Bank offered no receipt of copy to show delivery. This is  
12 compelling to the Court in light of Mr. Alessi's testimony that delivery of said  
13 letters were accompanied by an ROC that Alessi signed when it accepted the  
14 letter. (*Id.* at 86:1-18.)

15 56. Further, Mr. Alessi testified that it was the practice of Alessi to  
16 maintain a copy of letters like Ex. 24 in the file and/or notate its status report of  
17 receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from  
18 Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-  
19 19; *see also*, Ex. 30.)

20 57. NRS 51.145 provides that "[e]vidence that a matter is not included  
21 in the records in any form, of a regularly conducted activity, can be used to prove  
22 the nonoccurrence or nonexistence of the matter, if the matter was of a kind of  
23 which was regularly made and preserved."

24 58. What is included in the status report, in addition to what is not, also  
25 convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012,  
26 and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two  
27 payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these  
28

1 payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the  
2 servicer of the loan, inquired of Alessi about excess proceeds on September 24,  
3 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its  
4 servicer would not have sought out excess proceeds as these monies are only  
5 available to junior, extinguished lienholders. See NRS 116.31164.

6 59. All told, U.S. Bank failed to prove by a preponderance of the  
7 evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's  
8 claim is it never proved the superpriority amount. At trial, no ledgers were  
9 admitted into evidence that could prove this amount. Likewise, the Court strikes  
10 Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as  
11 this testimony constituted inadmissible hearsay to which SFR timely objected.

12 60. Having failed to prove the superpriority amount, even if this Court  
13 could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is  
14 meaningless as the Court cannot determine from the evidence whether it was a  
15 payment in full.

16 61. Having failed to prove its tender claim, the Court concludes the sale  
17 extinguished the Deed of Trust.

18  
19 **ORDER**

20 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S.  
21 Bank's action against SFR is DISMISSED on the basis the Court lacked subject  
22 matter jurisdiction at the time U.S. Bank filed its action.

23 2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S.  
24 Bank's claim against SFR, which is grounded in tender, is time-barred.

25 3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the  
26 Deed of Trust recorded against real property located at 7868 Marbledoe Street,  
27 Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official  
28



1 Records of the Clark County Recorder as Instrument No. 200505230004228,  
2 was extinguished by the July 25, 2012 Association sale.

3 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S.  
4 Bank its predecessors in interest and successors and assigns, principals, or  
5 anyone else claiming an interest in the Deed of Trust, have no further right, title  
6 or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada  
7 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from  
8 taking any further action to enforce the now extinguished Deed of Trust, including  
9 but not limited to, clouding title, initiating or continuing to initiate foreclosure  
10 proceedings, or taking any other actions to sell or transfer the Property.

11 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to  
12 real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149;  
13 Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

14 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis  
15 pendens recorded in the Official Records of the Clark County Recorder as  
16 Instrument No. 20160713-0002695 is expunged.

17 **IT IS SO ORDERED.**

18 DATED this 14<sup>th</sup> day of June, 2019.

19  
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21   
22 **HON. JOANNA S. KISHNER**  
23 **DISTRICT COURT JUDGE**  
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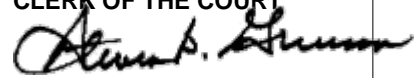
**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

**DANA J. NITZ, ESQ.**  
**NATALIE C. LEHMAN, ESQ.**  
WRIGHT, FINLAY & ZAK, LLP.

**KAREN HANKS, ESQ.**  
**JASON G. MARTINEZ, ESQ.**  
KIM GILBERT EBRON

  
TRACY L. CORDOBA-WHEELER  
Judicial Executive Assistant



**NEFF**  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
**JACQUELINE A. GILBERT, ESQ.**  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
**KAREN L. HANKS, ESQ.**  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
**KIM GILBERT EBRON**  
*fka Howard Kim & Associates*  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS  
TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

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

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 PLEASE TAKE NOTICE that on June 18, 2019 the **FINDINGS OF FACT AND**  
2 **CONCLUSIONS OF LAW AND JUDGMENT** was entered. A copy of said Order is attached  
3 hereto.

4 DATED this 19<sup>th</sup> day of June, 2019.

5 **KIM GILBERT EBRON**

6 /s/ Diana S. Ebron

7 DIANA S. EBRON, ESQ.

8 Nevada Bar No. 10580

9 7625 Dean Martin Drive, Suite 110

10 Las Vegas, Nevada 89139

11 *Attorney for SFR Investments Pool 1, LLC*

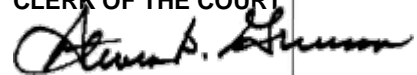


**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of June, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to the following parties:

|                  |  |
|------------------|--|
| Dana Nitz Esq.   | <a href="mailto:dnitz@wrightlegal.net">dnitz@wrightlegal.net</a>           |
| Natalie Lehman   | <a href="mailto:nlehman@wrightlegal.net">nlehman@wrightlegal.net</a>       |
| NVEfile          | <a href="mailto:nvefile@wrightlegal.net">nvefile@wrightlegal.net</a>       |
| Aaron Lancaster  | <a href="mailto:alancaster@wrightlegal.net">alancaster@wrightlegal.net</a> |
| Anna Luz         | <a href="mailto:aluz@wrightlegal.net">aluz@wrightlegal.net</a>             |
| Sara Aslinger    | <a href="mailto:saslinger@wrightlegal.net">saslinger@wrightlegal.net</a>   |
| Shadd Wade       | <a href="mailto:swade@wrightlegal.net">swade@wrightlegal.net</a>           |
| Lisa Cox         | <a href="mailto:lc Cox@wrightlegal.net">lc Cox@wrightlegal.net</a>         |
| J. William Ebert | <a href="mailto:bebert@lipsonneilson.com">bebert@lipsonneilson.com</a>     |
| Karen Kao        | <a href="mailto:kkao@lipsonneilson.com">kkao@lipsonneilson.com</a>         |
| Natalie Lehman   | <a href="mailto:nlehman@wrightlegal.net">nlehman@wrightlegal.net</a>       |
| Sydney Ochoa     | <a href="mailto:sochoa@lipsonneilson.com">sochoa@lipsonneilson.com</a>     |

/s/ Diane L. DeWalt  
An Employee of KIM GILBERT EBRON



1 FFCL

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 U.S. BANK, NATIONAL ASSOCIATION AS  
7 TRUSTEE FOR MERRILL LYNCH  
8 MORTGAGE INVESTORS TRUST,  
9 MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

10 Plaintiff,

11 vs.

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

13 Defendants.

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

15 Counter/Cross Claimant,

16 vs.

17  
18 U.S. BANK, NATIONAL ASSOCIATION AS  
19 TRUSTEE FOR MERRILL LYNCH  
20 MORTGAGE INVESTORS TRUST,  
MORTGAGE LOAN ASSET-BACKED  
CERTIFICATES, SERIES 2005-A8,

21 Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

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

22 This matter came before the Court for trial on April 16, 17, 18, 23, 24,  
23 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq.  
24 appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman,  
25 Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association  
26 as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-  
27 Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

1 considered the facts, testimony of witnesses and arguments of counsel, for the  
2 reasons stated on the record, and good cause appearing, the Court makes the  
3 following Findings of Fact and Conclusions of Law:<sup>1</sup>

4 **I. FINDINGS OF FACT**

5 Some of the following facts were stipulated to by the parties by way of  
6 their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated,  
7 the Court takes such facts and unrefuted and undisputed:

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership  
9 Act as NRS 116, including NRS 116.3116(2).

10 2. On June 23, 2004, the Antelope Homeowners Association  
11 ("Association") perfected and gave notice of its lien by recording its Declaration of  
12 Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the  
13 Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).<sup>2</sup>  
14 Thereafter the Association recorded a Second Amendment to CC&Rs as  
15 Instrument No. 200609140003739. (Ex. 2.)

16 3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real  
17 property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada  
18 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies")  
19 was recorded in the Official Records of the Clark County Recorder as Instrument  
20 No. 200610030004304. (Ex. 3.)

21 4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic  
22 Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating  
23

24  
25 <sup>1</sup> Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by  
26 June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so  
27 deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so  
28 deemed.

<sup>2</sup> The Parties stipulated to this fact.

1 lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument  
2 No. 200505230004228 ("Deed of Trust"). (Ex. 5.)<sup>3</sup>

3 5. On November 12, 2009, the Association, through its agent, Alessi &  
4 Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien  
5 ("NODAL") in the Official Records of the Clark County Recorder as Instrument  
6 No. 200911120004474. (Ex. 9.)<sup>4</sup>

7 6. On February 17, 2011, Alessi recorded a Notice of Default and  
8 Election to Sell Under Homeowners Association Lien ("NOD") in the Official  
9 Records of the Clark County Recorder as Instrument No. 201102170001289.  
10 (Ex. 11.)<sup>5</sup>

11 7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in  
12 the Official Records of the Clark County Recorder as Instrument No.  
13 201108110003087. (Ex. 12.)<sup>6</sup>

14 8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in  
15 the Official Records of the Clark County Recorder as Instrument No.  
16 201204160000922. (Ex. 13.)<sup>7</sup>

17 9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the  
18 Official Records of the Clark County Recorder as Instrument No.  
19 201207020001432. (Ex. 14.)<sup>8</sup>

20  
21  
22 <sup>3</sup> The parties stipulated to this fact.

23 <sup>4</sup> The parties stipulated to this fact.

24 <sup>5</sup> The parties stipulated to this fact.

25 <sup>6</sup> The parties stipulated to this fact.

26 <sup>7</sup> The parties stipulated to this fact.

27 <sup>8</sup> The parties stipulated to this fact.

1           10. Alessi, on behalf of the Association, mailed the NOD, NOS #1,  
2 NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its  
3 agent(s).<sup>9</sup>

4           11. Universal, the then recorded beneficiary of the Deed of Trust,  
5 and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.<sup>10</sup>

6           12. The Association foreclosure sale occurred on July 25, 2012  
7 ("Sale").<sup>11</sup>

8           13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed")  
9 was recorded in the Official Records of the Clark County Recorder, conveying  
10 the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)<sup>12</sup>

11           14. SFR paid Alessi \$5,950.00 in exchange for the Trustee's Deed.

12           15. At the time of the Association Sale, Universal was the owner of the  
13 Ivy Note and beneficiary of record of the Deed of Trust.<sup>13</sup>

14           16. On June 1, 2018, a Corporate Assignment of Deed of Trust was  
15 recorded in which all beneficial interest in the Deed of Trust was purportedly  
16 assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)<sup>14</sup>

17           17. On July 2, 2018, a Corporate Assignment of Deed of Trust was  
18 recorded in which all beneficial interest in the Deed of Trust was purportedly  
19 assigned to U.S. Bank National Association, as trustee, successor in interest to  
20 Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage  
21

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22           <sup>9</sup> The parties stipulated to this fact.

23           <sup>10</sup> The parties stipulated to this fact.

24           <sup>11</sup> The parties stipulated to this fact.

25           <sup>12</sup> The parties stipulated to this fact.

26           <sup>13</sup> The parties stipulated to this fact.

27           <sup>14</sup> The parties stipulated to this fact.

1 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.  
2 Bank"). (Ex. 42.)<sup>15</sup>

3 18. On July 12, 2016, U.S. Bank filed a complaint against SFR.  
4 Nowhere in the complaint does U.S. Bank plead tender or any facts related to  
5 tender.

6 19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the  
7 first pleading where U.S. Bank pleads tender.  
8

## 9 **II. CONCLUSIONS OF LAW**

### 10 **A. Evidentiary Rulings Re Witnesses Made During Trial**

11 1. U.S. Bank attempted to call a witness from Universal American  
12 Mortgage Company, LLC. The Court granted SFR's objection to the same for  
13 the following reasons: U.S. Bank never identified a witness by name for Universal  
14 in violation of NRCP 16.1. There was no good cause presented for the failure to  
15 name the witness. SFR raised timely objection(s). SFR also established that it  
16 would be prejudiced if the Court allowed the unnamed witness to testify as they  
17 had no opportunity to depose or have knowledge of what the witness would  
18 state. After a full opportunity for oral argument by the parties the Court found the  
19 Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3)  
20 combined with the prejudice meant that the witness was precluded from  
21 testifying at trial.

22 2. U.S. Bank attempted to call a witness from the Nevada Real Estate  
23 Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's  
24 objection to the same after a full hearing on the merits. The Court's reasoning  
25  
26

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27 <sup>15</sup> The parties stipulated to this fact.  
28

1 included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under  
2 NRCP 16.1 as required. There was no good cause cited for the failure to name  
3 her. Likewise, the documents for which the witness was expected to testify were  
4 never disclosed as required by Rule 16.1. The first time these documents were  
5 asserted to have been mentioned was the day before trial, via email to counsel  
6 for SFR. The Court finds this to be a per se violation. Both the witness and the  
7 documents were readily available during the discovery period, and the Bank was  
8 aware of NRED's involvement by virtue of the NRED mediation; notice of  
9 completion of which was filed on January 9, 2018. The Court further found that  
10 the Bank had not shown good cause why the Bank failed to disclose the witness  
11 and documents or sought relief from the Court to extend discovery. SFR raised  
12 timely objection(s). The Court further found that SFR was prejudiced by the  
13 failure to disclose as it could not depose the witness; did not prepare to have the  
14 documents taken into account in the case; and thus, it would not be proper to  
15 allow the witness to testify or have the documents introduced for the first time at  
16 trial.

17 3. U.S. Bank attempted to call Harrison Whitaker, an employee of  
18 Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as  
19 custodian of records. After a full hearing on the merits, the Court granted SFR's  
20 objection to the same for the following reasons: Neither Mr. Whittaker nor  
21 Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and  
22 the Court finds this is a per se violation. SFR raised timely objection(s). The  
23 Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan  
24 servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the  
25 Bank could have disclosed an Ocwen witness. The Court acknowledges the  
26 Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and  
27 took the fact that she left Ocwen into account. Given she left Ocwen's employ in  
28

1 or around February 2019, and the trial was several months later, the Court found  
2 that the Bank never named another witness for Ocwen or disclosed Ocwen  
3 overall as a potential witness despite having time to do so. The Bank also chose  
4 not to file a pre-trial motion to handle this issue despite knowing that SFR had  
5 timely objected. The Court also found that SFR established it would be  
6 prejudiced and thus in light of the totality of the circumstances, the Court found it  
7 proper to sustain SFR's objection.

8 **B. Rule 52(c) Motions**

9 4. At the close of U.S. Bank's case in chief, SFR brought several Rule  
10 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-  
11 trial memorandum.

12 5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale  
13 was wrongful and/or complied with the provisions of NRS Chapter 116, to the  
14 extent tender is alleged, the Court denied the Motion without prejudice.

15 6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale  
16 should be set aside, and within that inquiry: (a) whether the price paid at the  
17 foreclosure sale was inadequate; and (b) whether there were elements of fraud,  
18 unfairness, and/or oppression in the HOA foreclosure process and resulting sale,  
19 the Court granted this Motion. The only evidence U.S. Bank proffered for value  
20 was the Assessor's taxable value for 2008 and 2010. There being no value from  
21 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the  
22 Court cannot determine whether the price paid was grossly inadequate. But  
23 even if the Court could compare the price paid to the proffered values, price  
24 alone is not enough. There must be additional evidence of fraud, unfairness, and  
25 oppression that accounted for or brought about the price paid, and the Court  
26 finds no such evidence. See *Nationstar Mortgage, LLC v. Saticoy Bay, LLC*  
27 *Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79



1 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis  
2 added).

3 7. As to the Motion Re: Issue #7, whether the mortgage protection  
4 clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien  
5 to the Deed of Trust or preclude extinguishment of the Deed of Trust by a  
6 foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court  
7 granted this Motion. No CC&Rs were admitted into evidence, so the Court  
8 cannot determine whether a mortgage protection clause even existed in the  
9 Association's CC&Rs.

10 8. As to the Motion Re: Issue #8, whether the recitals in the  
11 Foreclosure Deed are conclusive proof of any matter contained therein, the Court  
12 granted this Motion in part. The Motion is granted with respect to those recitals  
13 contained in the Foreclosure Deed. As to the equity portion, the Motion is denied  
14 without prejudice.

15 9. As to the Motion Re: Issue #9, whether the HOA lien and Notices  
16 of Default and Sale included items and amounts not permitted by the CC&Rs and  
17 NRS Chapter 116, the Court grants the Motion in part. It is granted as to the  
18 CC&Rs as these were never admitted, so there is no proof the notices included  
19 amounts not permitted by the CC&Rs. The Motion is also granted as to NRS  
20 116. There is no evidence the Notices included amounts not permitted by NRS  
21 116. The Court denies, without prejudice, as to the superpriority amount.

22 10. As to the Motion Re: Issue #10, whether SFR was a bona fide  
23 purchaser of the Property as a matter of Nevada law, the Court denied this  
24 Motion without prejudice.

1                   **C. Subject Matter Jurisdiction**

2           11.     At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank  
3 was not the real party in interest and lacked standing; and therefore, under  
4 NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

5           12.     Under NRCP 17(a), "[a]n action must be prosecuted in the name of  
6 the real party in interest."

7           13.     "A real party in interest is one who possesses the right to enforce  
8 the claim and has a significant interest in the litigation." *Arguello v. Sunset*  
9 *Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations  
10 omitted).

11           14.     In short, the determination is whether the plaintiff is the correct  
12 party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d  
13 768, 771 (1988) ("appellants are asserting someone else's potential legal  
14 problem; they are not the proper party to assert [this claim]"); see also *Hammes*  
15 *v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of*  
16 *Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the  
17 person who is the true owner of the right sought to be enforced).

18           15.     Here, the parties stipulated that at the time of the Association sale,  
19 Universal was owner of the Ivy Note and beneficiary of record of the Deed of  
20 Trust.

21           16.     Also, at the time U.S. Bank filed its Complaint (July 12, 2016),  
22 Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is  
23 another stipulated fact by the parties.

24           17.     As such, Universal was the real party in interest on July 12, 2016,  
25 not U.S. Bank.

26           18.     "The inquiry into whether a party is a real party in interest overlaps  
27  
28

1 with the question of standing.” *Arguello*, 252 P.3d at 208. The question of  
2 standing “focuses on the party seeking adjudication rather than on the issues  
3 sought to be adjudicated.” *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498  
4 (1983). In order to have standing, the party must also have suffered a legally  
5 redressable harm and the suit must be “ripe” and not “moot” (at least as to the  
6 particular plaintiff) at the time of the lawsuit. See *Schwartz v. Lopez*, 382 P.3d  
7 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of  
8 an injury that is personal to him and not merely a generalized grievance.)  
9 (emphasis added.)

10 19. Whether a party has standing is a question that goes to the court's  
11 jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194  
12 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d  
13 506, 515–16 (2002).

14 20. A court lacks the power to grant relief when (1) an indispensable  
15 party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have  
16 the legal right to seek or receive the requested relief. See *State Indus. Ins. Sys.*  
17 *v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) (“There can be no  
18 dispute that lack of subject matter jurisdiction renders a judgment void”). See  
19 generally John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke  
20 L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential*  
21 *Element of the Separation of Powers*, 17 Suffolk U.L.Rev. 881, 881 (1983).

22 21. “Nevada has a long history of requiring an actual justiciable  
23 controversy as a predicate to judicial relief” i.e. standing. *In re Amerco Derivative*  
24 *Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted)  
25 (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

26 22. Further, “a justiciable controversy [is] a preliminary hurdle to an  
27 award of declaratory relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444  
28

1 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190  
2 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*,  
3 65 Nev. 1, 189 P.2d 352 (1948) as:

4  
5 (1) there must exist a justiciable controversy; that is to say, a  
6 controversy in which a claim of right is asserted against one  
7 who has an interest in contesting it; (2) the controversy must be  
8 between persons whose interests are adverse; (3) the party  
9 seeking declaratory relief must have a legal interest in the  
10 controversy, that is to say, a legally protectable interest; and (4)  
11 the issue involved in the controversy must be ripe for judicial  
12 determination.

13  
14 23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank  
15 had no claim of right at the time of filing the Complaint because it did not become  
16 the recorded beneficiary until July 2, 2018, nearly two years after the filing of the  
17 Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the  
18 Complaint filed. Second, in order for U.S. Bank's interest to be adverse to  
19 SFR's, U.S. Bank would actually have to have an interest in the first place. But  
20 at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust.  
21 Third, because U.S. Bank had no interest at the time it sued SFR, it follows that  
22 U.S. Bank did not have a legally protectable interest at the time of filing. Finally,  
23 because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank  
24 asserted against SFR were not ripe for judicial determination.

25  
26 24. Based on the above, U.S. Bank has failed to show a justiciable  
27 controversy and failed to show any injury. As such, U.S. Bank lacked standing at  
28 the time the claims were filed against SFR.

29  
30 25. Nor can the later assignment to U.S Bank in July 2018, while this  
31 case was pending, cure the lack of subject matter jurisdiction at the outset. This

1 is so because subject matter jurisdiction “cannot be conferred by the parties.”  
2 *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

3 26. Under NRCP 12(h)(3), “[i]f the court determines at any time that it  
4 lacks subject-matter jurisdiction, the court must dismiss the action.”

5 27. Because the Court finds that U.S. Bank was neither the real party in  
6 interest, nor did it have standing at the time it filed its Complaint, the Court finds it  
7 lacked subject matter jurisdiction from the outset. As such, under NRCP  
8 12(h)(3), this Court dismisses U.S. Bank’s action.

9 **D. Statute of Limitations**

10 28. U.S. Bank alleges “quiet title” against SFR. In Nevada, “quiet title”  
11 is just a slang term to identify any action where one party claims an interest in  
12 real property adverse to another. Thus, the title of U.S. Bank’s claim does  
13 nothing to assist the Court in determining which statute of limitations applies. In  
14 order to determine this, the Court must look at the nature of the grievance to  
15 determine the character of the action, rather than the labels in the pleadings.  
16 *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

17 29. Here, when the nature of U.S. Bank’s grievance is analyzed,  
18 tender, i.e. the Association lacked authority to foreclose because the default of  
19 the superpriority portion was cured, it becomes readily apparent that a three-year  
20 statute of limitations applies under NRS 11.190(3)(a).

21 30. As the Nevada Supreme Court noted in *Torrealba*, “[t]he phrase  
22 ‘liability created by statute’ means a liability which would not exist but for the  
23 statute.” *Torreabla*, 178 P.3d at 722. The Court further noted, “[w]here a duty  
24 exists only by virtue of a statute ... the obligation is one created by statute.”” *Id.*  
25 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015  
26 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969,  
27 976 (D.Cal.1942)) (internal citations and quotations omitted).

1           31.     Here, the “character” of U.S. Bank’s tender claim is simple: the  
2 Association had a duty to accept BANA’s tender, and it unjustifiably refused it.  
3 U.S. Bank even pled as much: “[t]he HOA trustee refused to accept [BANA’s]  
4 tender.” By virtue of this “rejection” U.S. Bank claims the “liability” is a void sale  
5 resulting in SFR taking subject to the deed of trust. This duty to accept tender  
6 arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it  
7 is the statute, i.e. NRS 116.3116 that governs liens against units for HOA  
8 assessments and details the portion of the lien that has superpriority status.”  
9 *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev.  
10 2018) (“*SFR III*”).

11           32.     In other words, but for the statute, there would be no superpriority  
12 portion and, in turn, no duty on the part of the Association to accept payment of  
13 this portion from a bank, like BANA. Moreover, but for the Association’s  
14 rejection, there would be no liability on the part of SFR by way of taking, subject  
15 to the Deed of Trust. All told, the Association’s lien is created by statute; the  
16 superpriority mechanism of that lien is created by statute; the superpriority  
17 portion is fixed by statute; and the Association’s implicit duty to accept payment  
18 of the superpriority portion is created by statute. See *Torrealba*, 178 P.3d at 723.

19           33.     Based on this, U.S. Bank’s tender claim is subject to the three-year  
20 statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on  
21 July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was  
22 July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank’s  
23 tender claim is time-barred.

24           34.     The Court rejects U.S. Bank’s argument that a five-year statute of  
25 limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes  
26 are time-bar statutes; they are standing statutes. Regardless, neither statute  
27 could ever apply to U.S. Bank as it never possessed the subject property, which  
28

1 both statutes require. But even if a five-year statute of limitations did apply, U.S.  
2 Bank would still be time-barred as it did not plead tender until nearly six years  
3 after the sale.

4 35. The Court rejects U.S. Bank's argument that its Amended  
5 Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12,  
6 2016). For one, because a three-year statute of limitations applies, relation-back  
7 does not save the bank as the original Complaint is time-barred. But even if the  
8 Court applied a longer statute of limitations, relation-back would not apply.

9 36. NRCP 15(c) states "[w]henver the claim or defense asserted in the  
10 amended pleading arose out of the conduct, transaction, or occurrence set forth  
11 or attempted to be set forth in the original pleading, the amendment relates back  
12 to the date of the original pleading." However, "where the original pleading does  
13 not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the  
14 grounds upon which it rests,' the purpose of the statute of limitations has not  
15 been satisfied and it is 'not an original pleading that [can] be rehabilitated by  
16 invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147,  
17 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover*  
18 *v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

19 37. In other words, the analysis under NRCP 15(c) is "whether the  
20 original complaint adequately notified the defendants of the basis for liability the  
21 plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail*  
22 *Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada  
23 law will not allow a new claim based upon a new theory of liability asserted in an  
24 amended pleading to relate-back under NRCP 15(c) after the statute of  
25 limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d  
26 1141, 1146 (1983).

1           38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never  
2       pled tender or any allegations related to tender. It made no allegations  
3       whatsoever that the super-priority portion was cured. Simply put, anyone reading  
4       the original Complaint would have no idea U.S. Bank would later claim it  
5       tendered the superpriority portion of the lien. Compare this to U.S. Bank's  
6       Amended Complaint, U.S. Bank completely changed the basis for which it was  
7       challenging the sale i.e. tender. Because of this there is no relation-back. See  
8       *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an  
9       independent basis for U. S. Bank's claims to fail.

10           **E. U.S. Bank Failed to Prove a Deliver of a Valid Tender**

11           39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427  
12       P.3d 113 at 117.

13           40. Under NRS 116.31162(b), the superpriority portion of the  
14       Association's lien is comprised of (1) nine-months of common assessments; and  
15       (2) charges incurred for nuisance-abatement and maintenance under NRS  
16       116.310312.

17           41. In Nevada, "[t]he burden of demonstrating that the delinquency was  
18       cured presale, rendering the sale void, [is] on the party challenging the  
19       foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437  
20       P.3d 154, 156 (Nev. 2019).

21           42. Thus, under Nevada law U.S. Bank bears the burden of proving  
22       what the superpriority amount was at the time of the sale, and that it delivered a  
23       full payment of this amount prior to the sale.

24           43. At trial, U.S. Bank offered a letter with a check written from Miles  
25       Bauer's Trust Account in the amount of \$405.00, dated December 16, 2011, (Ex.  
26       24), but there was no evidence the check was in fact delivered to Alessi. Mr.  
27       Jung only testified about general practices of the firm in terms of delivering  
28



1 similar checks like the one at Ex. 24, but had no personal knowledge about Ex.  
2 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R.  
3 Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

4 45. Mr. Jung was asked if he recalled sending a tender check in this  
5 case, and his answer was, "[i]ndependently, I don't." (*Id.* at 26:17-19.)

6 44. U.S. Bank offered no run slip or testimony from any runner that Ex.  
7 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court  
8 in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver  
9 said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's  
10 testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

11 55. U.S. Bank offered no receipt of copy to show delivery. This is  
12 compelling to the Court in light of Mr. Alessi's testimony that delivery of said  
13 letters were accompanied by an ROC that Alessi signed when it accepted the  
14 letter. (*Id.* at 86:1-18.)

15 56. Further, Mr. Alessi testified that it was the practice of Alessi to  
16 maintain a copy of letters like Ex. 24 in the file and/or notate its status report of  
17 receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from  
18 Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-  
19 19; *see also*, Ex. 30.)

20 57. NRS 51.145 provides that "[e]vidence that a matter is not included  
21 in the records in any form, of a regularly conducted activity, can be used to prove  
22 the nonoccurrence or nonexistence of the matter, if the matter was of a kind of  
23 which was regularly made and preserved."

24 58. What is included in the status report, in addition to what is not, also  
25 convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012,  
26 and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two  
27 payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these  
28

1 payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the  
2 servicer of the loan, inquired of Alessi about excess proceeds on September 24,  
3 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its  
4 servicer would not have sought out excess proceeds as these monies are only  
5 available to junior, extinguished lienholders. See NRS 116.31164.

6 59. All told, U.S. Bank failed to prove by a preponderance of the  
7 evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's  
8 claim is it never proved the superpriority amount. At trial, no ledgers were  
9 admitted into evidence that could prove this amount. Likewise, the Court strikes  
10 Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as  
11 this testimony constituted inadmissible hearsay to which SFR timely objected.

12 60. Having failed to prove the superpriority amount, even if this Court  
13 could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is  
14 meaningless as the Court cannot determine from the evidence whether it was a  
15 payment in full.

16 61. Having failed to prove its tender claim, the Court concludes the sale  
17 extinguished the Deed of Trust.

18  
19 **ORDER**

20 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S.  
21 Bank's action against SFR is DISMISSED on the basis the Court lacked subject  
22 matter jurisdiction at the time U.S. Bank filed its action.

23 2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S.  
24 Bank's claim against SFR, which is grounded in tender, is time-barred.

25 3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the  
26 Deed of Trust recorded against real property located at 7868 Marbledoe Street,  
27 Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official  
28

1 Records of the Clark County Recorder as Instrument No. 200505230004228,  
2 was extinguished by the July 25, 2012 Association sale.

3 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S.  
4 Bank its predecessors in interest and successors and assigns, principals, or  
5 anyone else claiming an interest in the Deed of Trust, have no further right, title  
6 or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada  
7 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from  
8 taking any further action to enforce the now extinguished Deed of Trust, including  
9 but not limited to, clouding title, initiating or continuing to initiate foreclosure  
10 proceedings, or taking any other actions to sell or transfer the Property.

11 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to  
12 real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149;  
13 Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

14 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis  
15 pendens recorded in the Official Records of the Clark County Recorder as  
16 Instrument No. 20160713-0002695 is expunged.

17 **IT IS SO ORDERED.**

18 DATED this 14<sup>th</sup> day of June, 2019.

19  
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21   
22 **HON. JOANNA S. KISHNER**  
23 **DISTRICT COURT JUDGE**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

**DANA J. NITZ, ESQ.**  
**NATALIE C. LEHMAN, ESQ.**  
WRIGHT, FINLAY & ZAK, LLP.

**KAREN HANKS, ESQ.**  
**JASON G. MARTINEZ, ESQ.**  
KIM GILBERT EBRON

  
\_\_\_\_\_  
TRACY L. CORDOBA-WHEELER  
Judicial Executive Assistant