

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

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

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

CASE NO. 79235

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Appeal from Eighth Judicial District Court, Case No.: A-16-73987-C  
(Dept. XXXI) Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S OPENING BRIEF**

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## **RULE 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

Appellant U.S. Bank, National Association As Trustee For Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (the “Trustee”) is a wholly-owned subsidiary of U.S. Bancorp and there are currently no owners holding in excess of 10% of the outstanding stock.

The following attorneys appeared on behalf of the Trustee before the district court or in this Court on this matter: Christina V. Miller, Esq., Lindsay D. Robbins, Esq., and Aaron D. Lancaster, Esq., and formerly with Wright, Finlay & Zak, LLP, Dana Jonathan Nitz, Esq., Natalie C. Lehman, Esq., Regina A. Habermas, Esq., Jamie S. Hendrickson, Esq., Edgar C. Smith, Esq., and Victoria L. Hightower, Esq.

DATED this 15<sup>th</sup> day of June, 2020.

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## **I. JURISDICTIONAL STATEMENT**

This case is properly before the Nevada Supreme Court based on the district court's June 18, 2019 Findings of Fact and Conclusions of Law following trial in this matter occurring on April 16, 17, 18, 23, and 24, 2019 and May 20, 2019.<sup>1</sup> Notice of entry of that order was served on June 19, 2018.<sup>2</sup>

The Trustee's notice of appeal of the above orders was served and filed on July 18, 2019.<sup>3</sup> The notice of appeal was timely as required by NRAP 4(a)(1).

## **II. ROUTING STATEMENT**

Review of the district court's decision pertaining to the requirement of delivery of tender to sufficiently discharge the HOA's superpriority lien presents an issue that affects many individual homeowners' association sales throughout Nevada and raises a principal issue of first impression that has not been addressed in a published decision of this Court. Accordingly, this Court should retain jurisdiction of this matter pursuant to either NRAP 17(a)(11) or NRAP 17(a)(12).

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<sup>1</sup> XII:JA02300 at 22-23. Citations to the record refer to the Joint Appendix and indicate the Volume and Page number of the Appendix where the matter relied on is to be found.

<sup>2</sup> XII:JA0231.

<sup>3</sup> XII:JA02341-66.

### **III. ISSUES PRESENTED**

1. Did the district court err by concluding that the Trustee was not the real party in interest with standing to protect the Deed of Trust, where the Trustee is the current beneficiary of the Deed of Trust and holder of the Note?
  - a. Did the district court abuse its discretion by precluding Harrison Whitaker from testifying at trial on behalf of the Trustee?
  - b. Did the district court abuse its discretion by excluding the deposition transcript of Katherine Ortwerth as a penalty for the Trustee's technical non-compliance with NRCP 16.1 where there is no evidence of any prejudice to SFR?
2. Did the district court err in applying a three-year limitation period under NRS 11.190 to preclude the Trustee's quiet title claim instead of a five-year limitation period under NRS 11.070 or NRS 11.080?
3. Did the district court abuse its discretion in failing to admit certain evidence at trial, which would have established the amount of tender?
4. Did the district court err in concluding that the Trustee must prove delivery of tender and, if so, then err in concluding that the Trustee did not prove mailing and delivery by a preponderance of the evidence?
5. Did the district court err in granting judgment in favor of SFR where the trial record established tender would have been futile under the circumstances?

#### **IV. STATEMENT OF THE CASE**

This matter arises out of a quiet title action following a homeowner association's non-judicial foreclosure sale occurring on July 25, 2012 ("HOA Sale"), concerning real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149 ("Property").<sup>4</sup>

On July 12, 2016, the Trustee sued SFR in the Eighth Judicial District Court, State of Nevada, seeking a judicial declaration that SFR acquired its interest in the Property subject to the Deed of Trust.<sup>5</sup> SFR filed its Answer and Counterclaim on October 19, 2016.<sup>6</sup> Following discovery and mutually unsuccessful motions for summary judgment,<sup>7</sup> the matter proceeded to trial on April 16-18, 23-24 and May 20, 2019, before the Honorable Joanna S. Kishner.<sup>8</sup> Following the trial, the Court granted several of SFR's Rule 52(c) motions, issued its Findings of Fact and Conclusions of Law ("Trial Order"), thereby entering judgment in favor of SFR and against the Trustee on the Trustee's Complaint and in favor of SFR on its Counterclaim.<sup>9</sup> Notice of Entry of the Trial Order was filed

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<sup>4</sup> I:JA00001-62.

<sup>5</sup> *Id.*

<sup>6</sup> I:JA00097-114.

<sup>7</sup> III:JA00465-68.

<sup>8</sup> XII:JA02300-18.

<sup>9</sup> *Id.*



on June 19, 2019.<sup>10</sup> The Trustee timely filed its appeal of the Trial Order on July 18, 2019.<sup>11</sup>

## **V. STATEMENT OF FACTS**

### **The Subject Loan**

On or about May 23, 2005, Henry E. Ivy and Freddie S. Ivy (“Borrowers”) purchased the Property and borrowed \$212,750.00 (the “Note”) from Universal American Mortgage Company, LLC, secured by a first deed of trust against the Property (“Deed of Trust”) (the Note and Deed of Trust are collectively referred to herein as the “Loan”).<sup>12</sup>

On October 1, 2005, Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificated, Series 2005-A8 (the “Trust”) acquired the loan.<sup>13</sup> On June 1, 2018, a Corporate Assignment of Deed of Trust to GreenPoint Mortgage Funding, Inc. was recorded against the Property.<sup>14</sup> Thereafter, on July 2, 2018, a Corporate Assignment of Deed of Trust to the Trustee was recorded against the Property.<sup>15</sup>

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<sup>10</sup> XII:JA02319-40.

<sup>11</sup> XIII:JA02341-66.

<sup>12</sup> III:JA00595-616.

<sup>13</sup> VIII:JA01278.

<sup>14</sup> VI:JA01212-13.

<sup>15</sup> VIII:JA01513-14.

## **The HOA's lien, tender and the resulting foreclosure sale**

The Property is located in the Antelope Homeowners' Association ("HOA"), and is subject to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antelope Homeowners' Association recorded on June 23, 2004.<sup>16</sup> The HOA retained Alessi & Koenig, LLC ("A&K") as its foreclosure agent to collect delinquent assessments from the Borrowers.<sup>17</sup> On November 12, 2009, A&K recorded a Notice of Delinquent Assessment ("NODA").<sup>18</sup> On February 17, 2011, A&K recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD").<sup>19</sup> On August 11, 2011, A&K recorded a Notice of Trustee's Sale ("First NOS").<sup>20</sup>

After the First NOS was recorded, Bank of America, N.A. ("BANA"), the prior servicer for the Loan, retained the law firm of Miles, Bauer, Bergstrom & Winters, LLP ("MBBW") to tender the superpriority portion of the HOA's lien in order to protect the Deed of Trust.<sup>21</sup> Due to several incorrect evidentiary rulings at trial, the Trustee was prohibited from establishing that BANA, through MBBW, requested a payoff demand from A&K with respect to the delinquent HOA

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<sup>16</sup> III:JA00523-88.

<sup>17</sup> IV:JA00662.

<sup>18</sup> *Id.*

<sup>19</sup> IV:JA00665.

<sup>20</sup> IV:JA00666.

<sup>21</sup> IV:JA00686-87.

assessment account for the Property. However, the evidence at trial establishes that on October 21, 2011, A&K provided a payoff demand to MBBW (“Payoff Demand”).<sup>22</sup> The district court incorrectly did not admit the HOA’s account ledger attached to the Payoff Demand.<sup>23</sup> However, testimony at trial established that there were no nuisance and abatement charges contained in the HOA lien.<sup>24</sup> In response to the Payoff Demand, and consistent with his ordinary course of business, Rock Jung, an attorney with MBBW, calculated the amount of the superpriority lien and tendered \$405.00 to A&K on December 16, 2011 (“Tender”).<sup>25</sup> The district court did not admit evidence that the Tender was rejected by A&K and returned to MBBW finding that the documents establishing rejection (the Affidavit of Doug Miles and screenshot of MBBW’s internal file management system for the Property)<sup>26</sup> were inadmissible hearsay.<sup>27</sup> Nonetheless, the evidence at trial established that A&K’s pattern and practice during the time of Tender was to reject all tender checks which were accompanied by letters containing, in A&K’s opinion, “restrictive” or “conditional” language.<sup>28</sup>

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<sup>22</sup> IV:JA00688-94.

<sup>23</sup> IV:JA00690-94.

<sup>24</sup> XIII:JA02557 at 15-19, JA02560:2-6 and XIV:JA02737:25-JA02738:2.

<sup>25</sup> IV: JA00695-97.

<sup>26</sup> VI:JA01161-66.

<sup>27</sup> XIV:02628:12-JA02630:4.

<sup>28</sup> XV:JA02798-99:13, JA02840:24-JA0241:3.

On April 16, 2012, A&K recorded a second Notice of Sale (“Second NOS”).<sup>29</sup> A third Notice of Sale (“Operative NOS”) was then recorded against the Property on July 2, 2012.<sup>30</sup> Pursuant to the Operative NOS, the HOA foreclosed on July 25, 2012 (“HOA Sale”).<sup>31</sup> On August 3, 2012, A&K recorded a Trustee’s Deed Upon Sale (“TDUS”), identifying SFR as the grantee and a sale price of \$5,950.00. *Id.*

### **The Trustee’s Complaint, SFR’s Counterclaim, and Trial**

On July 12, 2016, the Trustee sued SFR to quiet title.<sup>32</sup> SFR filed its Answer and Counterclaim for quiet title on October 19, 2016, claiming that as a result of the HOA Sale, the Deed of Trust no longer encumbered the Property and that SFR owned the Property free and clear of the Deed of Trust.<sup>33</sup> On May 8, 2018, the Trustee filed its First Amended Complaint, which included allegations of Tender.<sup>34</sup>

On December 2, 2016, the Trustee served its Initial Disclosure of Witnesses and Documents pursuant to NRCP 16.1, which identified the Trustee’s Corporate Designee as a witness.<sup>35</sup> By April 25, 2018, the Trustee had produced all of the

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<sup>29</sup> IV:JA00667.

<sup>30</sup> IV:JA00668.

<sup>31</sup> IV: JA00669-70.

<sup>32</sup> I:JA00001-62.

<sup>33</sup> I:JA00097-114.

<sup>34</sup> II:JA00283-346.

<sup>35</sup> ADD055-221.

documents pertaining to Tender.<sup>36</sup> The Trustee and SFR deposed David Alessi on May 29, 2018.<sup>37</sup> SFR also deposed the Trustee's NRCP 30(b)(6) Witness, Katherine Ortwerth, an employee of Ocwen Financial Corporation ("Ocwen") as servicer for the Trustee, on June 14, 2018, wherein SFR questioned Ms. Ortwerth regarding the Trustee's interest in the loan.<sup>38</sup> SFR also inspected the Trustee's original collateral file containing the wet-ink Note, endorsed in blank, and executed an acknowledgement of the same.<sup>39</sup>

In preparation of trial, the Trustee produced its Pre-Trial Disclosures, highlighting its intention to call its Corporate Designee and Custodian of Records at trial.<sup>40</sup> Additionally, the Trustee reserved the right to use any deposition designated by any other party.<sup>41</sup> SFR also designated the deposition of the Trustee's NRCP 30(b)(6) witness, Katherine Ortwerth, in its Pre-Trial Disclosures.<sup>42</sup> The trial took place on April 16<sup>th</sup>-18<sup>th</sup>, 23<sup>rd</sup>-24<sup>th</sup>, and May 20, 2019.<sup>43</sup>

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<sup>36</sup> ADD222-277.

<sup>37</sup> ADD001-022.

<sup>38</sup> X:JA01898-99. The entirety of the Deposition Transcript of Ms. Ortwerth is attached to Addendum as ADD023-054.

<sup>39</sup> IX:JA01515-620.

<sup>40</sup> ADD283-291.

<sup>41</sup> *Id.*

<sup>42</sup> ADD278-282.

<sup>43</sup> XII:JA02300-18.

The district court entered judgment in favor of SFR on the Trustee's Complaint and quieted title in SFR's favor on its Counterclaim.<sup>44</sup>

## **VI. SUMMARY OF THE ARGUMENT**

The district court entered judgment in favor of SFR and against the Trustee on three distinct grounds, all of which should be reversed on appeal:

*First*, the district court erroneously concluded that it lacked subject matter jurisdiction to consider the Trustee's claims, finding that the Trustee did not have any interest in the Loan at time of filing of the Complaint solely because the Assignment to the Trustee was not recorded until after the Complaint was filed. Had the district court not abused its discretion in refusing to permit testimony from the Trustee's corporate designee, the Trustee would have been able to establish that the Trust was in possession of the original Note and had owned the Loan since October 2005, thus providing the district court with subject matter jurisdiction.

*Second*, the district court erroneously concluded that the Trustee's tender defense had to be asserted within NRS 11.190(3)(a)'s three-year statute of limitations. To the contrary, this Court recently confirmed that the three-year limitation period under NRS 11.190(3)(a) does not apply to quiet title claims<sup>45</sup> and legal theories, such as the defense of tender. *Cf. Liston v. Las Vegas Metro. Police*

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<sup>44</sup> *Id.*

<sup>45</sup> *Arbor Park*, 2020 WL 1903156, 461 P.3d 159 (Nev. 2020), *unpublished*.

*Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995).

*Third*, regardless of the Trustee's standing to assert its claims within the requisite limitations period, the district court erred in quieting title in favor of SFR on its Counterclaim, because SFR failed to establish superior title where there was a pre-sale Tender of the superpriority portion of the HOA's lien. While the district court admitted the Tender, it abused its discretion by refusing to admit supporting business records and witness testimony confirming the Tender amount was sufficient to satisfy the superpriority portion of the HOA's lien and delivery of the Tender to A&K. Consequently, not only did the district court err in concluding that the Trustee failed to prove the Tender was sufficient to discharge the superpriority portion of the HOA's lien, but it also erred in quieting title in favor of SFR.

*Further*, even if this Court affirms the district court's evidentiary rulings regarding Tender, the Trustee is still entitled to a reversal of the Trial Order as this Court recently held that where tender would be futile based on an HOA trustee's pattern and practice of rejecting tenders, formal tender is excused. *7510 Perla Del Mar Ave Trust v. Bank of America, N.A.*, 136 Nev. Adv. Op. 6, 458 P.3d 348 (2020) ("*Perla Trust*"). Because the evidence at trial established that had A&K received the tender from MBBW, it would have been summarily rejected, this Court should reverse the district court's Trial Order on the basis that the Trustee's predecessor was excused from making a formal tender.

## **VII. STANDARD OF REVIEW**

While a district court's findings of fact are reviewed for abuse of discretion, a district court's conclusions of law are reviewed de novo. *White v. Cont'l Ins. Co.*, 119 Nev. 114, 116, 65 P.3d 1090, 1091 (2003). A district court abuses its discretion when it "bases its decision on a clearly erroneous factual determination or it disregards controlling law," *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1292 (2016). A district court also abuses its discretion when it excludes critical evidence that the plaintiff needs to prove an essential element of his disputed claim. *Hansen v. Universal Health Servs. of Nevada, Inc.*, 115 Nev. 24, 29, 974 P.2d 1158, 1161 (1999) (citing *McCourt v. J.C. Penney Co.*, 103 Nev. 101, 103, 734 P.2d 696, 698 (1987)).

## **VIII. LEGAL ARGUMENT**

### **A. THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO ALLOW THE TRUSTEE TO PRESENT TESTIMONY TO ESTABLISH STANDING.**

Pursuant to NRCP 17(a)(1) "[a]n action must be prosecuted in the name of the real party in interest". The district court abused its discretion when it concluded that the Trustee was not a real party in interest under NRCP 17(a) and therefore lacked standing at the time it filed its Complaint in July 2016.<sup>46</sup> Specifically, the district court found that because SFR and the Trustee stipulated to the fact that

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<sup>46</sup> XII:JA02330:1-JA02333:9.



Universal was still the beneficiary *of record* of Deed of Trust at the time the Trustee filed its Complaint on July 12, 2016, and because the Assignment to the Trustee was not recorded until July 2, 2018, that it was Universal and not the Trustee that was the real party of interest at the time of filing of the Complaint.<sup>47</sup>

However, the law in Nevada is clear that a recorded assignment is neither essential nor even a prerequisite to establishing standing to enforce a note and deed of trust. *See Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 522-24, 286 P.3d 249, 261 (2012), holding, at 522: “Even independently of MERS’ assignment, BNY Mellon was entitled to enforce the note. The Uniform Commercial Code, Article 3, governs transfers of negotiable instruments, like the note. [citation omitted]. Therefore, for a subsequent lender to establish that it is entitled to enforce a note, it must present ‘evidence showing [e]ndorsement of the note either in its favor or in favor of [its servicer].’ *In re Veal*, 450 B.R. 897, 921 (9th Cir. BAP 2011); *see also Leyva*, 127 Nev. at ———, 255 P.3d at 1279.”

Unfortunately, as discussed *infra*, the district court improperly refused to allow Harrison Whittaker, the NRCP 30(b)(6) witness for the Trustee, to testify at trial that the Trustee had owned and possessed the underlying Note, endorsed in blank,<sup>48</sup> since October 1, 2005. The trial court then compounded its error by also

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<sup>47</sup> XII:JA02330 at 15-26.

<sup>48</sup> IX:JA01275.

precluding the Trustee from, as an alternative to Mr. Whittaker's live testimony, offering the deposition transcript of Katherine Ortwerth, an earlier NRCP 30(b)(6) witness for the Trustee, deposed by SFR during discovery.<sup>49</sup>

Had the district court not abused its discretion in failing to admit testimony from either Mr. Whittaker or Ms. Ortwerth, the Trustee would have been able to move to admit proposed Exhibits 40 (the Pooling and Servicing Agreement with the associated Schedule of Loans for the Trustee ("PSA") and 41 (a copy of the original Note), to establish that the Trustee was the real party in interest with standing at the time of filing the Complaint.

While not required<sup>50</sup>, the Trustee also moved to introduce proposed Exhibit 43, the collateral file containing the original wet-ink Note that was reviewed by SFR in the course of discovery.<sup>51</sup> However, due to the district court's erroneous decision not to allow the Trustee to present a witness at trial, it was not allowed to authenticate the collateral file and original Note, thereby preventing their

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<sup>49</sup> XI:JA02068 at 10-17.

<sup>50</sup> See *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 235, 445 P.3d 846, 850 (2019) (Wells Fargo did not have to produce original promissory note or testify that it had inspected the note to establish when Freddie Mac obtained ownership of the loan or that it retained such ownership on a past date, as there is no legal requirement that an endorsement on a promissory note be dated) (citing NRS 104.3204 (discussing the endorsement of a promissory note and not providing any requirement that the endorsement be dated)).

<sup>51</sup> XI:JA02106 at 3-6.

admission into the record.<sup>52</sup> The district court's errors prevented the Trustee from presenting the evidence that would have established its standing.<sup>53</sup>

**1. The district court abused its discretion by not permitting Harrison Whittaker to testify at trial where SFR deposed a PMK witness for the Trustee during discovery and would not suffer any harm.**

Mr. Whittaker was present and prepared to testify at trial as a key witness for the Trustee; however, the district court refused to allow him to testify. The district court's evidentiary ruling excluding him was two-fold: first, the district court found that because Harrison Whittaker was not formally identified *by name* in the Trustee's NRCP 16.1 disclosures, he would not be allowed to testify.<sup>54</sup> Second, the district court took the position that, even if Mr. Whittaker had been identified by name as a witness for the Trustee, because Mr. Whittaker was employed by Ocwen, the loan servicer for the Trustee, rather than the Trustee directly, Mr. Whitaker was not allowed to testify because *Ocwen* was also not formally identified in the Trustee's NRCP 16.1 disclosures.<sup>55</sup> The district court's conclusions were erroneous and an abuse of its discretion as technical noncompliance with NRCP 16.1 is not fatal since the disclosures did designate the Corporate Designee for the Trustee and SFR had full knowledge of Ocwen's

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<sup>52</sup> XI:JA02106 at 14-18.

<sup>53</sup> It should be noted that the Trustee's standing is irrelevant to SFR's Counterclaim to quiet title, where it sued the Trustee.

<sup>54</sup> XII:JA02327 at 17-23.

<sup>55</sup> XII:JA02327:17-JA02328:8.

servicing relationship with the Trustee through discovery and would not suffer any harm by allowing him to testify.

NRCP 16.1(a)(1)(A)(i) requires “the name and, if known, the address and telephone number of each individual likely to have information discoverable under NRCP 26(a).” This Court, in a similar case, recently held that a district court was within its discretion to admit witness testimony at trial even though the witness was not formally disclosed under NRCP 16.1, where technical noncompliance with NRCP 16.1 was harmless. *See Order of Affirmance, SFR Investments Pool 1, LLC v. Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP*, Case No. 77898 (unpub.) (“March 27, 2020 Order”) (citing to NRCP 37(c)(1), “[i]f a party fails to provide information or identify a witness as required by Rule 16.1 . . . the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, *unless the failure was substantially justified or is harmless.*” [emphasis added]).

Here, the failure to identify Mr. Whittaker as a witness in the Trustee’s NRCP 16.1 disclosure was substantially justified and harmless to SFR. *First*, the Trustee was justified in not having identified Mr. Whittaker by name in its NRCP 16.1 disclosures prior to the close of discovery because the Trustee had originally identified the Trustee’s NRCP 30(b)(6) witness in its initial disclosures and only

became aware that Katherine Ortwerth, the witness deposed as the Trustee's NRCP 30(b)(6) witness, was no longer employed by Ocwen in February 2019.<sup>56</sup>

*Second*, although the Trustee did in fact disclose a "Custodian of Records and Corporate Designee" during discovery, to the extent the district court determined that the Trustee should have informed the court of the change in witness identity before trial, any such change was irrelevant where the witness would be testifying as a corporate designee and not as a percipient witness. The witness was bound by the knowledge of the corporation, which would not change simply because a different person was designated to testify on its behalf. *See Great American Ins. Co. of New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008) (the testimony of a Rule 30(b)(6) designee represents the knowledge of the corporation, not the individual deponents) (internal citations omitted).<sup>57</sup> As a result, presenting a different corporate designee who was going to provide the same testimony as the prior designee caused no harm to SFR.

*Third*, whether or not Mr. Whittaker was employed by the Trustee or its loan servicer, Ocwen, and whether or not Ocwen was identified as a witness in the

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<sup>56</sup> XV:JA02845:13-JA02846:2.

<sup>57</sup> "Federal cases interpreting the Federal Rules of Civil Procedure "are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

Trustee's NRCP 16.1 disclosures, is not a sufficient justification to preclude him from testifying at trial. Both the district court and SFR are well aware from the hundreds, if not thousands, of Nevada HOA disputes between the various banks and HOA buyers, that the banks retain loan servicers to not only service the loan, but to testify on behalf of the trust in the course of litigation. Nevada law confirms the same. *See Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. 247, 253, 396 P.3d 754, 759 (2017) (The loan servicer's NRCP 30(b)(6) witness testified as to Freddie Mac's ownership of the loan at issue and its servicing relationship with the loan owner. SFR presented no evidence, only argument, to dispute the servicer's allegations). This Loan is owned by the Trust, a pool of loans. The Trustee had the right to hire a loan servicing company to service the Loan on its behalf, which included the right to foreclose on the Loan, and appear in any litigation involving the Loan.

Here, both SFR and the district court were well aware that Ocwen was operating as the loan servicer for the Trustee at all relevant times based on information disclosed during discovery and SFR's deposition of Katherine Ortwerth,<sup>58</sup> an employee of Ocwen and corporate designee for the Trustee. Mr. Whittaker would have testified to those same business records disclosed in

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<sup>58</sup> X:JA01898-99.

discovery and relied upon by Ms. Ortwerth in deposition.<sup>59</sup> In fact, the Trustee offered to limit Mr. Whittaker's trial testimony to only those documents contained in the business records produced in discovery and offered to allow SFR to attempt to impeach Mr. Whittaker with Ms. Ortwerth's deposition testimony if inconsistent.<sup>60</sup> Despite the Trustee's concessions, and without any proof of harm or prejudice from SFR, the district court found that SFR would be prejudiced if Mr. Whittaker were allowed to testify.<sup>61</sup>

The district court thus abused its discretion in not permitting Mr. Whittaker to testify at trial. Had he testified, the Trustee would have been able to prove its standing to bring claims against SFR.

**2. The district court abused its discretion by not admitting the deposition transcript of Katherine Ortwerth where SFR itself reserved the right to admit the transcript and knew before trial that Ms. Ortwerth would be a witness for the Trustee.**

The district court also abused its discretion by refusing to allow the Trustee to offer the Ms. Ortwerth's full deposition transcript into evidence, in lieu of Mr. Whittaker's live testimony,<sup>62</sup> on the sole ground that the deposition transcript was not designated in the Trustee's pre-trial disclosure for its case-in-chief.<sup>63</sup> However,

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<sup>59</sup> XV:JA02846 at 3-13.

<sup>60</sup> XV:02859:16-JA02860:3.

<sup>61</sup> XV:JA02869:14-JA02872:11.

<sup>62</sup> XI:JA02088:13-JA02092:7, JA02094:24-JS02099:1.

<sup>63</sup> *Id.*

the Trustee did reserve the right to utilize Ms. Ortwerth's deposition transcript in its pre-trial disclosures.<sup>64</sup> Significantly, SFR itself had reserved the right to use Ms. Ortwerth's deposition transcript in its case-in-chief.<sup>65</sup>

As discussed above, there is no evidence of any harm or prejudice to SFR from allowing the Trustee to have offered Ms. Ortwerth's deposition testimony into evidence. This is especially significant since SFR thoroughly deposed Ms. Ortwerth during discovery and anticipated utilizing Ms. Ortwerth's deposition transcript itself.

The district court abused its discretion by not admitting the deposition transcript into evidence, which precluded the Trustee from establishing its standing. Had Mr. Whittaker been allowed to testify *or* Ms. Ortwerth's deposition been admitted into evidence, the Trustee would have been able to establish its standing to pursue its Complaint.

**B. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE TRUSTEE'S CLAIMS ARE SUBJECT TO A THREE-YEAR STATUTE OF LIMITATION.**

The district court ruled that the Trustee's claims are based on a liability created by statute and, therefore, time-barred based the three-year statute of limitations under NRS 11.190(3)(a). (XII:JA02333:9-JA02336:10.) The district court also concluded that the Trustee was required to assert the defense of tender

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<sup>64</sup> XV:JA02083 at 4-14.

<sup>65</sup> XV:JA02068:25-JA02070:9.



within the same limitation period and would not allow this defense to relate-back to the date of filing the original Complaint. The district court was incorrect on both points.

**1. The district court erred in concluding that the Trustee’s quiet title claim is a liability created by statute, under NRS 11.190(3)(a).**

The district court incorrectly found that NRS 11.190(3)(a) was applicable because the “character” of the Trustee’s quiet title claim is based on tender of the superpriority lien under NRS Chapter 116 and that by virtue of the HOA’s rejection of tender, the “liability” is a “void sale resulting in SFR taking subject to the deed of trust.”<sup>66</sup>

However, this Court recently confirmed that the three-year limitation period under NRS 11.190(3)(a) does not apply to a quiet title claim. *Arbor Park*, 2020 WL 1903156, -- P.3d --. In *Arbor Park*, this Court considered an identical claim for quiet title and declaratory relief brought by the Trustee against SFR. There the lower court granted SFR’s motion to dismiss “on the ground that all of appellant’s claims constituted “[a]n action upon a liability created by statute” subject to NRS 11.190(3)(a)’s 3-year limitation period.” *Id.* at \*1. However, on appeal, this Court reversed, concluding that applying NRS 11.190(1)(a) to appellant’s quiet title claims was error and explaining that “a quiet title action does not seek to hold

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<sup>66</sup> XII:JA02333 at 1-10.

anyone liable, but instead simply seeks a determination regarding the parties' respective rights with regard to the subject property.” *Id.* (citing *Chapman v. Deutsche Bank Nat’l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013) (quoting NRS 40.010); *Liability*, Black’s Law Dictionary (11th ed. 2019) (defining “Liability” as “[t]he quality, state, or condition of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment” and “[a] financial or pecuniary obligation in a specific amount”)).

Here, the legal claims are identical and SFR made the same argument at trial. Accordingly, the Trustee requests that this Court apply its holding in *Arbor Park* and reverse the district court’s conclusion that the Trustee’s claims for quiet title and declaratory relief are time-barred by NRS 11.190(3)(a).

**2. The Trustee’s quiet title claim is subject to a five-year statute of limitation under either NRS 11.070 or 11.080.**

In *Arbor Park*, this Court left open which statute of limitation may actually apply to a quiet title claim. 2020 WL 1903156, -- P.3d --, at fn.1. The Trustee submits that the appropriate limitation period is set forth in either NRS 11.070 or NRS 11.080. NRS 11.070 provides for a five year statute of limitations for claims or defenses “founded upon the title to real property,” where “the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ... grantor of such person, was seized or

possessed of the premises in question.” NRS 11.070. Similarly, NRS 11.080 provides for a five year statute of limitations for actions pertaining to the recovery of real property where a grantor was seized or possessed of the premises. NRS 11.080. The district court mistakenly held that both NRS 11.070 and 11.080 were *standing* statutes as opposed to time-bar statutes and that the statutes were inapplicable because the Trustee never “possessed” the property.<sup>67</sup> The district court’s finding was clear error.

NRS 11.070 provides a five-year limitations period for quiet-title claims to allow “anyone with an interest in the property to sue to determine adverse claims,” “even if that person does not have title to or possession of the property.” *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass’n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at \*3-4 (D. Nev. Mar. 31, 2016). NRS 11.070 applies to claims (1) “*founded upon the title to real property*,” where (2) “*the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, ... or [the] grantor of such person, was seized or possessed of the premises in question*” within five years before the challenged action. NRS 11.070 (emphases added).

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<sup>67</sup> XII:JA02334:24-JA02335:3.

The Trustee's claims readily satisfy the statutory requirements. *First*, the claims are "founded upon ... title" to the Property. The Trustee's underlying claim is denominated quiet *title*, reflecting the substance of the dispute.

*Second*, a "grantor" in Nevada law includes a borrower who has executed a deed of trust to provide another party with a security interest in the property. *See* NRS 107.410 (a borrower "is a mortgagor or *grantor of a deed of trust under a residential mortgage loan.*" (Emphasis added)); *Rose v. First Fed. Sav. & Loan Ass'n of Nev.*, 105 Nev. 454, 777 P.2d 1318 (1989) (grantor of deed of trust is party obligated to pay the loan). There is no dispute that the borrower on the Note and grantor of the Deed of Trust had possession of the Property until the HOA Sale. The Trustee's claims are timely under NRS 11.070.

The Trustee's claims are also timely under NRS 11.080's five-year statute of limitations, which encompasses recovery of real property "*other than mining claims*" where "the plaintiff or the plaintiff's ... *grantor* was seized or possessed of the premises in question" within five years before the challenged action. NRS 11.080 (emphasis added). This broad language demonstrates that the statute's scope includes lien interests; by exempting mining claims, which are a distinct form of property interest rather than a subset of title to real property, *see Mills v. United States*, 742 F.3d 400, 403 (9th Cir. 2014) (discussing different owners of legal title, mining rights, and possessory rights in land), the Nevada legislature

confirmed that the NRS 11.080 applies to disputes about a variety of property interests, not just interests directly involving title to real property.

Courts have adopted a broad interpretation of NRS 11.080 that covers quiet-title claims seeking to confirm the survival of a deed of trust after an HOA foreclosure sale. For instance, this Court has cited NRS 11.080 in a case involving a dispute between a lienholder and an HOA sale purchaser, the same dispute central to this case. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21. 388 P.3d 226 (2017). Most recently, in *Arbor Park*, this Court rejected SFR’s challenge to NRS 11.080’s application in the context of a bank’s quiet title action: “We reject respondent SFR Investments’ argument that appellant must have an *ownership* interest in the subject property in order to assert a quiet title claim, as nothing in NRS 40.010 suggests the Legislature intended to impose such a requirement.” 2020 WL 1903156 at fn.1.

There is no dispute here that the Borrowers on the Note and grantors of the Deed of Trust had possession of the Property up until the HOA Sale on July 25, 2012, less than five years before the Trustee filed its Complaint on July 12, 2016.<sup>68</sup> Because NRS 11.070 and 11.080 apply where *either* a quiet title claimant itself, “*or the ... grantor of such person*”, was seized or possessed of the premises in

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<sup>68</sup> IV:JA00669-70 and I:JA00001-62.

question, the district court erred in finding that NRS 11.070 and 11.080 were inapplicable because the Trustee never possessed the Property.

**3. The District Court erred in concluding that the Trustee's tender defense was untimely asserted.**

The district court further found that, even if it applied a five-year statute of limitation to the Trustee's claims under either NRS 11.070 or NRS 11.080, the Trustee's claims were still time-barred because the Trustee did not allege tender until six years after the HOA Sale when the Trustee filed its First Amended Complaint on May 8, 2018 ("Amended Complaint").<sup>69</sup> In making this determination, the district court also erroneously concluded that the Trustee's tender allegations contained in its Amended Complaint did not relate-back to the time of filing of the Trustee's Complaint under NRCP 15(c).<sup>70</sup>

First, there are no requirements under Nevada law that the Trustee allege tender in its Complaint or as a defense to SFR's Counterclaim. The Trustee did not bring a separate cause of action for tender; rather, the Trustee's assertion of its tender defense is a legal theory. *See* Legal Theory Definition, *Black's Law Dictionary* (10th ed. 2014) (a legal theory is a "principle under which litigation proceeds, or on which a litigant bases its claims or defenses in a case."). Only claims are subject to limitations periods, legal theories are not. *Cf. Liston v. Las*

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<sup>69</sup> XII:JA02335 at 1-3.

<sup>70</sup> XII:JA02335:4-JA02336:10.

*Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995) (“‘Notice pleading’ requires plaintiffs to set forth the facts which support a legal theory, but does not require the legal theory relied upon to be correctly identified.”).

This Court has previously confirmed that a defense to an HOA foreclosure sale is a legal theory as opposed to claim. *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 396 P.3d 754 (2017) (“*Nationstar*”). In *Nationstar*, this Court rejected the argument that Nationstar’s invocation of the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), as a defense to an HOA sale was equivalent to asserting a standalone claim. “Rather, SFR asserted a quiet title claim against Nationstar, and Nationstar has merely argued that Freddie Mac’s property is not subject to foreclosure while it is in conservatorship under federal law.” *Id.* Similarly here, while the Trustee initiated the litigation by filing a Complaint, it was only required to do so because SFR held itself out to be superior to the Trustee’s Deed of Trust despite the pre-sale tender of the superpriority portion of the HOA’s lien. SFR has also asserted a counterclaim for quiet title against the Trustee, arguing that SFR’s interest in the Property was superior to that of the Trustee’s.<sup>71</sup> As such, the Trustee is entitled to assert any legal theory to the HOA Sale and SFR’s claim of superiority of title as a defense. Because the

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<sup>71</sup> I: JA00097-114.

Trustee's tender allegations were based on a legal theory and not a separate claim, the district court erred in finding that the Trustee was required to assert tender in its pleadings prior to the statute of limitations period.

Second, even if the Trustee were required to allege tender, the district court erred in concluding that the Trustee's tender allegations in the Amended Complaint do not relate back to the time of filing of the original Complaint under NRCP 15. The district court stated that the Trustee's original Complaint never pled tender or any allegations related to tender and therefore, "anyone reading the original Complaint would have no idea the Trustee would later claim it tendered the superpriority portion of the lien."<sup>72</sup> However, NRCP 15(a) only requires a short and plain statement regarding the nature of the claim. The Trustee's Complaint describes the Trustee's interest in the Property, as well as allegations pertaining to the HOA Sale, putting SFR on notice that the Trustee sought a quiet title order establishing that its lien interest remained a valid encumbrance against title to the Property and was not extinguished by the HOA Sale.<sup>73</sup> The facts giving rise to tender of the superpriority portion of the HOA's lien arose out of the same conduct, transaction and occurrence set out in the Trustee's original Complaint.

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<sup>72</sup> XII:JA02336 at 1-10.

<sup>73</sup> I:JA00001-62.



Additionally, given that SFR is involved in hundreds of quiet title cases stemming from its purchase of properties foreclosed upon under NRS Chapter 116, it is well aware of the tender defense. SFR cannot prove that it was prejudiced as a result of any delay in alleging tender considering SFR had a full and fair opportunity to investigate tender during discovery.

Moreover, the rules regarding amendment under NRCP 15 are relaxed, even allowing parties to amend the pleadings during and after trial to conform to the evidence. Because the Trustee timely sought leave to amend its Complaint prior to the deadline to do so, this Court should find that SFR was put on timely notice of the Trustee's tender defense and the district court erred in not concluding that the allegations in the Amended Complaint relate back to the date the original Complaint was filed.

Even if the district court could not affirmatively rule in the Trustee's favor due to lack of standing and the statute of limitation, the district court still erred in quieting title in favor of SFR on its Counterclaim. "A plea to quiet title does not require any particular elements, but each party must plead and prove his or her own claim to the property in question" and a claimant's right to relief "therefore depends on superiority of title." *Chapman v. Deutsche Bank Nat'l Trust Co.*, 129 Nev. 314, 302 P.3d 1103 (Nev. 2013) (citing *Yokeno v. Madnas*, 973 F.2d 803, 808 (9<sup>th</sup> Cir. 1992)). As such, in order for SFR to be successful on its Counterclaim for

quiet title, SFR was required to prove that its title was superior to that of the Trustee's. The district court erred in granting title in favor of SFR due to evidence of Tender. *See infra*.

**C. THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT ADMITTING BUSINESS RECORDS ESTABLISHING TENDER.**

During trial, the district court admitted the Tender; but refused to admit supporting business records and witness testimony confirming the Tender amount was sufficient to satisfy the superpriority portion of the HOA's lien and delivery of the Tender to A&K. Consequently, the district court reached the erroneous conclusion that the Trustee had failed to prove the defense of tender to protect the Deed of Trust. Here, the district court abused its discretion. It failed to admit certain evidence on this point proffered by the Trustee and reached an erroneous conclusion of law. Accordingly, the Trustee respectfully requests that this Court reverse judgment in favor of SFR and find that the Tender was sufficient to discharge the superpriority portion of the HOA's lien such that SFR purchased the Property subject to the Deed of Trust. At a minimum, this Court should reverse judgment in favor of SFR and remand for reconsideration of the evidence presented by the Trustee during trial.

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**1. The district court abused its discretion in failing to admit evidence to prove the amount of the Tender which evidence is either not hearsay or falls within the business records exception to hearsay.**

The district court refused to admit the following evidence offered by the Trustee at trial: (1) the HOA's account ledger<sup>74</sup>, attached to the Payoff Demand sent by A&K to MBBW (Exhibit 23); (2) the records attached to the Affidavit of Doug Miles (proposed Exhibit 31); (3) the HOA account ledger<sup>75</sup> contained in A&K's collection file (Exhibit 30); (4) the HOA complete account ledger<sup>76</sup> contained in the HOA's initial NRCP 16.1 disclosures (proposed Exhibit 44) while the HOA was still a party to the litigation; and (5) the testimony of David Alessi, on behalf of A&K, concerning the amount of monthly assessments. The district court abused its discretion in concluding that the foregoing evidence was inadmissible hearsay.

a. The HOA's account ledger attached to the Payoff Demand<sup>77</sup> is not hearsay.

The district court abused its discretion by not admitting the HOA's account ledger<sup>78</sup> attached to the Payoff Demand, which was admitted into the trial record as Exhibit 23, finding that the account ledger was inadmissible hearsay.<sup>79</sup>

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<sup>74</sup> IV:JA00690-94.

<sup>75</sup> VI:JA01113-20.

<sup>76</sup> IX:JA01720-25.

<sup>77</sup> IV:JA00690-94.

<sup>78</sup> *Id.*

<sup>79</sup> XIV:JA02603 at 11-12.

A statement is not hearsay if the statement is not being introduced to prove the truth of the matter asserted. NRS 51.035. If the statement being introduced is a “verbal act” or a “legally operative fact”, then the statement is not hearsay because the issue turns on whether the statement was made, not whether the statement is true. *See Woods v. State*, 101 Nev. 128, 131, 696 P.2d 464, 466 (1985); *Wood v. U.S.*, 1968, 405 F.2d 423 (finding that testimony that was not offered nor received to prove truth of statement testified to but to prove that statement had been made and heard was not hearsay).

The district court found that the HOA’s account ledger attached to the Payoff Demand was hearsay and examined the business records exception under NRS 51.135 without fully considering whether the HOA account ledger was actually being offered to prove the truth of the matter asserted. However, the HOA account ledger is not hearsay because the Trustee sought to introduce it only for evidence that the account statement was made and relied upon by Mr. Jung in preparing the Tender Letter (admitted into evidence at trial as Exhibit 24). Mr. Jung testified that he wrote thousands of tender letters during the course of his employment with MBBW.<sup>80</sup> It was Mr. Jung’s pattern and practice to draft the tender letter and calculate the superpriority portion of an HOA’s lien relying on an

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<sup>80</sup> XIII:JA02537 at 1-6.

HOA account ledger attached to an HOA's trustee's payoff demand.<sup>81</sup> Mr. Jung testified that he would take the information contained in the account ledger and would then multiple the monthly assessment by nine (9).<sup>82</sup> The truth and accuracy of the actual charges contained in the HOA account ledger are irrelevant. The Trustee simply sought to show that Mr. Jung *relied* on the representations in the HOA account ledger<sup>83</sup> in preparing the Tender (Exhibit 24).

Had the district court admitted the HOA account ledger not for the purpose of establishing the *amount* of the HOA's monthly assessment, but for the purpose of showing that the account statement was made and Mr. Jung relied upon it in calculating the Tender, the Trustee would have been able to show that tender was properly made. Indeed, the Tender was admitted into evidence at trial<sup>84</sup> and both Mr. Jung and Mr. Alessi confirmed that there were no nuisance and abatement charges on the homeowner's account, meaning that only nine (9) months of dues had superpriority.<sup>85</sup>

- b. The district court abused its discretion in excluding documents that qualify under the business records exception to hearsay.

The district court abused its discretion in not admitting the following evidence of the monthly assessment amount to calculate the Tender under the

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<sup>81</sup> XIII:JA02537 at 8-20.

<sup>82</sup> XIII:JA02557 at 5-19, JA02559:22-JA02560:6.

<sup>83</sup> IV:JA00690-94.

<sup>84</sup> Exhibit 24, IV:JA00695-97.

<sup>85</sup> XIII:JA02557 at 15-19, JA02560:2-6, and XIV:JA02737:25-JA02738:2.

business records exception to hearsay: the HOA's account ledger,<sup>86</sup> attached to the Payoff Demand (Exhibit 23); the records attached to the Affidavit of Doug Miles (proposed Exhibit 31); the HOA account ledger<sup>87</sup> contained in A&K's collection file (Exhibit 30); and the HOA account ledger<sup>88</sup> contained in the HOA's initial NRCP 16.1 disclosures (proposed Exhibit 44).

The business records exception to hearsay, NRS 51.135, provides:

A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

A "qualified person" required to authenticate the writing has been broadly interpreted as anyone who understands the record-keeping system involved. *See Thomas v. State*, 114 Nev. 1127, 1147–48, 967 P.2d 1111, 1124–25 (1998) (holding that the term "'qualified person' ... ***has been broadly interpreted***" and the proponent of the record "need only make a prima facie showing of [its] authenticity so that a reasonable juror could find that the [record] is what it purports to be."); *see also Cager v. State*, 124 Nev. 1455, 238 P.3d 799 (2008) (unpub.) (The term "qualified person" is broadly interpreted to include anyone who

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<sup>86</sup> IV:JA00690-94.

<sup>87</sup> VI:JA01113-20.

<sup>88</sup> IX:JA01720-25.

knows that the documents were kept in the ordinary course of business and understands the record-keeping system that was involved) (citing *Thomas*, 114 Nev. at 1148, 967 P.2d at 1124).

While Nevada law does not define what an “other qualified person” means for the purpose of authenticating a business record, this Court ruled in *Thomas* that where a witness testified that they were not the custodian of records and did not personally prepare the documents in question, they were an “other qualified person” because the witnesses testified that documents were kept in the ordinary course of business. *Thomas*, 967 P.2d at 1124–25. The Ninth Circuit has similarly set a low bar: “[t]he phrase ‘other qualified witness’ is broadly interpreted to require only that the witness understand the record-keeping system.” *U.S. v. Ray*, 930 F.2d 1368, 1370 (9th Cir. 1990) (finding that welfare fraud investigator familiar with the reporting and filing requirements for public assistance benefits was an “other qualified witness” although she was not a custodian of record); *U.S. v. Basey*, 613 F.2d 198, 201 n.1 (9th Cir. 1979) (college records properly admitted to establish defendant’s address even though custodian did not record the information herself nor knew who did). And while the district court has considerable discretion in determining whether a foundation has been laid for the admission of evidence under the business records exception to the hearsay rule, all the propounding party is required to do is to make a “prima facie” case for

admissibility. *Greco v. State*, No. 67973, 2016 WL 937117, at \*3–4 (Nev. App. Mar. 9, 2016).

*i. The HOA's account ledger,<sup>89</sup> attached to the Payoff Demand (Exhibit 23)*

The district court incorrectly found neither Mr. Jung nor Mr. Alessi were qualified under the business records exception to hearsay<sup>90</sup> to admit the HOA's account ledger<sup>91</sup> attached to the Payoff Demand (Exhibit 23). As previously mentioned, during trial, Mr. Jung testified that when he worked for MBBW, he wrote thousands of letters to HOA collection agents requesting a superpriority lien payoff and offering that his client would pay the same upon sufficient proof.<sup>92</sup> Mr. Jung confirmed that he is familiar with the record keeping practices of MBBW through his employment with that firm as an attorney for over four (4) years.<sup>93</sup> As part of Mr. Jung's familiarity with MBBW's record keeping practices, Mr. Jung testified that it was MBBW's pattern and practice to save all written communications with the various HOA trustees to MBBW's file for each individual property.<sup>94</sup> And, while Mr. Jung testified at trial that he did not independently recall receiving the Payoff Demand (Exhibit 23), including the

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<sup>89</sup> IV:JA00690-94.

<sup>90</sup> XIV:JA02603 at 11-12, JA02609 at 1-12.

<sup>91</sup> IV:JA00690-94.

<sup>92</sup> XIII:JA02537 at 16.

<sup>93</sup> XIII:JA02536 at 11-14, XV:JA02585:10:JA02587:2, JA02591:12-JA02592:8.

<sup>94</sup> XIV:JA02591 at 15-25.



HOA's account ledger,<sup>95</sup> addressed to Mr. Jung's paralegal, Mr. Jung testified that it was MBBW's pattern and practice for the paralegal to save the correspondence to the file and Mr. Jung would then prepare a tender letter in response.<sup>96</sup> Mr. Jung's testimony demonstrated that the HOA account ledger is what it purports to be—an HOA ledger attached to A&K's Payoff Demand for the purpose of demanding the entirety of the HOA's lien in addition to A&K's fees and costs.<sup>97</sup>

Mr. Jung is not the custodian of records for either MBBW or the HOA; however, he is an "other qualified person" with sufficient knowledge to testify under NRS 51.135 based on his testimony on how MBBW's records are kept and stored in the normal course of business. The district court sustained SFR's objections that Mr. Jung was not qualified to admit the HOA account ledger because it was not a MBBW record.<sup>98</sup> Yet, courts routinely permit a witness to testify to and authenticate records created by another entity where the entity relies on the records to conduct day-to-day business. *See U.S. Bank Trust, N.A. v. Jones*, 330 F.Supp.3d 530 (D. Me. 2018) (noting that a current servicer relies on other servicers' records in its day-to-day business once it believes they are correct, and a current servicer then treats the records as part of its own business records).

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<sup>95</sup> IV:JA00690-94.

<sup>96</sup> XIII:JA02556:20-JA02558:8, JA:02600:1-JA02601:15.

<sup>97</sup> XIV:JA02599:5-JA02601:24.

<sup>98</sup> XIV:JA2602:18-JA2603:12.

Most other circuit courts have applied the business records exception flexibly to admit records created by a different business entity once incorporated and relied upon by the business entity producing the witness to testify about the other requirements of [the business records exception].

*See, e.g., U.S. v. Adefehinti*, 510 F.3d 319, 326 (D.C. Cir. 2007); *Air Land Forwarders, Inc. v. U.S.*, 172 F.3d 1338, 1344 (Fed. Cir. 1999); *U.S. v. Childs*, 5 F.3d 1328, 1333 (9th Cir. 1993); *Matter of Ollag Constr. Equip. Corp.*, 665 F.2d 43, 46 (2d Cir. 1981); *Mason v. Midland Funding LLC*, No. 1:16-cv-02867-LMM-RGV, 2018 WL 3702462, at \*81 (N.D. Ga. May 25, 2018) (overruled on other grounds) (applying the business records exception under Fed. R. Evid. 803(6)<sup>99</sup> to records which were not created by the business, but rather gathered by the business and kept in the course of its business).

Because the HOA account ledger<sup>100</sup> attached to A&K's Payoff Demand (Exhibit 23) was received by MBBW and relied upon by Mr. Jung to calculate the superpriority portion of the HOA's lien in his preparation of the Tender, the district court abused its discretion in finding that Mr. Jung was not qualified to admit the non-MBBW record into evidence. The foundational requirements for admission of the HOA Ledger as a business record were met through Mr. Jung's testimony.

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<sup>99</sup> Fed. R. Evid. 803(6) is substantially similar to NRS 51.135. This Court may look to federal law "discussing an analogous federal rule of evidence" for guidance in interpreting its own evidence rules. *Las Vegas Dev. Assocs., LLC v. Eighth Judicial Dist. Ct.*, 130 Nev. Adv. Rep. 37, 325 P.3d 1259, 1265 (2014).

<sup>100</sup> IV:JA00690-94.

The Trustee also called Mr. Alessi, custodian of records and corporate designee for A&K, foreclosure agent for the HOA, as a witness at trial. Mr. Alessi testified that in the course of A&K's collection activities on behalf of the HOA, A&K would regularly request and receive HOA ledgers from the HOA.<sup>101</sup> Mr. Alessi further testified that once A&K receives a statement of account or ledger from the HOA, the document would be integrated into A&K's business records<sup>102</sup> at or near the time of receipt,<sup>103</sup> that the account ledger is the type of document he would expect to find attached to a payoff demand provided to MBBW,<sup>104</sup> and that A&K relied on the truthfulness and accuracy of the ledger provided by the HOA when drafting and sending payoff demands to MBBW.<sup>105</sup> Mr. Alessi's testimony was sufficient to satisfy both his position as the custodian of records for A&K, as well as an "other qualified person" under NRS 51.135, such that he was able to testify that the HOA's account ledger became a business record of A&K and should have been admitted at trial as an exception to hearsay.

The district court questioned the gap between the dates and total amounts due and owing identified in the HOA account ledger, dated May 31, 2011, setting forth a total amount of unpaid assessments and late fees of \$1,440.01, and the

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<sup>101</sup> XIV: JA02675 at 11-25 – JA02676 at 1-10.

<sup>102</sup> XIV:JA02676 at 11-14.

<sup>103</sup> XIV:JA02676 at 15-17.

<sup>104</sup> XIV:JA02718 at 3-13.

<sup>105</sup> XIV:JA02722:22-JA02723:9; XV:JA02771:5-JA02772:5.

Payoff Demand, dated October 21, 2011, setting forth a total amount of unpaid assessments and late fees of \$1,761.61.<sup>106</sup> However, these were, at worst, minor discrepancies and were cured through Mr. Alessi's testimony.<sup>107</sup> Mr. Alessi testified that while the date of the HOA ledger was May 31, 2011, during the intervening five months before A&K submitted the demand to MBBW on October 21, 2011, the homeowners continued to accrue unpaid assessments.<sup>108</sup> As such, Mr. Alessi testified that the difference between the HOA account ledger and the Payoff Demand it was attached to could be accounted for by the fact that the homeowner was still accruing unpaid assessments and late fees during that five month period.<sup>109</sup>

The district court also took issue with the fact that the entire Payoff Demand, including the HOA account ledger, was not collectively contained in A&K's collection file.<sup>110</sup> However, it was confirmed during trial by the court and parties, as well as Mr. Alessi, that the HOA account ledger was contained in A&K's collection under a different bates number.<sup>111</sup> Mr. Alessi further confirmed on his second day of trial testimony that the Payoff Demand was maintained in an

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<sup>106</sup> IV:JA00690-94.

<sup>107</sup> XIV:JA02726:23-JA02727 and JA02731:18-JA0232:15.

<sup>108</sup> XIV:JA02729 at 3-8.

<sup>109</sup> XIV:JA02729:26-JA02730:5.

<sup>110</sup> XIV:JA02725 at 2-15.

<sup>111</sup> XIV:JA02720:1-JA0272:15.

electronic file which is why it was not originally disclosed in A&K's collection file (Exhibit 30).<sup>112</sup>

Mr. Jung's trial testimony confirms that he was an "other qualified person" with sufficient knowledge to testify concerning MBBW's business records and those records received by MBBW in the normal course of its business which are then incorporated into MBBW's records and relied upon in MBBW requesting payoff information from an HOA foreclosure agent. Similarly, Mr. Alessi's trial testimony confirms he is the custodian of records and an "other qualified person" with sufficient knowledge to testify concerning receipt of an HOA account ledger, incorporation of the account ledger into A&K's business records and reliance upon the information contained in the account ledger in A&K's normal course of its collection business. Accordingly, the district court abused its discretion when it refused to admit the HOA account ledger<sup>113</sup> attached to the Payoff Demand (Exhibit 23) into evidence during trial. Had the court admitted this evidence, the Trustee would have been able to prove that the Tender amount was sufficient to satisfy the superpriority portion of the HOA's lien.

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<sup>112</sup> XV:JA02747:17-JA02753:8.

<sup>113</sup> IV:JA00690-94.

*ii. The Affidavit of Doug Miles (Proposed Exhibit 31)*

The district court refused to admit the Affidavit of Douglas Miles (proposed Exhibit 31), custodian of records for MBBW, and all of the documents attached thereto, on the sole basis that Mr. Miles was not identified as a witness in the Trustee's NRCP 16.1 disclosures and that the documents attached to the Affidavit was double hearsay.<sup>114</sup> The district court abused its discretion in refusing to admit this evidence.

First, as discussed above, technical noncompliance with not disclosing Mr. Miles as a witness in the Trustee's NRCP 16.1 disclosures was not fatal to admission of proposed Exhibit 31 at trial. The Affidavit and accompanying documents were produced during the discovery period. As such, SFR was apprised of the information contained therein and had a full and fair opportunity to investigate. It chose not to depose Mr. Miles or serve a subpoena for any additional documentation upon him. As such, the Trustee's failure to name Mr. Miles as a witness in its NRCP 16.1 disclosure was harmless and this technical noncompliance should have been excused. NRCP 37(c)(1).

Second, other copies of the Payoff Demand and accompanying HOA account ledger<sup>115</sup> were attached to the Affidavit. As discussed above this

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<sup>114</sup> XIV:02628:12-JA02630:4.

<sup>115</sup> Exhibit 23 and IV:JA00690-94.

document was admissible as a business record of both A&K and MBBW and was admissible as an exception to hearsay. *Supra* at Section D(1)(b)(i).

Third, the Affidavit is not hearsay as it was not offered to prove the truth of any information contained therein. The Affidavit simply provides information on how documents are kept and stored in the course of MBBW's business and how MBBW creates and maintains its records,<sup>116</sup> as well as an explanation of what each document attached to the Affidavit purports to be and the method for creating and maintaining that record for the Property.<sup>117</sup>

Accordingly, the district court abused its discretion when it refused to admit the Affidavit and accompanying documents (proposed Exhibit 31) at trial.

*iii. The HOA account ledger<sup>118</sup> located in A&K's collection file (Exhibit 30)*

Since the district court would not admit the HOA account ledger attached to the Payoff Demand<sup>119</sup>, the Trustee then moved to admit a separate copy of the HOA's account ledger<sup>120</sup> for the Property located in A&K's collection file (Exhibit

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<sup>116</sup> VI:JA01161 at ¶¶3-4.

<sup>117</sup> VI:JA01162-63 at ¶¶5-10.

<sup>118</sup> VI:JA01113-20.

<sup>119</sup> *Supra* at Section C(1)(b)(i).

<sup>120</sup> *Id.*

30).<sup>121</sup> The Trustee sought to admit the document through the testimony of Mr. Alessi and Mr. Alessi's Affidavit as custodian of records for A&K.<sup>122</sup>

While the district court admitted the account ledger for the non-hearsay purpose of establishing that A&K relied on the ledger in preparing the recorded foreclosure notices and payoff demands to MBBW, the district court refused to admit the ledger to establish the amount of the HOA's lien.<sup>123</sup> The district court reached this conclusion after inferring that the HOA account ledger indicated a lack of trustworthiness because Ms. Alessi testified regarding inconsistencies between this ledger and the Payoff Demand (Exhibit 23).<sup>124</sup> The district court found that while VI:JA01117 of the HOA ledger purports to show late fees in the amount of \$11.29, A&K's demand identified showed late fees totaling \$11.54.<sup>125</sup> However, Mr. Alessi accounted for this negligible difference by stating that the management company may have provided a slight adjustment.<sup>126</sup> The district court also found it troubling that once A&K obtained the account ledger from the HOA, which only provided a statement of account through July 2012, A&K added the July 2012 late fee and August 2012 monthly assessment into its July 11, 2012

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<sup>121</sup> XV:JA02776 at 9-17, JA02787 at 10-11, JA02801 at 1-5, JA02807 at 7-17, and JA02822:25-JA02823:1.

<sup>122</sup> XIV:JA02671 at 15-24, XV:JA02773:12-JA02774:3.

<sup>123</sup> XV:JA02818:20-JA0219:17.

<sup>124</sup> XV:JA02801:1-JA02802:21.

<sup>125</sup> XV:JA02801:25-JA02802:21.

<sup>126</sup> XV:JA02794 at 5-15.



demand to MBBW.<sup>127</sup> However, this was explained by A&K's pattern and practice of automatically adding unpaid monthly assessments.<sup>128</sup>

Mr. Alessi also stated that in order to generate the Payoff Demand, A&K relied on the truth and accuracy of the HOA account ledger in its collection file.<sup>129</sup> Additionally, A&K's collection file was produced under Mr. Alessi's Custodian of Records Affidavit, of which Mr. Alessi testified that he would not have executed had he not verified the accuracy of the statements in his declaration, that all documents produced with the Affidavit, including VI:JA01113-1120, are true and exact copies.<sup>130</sup>

*iv. The HOA's complete account ledger for the Property<sup>131</sup>  
disclosed by the HOA (Proposed Exhibit 44)*

During trial, the Trustee also moved to admit a complete account ledger for the Property from 2005 through 2012,<sup>132</sup> disclosed by the HOA during discovery (proposed Exhibit 44), through the testimony of the Custodian of Records for the HOA, as well as the HOA's community manager ("CAMCO"), Yvette Saucedo.<sup>133</sup>

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<sup>127</sup> XV:JA02794:16-JA02795:8.

<sup>128</sup> XIV:JA02729:2-8.

<sup>129</sup> XV:JA02775:21-JA02776:4, JA02793:4-JA02795:8.

<sup>130</sup> XIV:JA02672 at 5-17.

<sup>131</sup> IX:JA01720-25.

<sup>132</sup> *Id.*

<sup>133</sup> XI:JA02012 at 9-11, JA02016 at 8-10, JA02024 at 5-6, JA02034 at 7-8, JA02038 at 10-11, and JA02056 at 4-5.

The district court refused to admit the ledger, concluding that it was double hearsay.<sup>134</sup>

Ms. Saucedo testified that CAMCO maintained certain documents on behalf of the HOA in a physical file, such as all correspondence received and sent, as well as certain records in digital format within CAMCO's operating system, such as the HOA's ledger.<sup>135</sup> Because the source of proposed Exhibit 44 was in two formats, the district court found that the document was double hearsay.<sup>136</sup> Yet, the Trustee only moved to admit the account ledger within proposed Exhibit 44, which Ms. Saucedo testified was stored in digital format *only*.<sup>137</sup> As such, the account ledger itself was not double hearsay but rather admissible as an HOA business record, as Ms. Saucedo confirmed at trial: CAMCO created and electronically stored the account ledger in the course of its duties as the management company for the HOA,<sup>138</sup> explained how CAMCO arrived at the various amounts included in the account ledger,<sup>139</sup> and that CAMCO had a policy and procedure of timely inputting the various information into the account ledgers<sup>140</sup> by someone with personal

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<sup>134</sup> XI:JA02012 at 3-15, JA02018:13-JA02019:6, JA02027 at 6-16, JA02035 at 15-22, JA02048:13-JA02049:24, and XI:JA02062.

<sup>135</sup> XI:JA02055 at 5-16.

<sup>136</sup> XI:JA02062.

<sup>137</sup> XI:JA02055 at 5-16.

<sup>138</sup> XI:JA02002 at 12-22 and JA02003:15-JA02004.

<sup>139</sup> XI:JA02021 at 13-20.

<sup>140</sup> XI:JA02014 at 17-20, JA022015 at 1-4.

knowledge.<sup>141</sup> Lastly, she testified that the account ledger is a true and accurate copy of the HOA's ledger that is stored in CAMCO's operating system,<sup>142</sup> that in the course of CAMCO's duty to the HOA, it runs monthly reconciliation checks to ensure the accuracy of the document,<sup>143</sup> and that access to the ledgers maintained in CAMCO's operating system is restricted to only those in the accounting department.<sup>144</sup>

Nothing in Ms. Saucedá's testimony at trial indicated any lack of trustworthiness in the account ledger, nor any lack of capacity on her part, so as to warrant treating this business record as hearsay, let alone double hearsay. Accordingly, the district court abused its discretion in refusing to admit the complete account ledger, IX:JA01720-1725, at trial.<sup>145</sup>

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<sup>141</sup> XI:JA02002 at 23-25, JA02014 at 21-25.

<sup>142</sup> XI:JA02003 at 12-14.

<sup>143</sup> XI:JA02020 at 4-9.

<sup>144</sup> XI:JA02022 at 4-25.

<sup>145</sup> The various HOA account ledgers were also admissible under the catch-all exceptions to hearsay. "[a] statement is not excluded by the hearsay rule if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness, even though the declarant is available." NRS 51.075. Under NRS 51.315, a statement is not excluded by the hearsay rule if the "nature and the special circumstances under which it was made offer strong assurances of accuracy" and the declarant is unavailable. *See* NRS 51.315. Information is more likely accurate when it is commonly relied upon by reasonable and prudent persons in the conduct of their affairs. *State, Dep't of Motor Vehicles v. Kiffe*, 101 Nev. 729, 733, 709 P.2d 1017, 1020 (1985) (holding that "the evidence consisting of officer's statement is of the type commonly relied upon by reasonable and prudent persons in the conduct of

## **2. The district court erred in requiring the Trustee to prove delivery of the Tender.**

The district court also erred in concluding that the Trustee must prove the specific details of delivery of the Tender to A&K in order to successfully assert the defense of tender.<sup>146</sup>

There is no requirement in applicable law that a party asserting tender must also prove delivery of tender. *Diamond Spur*, 427 P.3d at 120. Indeed, the *Diamond Spur* court considered the exact same set of facts presented to the district court here and concluded that once a tender is made, it automatically discharges the superpriority portion of an HOA's lien by operation of law. *Id.* There is simply no requirement that after establishing a sufficient tender, the tendering party must take any further action, including proving specific details of delivery of the tender. *See id.* at 120 (rejecting SFR's argument that the bank is required to record a tender or to otherwise keep tender good) and *id.* at 120-121 (rejecting SFR's argument that the bank was required to take further action to keep its tender good by depositing the tender into court or opening an escrow account). As such,

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their affairs.”). This Court has also recognized that “a statement is not excluded by the hearsay rule if its nature and the circumstances under which it is made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness.” *Johnstone v. State*, 92 Nev. 241, 244, 548 P.2d 1362, 1363 (1976) (citing NRS 51.075) (internal quotes omitted); *see also Emmons v. State*, 107 Nev. 53, 57-58, 807 P.2d 718, 721 (1991) *overruled on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000).

<sup>146</sup> XII:JA02336 at 21-24.

MBBW was not required to take any further action under the law once it mailed the Tender to A&K, including confirming that the Tender was delivered to A&K. Accordingly, the district court erred in concluding that evidence of mailing was not enough to prove tender and that the Trustee was required to produce further evidence of delivery too.

Even if the Trustee was required to prove delivery of the Tender (which it was not), the evidence considered by the district court at trial established that there is no genuine issue of material fact that the Tender was delivered to A&K. The uncontested evidentiary record considered by the District Court showed:

- On October 11, 2011, MBBW sent a payoff request to A&K<sup>147</sup> at A&K's mailing address identified in the NOD<sup>148</sup> and First NOS<sup>149</sup>: 9500 W. Flamingo Rd., Suite 100, Las Vegas, NV 89147;
- In response, ten days later on October 21, 2011, A&K faxed the Payoff Demand to MBBW.<sup>150</sup> The Payoff Demand directed payment to be delivered to A&K's Nevada address; specifically, the only address on the

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<sup>147</sup> IV:JA00686-87.

<sup>148</sup> IV:JA00665.

<sup>149</sup> IV:JA00666.

<sup>150</sup> IV:JA00688-94.

Payoff Demand: 9500 W. Flamingo Rd., Suite 100, Las Vegas, NV 89147<sup>151</sup>;

- On December 16, 2011, MBBW sent the Tender to A&K at the mailing address identified in the NOD, First NOS, and Payoff Demand<sup>152</sup>: 9500 W. Flamingo Rd., Suite 100, Las Vegas, NV 89147;
- Rock Jung testified at trial that it was his pattern and practice to mail tender letters after they were prepared<sup>153</sup>;
- Mr. Jung testified that during his tenure with MBBW, he sent thousands of tender checks to the various HOA trustees during the relevant time period<sup>154</sup>; and
- Mr. Jung testified regarding his pattern and practice of immediately sending a tender letter and check to the intended recipient via runner's service once prepared.<sup>155</sup>

Additionally, had the district court admitted the Affidavit of Doug Miles of MBBW into evidence as requested by the Trustee (proposed Exhibit 31),<sup>156</sup> the

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<sup>151</sup> IV:JA0689.

<sup>152</sup> IV:JA00695-97.

<sup>153</sup> XIII:JA02557.

<sup>154</sup> XIII:JA02537 at 1-6.

<sup>155</sup> XIII:JA02557 at 5-14 (stating that once he received a payoff demand from A&K, it was his pattern and practice to review the A&K demand, calculate the superpriority lien, and then have a legal runner hand deliver the check).

<sup>156</sup> VI:JA01161-81.

district court would have seen further evidence of rejection of the Tender by A&K and return of the Tender to MBBW.<sup>157</sup>

Moreover, the testimony of Mr. Alessi confirms that in this case, there would be no further evidence of delivery or receipt by A&K:

- Mr. Alessi testified that MBBW tender letters were accompanied by a receipt of check (“ROC”) signed by A&K whenever a tender was *accepted*<sup>158</sup>;
- A ROC would only be signed *when provided by MBBW* and only where *A&K accepted* the tender<sup>159</sup>;
- During the relevant time period, MBBW did not provide a ROC with every letter that it tendered<sup>160</sup>;
- A&K would not accept any tenders that were accompanied by a letter that contained “conditional language”<sup>161</sup>; and
- Mr. Alessi testified that he would “expect” a copy of a tender letter or a status note in the collection file, but that this practice was not “always” followed.<sup>162</sup>

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<sup>157</sup> See discussion regarding the admissibility of Doug Miles’ Affidavit, *supra* at Section D(1)(b)(ii).

<sup>158</sup> XII:JA02337 at 11-15.

<sup>159</sup> XV:JA02829:1-JA02830:1.

<sup>160</sup> XV:JA02829 at 1-24.

<sup>161</sup> XV:JA02798:8-JA02799:13, JA02840:24-JA02841:3.

None of the foregoing evidence admitted into the record at trial *was disputed or rebutted with contrary evidence by SFR*.

Despite this, the district court concluded that there was no proof of delivery of tender here, without any contrary evidence actually being presented by SFR and contrary to the testimony of Mr. Jung and Mr. Alessi.

Pursuant to NRS 47.250, where a letter is duly directed and mailed, there is an inference that it was received in the regular course of the mail. *See* NRS 47.250(13). This inference can also be applied to sending of a letter via runner's service. There is also a presumption that the ordinary course of business has been followed. NRS 47.250(18)(c). It is undisputed that Mr. Jung prepared the Tender, admitted into evidence at trial (Exhibit 24), and that it was Mr. Jung's ordinary course of business to send tender letters to an HOA trustee via runner once prepared. As such, the Trustee met its evidentiary burden under the presumption that the Tender was duly sent and received in the ordinary course of MBBW's business. The burden then shifted to SFR to produce evidence at trial in rebuttal. Yet, the trial record is devoid of any evidence presented by SFR challenging MBBW's normal course of business or A&K's mailing address. Nor did SFR

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<sup>162</sup> XV:JA02827:23-JA02828:6, JA02842 at 8-12 (stating that "it's very possible that we received a check, but that we neither noted in the status report, nor scanned it in the file . . . [w]e were just getting so many of them and depending who the attorney or legal assistant was, that check may or may not have made it into the file, and a status report entry may or may not have occurred").



present any evidence to show that the mailing or runner service was not actually made.

Lastly, the district court also erred in making certain assumptions regarding tender. The district court found that MBBW's subsequent attempt to tender the superpriority portion of the HOA's lien before the HOA Sale established that tender was never delivered.<sup>163</sup> However, A&K recorded several additional notices of sale after the Tender. It was logical for MBBW to submit subsequent payoff inquiries after its Tender was rejected. Additionally, the district court found that an entry in A&K's status notes wherein Ocwen Loan Servicing, LLC ("Ocwen"), inquired about excess proceeds was conclusive that tender was not delivered.<sup>164</sup> However, a subsequent loan servicer would logically seek payoff information if a foreclosing HOA continued to record new notices of sale identifying the full lien amount.

Accordingly, the district court erred in concluding that the Trustee had not met its burden of proof by a preponderance of evidence, despite the foregoing evidence admitted into the trial record. For the same reasons, the district court erred in quieting title to SFR when SFR cannot establish that superior title passed to it following the pre-sale Tender.

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<sup>163</sup> XII:JA02337:24-JA02338:1.

<sup>164</sup> VI:JA01159-60.

#### **D. THE EVIDENTIARY RECORD CONFIRMS THAT TENDER WOULD HAVE BEEN FUTILE.**

As stated above, the Trustee contends that the district court's finding that it failed to prove delivery of a valid tender<sup>165</sup> was in error. However, due to intervening change in law, this Court should also reverse the district court's decision because the evidentiary record from trial proves that tender would have been futile under the circumstances.

On February 27, 2020, this Court held that where tender would be futile based on an HOA trustee's pattern and practice of rejecting tenders, formal tender is excused. *7510 Perla Del Mar Ave Trust v. Bank of America, N.A.*, 136 Nev. Adv. Op. 6, 458 P.3d 348 (2020) ("*Perla Trust*"). In *Perla Trust*, evidence was presented by the bank trust at trial that even if MBBW had tendered a check for the superpriority lien amount, it would have been rejected given the HOA trustee's business policy to reject any checks for less than the full amount demanded by the HOA trustee. *Id.* The bank trust presented evidence that MBBW had knowledge of this business practice. *Id.* As such, this Court found that the bank trust was therefore excused from making a formal tender. *Id.*, citing, among others, *Schmitt v. Sapp*, 71 Ariz. 48, 223 P.2d 403, 406-07 (1950) ("An actual tender is unnecessary where it is apparent the other party will not accept it. The law does not require one to do a vain and futile thing." (citation omitted)); and *Mark Turner*

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<sup>165</sup> XII:JA02338 at 6-18.

*Props., Inc. v. Evans*, 274 Ga. 547, 554 S.E.2d 492, 495 (2001) (“Tender of an amount due is waived when the party entitled to payment, by declaration *or by conduct*, proclaims that, if tender of the amount due is made, an acceptance of it will be refused.” (alteration and internal quotation marks omitted).

During trial, Mr. Jung testified as to A&K’s pattern and practice of rejecting tenders,<sup>166</sup> confirming that during his four years of employment with MBBW, Mr. Jung estimated that he tendered payment to A&K for the super priority lien on several hundred occasions.<sup>167</sup> A&K consistently rejected any tendered checks that did not include A&K’s collection fees and costs.<sup>168</sup> Additionally, Mr. Alessi, the Custodian of Records for A&K, testified that A&K would accept tenders of the superpriority lien if the check was accompanied by a letter that did not have “conditional language.”<sup>169</sup>

Here, the Tender did not contain any of A&K’s collection fees and costs and the letter accompanying the tender check contains language that both SFR and A&K argued was “conditional”.<sup>170</sup> As such, the evidence at trial established that, had A&K received the tender from MBBW, it would have been summarily rejected. Therefore, applying *Perla Trust*, the Trustee respectfully submits that this

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<sup>166</sup> XIII:JA02538:13-JA02538:10.

<sup>167</sup> XIII:JA02537 at 8-12.

<sup>168</sup> XIII:JA0-2538:13-JA02538:10.

<sup>169</sup> XV:JA02798-JA02799:13, JA02840:24-JA0241:3.

<sup>170</sup> III:JA00402:20-25, JA00409:12-JA00410:10, JA00416:9-25.

Court should reverse the district court's Trial Order on the basis that the Trustee's predecessor was excused from making a formal tender, such that the HOA Sale did not extinguish the Deed of Trust and SFR acquired its interest in the Property subject to the Deed of Trust.

Regardless of the district court's conclusions as to the Trustee's standing to assert its claims and whether the claims were brought within the applicable limitation period, the district court still erred in quieting title in favor of SFR. SFR cannot establish a superior claim to title where the evidence on the record establishes that there was a valid tender, or in the alternative, tender would have been futile and was therefore excused. Accordingly, at a minimum, the Court should reverse the decision quieting title in SFR's favor and, instead, award judgment in the Trustee's favor on SFR's Counterclaim.

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## **IX. CONCLUSION**

The Trustee respectfully requests that the Court set aside the final judgment of the district court and direct entry of quiet title in favor of the Trustee on the basis that the Trustee has standing to assert its claims which were filed within the requisite limitation period. Even if this Court affirms the district court's rulings on standing and the statute of limitation, the Trustee requests that the Court reverse the judgment quieting title to the Property in favor of SFR as superior title did not pass to SFR as a result of either a valid or excused tender.

DATED this 15<sup>th</sup> day of June, 2020.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller, Esq.

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*Attorneys for Appellant*

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point, Times New Roman style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 11,921 words. I further certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15<sup>th</sup> day of June, 2020.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller, Esq.

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Las Vegas, Nevada 89117

*Attorneys for Appellant*

### **PROOF OF SERVICE**

I certify that I electronically filed on the 15<sup>th</sup> day of June, 2020, the foregoing **APPELLANT'S OPENING BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

- [X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

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

Jacqueline Gilbert  
Karen Hanks

- [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.

/s/ Faith Harris  
An Employee of WRIGHT, FINLAY & ZAK, LLP



## **APPELLANT'S ADDENDUM**

## **INDEX TO ADDENDUM**

<b>Ex.</b>	<b>Name of Exhibit</b>	<b>Pages</b>
1	Deposition of David Alessi, 30(b)(6) Designee for Alessi & Koenig, LLC	ADD001-022
2	Deposition of Katherine Ortwerth	ADD023-054
3	Plaintiff/Counter-Defendant U.S. Bank National Association's Initial Disclosure of Witnesses and Documents	ADD055-221
4	Plaintiff U.S. Bank National Association's Second Supplemental Disclosure of Witnesses and Documents	ADD222-277
5	SFR Investments Pool 1, LLC's Pre-Trial Disclosures	ADD278-282
6	U.S. Bank National Association's Pre-Trial Disclosures	ADD283-291

# **EXHIBIT 1**

# **EXHIBIT 1**

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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, Case No. A-16-739867-C  
Dept. No. XXXI

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.

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DEPOSITION OF DAVID ALESSI, 30(b)(6) DESIGNEE FOR  
ALESSI & KOENIG, LLC  
Las Vegas, Nevada  
Tuesday, May 29, 2018

Reported by:  
MARCIA LEONARD  
CCR No. 204  
Job No. 2906443  
PAGES 1 - 39



<p>1 LAS VEGAS, NEVADA, TUESDAY, MAY 29, 2018</p> <p>2 2:35 p.m.</p> <p>3 * * * * *</p> <p>4</p> <p>5 (In an off-the-record discussion held prior to</p> <p>6 the commencement of the deposition proceedings, counsel</p> <p>7 agreed to waive the court reporter requirements under</p> <p>8 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)</p> <p>9</p> <p>10 Whereupon,</p> <p>11 DAVID ALESSI,</p> <p>12 having been first duly sworn, did testify as follows:</p> <p>13</p> <p>14 EXAMINATION</p> <p>15 BY MR. HENDRICKSON:</p> <p>16 Q. All right. My name is Jamie Hendrickson. I</p> <p>17 represent U.S. Bank, National Association as Trustee for</p> <p>18 the Merrill Lynch Mortgage Investors Trust, Mortgage Loan</p> <p>19 Asset-Backed Certificates, Series 2005-A8. So we'll call</p> <p>20 that U.S. Bank in connection with Alessi &amp; Koenig</p> <p>21 foreclosure sale of the property located at 7868 Marble</p> <p>22 Doe Street, Las Vegas, Nevada 89149.</p> <p>23 Can you state your name and spell it for the</p> <p>24 record?</p> <p>25 A. David Alessi, A-L-E-S-S-I.</p> <p style="text-align: right;">Page 6</p>	<p>1 A. Yes.</p> <p>2 Q. And did you review this document prior to</p> <p>3 today?</p> <p>4 A. Yes, and I am prepared to testify on all topics</p> <p>5 contained within it.</p> <p>6 Q. Perfect. All right.</p> <p>7 So let me just put a couple shorthand</p> <p>8 definitions on the record today. When I refer to the</p> <p>9 property, I'm referring to 7868 Marble Doe Street, Las</p> <p>10 Vegas, Nevada 89149, bearing association or assessor's</p> <p>11 parcel number 125-18-122-069.</p> <p>12 If I mention the HOA, I'm referring to the</p> <p>13 Antelope Homeowners Association. If I refer to the</p> <p>14 former homeowners or the borrowers, I'm referring to</p> <p>15 Henry E. and Freddie S. Ivy.</p> <p>16 If I refer to the HOA foreclosure sale, I'm</p> <p>17 referencing the sale conducted at Alessi &amp; Koenig, LLC's</p> <p>18 business location regarding this property on July 25,</p> <p>19 2012.</p> <p>20 If I refer to SFR, I'm referring to the</p> <p>21 third-party purchaser, SFR Investments Pool 1, LLC. If I</p> <p>22 refer to MBBW, I'm referring to the law firm of Miles</p> <p>23 Bauer Bergstrom &amp; Winters, LLP.</p> <p>24 And if I refer to the HOA trustee or A&amp;K, I'm</p> <p>25 referring to Alessi &amp; Koenig.</p> <p style="text-align: right;">Page 8</p>
<p>1 Q. Okay. And you are the corporate designee for</p> <p>2 Alessi &amp; Koenig, LLC?</p> <p>3 A. Yes.</p> <p>4 Q. What is your position with Alessi &amp; Koenig?</p> <p>5 A. I don't have a position with Alessi Koenig,</p> <p>6 except that I was appointed to be the PMK by the</p> <p>7 bankruptcy trustee when Alessi Koenig filed Chapter 7 in</p> <p>8 December of 2016.</p> <p>9 Q. Okay. And you have extensive experience</p> <p>10 testifying at both depositions and trial, correct?</p> <p>11 A. Yes. Over a hundred times.</p> <p>12 Q. Do you mind if I skip the normal admonitions as</p> <p>13 part of this deposition?</p> <p>14 A. No.</p> <p>15 Q. Okay. I have one question that I have as</p> <p>16 matter of course, is there anything that would prevent</p> <p>17 you from giving accurate testimony regarding the matters</p> <p>18 noticed within the subpoena today?</p> <p>19 A. No.</p> <p>20 Q. Okay. I'm going to show you what's marked as</p> <p>21 Exhibit 1.</p> <p>22 (Plaintiff's Exhibit 1 marked for</p> <p>23 identification.)</p> <p>24 BY MR. HENDRICKSON:</p> <p>25 Q. And are you familiar with this document?</p> <p style="text-align: right;">Page 7</p>	<p>1 Can we agree on those definitions?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And when was Alessi &amp; Koenig selected as</p> <p>4 the collection agent for the Antelope Homeowners</p> <p>5 Association?</p> <p>6 A. I don't know.</p> <p>7 Q. Okay. Who normally would have selected</p> <p>8 Alessi &amp; Koenig. Would that have been the management</p> <p>9 company or the HOA itself?</p> <p>10 A. The HOA itself oftentimes by way of a</p> <p>11 recommendation from the management company.</p> <p>12 Q. Okay. And was there a written agreement</p> <p>13 between the HOA and Alessi &amp; Koenig regarding services as</p> <p>14 a collection agent?</p> <p>15 A. I'm not sure. We had retainers with many, most</p> <p>16 of the associations that we performed assessment</p> <p>17 collections for. Those retainers were not saved into</p> <p>18 each individual collection file, however, so that would</p> <p>19 not be produced as part of the file.</p> <p>20 As you know, we have, we may have several dozen</p> <p>21 collection files in any one given HOA. So those</p> <p>22 retainers were stored elsewhere. I can check with John</p> <p>23 to see if we have a retainer with this association.</p> <p>24 As I've testified before, the files were</p> <p>25 generally facilitated by an email from the management</p> <p style="text-align: right;">Page 9</p>

<p>1 company to our office to proceed in those emails 2 contained within them, an attached account ledger. 3 Q. Okay. Was Alessi &amp; Koenig retained as anything 4 other than a collection agent for the HOA? 5 A. Not having the retainer in front of me, I don't 6 know. We were retained in most circumstances as the 7 general counsel and assessment collection entity for the 8 associations. However, there were times when we 9 performed solely assessment collection duty. 10 Q. And does Alessi &amp; Koenig maintain its own 11 collection policy or does it adopt the collection policy 12 of each individual homeowners association? 13 A. Alessi &amp; Koenig follows the collection policy 14 of the associations and primarily follows the timeline 15 and policies laid out in NRS 116. 16 Q. Okay. So was Alessi &amp; Koenig delegated the 17 authority to act on behalf of the HOA as a collection 18 agent based on its own judgment and experience, or were 19 there specific milestones for which Alessi &amp; Koenig would 20 have required the HOA's approval during the collection 21 process? 22 A. So I think there is two parts to that question. 23 I think that we were retained, not as -- when I hear the 24 term collection agent, I think of a company licensed and 25 regulated by the Financial Institutions Division. Alessi</p> <p style="text-align: right;">Page 10</p>	<p>1 attachment. 2 Q. Okay. So then someone at Alessi &amp; Koenig would 3 have had to manually input that ledger into Alessi &amp; 4 Koenig's software to maintain a centralized accounting 5 record for the collection process? 6 A. We would scan the ledger into the program, into 7 the letters and notices tab of the program. We had a 8 data field in the program that where the total past-due 9 assessments would be entered -- 10 Q. Okay. 11 A. -- and updated. 12 Q. Okay. And at various points throughout the 13 collection process, did Alessi &amp; Koenig receive updated 14 ledgers from the HOA? 15 A. I don't have the file in front of me, but if we 16 had, they should be in the file. 17 Q. Okay. 18 (Plaintiff's Exhibit 2 marked for 19 identification.) 20 BY MR. HENDRICKSON: 21 Q. I'm going to show you what's marked as 22 Exhibit 2. And are you familiar with this document? 23 A. This appears to be an account ledger kept by 24 the management company, maintained by the management 25 company on behalf of Antelope HOA.</p> <p style="text-align: right;">Page 12</p>
<p>1 Koenig was a law firm, multi jurisdictional law firm, so 2 I don't refer to our firm as a collection agency for that 3 reason. 4 But we were an agent of the association hired 5 to collect past-due assessments. Once the file was 6 transferred to our office for collections, we proceeded 7 to foreclosure sale, absent specific direction from the 8 board not to move forward. 9 Q. Okay. And when A&amp;K was retained as a trust, a 10 HOA trustee in this matter, how did it receive the HOA's 11 accounting information? Was that provided manually or 12 electronically? When I say manually, I mean by document. 13 A. It depended on which software the HOA and the 14 HOA management company used. There is a software program 15 called VMS that allowed for our office to access in view 16 mode only the account ledgers for each homeowner that the 17 management company managed, regardless of the 18 association. 19 If the management company used VMS, we were 20 able to access the individual homeowner's account ledgers 21 with view access for each owner living within a community 22 managed by that management company. 23 If the management company used a different 24 software program, such as TUFTS, then we would be 25 provided with the account ledgers via usually email as an</p> <p style="text-align: right;">Page 11</p>	<p>1 Q. Okay. And do you see where this ledger is 2 dated at the bottom of each page? 3 A. 7/24/2012, yes. 4 Q. Okay. So if the HOA sale occurred on the 25th 5 of July, 2012, is it fair to say that this ledger should 6 contain all the outstanding assessments, including the 7 payments made to the association during the collection 8 process? 9 A. Was this document provided by our office? 10 Q. Yes, it was. 11 A. Yes, then that would be fair to say. 12 Q. Okay. So go ahead and hold on to that because 13 we may reference that at various points. I want to show 14 you what is marked as Exhibit 3. 15 (Plaintiff's Exhibit 3 marked for 16 identification.) 17 BY MR. HENDRICKSON: 18 Q. Are you familiar with this document? 19 A. Yes. This is a Notice of Delinquent Assessment 20 Lien. 21 Q. Okay. And this was prepared by Alessi &amp; 22 Koenig? 23 A. Yes, on behalf of Antelope Homeowners 24 Association. 25 Q. Okay. And would this have been prepared by the</p> <p style="text-align: right;">Page 13</p>

<p>1 person who signs the documents?</p> <p>2 A. Yes, it's a template. Then the bolded areas</p> <p>3 are merged into the document from the program.</p> <p>4 Q. Okay. And when this lists a total amount due</p> <p>5 as of today's date of 692.36, does that reference all of</p> <p>6 the delinquent assessments and fees and costs up to this</p> <p>7 point?</p> <p>8 A. Yes. You would have the past-due assessments</p> <p>9 of \$267.01. You would also have a management company,</p> <p>10 and I can refer to in Exhibit 2. The management company</p> <p>11 audit fee, which is currently set by statute at \$200. I</p> <p>12 think it was something less than that back in 2009.</p> <p>13 That's a fee that goes to the management company.</p> <p>14 You would also have the Notice of Delinquent</p> <p>15 Assessment Lien fee charged by Alessi &amp; Koenig, which in</p> <p>16 2009 I'm guessing was either \$925 or \$325. It's</p> <p>17 currently set by statute at \$325. And you would have the</p> <p>18 past-due assessments, late fees, and interest.</p> <p>19 Q. Okay. And roughly how many assessments were</p> <p>20 outstanding as of the date of this notice?</p> <p>21 A. Nine.</p> <p>22 Q. Okay. And I just wanted to confirm that the</p> <p>23 assessments were approximately it appears about \$39 a</p> <p>24 month as of the date of this notice?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 14</p>	<p>1 the amounts listed in the \$3,010 that are listed on</p> <p>2 Exhibit 4?</p> <p>3 A. That's correct. And I'm looking through</p> <p>4 Exhibit 2 and I don't see any entries for fines.</p> <p>5 Q. Okay. And to your knowledge, Alessi &amp; Koenig</p> <p>6 was not engaged for the collection of any of the balances</p> <p>7 listed on this particular violation lien?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. All right. I want to show you what's</p> <p>10 marked as Exhibit 5.</p> <p>11 (Plaintiff's Exhibit 5 marked for</p> <p>12 identification.)</p> <p>13 BY MR. HENDRICKSON:</p> <p>14 Q. And are you familiar with this document?</p> <p>15 A. Yes.</p> <p>16 Q. And what is this document?</p> <p>17 A. This is a Notice of Default and Election to</p> <p>18 Sell recorded February 17, 2011, on behalf of Antelope</p> <p>19 HOA by Alessi Koenig.</p> <p>20 Q. Okay. And at the top where it says trustee</p> <p>21 sale number, is that a number that Alessi &amp; Koenig</p> <p>22 assigns to the matter?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And this particular document appears to</p> <p>25 show an outstanding balance of 2,522.33 as of January 7,</p> <p style="text-align: right;">Page 16</p>
<p>1 Q. Okay. I want to show you what's marked as</p> <p>2 Exhibit 4.</p> <p>3 (Plaintiff's Exhibit 4 marked for</p> <p>4 identification.)</p> <p>5 BY MR. HENDRICKSON:</p> <p>6 Q. Are you familiar with this document?</p> <p>7 A. This is a Notice of Violation Lien. This</p> <p>8 appears to have been recorded by CAMCO, the managing</p> <p>9 agent of Antelope HOA.</p> <p>10 Q. Okay. Now, Alessi &amp; Koenig did not prepare</p> <p>11 this notice?</p> <p>12 A. No.</p> <p>13 Q. And what would be the difference in your</p> <p>14 understanding between the delinquent violation and the</p> <p>15 delinquent assessment lien?</p> <p>16 A. So management companies generally keep two</p> <p>17 separate ledgers, account ledgers. One for assessments,</p> <p>18 one for violations. If a file were to be transferred to</p> <p>19 our account to collect both past-due assessments and</p> <p>20 past-due violations, we would set up two completely</p> <p>21 separate accounts as well.</p> <p>22 So this violation lien in the amounts shown due</p> <p>23 on it would be amounts that are reflected on a separate</p> <p>24 ledger than the assessment ledger.</p> <p>25 Q. Okay. So Exhibit 2 should not contain any of</p> <p style="text-align: right;">Page 15</p>	<p>1 2011?</p> <p>2 A. Yes.</p> <p>3 Q. And roughly how many delinquent assessments</p> <p>4 would that represent?</p> <p>5 A. As of January 2011, the homeowner was \$1,181.78</p> <p>6 delinquent. At that time, the assessments were \$45 per</p> <p>7 month. They had just been raised from 42.90 per month.</p> <p>8 So that's approximately 22 months delinquent.</p> <p>9 Q. Okay. And who would this notice have been</p> <p>10 mailed to?</p> <p>11 A. This notice would have been mailed to all</p> <p>12 parties in interest, i.e., the delinquent homeowner, the</p> <p>13 mortgage company, the bank. Those are primarily the two</p> <p>14 entities. There is a judgment recorded on the property.</p> <p>15 Q. Okay. Now, did Alessi &amp; Koenig prepare the</p> <p>16 mailings for the HOA notices? And by that I mean the</p> <p>17 Notice of Default and the Notices of Sale and mailed it,</p> <p>18 physically mailed them themselves, or did they hire a</p> <p>19 vendor to do that?</p> <p>20 A. So I prepared for the deposition as I always do</p> <p>21 by calling HOA Lawyers Group paralegal, Jona Lepoma,</p> <p>22 L-E-P-O-M-A, on my way to the deposition. And from my</p> <p>23 discussion with Jona prior to this deposition, it's my</p> <p>24 understanding that the NOD was mailed by the Walls</p> <p>25 Company, which was a third party that we used to perform</p> <p style="text-align: right;">Page 17</p>




<p>1 the mailings.</p> <p>2 And that the NOD was mailed regular and</p> <p>3 certified mail to both the bank and the delinquent</p> <p>4 homeowner. And that the Notice of Trustee Sale mailings</p> <p>5 were done as we always did them in-house.</p> <p>6 Q. Okay. I notice in the file that there are</p> <p>7 certified mail return receipts, meaning that they're</p> <p>8 receipts when the notice gets sent out.</p> <p>9 Did Alessi &amp; Koenig ever retain the green cards</p> <p>10 to prove receipt of the actual mailings?</p> <p>11 A. We retained them. We did not scan them into</p> <p>12 the program, but we did bind them in rubber bands with</p> <p>13 little yellow stickers on them that gave the date and the</p> <p>14 year. Those are in storage. I believe the bankruptcy</p> <p>15 trustee has dominion over that storage unit.</p> <p>16 I also, my understanding is also that if you,</p> <p>17 you can track the item using the vertical number on the</p> <p>18 certified mail receipt as well.</p> <p>19 Q. Okay. I'm going to show you what's marked as</p> <p>20 Exhibit 6.</p> <p>21 (Plaintiff's Exhibit 6 marked for</p> <p>22 identification.)</p> <p>23 BY MR. HENDRICKSON:</p> <p>24 Q. Are you familiar with this document?</p> <p>25 A. Yes. Exhibit 6 is a notice of trustee sale</p> <p style="text-align: right;">Page 18</p>	<p>1 Q. Okay. And the Notice of Trustee Sale would</p> <p>2 have been mailed to which parties?</p> <p>3 A. All of the parties that the NOD was mailed to,</p> <p>4 in addition to the ombudsmen is notified.</p> <p>5 Q. Okay. I'm going to show you what's marked as</p> <p>6 Exhibit 7.</p> <p>7 (Plaintiff's Exhibit 7 marked for</p> <p>8 identification.)</p> <p>9 BY MR. HENDRICKSON:</p> <p>10 Q. Are you familiar with this document?</p> <p>11 A. Yes. This is a Second Notice of Trustee Sale</p> <p>12 recorded April 2012 by Alessi Koenig on behalf of</p> <p>13 Antelope Homeowners Association?</p> <p>14 Q. And this appears to state a balance of</p> <p>15 4,161.61; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And roughly how many delinquent assessments</p> <p>18 would have been outstanding at the date of this sale?</p> <p>19 A. Thirty-eight months.</p> <p>20 Q. Okay.</p> <p>21 A. Approximately a little over three years.</p> <p>22 Q. I'm going to show you what is marked as</p> <p>23 Exhibit 8. Before we do that just -- and this notice</p> <p>24 would have been mailed to the exact same parties as the</p> <p>25 previous exhibit?</p> <p style="text-align: right;">Page 20</p>
<p>1 recorded August 11, 2011, by Alessi Koenig on behalf of</p> <p>2 Antelope HOA.</p> <p>3 Q. Okay. And I notice that this particular sale,</p> <p>4 it looks like it's noticed for Nevada Legal News as</p> <p>5 opposed to Alessi &amp; Koenig's building address of 9500</p> <p>6 West Flamingo, Suite 205.</p> <p>7 Was there a reason why Alessi &amp; Koenig at times</p> <p>8 noticed sales for Nevada Legal News as opposed to its own</p> <p>9 buildings?</p> <p>10 A. Yes. And the reason was chronological. The</p> <p>11 early sales we did at Nevada Legal News, and then the</p> <p>12 Nevada attorneys advised that we could perform an HOA</p> <p>13 sale at our office, which made it more convenient for us,</p> <p>14 and we had a large conference room for the public.</p> <p>15 So at that point, and I think some of our</p> <p>16 competitors as well started doing sales at their office</p> <p>17 rather than at Nevada Legal News.</p> <p>18 Q. Okay. And as of the date of this notice, it</p> <p>19 appears to indicate in the last paragraph that the total</p> <p>20 balance of the lien was \$3,798.39. Is that your</p> <p>21 understanding?</p> <p>22 A. Yes.</p> <p>23 Q. And as of the date of this notice, roughly how</p> <p>24 many assessments would have been delinquent at that time?</p> <p>25 A. So the 22 plus -- 28.</p> <p style="text-align: right;">Page 19</p>	<p>1 A. Yes. Unless there was an assignment of the</p> <p>2 mortgage or something to that effect.</p> <p>3 Q. Okay.</p> <p>4 (Plaintiff's Exhibit 8 marked for</p> <p>5 identification.)</p> <p>6 BY MR. HENDRICKSON:</p> <p>7 Q. Are you familiar with this document?</p> <p>8 A. Yes. This is a Notice of Trustee Sale recorded</p> <p>9 June 7, 2012, by Alessi Koenig on behalf of Antelope</p> <p>10 Homeowners Association.</p> <p>11 Q. Okay. And it appears to state a loan amount of</p> <p>12 \$5,071.87. Is that your understanding?</p> <p>13 A. Not a loan amount. That would be --</p> <p>14 Q. I mean a lien amount. I'm sorry.</p> <p>15 A. That is my understanding.</p> <p>16 Q. And roughly at the time of this, at the</p> <p>17 recording of this notice, how many delinquent assessments</p> <p>18 or estimate of how many delinquent assessments would have</p> <p>19 been outstanding?</p> <p>20 A. Forty months.</p> <p>21 Q. Okay.</p> <p>22 A. I'm just guessing off the top of my head.</p> <p>23 Q. Okay. And there were three Notices of Sale for</p> <p>24 this particular file. Can you just briefly describe why</p> <p>25 there would be multiple Notices of Sale?</p> <p style="text-align: right;">Page 21</p>

<p>1 A. My understanding from my discussion with Jona 2 is that we had postponed the original sale the maximum 3 three times, and for that reason we -- and it's because 4 this was very early on in the process mid 2011. The HOA 5 foreclosure sales really didn't start ramping up until 6 early 2012-ish. And so because, my understanding is 7 because we were out of postponements, we republished and 8 posted the sale.</p> <p>9 Q. Okay.</p> <p>10 A. I don't know why there is three. That would be 11 my explanation as to why there was a second one. Without 12 seeing the whole file, I don't know why there was a third 13 one.</p> <p>14 Q. Okay. And for these notices, was there anyone, 15 other than the person who prepared the notice, who 16 verified the amounts listed therein?</p> <p>17 A. Yes. The Notice of Trustee Sale is a triple 18 check of the file. Ryan Kerbow, who signed the notice, 19 is the attorney who will review the file. Also we 20 started doing enough sales to justify a employee in the, 21 quote/unquote, "Trustee Sale Department."</p> <p>22 At this time, I believe his name was Bronco 23 Jettick, who was later replaced by George Bates, so the 24 Trustee Sale Department head would also review the file, 25 as well as the legal assistant who handled the file.</p> <p style="text-align: right;">Page 22</p>	<p>1 do not know if one was contained within the Antelope 2 Homeowners Association CC&amp;Rs. But if there was one and 3 it's the standard protection clause that I've seen in 4 other CC&amp;Rs, then the opinion of Alessi would have been 5 that, the term that I'm familiar with anyway, would have 6 been in conflict with NRS 116 and, therefore, it would 7 not have affected our foreclosure.</p> <p>8 Q. Okay. And are you familiar with the law firm, 9 Miles Bauer Bergstrom &amp; Winters, LLP?</p> <p>10 A. Yes. I've been deposed on checks received by 11 their office and requests for demands by their office 12 dozens and dozens of times. We also had hired several 13 employees who have formerly worked for Miles Bauer.</p> <p>14 Q. I'm going to show you what's marked as 15 Exhibit 9.</p> <p>16 (Plaintiff's Exhibit 9 marked for 17 identification.)</p> <p>18 BY MR. HENDRICKSON:</p> <p>19 Q. And are you familiar with this document?</p> <p>20 A. I'm familiar with this type of document. I 21 can't say that I'm familiar with this specific document. 22 Although in my discussions with Jona on my way to this 23 deposition, she had informed me that we received a 24 request for demand, such as the one here Exhibit 9, from 25 Miles Bauer based on her review of the file.</p> <p style="text-align: right;">Page 24</p>
<p>1 Q. Okay. And did Alessi &amp; Koenig take any 2 position back in 2012 whether these notices and any sale 3 that would have occurred pursuant to the notices were 4 foreclosing on a super priority lien?</p> <p>5 A. No.</p> <p>6 Q. Okay. And does Alessi &amp; Koenig now take a 7 position one way or the other?</p> <p>8 A. Well, the statutes changed and I will defer to 9 Nevada counsel for the interpretation of the changes. 10 But we're operating under a different statute now than we 11 were then.</p> <p>12 I am aware of a letter from Ryan Kerbow taking 13 a position on the issue, but that was not an Alessi 14 Koenig position. In other words, Alessi Koenig didn't 15 advise its clients one way or the other or advise 16 investors one way or the other whether or not the HOA 17 sale wiped out the mortgage.</p> <p>18 Q. Okay. Did Alessi &amp; Koenig review the CC&amp;Rs for 19 the association prior to beginning the collection 20 process?</p> <p>21 A. Generally we have copies of the CC&amp;Rs. And we 22 do review CC&amp;Rs both as part of our general counsel work. 23 And to the extent the CC&amp;Rs do not conflict with NRS 116, 24 our firm would follow the CC&amp;Rs.</p> <p>25 I am aware of a mortgagee protection clause. I</p> <p style="text-align: right;">Page 23</p>	<p>1 Q. Okay. And I just wanted to point out a couple 2 things regarding this notice. On the first page where it 3 says, it begins with the second paragraph, it says, "As 4 you know, NRS 116 governs liens," and then it quotes the 5 statutes as far as the portion of, it looks like what 6 compromises the super priority lien.</p> <p>7 Do you see that paragraph?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Did Alessi &amp; Koenig agree with Miles 10 Bauer's interpretation of the composition of the super 11 priority lien?</p> <p>12 A. Alessi Koenig, let's put it this way, was aware 13 that there was disagreement in the legal community, both 14 as reflected in the Corbell case and the advisory opinion 15 issued by the Commission on Common Interest Developments. 16 So we were aware that there were different opinions in 17 the law, and that this issue had not been, the Icon 18 decision had not come out at this time.</p> <p>19 And so this issue had not been decided as of 20 the time of this letter, October of 2011, by the Supreme 21 Court, and there were different District Courts -- in 22 fact, in October of 2011, I'm only aware of one District 23 Court decision, that's the Corbell case, which was 24 contrary to the position taken by Rock Jung in this 25 letter from Miles Bauer.</p> <p style="text-align: right;">Page 25</p>

<p>1 So we were aware that there were different 2 opinions on the issue.</p> <p>3 Q. Did Alessi &amp; Koenig ever write back in response 4 to a letter, whether it be this one or one such as this, 5 where Miles Bauer attempted to define the super priority 6 lien, and write back to say, "Well, Alessi &amp; Koenig 7 thinks your definition is wrong. Here's what we think 8 comprises the super priority lien"?</p> <p>9 A. I am aware of one letter from Ryan Kerbow. I 10 don't know if it was responsive to this particular letter 11 in October of 2011. But I have seen a letter from Ryan 12 Kerbow that did respond to Miles Bauer in a handful of my 13 depositions. For the most part, that Ryan Kerbow letter 14 was not used in response. I'm only seen it in a handful 15 of depositions.</p> <p>16 Q. Okay. And did Alessi &amp; Koenig understand the 17 import of this letter as asking for a payoff of the super 18 priority -- or what Alessi &amp; Koenig deemed as the super 19 priority portion of the lien?</p> <p>20 A. Well, what we did, we understood it as a payoff 21 that the bank was requesting on the property. And we did 22 provide as you know a response to these letters by 23 providing a total amount due the association and our 24 office, as well as an account ledger breaking out the 25 monthly assessments, such as the one shown in Exhibit 2.</p> <p style="text-align: right;">Page 26</p>	<p>1 client to costs and fees that they may not end up being 2 liable for, especially if the Supreme Court followed the 3 Commission's interpretation of the statute and/or the 4 judge in Corbell's interpretation of the statute.</p> <p>5 So our position wasn't so much as taking a 6 position as having a problem with Miles Bauer's 7 restrictive language.</p> <p>8 Q. And did Alessi &amp; Koenig ever consider bringing 9 an action for declaratory relief before a court to 10 determine, to define the super priority lien?</p> <p>11 A. No. I guess Alessi Koenig didn't really feel 12 it had a dog in that fight. I mean I know that I'm aware 13 of the Ryan Kerbow letter. I wasn't aware of it until I 14 was deposed on it. But that to me is more posturing 15 between attorneys.</p> <p>16 We certainly didn't advise our clients of 17 whether or not the Deed of Trust survived the HOA sale. 18 And we didn't advise investors of whether or not the Deed 19 of Trust survived the HOA foreclosure sale. So to that 20 extent, we didn't feel like we had a dog in that fight, 21 so to speak.</p> <p>22 Q. I'm going to show you what's mark as 23 Exhibit 11.</p> <p>24 (Plaintiff's Exhibit 11 marked for 25 identification.)</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. I'm going to show you what's mark as 2 Exhibit 10.</p> <p>3 (Plaintiff's Exhibit 10 marked for 4 identification.)</p> <p>5 BY MR. HENDRICKSON:</p> <p>6 Q. And is Exhibit 10 a response to Miles Bauer 7 request for a payoff?</p> <p>8 A. Yes.</p> <p>9 Q. And I notice that this particular payoff lists 10 all of the fees and costs. Is that because Alessi &amp; 11 Koenig did not want to take a position on what comprised 12 the super priority portion of the lien?</p> <p>13 A. Well, the position that we took was to Miles 14 Bauer, "Why don't you just pay what you think is owed to 15 protect your interest? Do what you think is owed without 16 the restrictive language." As you know, I've testified 17 to that before, and let the courts figure out what effect 18 the payment has.</p> <p>19 We were not comfortable nor was anybody else in 20 our industry with letting Miles Bauer play judge and jury 21 at the time on an issue that was not yet decided by the 22 Supreme Court. We thought that that might jeopardize 23 rights that our clients potentially had to collect the 24 money from the bank.</p> <p>25 And so we did not feel comfortable exposing our</p> <p style="text-align: right;">Page 27</p>	<p>1 BY MR. HENDRICKSON:</p> <p>2 Q. Are you familiar with this document?</p> <p>3 A. Yes.</p> <p>4 Q. How are you familiar with it?</p> <p>5 A. I'm familiar with the general nature of the 6 document. I don't know that I'm familiar with this exact 7 document.</p> <p>8 Q. Okay.</p> <p>9 A. But, again, Jona did mention correspondence 10 from Miles Bauer on my discussion with her on the way to 11 this depo.</p> <p>12 Q. Okay. And you've seen letters similar to this 13 before?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what is your understanding of the 16 import of this letter?</p> <p>17 A. My understanding is that Miles Bauer is paying 18 an amount equal to only nine months of assessments, and 19 if we were to cash that payment, we would be waiving any 20 possible rights that our client may have under what was 21 the current law at the time.</p> <p>22 Q. Okay. Now, it looks like on page two of this 23 exhibit, there seems to be a paragraph, again, where the, 24 where the statute is quoted that defines -- actually, 25 it's the first and the second page where, the end of the</p> <p style="text-align: right;">Page 29</p>

<p>1 first page and the beginning of the second page where it 2 purports to define the super priority lien based on 3 quoting the statutes. 4 Do you see that? 5 A. Yes. 6 Q. Okay. I notice that many counsel has pointed 7 out in various arguments that this definition of the 8 super priority lien does not include amounts for nuisance 9 and abatement. 10 Do you notice that? 11 A. Well, my understanding was that a nuisance and 12 abatement lien is a separate part of the statute of 13 NRS 116. So that doesn't surprise me. 14 Q. So the fact that there is this definition of 15 the super priority lien that it does not include nuisance 16 and abatement charges, would that have been a basis for 17 Alessi &amp; Koenig's objection to this particular letter and 18 check? 19 A. No. I think the basis of it was more, you 20 know, whereas we know that later on the Icon decision 21 came out and found that the bank owed nine months of 22 assessment during this period of time under the super 23 priority statute. 24 But in another Supreme Court case, the court, 25 which I think is the most important case, decided for the</p> <p style="text-align: right;">Page 30</p>	<p>1 putting us in an impossible position by playing judge and 2 jury and submitting a check that had all sorts of 3 problems with the language accompanying it, some of which 4 I just discussed. 5 Q. So just to unpack a little bit of that and be 6 specific on the record. One of the concerns that you 7 cited as part of Alessi &amp; Koenig's reason for rejecting 8 this tender letter and check is the belief that 9 acceptance of this would prevent or potentially alleviate 10 the bank's responsibility to pay subsequent super 11 priority liens if further notice or further delinquent 12 assessment liens were asserted against the property? 13 A. I wouldn't go that far. We just did not know. 14 We didn't know if they were asserting that or not. 15 Q. Did you ever seek clarification from Miles 16 Bauer on exactly what they meant by this language? 17 A. We had discussions with Miles Bauer or our 18 Nevada attorneys did. I wasn't privy to them. I am a 19 California attorney, I wouldn't have been involved in 20 those discussions. 21 My understanding, though, is that Brad Base 22 with our office at some point much later than 2011, I 23 think in 2014, early 2015, may have come to an agreement 24 with Miles Bauer wherein they might have sent us a couple 25 of checks without any restrictive language. I seem to</p> <p style="text-align: right;">Page 32</p>
<p>1 HOAs, the court found that, I term it the one off rule, 2 where the bank had to pay, has to pay that nine months 3 each time the account goes into collection. 4 So in other words, the bank paying the nine 5 months as was done here by Miles Bauer one time does not 6 eliminate the bank's duty or responsibility to continue 7 to pay that nine months were the client, were the account 8 to go into collections again. 9 So to that extent, having cashed this check, I 10 believe there is a very good possibility that we would 11 have been waiving the association's right to collect 12 subsequent nine-month checks from the bank under current 13 law. 14 So, and then the second thing is if you notice 15 in the memo of the check, it says to cure HOA deficiency. 16 So as we discussed earlier in this deposition, there 17 appears to have been a violation deficiency on this 18 account. 19 So if we were to cash this check by Miles 20 Bauer, which states in the memo, to cure the HOA 21 deficiency, does that include the fines and the 22 assessments? We didn't know. And there were a lot of 23 other things that we weren't comfortable with. 24 So I feel like today and same as we felt, our 25 Nevada counsel felt back in 2011, that Miles Bauer was</p> <p style="text-align: right;">Page 31</p>	<p>1 recall having seen an email in one of my several hundred 2 depos to that effect. 3 But as I sit here, I'm not 100 percent sure 4 that we were able to ever work this issue out with Miles 5 Bauer. Certainly they knew our position and we certainly 6 knew theirs. 7 Q. Okay. 8 A. I can tell you, I would just like to add, if 9 Miles Bauer had tendered a check for \$405 as they did 10 here, as they attempted to here, without any restrictive 11 language accompanying it, we would have cashed that 12 check. 13 Q. Okay. Would you then, if Miles Bauer had 14 specified that that check was intended to satisfy the 15 super priority lien, would -- and there were nothing else 16 related to the check, would Alessi &amp; Koenig have still 17 cashed the check? 18 A. I don't know. I would be speculating if there 19 were no restrictive language at all, we would have, that 20 was our policy. Because of your scenario, it never 21 happened. We didn't have a policy for that, so I would 22 be speculating. 23 Q. And did you ever hear anyone from Miles Bauer 24 indicate that they thought that this language in this 25 check would have applied to a one and done scenario as</p> <p style="text-align: right;">Page 33</p>

<p>1 you, as you characterized it, whereby the association 2 gets one super priority lien and the bank pays that nine 3 months, and then the bank is never on the hook again for 4 a dime? Did you ever hear Miles Bauer assert a position 5 like that?</p> <p>6 A. No.</p> <p>7 Q. Okay. So that was just a concern that your 8 attorneys noticed as a possibility that could occur if 9 this particular check had been accepted and cashed?</p> <p>10 A. That was one of the concerns.</p> <p>11 Q. Okay.</p> <p>12 A. We didn't know exactly how much of our clients' 13 rights we may potentially be waiving, and that's the 14 bottom line.</p> <p>15 Q. Was there ever a concern that if a super 16 priority, if the super priority lien had been satisfied, 17 that the HOA would then be on the hook for your fees and 18 costs and Alessi &amp; Koenig may not get paid?</p> <p>19 A. No. I mean we would have gotten paid either 20 way. The concern was more we didn't want the client 21 paying us money that they didn't legally owe us, or they 22 arguably didn't legally owe us. Only if that was in our 23 clients' best interest.</p> <p>24 Q. Okay. And to your knowledge, what occurred 25 with this particular check? Was it returned to Miles</p> <p style="text-align: right;">Page 34</p>	<p>1 checks for a number of years in spite of not receiving 2 responses?</p> <p>3 A. Well, in spite of them not being cashed, yes.</p> <p>4 Q. Okay. And do you recall if there were any 5 further communications by Miles Bauer after this 6 particular letter was sent to Alessi &amp; Koenig regarding 7 this property?</p> <p>8 A. Not regarding this property. We had, you know, 9 ongoing discussions periodically with Miles Bauer. But I 10 can't testify as to whether or not any of them pertained 11 to this foreclosure.</p> <p>12 Q. Okay. And did Alessi &amp; Koenig call the sales 13 that were held at its building?</p> <p>14 A. Yes. We cried the sales. Either a lawyer or a 15 paralegal with the firm cried the sales, and then Bronco 16 and then later George, his replacement, would be present 17 at every sale. I did not attend the sales. I did peek 18 my head into the conference room a couple times. We had 19 sales I believe every other Wednesday at 2:00 p.m.</p> <p>20 Q. Did Alessi &amp; Koenig retain the sales scripts 21 for these sales?</p> <p>22 A. No. We qualified the bidders. Either Bronco 23 and later George would qualify the bidders and handwrite 24 that on a yellow pad or paper. I have never seen that 25 pad of paper. We didn't retain that. I do know that we</p> <p style="text-align: right;">Page 36</p>
<p>1 Bauer, was it kept, and just not cashed?</p> <p>2 A. I think it was kept and just not cashed. I 3 don't believe it was returned. I have seen in my depos 4 oftentimes the check is scanned into the program. 5 Sometimes not. Oftentimes a check is logged into the 6 status report as having been received, sometimes not. 7 But we, as I said, we didn't cash the check and my 8 understanding is we did not return the checks either.</p> <p>9 Q. And did you ever, did Alessi &amp; Koenig ever 10 prepare correspondence to Miles Bauer indicating that it 11 had rejected the check?</p> <p>12 A. I don't like to use the word rejected because 13 of the restrictive language, I don't know if I would even 14 call it, I mean I don't like to use the word rejected. 15 But I can testify that Miles Bauer was aware of our 16 position, as we were aware of theirs. Just this went on 17 for several years.</p> <p>18 So at the beginning of the process, I would 19 imagine, I don't know if it was reduced to writing. I 20 have never seen a letter to that effect, or if it was 21 communicated over the phone between attorneys, you know 22 that we would not be cashing those checks with the 23 restrictive language that was accompanying them. But 24 they were aware of that position.</p> <p>25 Q. And so Miles Bauer continued to send these</p> <p style="text-align: right;">Page 35</p>	<p>1 did not track each individual bid. Sometimes the 2 investors would raise the bid by one dollar, and so we 3 just tracked the qualifying of the bidders. We did not 4 retain that.</p> <p>5 And then we tracked the, who the successful 6 bidder was and the amount. And I've oftentimes seen that 7 document in depos. It would have been handwritten, 8 handwriting on an email checklist. I don't know if one 9 is in this file or not.</p> <p>10 Q. Okay. And would Alessi &amp; Koenig ever have 11 announced at a sale that a lender had attempted to send a 12 check for the super priority lien?</p> <p>13 A. My understanding is that Alessi Koenig never 14 announced the attempt, receiving checks from Miles Bauer. 15 We never announced that. Without, and that's all I feel 16 comfortable.</p> <p>17 I don't, without having any other files in 18 front of me, I don't know if we ever received a payment. 19 My understanding, though, is that we did not announce the 20 payments from Miles Bauer at the sale.</p> <p>21 Q. I'm going to show you what's marked as 22 Exhibit 12.</p> <p>23 (Plaintiff's Exhibit 12 marked for 24 identification.) 25</p> <p style="text-align: right;">Page 37</p>

<p>1 BY MR. HENDRICKSON:</p> <p>2 Q. Are you familiar with this document?</p> <p>3 A. Yes. This is a Trustee Deed Upon Sale</p> <p>4 reflecting that the sale did take place on July 25, 2012.</p> <p>5 And the property sold to SFR Investments Pool 1.</p> <p>6 Q. Okay. And this lists the winning bid amount at</p> <p>7 \$5,950?</p> <p>8 A. Yes.</p> <p>9 Q. It looks like Ryan Kerbow signed this. Is that</p> <p>10 indicative that he likely prepared it?</p> <p>11 A. No. He would have been -- again, these are</p> <p>12 mailed, these are mail merged documents. The bold fields</p> <p>13 are merged into the document. The amount of unpaid debt</p> <p>14 and the amount paid by the grantee would have been</p> <p>15 entered by Bronco Jettick. Ryan would have reviewed and</p> <p>16 signed it.</p> <p>17 Q. Was it Alessi &amp; Koenig's intent to grant any</p> <p>18 warranties of title with this deed to SFR?</p> <p>19 A. What warranties were granted, if any, I would</p> <p>20 defer to a court. And Alessi Koenig's intent was to</p> <p>21 conduct a proper sale. Beyond that, we're not a judicial</p> <p>22 body, so what type of title we passed, I would defer to a</p> <p>23 judicial body.</p> <p>MR. HENDRICKSON: Okay. I have no further</p> <p>24 questions.</p> <p>25 (The deposition was concluded at 3:21 p.m.)</p> <p style="text-align: right;">Page 38</p>	
<p>1 I, the undersigned, a Certified Court Reporter</p> <p>2 of the State of Nevada, do hereby certify:</p> <p>3 That the foregoing proceedings were taken</p> <p>4 before me at the time and place herein set forth; that</p> <p>5 any witnesses in the foregoing proceedings, prior to</p> <p>6 testifying, were placed under oath; that a verbatim</p> <p>7 record of the proceedings was made by me using machine</p> <p>8 shorthand which was thereafter transcribed under my</p> <p>9 direction; further, that the foregoing is an accurate</p> <p>10 transcription thereof.</p> <p>11 I further certify that I am neither financially</p> <p>12 interested in the action nor a relative or employee of</p> <p>13 any attorney or any of the parties.</p> <p>14 IN WITNESS WHEREOF, I have this date subscribed</p> <p>15 my name.</p> <p>16</p> <p>17 Dated: 6/12/2018</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 </p> <p>24 MARCIA LEONARD</p> <p>25 CCR No. 204</p> <p style="text-align: right;">Page 39</p>	

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## **EXHIBIT 2**

## **EXHIBIT 2**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3

4 U.S. BANK NATIONAL )  
ASSOCIATION AS TRUSTEE FOR )  
5 MERRILL LYNCH MORTGAGE )  
INVESTORS TRUST, MORTGAGE )  
6 LOAN ASSET-BACKED )  
CERTIFICATES, SERIES )  
7 2005-A8, )  
 )  
8 Plaintiff, )  
 ) Case No. A-16-739867-C  
9 ) Dept. No. XXXI  
vs. )  
10 )  
SFR INVESTMENTS POOL 1, )  
11 LLC, a Nevada Limited )  
Liability company; ANTELOPE )  
12 HOMEOWNERS' ASSOCIATION, a )  
Nevada non-profit )  
13 corporation; DOE INDIVIDUALS )  
I through X, inclusive; and )  
14 ROE CORPORATIONS I through )  
X, inclusive, )  
15 )  
Defendants. )  
16 )  

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and related cross-claims. )  
17 )  

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20 DEPOSITION OF KATHERINE ORTWERTH  
LAS VEGAS, NEVADA  
21 THURSDAY, JUNE 14, 2018  
at 2:16 p.m.

22

23

24 Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400  
25 JOB NO: 37008

1                   DEPOSITION OF KATHERINE ORTWERTH, taken at  
2   KIM GILBERT EBRON 7625 Dean Martin Drive, Suite 110,  
3   Las Vegas, Nevada, on Thursday, June 14, 2018, at  
4   2:16 p.m., before Lisa Makowski, Certified Court  
5   Reporter, in and for the State of Nevada.

6

7   APPEARANCES:

8   For SFR Investments Pool 1, LLC:

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## U.S. Bank National Association vs. SFR Investments Pool 1, LLC, et al.

<p>1 LAS VEGAS, NEVADA, THURSDAY, JUNE 14, 2018</p> <p>2 2:16 p.m.</p> <p>3 -oOo-</p> <p>4</p> <p>5 (The court reporter requirements under</p> <p>6 Rule 30(b)(4) of the Nevada Rules of</p> <p>7 Civil Procedure were waived.)</p> <p>8</p> <p>9 KATHERINE ORTWERTH,</p> <p>10 having been first duly sworn, did testify as follows:</p> <p>11</p> <p>12 EXAMINATION</p> <p>13 BY MS. SCHIMMING:</p> <p>14 Q. Hello, my name is Chantel Schimming, I</p> <p>15 represent SFR Investments Pool 1, LLC, the third</p> <p>16 party purchaser at the public auction for this</p> <p>17 property. And throughout this deposition, I will</p> <p>18 refer to my client as SFR, if that's okay with you?</p> <p>19 <b>A. Yes.</b></p> <p>20 MS. SCHIMMING: Counsel, do you want to</p> <p>21 make your appearance.</p> <p>22 MS. HABERMAS: Yes. Regina Habermas for</p> <p>23 the plaintiff, US Bank National Association as</p> <p>24 trustee for Merrill Lynch Mortgage Investors Trust,</p> <p>25 mortgage Loan Asset-Backed Certificates, series</p> <p style="text-align: right;">Page 4</p>	<p>1 through a series of admonitions that are just the</p> <p>2 basic rules of the deposition process. Having been</p> <p>3 through a number of depositions, if you are</p> <p>4 comfortable, I will go ahead and skip going through</p> <p>5 those.</p> <p>6 <b>A. That's fine.</b></p> <p>7 Q. I will, however, remind that you are</p> <p>8 under oath. This is the same oath that you would</p> <p>9 be administered if you were in a court of law,</p> <p>10 therefore, it carries with it the same penalties of</p> <p>11 perjury.</p> <p>12 Do you understand that?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Is there anything that prevents from you</p> <p>15 giving your full and truthful and accurate</p> <p>16 testimony today?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Since you have been deposed by our</p> <p>19 office, I'm not going to delve deeply into your</p> <p>20 educational background or your history, but I will</p> <p>21 go through a brief employment background. I</p> <p>22 believe I've actually deposed before, too --</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. -- but I don't recall --</p> <p>25 <b>A. Okay.</b></p> <p style="text-align: right;">Page 6</p>
<p>1 2005-A8.</p> <p>2 BY MS. SCHIMMING:</p> <p>3 Q. Can you please state and spell your name</p> <p>4 for the record?</p> <p>5 <b>A. Katherine, K-A-T-H-E-R-I-N-E, Ortwerth,</b></p> <p>6 <b>O-R-T-W-E-R-T-H.</b></p> <p>7 Q. You have been deposed before; correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Been deposed by our office before;</p> <p>10 correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Can you give an estimate of about how</p> <p>13 many times you have been deposed?</p> <p>14 <b>A. I would say between 30 and 50.</b></p> <p>15 Q. And you testified in trial as well;</p> <p>16 correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Have you testified in a jury trial?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. How many?</p> <p>21 <b>A. Two. It might be more than that. Two</b></p> <p>22 <b>definitely.</b></p> <p>23 Q. Definitely less than ten, though?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. As you are aware I am sure, we usually go</p> <p style="text-align: right;">Page 5</p>	<p>1 Q. -- everything from it. So, yeah, we will</p> <p>2 go through a brief educational background.</p> <p>3 <b>A. Okay.</b></p> <p>4 Q. Where are you currently employed?</p> <p>5 <b>A. Ocwen Financial Corporation.</b></p> <p>6 Q. And where is your office located?</p> <p>7 <b>A. I telecommute to the West Palm Beach</b></p> <p>8 <b>office.</b></p> <p>9 Q. How long have you been employed with</p> <p>10 Ocwen Financial?</p> <p>11 <b>A. Since January of 2014.</b></p> <p>12 Q. Where were you employed prior to being</p> <p>13 employed with Ocwen Financial?</p> <p>14 <b>A. One West Bank.</b></p> <p>15 Q. And what did you do with One Best Bank?</p> <p>16 <b>A. I was a default litigation specialist.</b></p> <p>17 Q. What does your position as a default</p> <p>18 litigation specialist entail?</p> <p>19 <b>A. I basically case manage lawsuits, so I</b></p> <p>20 <b>would get case assigned to me. I would assign it</b></p> <p>21 <b>to outside counsel. I would do all the research,</b></p> <p>22 <b>get the settlement authority, pull all the</b></p> <p>23 <b>documents, review all the pleadings for accuracy,</b></p> <p>24 <b>just all the day-to-day stuff, anything that</b></p> <p>25 <b>counsel needed from the bank.</b></p> <p style="text-align: right;">Page 7</p>

<p>1 Q. How long did you work for One West Bank?</p> <p>2 <b>A. April 2012 to November 2013.</b></p> <p>3 Q. And I'm fairly certain I know the answer</p> <p>4 to this question, but the gap between November of</p> <p>5 2013 and January of 2014, was that just</p> <p>6 transitioning from one place to another?</p> <p>7 <b>A. I got laid off from One West and it</b></p> <p>8 <b>didn't really make sense for me to start at Ocwen</b></p> <p>9 <b>when all the holidays were happening, so we just</b></p> <p>10 <b>started me after the new year.</b></p> <p>11 Q. And then prior to working at One West</p> <p>12 Bank, where were you employed?</p> <p>13 <b>A. It wasn't mortgage related. Do you still</b></p> <p>14 <b>want to know about it?</b></p> <p>15 Q. You can go ahead and give me where it was</p> <p>16 at, yeah.</p> <p>17 <b>A. It was at this place called Lawyers Aid</b></p> <p>18 <b>Service. They basically ran documents to the</b></p> <p>19 <b>Secretary of State for people.</b></p> <p>20 Q. All right. Since January of 2014, have</p> <p>21 you held the same position while working at Ocwen</p> <p>22 or has your position changed?</p> <p>23 <b>A. I have the same job and the same</b></p> <p>24 <b>responsibilities, but I got raise promotion to</b></p> <p>25 <b>senior loan analyst versus just a regular loan</b></p> <p style="text-align: right;">Page 8</p>	<p>1 Certificates, series 2005-8."</p> <p>2 <b>A. A8.</b></p> <p>3 Q. A8. Excuse me.</p> <p>4 Do you recognize this document as</p> <p>5 something you've seen before today?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. If you can go ahead and turn to the</p> <p>8 second page of this document. Can you see towards</p> <p>9 the bottom of the page there's some -- the</p> <p>10 definitions start? Can you see where they start</p> <p>11 down there?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Sorry. We're going to go through these</p> <p>14 to make sure we're all on the same page going</p> <p>15 through this deposition. The first is defining the</p> <p>16 property as 7868 Marbledoe Street, Las Vegas,</p> <p>17 Nevada, 89149-3740, parcel number 125-18-112-069.</p> <p>18 Is that correct as I read it?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. As we go through the deposition today, I</p> <p>21 will be referring to the property as either the</p> <p>22 property or the Marbledoe property. Are you</p> <p>23 comfortable with that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. We'll also be talking about a Deed of</p> <p style="text-align: right;">Page 10</p>
<p>1 <b>analyst.</b></p> <p>2 Q. Can you tell me what your job as a senior</p> <p>3 loan analyst entails?</p> <p>4 <b>A. It's pretty much two parts, there's the</b></p> <p>5 <b>part I do in the office, which is mostly research</b></p> <p>6 <b>on litigated loans. So if the attorneys need me to</b></p> <p>7 <b>review something and explain it to them or find out</b></p> <p>8 <b>what happened with something, I do that.</b></p> <p>9 <b>I also execute discovery documents,</b></p> <p>10 <b>answers, affidavits, declarations, when I'm in the</b></p> <p>11 <b>office.</b></p> <p>12 <b>And then the other part is what I do when</b></p> <p>13 <b>I'm outside the office, which is appear on behalf</b></p> <p>14 <b>of Ocwen and the loan owners that we service for at</b></p> <p>15 <b>depos, trials, mediations, hearings, anywhere they</b></p> <p>16 <b>need a body basically.</b></p> <p>17 (Exhibit 1 was marked for</p> <p>18 identification.)</p> <p>19 BY MS. SCHIMMING:</p> <p>20 Q. Okay. I'm going to go ahead and hand you</p> <p>21 what we've marked as Exhibit 1.</p> <p>22 This document is titled "A Notice Of Rule</p> <p>23 30(b)(6) Deposition of U.S. Bank National</p> <p>24 Association as Trustee for Merrill Lynch Mortgage</p> <p>25 Investors Trust, Mortgage Loan Asset-Backed</p> <p style="text-align: right;">Page 9</p>	<p>1 Trust today. I'm going to go ahead and have you</p> <p>2 flip really quick to -- in the second stack of</p> <p>3 documents you have, if you see, most of them are</p> <p>4 Bates stamped at the very bottom right-hand corner</p> <p>5 of the page. I'm going to have you go ahead and</p> <p>6 flip to what is Bates stamped as 73.</p> <p>7 For the record, this is Deed of Trust</p> <p>8 recorded on May 23rd, 2005, as instrument number</p> <p>9 20050523-0004228.</p> <p>10 Do you recognize this document as</p> <p>11 document -- the Deed of Trust that is the subject</p> <p>12 of this deposition today?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Whenever we refer to the Deed of Trust</p> <p>15 throughout this deposition, we will be referring to</p> <p>16 this Deed of Trust unless I specify otherwise.</p> <p>17 Okay?</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. When we talk about the borrowers, we'll</p> <p>20 be referring to Henry E. Ivy and Freddie S. Ivy,</p> <p>21 last name I-V-Y.</p> <p>22 Also, when I refer to the association,</p> <p>23 unless I specify otherwise, I'll be referring to</p> <p>24 Antelope Homeowners' Association. At times I'll be</p> <p>25 talking about the association foreclosure sale.</p> <p style="text-align: right;">Page 11</p>

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<p>1 When I do that, I will be referring to the public 2 auction that was held on July 25, 2012, by Alessi &amp; 3 Koenig, LLC, on behalf of the association. Okay? 4 <b>A. Okay.</b> 5 Q. And when I ask you for communications or 6 something that happened before the date of the 7 association foreclosure sale, we'll be looking to 8 that July 25th, 2012 date. 9 <b>A. Okay.</b> 10 Q. If I happen to refer to Alessi, I will be 11 referring to Alessi &amp; Koenig, LLC, the foreclosure 12 agent. I may also refer to them from time to time 13 as A&amp;K. 14 <b>A. Okay.</b> 15 Q. When I refer to U.S. Bank, I will be 16 referring to U.S. Bank National Association as the 17 trustee. 18 <b>A. Okay.</b> 19 Q. And when I refer to the trust, I will be 20 referring to that Merrill Lynch Mortgage Investors 21 Trust, Mortgage Loan Asset-Backed Certificates, 22 Series 2005-A8, for which U.S. Bank is the trustee. 23 All right. Now, if you go ahead and look 24 to page 3, midway down to almost the bottom of the 25 page, I believe on line 19, starts a list of 13</p> <p style="text-align: right;">Page 12</p>	<p>1 <b>A. There -- I can't say for sure.</b> 2 <b>Generally, they're between U.S. Bank and Ocwen and</b> 3 <b>then there's a list of trusts that they refer to.</b> 4 Q. Okay. When did Ocwen become the servicer 5 on this loan? 6 <b>A. I believe it was in December of 2013.</b> 7 Q. So that was after the foreclosure sale? 8 <b>A. Correct.</b> 9 Q. Do you know who the prior servicer of the 10 loan was? 11 <b>A. I believe it was Bank of America before</b> 12 <b>us and Greenpoint before them.</b> 13 Q. Do you know the dates, by any chance, 14 that Bank of America was the servicer? 15 <b>A. I don't recall offhand.</b> 16 Q. Do you know in Bank of America was the 17 servicer at the time that the foreclosure sale 18 occurred? 19 <b>A. Yes, they were.</b> 20 Q. Do you know if there was a servicer prior 21 to Greenpoint servicing the loan? 22 <b>A. Not that I'm aware of.</b> 23 Q. Would this be information that would be 24 in your business records somewhere? 25 <b>A. From my review of our business records,</b></p> <p style="text-align: right;">Page 14</p>
<p>1 topics. They start there on three and they go to 2 page 6. Have you had chance to review those topics 3 before today? 4 <b>A. Yes.</b> 5 Q. And are you the person that U.S. Bank has 6 designated to testify on its behalf for those 7 topics? 8 <b>A. Yes.</b> 9 Q. What is the relationship between Ocwen 10 and the trust such that you would be the person 11 designated as the witness to testify for U.S. Bank? 12 <b>A. So Ocwen Loan Servicing, LLC is an</b> 13 <b>indirect subsidiary of Ocwen Financial Corporation,</b> 14 <b>and Ocwen Loan Servicing is the servicer, and we</b> 15 <b>have a power of attorney for the trust.</b> 16 Q. Did you review that power of attorney 17 prior to this deposition? 18 <b>A. I don't think I did. I might have, but I</b> 19 <b>don't recall.</b> 20 Q. Have you seen that power of attorney in 21 the past? 22 <b>A. I probably have.</b> 23 Q. Do you know if it is a power of attorney 24 directly between U.S. Bank as the trustee and Ocwen 25 or is it between the trust and Ocwen?</p> <p style="text-align: right;">Page 13</p>	<p>1 <b>nothing indicates that there was a servicer before</b> 2 <b>Greenpoint. The only servicing histories I've seen</b> 3 <b>are Greenpoint and Bank of America so ...</b> 4 Q. Okay. At any time, was there a separate 5 master servicer and sub-servicer for this loan that 6 you're aware of? 7 <b>A. I don't know offhand. I didn't look into</b> 8 <b>that. Sorry.</b> 9 Q. Is that information that if you had to, 10 you could look into your files and find? 11 <b>A. I can look into it. As far as when we</b> 12 <b>were servicing, I don't know if I would have access</b> 13 <b>or be able to look into when the prior servicers</b> 14 <b>were servicing.</b> 15 Q. Does U.S. Bank have any policies or 16 procedures in place to ensure that all of the 17 information related to a particular loan is 18 forwarded from one servicer to the next? 19 <b>A. I don't know that U.S. Bank has a policy</b> 20 <b>and procedure. It's part of Ocwen's policies and</b> 21 <b>procedures to make sure we get all the documents</b> 22 <b>from the prior servicer as part of our boarding</b> 23 <b>process.</b> 24 Q. And what steps do you do to ensure that 25 you do that?</p> <p style="text-align: right;">Page 15</p>



<p>1 <b>A. It's also kind of a two-part process.</b></p> <p>2 <b>There's kind of what we call the data transfer,</b></p> <p>3 <b>which is basically, wherever the loan stands now,</b></p> <p>4 <b>the prior service gets together with our tech</b></p> <p>5 <b>people and they come up with kind of a translation</b></p> <p>6 <b>to get data from one system to other. We board</b></p> <p>7 <b>that data into our system. We do a series of</b></p> <p>8 <b>checks based on what the prior -- we make sure it</b></p> <p>9 <b>matches up with what the prior servicer sent to us.</b></p> <p>10 <b>We make sure it matches up with the loan documents.</b></p> <p>11 <b>Then we also do a boarding process for</b></p> <p>12 <b>the physical documents, where they're uploaded into</b></p> <p>13 <b>a SharePoint site, kind of, and then we download</b></p> <p>14 <b>them off and put them in folders in our system.</b></p> <p>15 Q. Okay.</p> <p>16 <b>A. Our imaging system, sorry.</b></p> <p>17 Q. So what did you do to prepare for today's</p> <p>18 deposition then?</p> <p>19 <b>A. I reviewed our many levels of</b></p> <p>20 <b>disclosures. I reviewed Bank of America's comments</b></p> <p>21 <b>logs during the relevant time period. I reviewed</b></p> <p>22 <b>documents in our imaging system. I reviewed our</b></p> <p>23 <b>servicing notes. I found the PSA and the mortgage</b></p> <p>24 <b>loan schedule to the PSA. I think that's</b></p> <p>25 <b>everything.</b></p> <p style="text-align: right;">Page 16</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Other than your servicing platform and</p> <p>3 your imaging system, are there any other separate</p> <p>4 systems that you reviewed?</p> <p>5 <b>A. I went into our pooling -- PSA, pooling</b></p> <p>6 <b>and servicing agreement -- SharePoint site to pull</b></p> <p>7 <b>the pooling and servicing agreement out of.</b></p> <p>8 Q. Speaking of that, we'll go over that real</p> <p>9 quick. We'll need to go over it later. But you</p> <p>10 indicated that you had pulled the mortgage loan --</p> <p>11 <b>A. Schedule.</b></p> <p>12 Q. -- schedule. Was that to confirm that</p> <p>13 this loan was part of that pooling and servicing</p> <p>14 agreement for this trust?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And you were able to confirm that that</p> <p>17 was the case?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. You indicated you reviewed the multiple</p> <p>20 disclosures that were provided by counsel --</p> <p>21 actually, scratch that.</p> <p>22 Aside from your attorney, did you</p> <p>23 communicate with anybody else in preparation for</p> <p>24 your deposition?</p> <p>25 <b>A. I e-mailed and in-boxed to request the</b></p> <p style="text-align: right;">Page 18</p>
<p>1 Q. Okay. You indicated that you reviewed</p> <p>2 Bank of America's comments and logs. Are those</p> <p>3 comments and logs that you received from Bank of</p> <p>4 America when Ocwen became the servicer?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And are they housed now in your servicing</p> <p>7 platform?</p> <p>8 <b>A. They're in our imaging system, yes.</b></p> <p>9 Q. In your imaging system. Okay.</p> <p>10 Now, is your imaging system and your</p> <p>11 servicing platform different systems?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So the information in your servicing</p> <p>14 platform, does that include only your servicing</p> <p>15 information? Your -- I'm sorry, for clarification,</p> <p>16 your being only Ocwen's servicing information?</p> <p>17 <b>A. Generally, yes. And I believe with Bank</b></p> <p>18 <b>of America's loan, it only includes ours.</b></p> <p>19 <b>Sometimes if it's one of these prior servicers that</b></p> <p>20 <b>we took over, we'll have their stuff in there too.</b></p> <p>21 <b>But I think for Bank of America, it's just ours.</b></p> <p>22 Q. Okay. And the documents that are housed</p> <p>23 in your imaging system, would those include</p> <p>24 documents that were mailed to either Ocwen or to a</p> <p>25 prior servicer if they were forwarded to Ocwen?</p> <p style="text-align: right;">Page 17</p>	<p>1 <b>mortgage servicing schedule, but that's it.</b></p> <p>2 Q. So for purposes of clarification, you</p> <p>3 didn't speak with anybody directly from U.S. Bank?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. And you didn't speak with anybody from</p> <p>6 any other prior servicers?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Other than the power of attorney you</p> <p>9 referenced between -- either between U.S. Bank and</p> <p>10 Ocwen or between the trust and Ocwen, but likely</p> <p>11 between U.S. Bank and Ocwen, did you review any</p> <p>12 other powers of attorney in preparation for this?</p> <p>13 Actually, you indicated you don't recall</p> <p>14 if you reviewed that power of attorney. But were</p> <p>15 there other separate power of attorneys, any that</p> <p>16 you reviewed in preparation for this deposition?</p> <p>17 <b>A. I don't think so.</b></p> <p>18 Q. Other than the pooling and servicing</p> <p>19 agreement, do you know if there are any other</p> <p>20 servicing guidelines applicable to this loan?</p> <p>21 <b>A. Not that I'm aware of.</b></p> <p>22 Q. Taking into consideration the pooling and</p> <p>23 servicing agreement is awfully long and has much</p> <p>24 information in it, did you complete any sort of a</p> <p>25 review of that pooling and servicing agreement?</p> <p style="text-align: right;">Page 19</p>

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<p>1 <b>A. No. I just literally pulled it out and</b>  2 <b>sent it. I looked at the front page for the date.</b>  3 Q. Am I correct in understanding then that  4 you would not know if the pooling and services  5 agreement included any information on how to handle  6 homeowners' association liens?  7 <b>A. I would not.</b>  8 Q. Does U.S. Bank have any policies and  9 procedures for how to handle homeowners'  10 association liens?  11 <b>A. U.S. Bank would just forward that to the</b>  12 <b>servicer and the servicer would handle responding</b>  13 <b>to those liens.</b>  14 Q. Does U.S. Bank require the servicer to  15 communicate with U.S. Bank with regard to its  16 policies and procedures on how to handle  17 homeowners' association liens?  18 <b>A. I don't believe so.</b>  19 Q. So if I'm understanding correctly then,  20 they leave it entirely up to the servicer on to  21 handle them?  22 <b>A. Correct. That's my understanding. I</b>  23 <b>haven't reviewed the PSA in this case. But we</b>  24 <b>service within the guidelines of the PSA, which</b>  25 <b>generally mean we service with our servicing</b></p> <p style="text-align: right;">Page 20</p>	<p>1 that U.S. Bank admits to having received -- or to  2 its servicer having received the notice of default  3 and election to sell and the notices of sales for  4 this association foreclosure sale?  5 <b>A. Yes.</b>  6 Q. Okay. Let's see if we can get to some of  7 these documents. Let's go ahead and first flip  8 to -- I believe it was 73 was the Deed of Trust?  9 <b>A. Yes.</b>  10 Q. And you recognize this document as being  11 the Deed of Trust, the subject of this litigation;  12 correct?  13 <b>A. Yes.</b>  14 Q. Does this document relate to the  15 Marbledoe property?  16 <b>A. Yes.</b>  17 Q. When is the Deed of Trust dated?  18 <b>A. May 13th, 2005.</b>  19 Q. And who originated the loan that's  20 secured by this Deed of Trust?  21 <b>A. Universal American Mortgage Company, LLC.</b>  22 Q. And they were the beneficiary under Deed  23 of Trust as well; correct?  24 <b>A. Yes.</b>  25 Q. Do you recall in your review of the</p> <p style="text-align: right;">Page 22</p>
<p>1 <b>guidelines.</b>  2 Q. In your review of the business records in  3 preparation for this deposition, not including the  4 disclosures that were provided by counsel, did you  5 see any reference to the association or its liens?  6 <b>A. The documents in the disclosures are in</b>  7 <b>our imaging system, so I don't know how to answer</b>  8 <b>that.</b>  9 Q. Let me clarify. To the extent that the  10 document exist in both places, then I would say,  11 yes, you reviewed them in your -- if you did, you  12 reviewed them business records as well as  13 disclosure, so, yes, I would like to discuss those.  14 It's the documents that I don't -- the documents I  15 don't want to discuss are those documents that were  16 disclosed by counsel, but did not can exist in your  17 imaging system or in any of the business records  18 that you reviewed.  19 <b>A. Okay. I know that the Bank of America</b>  20 <b>servicing notes had entries about receiving the</b>  21 <b>various notice of sales and the notice of defaults.</b>  22 <b>I honestly don't recall offhand whether the stuff</b>  23 <b>from the law firm that Bank of America hired was in</b>  24 <b>our system or not.</b>  25 Q. So am I correct in understanding then</p> <p style="text-align: right;">Page 21</p>	<p>1 business records related to this loan having seen a  2 couple of re-recordings of this Deed of Trust to  3 correct certain aspects of the Deed of Trust?  4 <b>A. Yes.</b>  5 Q. I'll just represent for the record that I  6 recall there being at least two re-recordings. I'm  7 going to go ahead and put on the record what they  8 are. If we can flip first to USB00108. For the  9 record, this document is a cover page for a  10 re-recording of the Deed of Trust, and this  11 document was recorded on 10/20 of 2005, that being  12 October 20th. Instrument number 200510200003872.  13 It appears from the face of the document that it  14 was being re-recorded to correct the adjustable  15 rate rider.  16 Do you recognize this document as being  17 something that was in your business records?  18 <b>A. I think it was.</b>  19 Q. Do you have any reason to believe that it  20 wasn't -- that this doesn't accurately represent  21 the re-recording of the Deed of Trust to correct  22 the adjustable rate rider?  23 <b>A. No, I have no reason to believe that.</b>  24 Q. And then I believe it was re-recorded one  25 other time. We'll maybe get to that later --</p> <p style="text-align: right;">Page 23</p>

<p>1 <b>A. I think your depo notice only had it</b>  2 <b>twice.</b>  3 Q. -- in the documents, just so we have a  4 clear record of the last time it was re-recorded  5 and what changed from the initial recording. But  6 for right now, I'll move forward until we get to  7 that. Since there are so many documents to take a  8 look at.  9 Did you review the promissory note  10 related to this Deed of Trust?  11 <b>A. I reviewed the imaged systems. I didn't</b>  12 <b>review the original.</b>  13 Q. It's my understanding based on the  14 documents that were provided, that the original  15 promissory note for this loan was lost. Is that  16 your understanding as well?  17 <b>A. It is not, and I don't -- so our</b>  18 <b>servicing notes say that we received the original</b>  19 <b>in 2015, and we imaged a copy of it in 2015, so I</b>  20 <b>have no reason to believe we don't have the</b>  21 <b>original. I was confused by those loss notes</b>  22 <b>affidavits, because they said that Countrywide was</b>  23 <b>the lender on them.</b>  24 Q. That was my confusion as well, along with  25 several other things that had me confused.</p> <p style="text-align: right;">Page 24</p>	<p>1 number is redacted, so we don't have the ability to  2 compare this loan number to the loan number of the  3 Deed of Trust. But am I correct in looking at this  4 to say that it references a note secured by a Deed  5 of Trust on 7868 Marbledoe Street, Las Vegas,  6 Nevada, 89149?  7 <b>A. Yes.</b>  8 Q. And that is the property; correct?  9 <b>A. Yes.</b>  10 Q. And it references the borrower is Henry  11 E. Ivy and Freddie S. Ivy, who are the borrowers in  12 this case; correct?  13 <b>A. Yes.</b>  14 Q. It also references an amount of \$212 --  15 not \$212 -- \$212,750, which is also the amount of  16 the Deed of Trust that is the subject of this  17 litigation; correct?  18 <b>A. Yes.</b>  19 Q. It further indicates that Countrywide was  20 the -- that they originated the loan and that the  21 note was lost. It's your understanding that that  22 is not the case, the note was not lost; correct?  23 <b>A. Well, the loan we serviced, Countrywide</b>  24 <b>didn't originate. And it's my understanding, based</b>  25 <b>on my review of our records, that the original was</b></p> <p style="text-align: right;">Page 26</p>
<p>1 <b>A. Yeah. So as far as I know, we have the</b>  2 <b>original. I have not seen it, but our business</b>  3 <b>records seem to indicate to me that we have the</b>  4 <b>original.</b>  5 Q. Where do your business records indicate  6 the original is housed?  7 <b>A. It would be -- I didn't review past --</b>  8 <b>when we got it, so it's possible we might have sent</b>  9 <b>it back to custodian. At least in 2015, it was in</b>  10 <b>housed in our vault, which is our physical building</b>  11 <b>that we store that stuff in.</b>  12 Q. So your understanding is, that at least  13 at the time Ocwen began servicing this loan -- or  14 at least in 2015, after Ocwen began servicing the  15 loan, the original note was in Ocwen's possession?  16 <b>A. That's what our business records state,</b>  17 <b>yes.</b>  18 Q. Then we're going to take a look just for  19 purposes of the record all of these lost  20 affidavits, and there's an assignment in here that  21 doesn't really appear to assign anything. But just  22 so we can see -- make sure we're all on the same  23 page.  24 If we flip to USB181 -- unfortunately,  25 the document that we have that disclosed the loan</p> <p style="text-align: right;">Page 25</p>	<p>1 <b>not lost.</b>  2 Q. And you have nothing in your records to  3 indicate why this affidavit of loss notes would be  4 in the records; correct?  5 <b>A. I mean, there's letters between</b>  6 <b>Greenpoint and somebody saying to do this. But I</b>  7 <b>don't really understand why I have not been able to</b>  8 <b>ascertain anything about that. And obviously we</b>  9 <b>were not servicing when this happened.</b>  10 Q. Did you look to see if you could find any  11 information regarding ...  12 <b>A. I mean, I looked through everything we</b>  13 <b>had in our business records. Countrywide doesn't</b>  14 <b>exist anymore. I don't think Greenpoint exists</b>  15 <b>anymore. So I can't really ask either of them why</b>  16 <b>this happened. And I didn't see anything in like</b>  17 <b>BOA's servicing notes about it either. I mean,</b>  18 <b>this does say void on it, so maybe -- I don't know.</b>  19 Q. That might mean something, although I  20 think there's some copies that don't.  21 Do you have the ability to look and  22 compare the loan number from this affidavit of loss  23 note to the loan number on the Deed of Trust?  24 <b>A. Assuming we redacted it, yes, probably.</b>  25 MS. SCHIMMING: Counsel, can I ask that</p> <p style="text-align: right;">Page 27</p>

<p>1 you just compare them and let us know if they're</p> <p>2 the same?</p> <p>3 MS. HABERMAS: We will actually serve a</p> <p>4 copy that has proper redactions. So it will have</p> <p>5 the last four digits.</p> <p>6 MS. SCHIMMING: And I don't know that it</p> <p>7 matters that much anyway.</p> <p>8 THE WITNESS: I will say, I do believe</p> <p>9 this is the investor number that's handwritten on</p> <p>10 here, if I remember correctly.</p> <p>11 BY MS. SCHIMMING:</p> <p>12 Q. Okay. And we will talk more about that</p> <p>13 later.</p> <p>14 Has the investor been the same investor</p> <p>15 from inception of the loan, do you know or from</p> <p>16 when it was purchased?</p> <p>17 <b>A. 2005. It was Wachovia and then Wachovia</b></p> <p>18 <b>failed and U.S. -- so the trust -- it's been in the</b></p> <p>19 <b>same trust, but the trustee has changed since 2005.</b></p> <p>20 Q. If you go ahead and look at -- the</p> <p>21 following page 182 is just another copy of this</p> <p>22 affidavit of loss note. But if you look at 183</p> <p>23 through 187, it appears to be a copy of the note.</p> <p>24 But does this copy accurately reflect the copy that</p> <p>25 you reviewed?</p> <p style="text-align: right;">Page 28</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. And it also references the Ivy's as the</p> <p>3 borrowers; correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And it references a Deed of Trust dated</p> <p>6 May 15, 2005, in the original amount of \$212,750;</p> <p>7 is that correct?</p> <p>8 <b>A. A note, not a Deed of Trust, but, yes.</b></p> <p>9 Q. A note. I'm sorry, yes.</p> <p>10 <b>A. Oh, yes, it does.</b></p> <p>11 Q. And a Deed of Trust securing that note?</p> <p>12 <b>A. It does, yes.</b></p> <p>13 Q. And again, as with the previous one,</p> <p>14 you're not sure why this exists; correct?</p> <p>15 <b>A. Right.</b></p> <p>16 Q. I'm going to have you flip to page 213.</p> <p>17 I'm not sure it will be a very productive</p> <p>18 discussion, but do you recall having seen this</p> <p>19 document in your business records at all?</p> <p>20 <b>A. Again, I can't recall if I saw it in our</b></p> <p>21 <b>business records or when I was reviewing the</b></p> <p>22 <b>disclosures, but I've seen it.</b></p> <p>23 Q. I don't know if there's a better copy</p> <p>24 that you had reviewed, but --</p> <p>25 <b>A. There's not.</b></p> <p style="text-align: right;">Page 30</p>
<p>1 <b>A. I think this was an origination copy, and</b></p> <p>2 <b>there were letters in our file about this not being</b></p> <p>3 <b>a proper form. It's missing the amount of months</b></p> <p>4 <b>and they redid it later.</b></p> <p>5 Q. Okay.</p> <p>6 <b>A. So if you go to 188, that's more -- I</b></p> <p>7 <b>don't know if that one has all the allonges and</b></p> <p>8 <b>everything. I know we produced recently --</b></p> <p>9 Q. That one doesn't have the allonges</p> <p>10 either.</p> <p>11 <b>A. We produced recently the one that's in</b></p> <p>12 <b>our system that we imaged when we received the</b></p> <p>13 <b>original. I think that was on the 5th.</b></p> <p>14 Q. We'll get to it. And then it just</p> <p>15 appears there's several more copies of the note</p> <p>16 here.</p> <p>17 <b>A. Right.</b></p> <p>18 Q. Okay. Then if you go to USB202, this is</p> <p>19 one of several copies of what appears to be another</p> <p>20 affidavit of lost adjustable rate note, signed by</p> <p>21 Greenpoint Mortgage Funding Incorporated; is that</p> <p>22 correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And it also reference the Marbledoe</p> <p>25 property; correct?</p> <p style="text-align: right;">Page 29</p>	<p>1 Q. Okay. So can you shed any light on what</p> <p>2 this document is or what it's asking for or doing?</p> <p>3 <b>A. I can't really read it, but this was in a</b></p> <p>4 <b>group of documents where Greenpoint I believe was</b></p> <p>5 <b>telling somebody that the note and Deed of Trust</b></p> <p>6 <b>were not in the correct forms and that forms needed</b></p> <p>7 <b>to be replaced because they were missing numbers in</b></p> <p>8 <b>them.</b></p> <p>9 Q. And then it looks like USB216 and 217 are</p> <p>10 e-mail correspondence regarding the corrected notes</p> <p>11 and the wrong numbers and information that you were</p> <p>12 referencing?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So do you know if the notes were</p> <p>15 reprinted and re-executed?</p> <p>16 <b>A. I would have no way of knowing that. The</b></p> <p>17 <b>one we have in your system -- the note that we have</b></p> <p>18 <b>in our system that was imaged on the day that we</b></p> <p>19 <b>signed something saying we received the original</b></p> <p>20 <b>note, had the signatures of the borrower and also</b></p> <p>21 <b>like month numbers and interest numbers in them. I</b></p> <p>22 <b>can't tell you whether --</b></p> <p>23 Q. Do you recall, having reviewed it, did it</p> <p>24 have the origination date?</p> <p>25 <b>A. It had a date on it.</b></p> <p style="text-align: right;">Page 31</p>

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<p>1 Q. Well, we'll take a look if you can find a 2 copy of what you reviewed.</p> <p>3 <b>A. I think it was in May 2005, I think. I</b> 4 <b>can't remember the exact date on it.</b></p> <p>5 Q. Okay. It looks like 218 and 219 are just 6 additional copies of the affidavit of loss note 7 from Countrywide, dated March 25, 2010, just are 8 voided copies.</p> <p>9 <b>A. And just to be clear, this 218 one is for</b> 10 <b>a completely different loan. I don't know why it's</b> 11 <b>included.</b></p> <p>12 Q. 218?</p> <p>13 <b>A. It's for Janice something.</b></p> <p>14 Q. Oh, yes, it is. So actually they're not 15 copies. So 218 is not another duplicate copy of 16 the affidavit of loss note. 219, however, is?</p> <p>17 <b>A. Correct. Except the loan number isn't</b> 18 <b>redacted.</b></p> <p>19 Q. Oh, look at that.</p> <p>20 <b>A. But that might be Countrywide's loan</b> 21 <b>number.</b></p> <p>22 Q. It does not match the loan number of the 23 loan on this -- on our Deed of Trust.</p> <p>24 Okay. Now, looking at 220 through -- I'm 25 sorry, not 220. 225 -- no. There we go. 229</p> <p style="text-align: right;">Page 32</p>	<p>1 "CF001 collateral file"?</p> <p>2 <b>A. Yeah. I think that just means they're</b> 3 <b>looking for the collateral file, which is generally</b> 4 <b>the note, the Deed of Trust, any assignments, the</b> 5 <b>title policy.</b></p> <p>6 Q. Do you know why they would be asking 7 Wells Fargo Bank for this?</p> <p>8 <b>A. The PSA will have the custodian listed in</b> 9 <b>it probably. My guess is that Wells Fargo was the</b> 10 <b>custodian for the trust.</b></p> <p>11 Q. So your custodian is sometimes different 12 than the entity that's servicing or the entity that 13 is the holder of the note?</p> <p>14 <b>A. A lot of the time.</b></p> <p>15 Q. Now, if I can have you flip to USB000357. 16 Do you recognize this document as something that 17 existed in your business records?</p> <p>18 <b>A. It does exist in our business records. I</b> 19 <b>have seen indication that it was ever recorded.</b></p> <p>20 Q. It does appear to have been signed by a 21 representative of Universal American Mortgage 22 company, LLC; correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And notarized as well. And it -- for the 25 record, this document is titled "An Assignment of</p> <p style="text-align: right;">Page 34</p>
<p>1 through 233, does that appear to be a copy of the 2 note that you reviewed?</p> <p>3 <b>A. Mostly, except that in the one that we</b> 4 <b>have in our system, this endorsement on the</b> 5 <b>bottom -- you see how it's blank endorsement and</b> 6 <b>then they have a stamp for Wachovia?</b></p> <p>7 Q. Yes.</p> <p>8 <b>A. That's been crossed out on ours and then</b> 9 <b>there's an allonge from Greenpoint to blank</b> 10 <b>attached.</b></p> <p>11 Q. Okay. So, yeah, I believe there's a copy 12 of that in here as well.</p> <p>13 <b>A. The most recent copy we produced is the</b> 14 <b>one that we scanned when we checked a box saying</b> 15 <b>that we received the original.</b></p> <p>16 Q. If I can have you turn to page 280 -- 17 USB287, this appears to a document entitled 18 "Request for Release of Documents," to Wells Fargo 19 Bank regarding Henry Ivy, from BAC Home Loan 20 Servicing, LP. Do you know what this document is 21 requesting from Wells Fargo?</p> <p>22 <b>A. It looks like there's a stamp that I</b> 23 <b>can't read at the bottom where they're supposed to</b> 24 <b>say what they're looking for.</b></p> <p>25 Q. On the bottom left-hand side, it does say</p> <p style="text-align: right;">Page 33</p>	<p>1 Deed of Trust." It is not recorded. There's no 2 indication that it was ever recorded, as the 3 witness testified. But it appears to be assigning 4 all right title and interest in and to the Deed of 5 Trust, executed by Henry Ivy and Freddie Ivy to 6 Universal Mortgage Company, LLC, in the amount of 7 \$212,750. It does not have recorded information.</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And it appears to be assigning it to 10 Mortgage Electronic Registration Systems 11 Incorporated.</p> <p>12 Do you -- in your review of the business 13 records, did you have any information as to why 14 this assignment of Deed of Trust may have been 15 executed and not recorded?</p> <p>16 <b>A. No. This was way before our time.</b></p> <p>17 Q. And there is nothing in Bank of America's 18 servicing notes that indicated anything related to 19 this assignment?</p> <p>20 <b>A. I don't think Bank of America was even</b> 21 <b>servicing when this happened. I didn't see</b> 22 <b>anything in anybody's -- anything about this.</b></p> <p>23 Q. Okay. So --</p> <p>24 <b>A. I mean, I've seen this document, but</b> 25 <b>not --</b></p> <p style="text-align: right;">Page 35</p>

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<p>1 Q. And you would have -- anywhere that you 2 looked in your business records, you would have 3 found reference if reference did exist; correct? 4 <b>A. Out of what we have, yes.</b> 5 Q. If you can flip to USB1012 through 1017. 6 It's in the fourth supplemental disclosures. 7 MS. HABERMAS: Almost at the back of 8 everything. 9 THE WITNESS: Got it. Yeah. 10 BY MS. SCHIMMING: 11 Q. Now, does this appear to be a true and 12 correct copy of the note that you reviewed that was 13 placed into your imaging system? 14 <b>A. Yes.</b> 15 Q. And it has an endorsement from Universal 16 American Mortgage Company, LLC to Greenpoint 17 Mortgage Funding Incorporated; correct? 18 <b>A. Yes.</b> 19 Q. And that is not dated; correct? 20 <b>A. Correct.</b> 21 Q. And do you have any information to 22 indicate what date that that endorsement was put on 23 the document? 24 <b>A. Some time before May 2015.</b> 25 Q. And then there appears to be a crossed</p> <p style="text-align: right;">Page 36</p>	<p>1 based on your review of the business records, do 2 you have information as to when the trust obtained 3 its interest in the loan? 4 <b>A. It will be on the first page of the PSA,</b> 5 <b>but I believe it was in 2005 sometime.</b> 6 Q. So you were able to determine that by 7 looking at the PSA; correct? 8 <b>A. Looking at the PSA, making sure that it</b> 9 <b>was included in the mortgage loan schedule to the</b> 10 <b>PSA.</b> 11 Q. Does that information show whether or not 12 the trust purchased the loan directly from the 13 originating lender or from somebody else? 14 <b>A. If I recall correctly, they purchased it</b> 15 <b>from Greenpoint. But I could be wrong about that.</b> 16 Q. And that information was in PSA? 17 <b>A. Correct. I just don't recall offhand.</b> 18 Q. Based on your review of the business 19 records, were there any other contracts or 20 agreements or purchase agreements -- let's back up. 21 Based on your review of your business 22 records, were there any type of contracts or 23 purchase agreements between the trust and the 24 entity from whom the trust purchased its interest? 25 <b>A. I can tell you there were other documents</b></p> <p style="text-align: right;">Page 38</p>
<p>1 out endorsement from Greenpoint Mortgage to blank 2 with a Wachovia stamp, and then attached to the 3 note is an allonge to mortgage note executed by 4 Greenpoint Mortgage Funding, Inc. in blank; 5 correct? 6 <b>A. Correct.</b> 7 Q. Do you know what date this allonge was 8 executed? 9 <b>A. No.</b> 10 Q. It was just part of the note when you 11 received it -- when Ocwen received it to service? 12 <b>A. When we received what I believe to be the</b> 13 <b>original and scanned it in, this was part of it, in</b> 14 <b>2015.</b> 15 Q. And I believe we already cleared this up 16 or I already asked it, but I will ask again just in 17 case I didn't: You did not see anything in Bank of 18 America's servicing notes referencing the missing 19 note or the inability to find the note at any time; 20 correct? 21 <b>A. Not that I recall seeing, no.</b> 22 Q. Let's see if we can get back on track now 23 that we've tried to clear up the missing, not 24 missing documents. 25 We briefly touched on this before, but</p> <p style="text-align: right;">Page 37</p>	<p>1 <b>in our SharePoint relating to this trust. I didn't</b> 2 <b>look at or open any of them, so I don't know what</b> 3 <b>they were, because I was just looking for the PSA.</b> 4 Q. Is there a reason that you didn't look at 5 them other than you were just looking for the PSA? 6 <b>A. That's the only reason.</b> 7 Q. And is that because the PSA provided the 8 information that you thought you would need? 9 <b>A. My attorneys asked me for the PSA, so I</b> 10 <b>pulled it for them. And I just looked at the front</b> 11 <b>page so I could see what the date was because</b> 12 <b>that's normally a question I know you'll ask.</b> 13 Q. Do you know how much the trust paid for 14 its interest? 15 <b>A. Generally, the trust does not buy these</b> 16 <b>things piecemeal. They pay for an entire pool of</b> 17 <b>loans. So it's impossible to see what they would</b> 18 <b>pay for this specific loan interest.</b> 19 Q. Do you know if they paid in cash or in 20 another form such as certificates? 21 <b>A. It says, "certificates" in the name, but</b> 22 <b>I don't know one way or the other.</b> 23 Q. Is there any way to confirm that 24 information? 25 <b>A. I don't know if there's any way for me to</b></p> <p style="text-align: right;">Page 39</p>

<p>1 <b>confirm it or not.</b></p> <p>2 Q. Do you know who would know how to confirm</p> <p>3 that information?</p> <p>4 <b>A. I don't. I would have to do some digging</b></p> <p>5 <b>to do that. It might say in the PSA. I don't know</b></p> <p>6 <b>one way or the other.</b></p> <p>7 Q. Did you review any recorded assignments</p> <p>8 in preparation for your deposition?</p> <p>9 <b>A. I know there's been one recorded now from</b></p> <p>10 <b>the originating lender to Greenpoint, and that's</b></p> <p>11 <b>currently the only one that's recorded, that I know</b></p> <p>12 <b>of.</b></p> <p>13 Q. And other than the unrecorded assignment</p> <p>14 that we discussed previously that was from the</p> <p>15 originating lender to MERS, did you see any other</p> <p>16 unrecorded assignments in the business records that</p> <p>17 you reviewed?</p> <p>18 <b>A. There was an unrecorded assignment in our</b></p> <p>19 <b>business records that wasn't to anybody.</b></p> <p>20 Q. Do you know if that assignment</p> <p>21 specifically referenced the Deed of Trust by</p> <p>22 recording number or was that information blank?</p> <p>23 <b>A. It looked almost identical to the one to</b></p> <p>24 <b>MERS, except that was blank.</b></p> <p>25 Q. The recorded assignment that you</p> <p style="text-align: right;">Page 40</p>	<p>1 <b>sold it to.</b></p> <p>2 Q. So right now on paper, the assignment is</p> <p>3 from the originating lender to Greenpoint, which is</p> <p>4 an entity that we believe doesn't exist; correct?</p> <p>5 <b>A. Correct. Ocwen is currently working on</b></p> <p>6 <b>trying to figure out to how to get an assignment</b></p> <p>7 <b>from Greenpoint to the trust.</b></p> <p>8 MS. SCHIMMING: Can we go off record for</p> <p>9 a minute.</p> <p>10 (A brief recess was taken.)</p> <p>11 BY MS. SCHIMMING:</p> <p>12 Q. So back on the record.</p> <p>13 Do you know what other entities, if any,</p> <p>14 claim an interest in this Deed of Trust?</p> <p>15 More clearly, does the FHA have an</p> <p>16 interest in this Deed of Trust?</p> <p>17 <b>A. No.</b></p> <p>18 Q. How do you know that the FHA does not</p> <p>19 have an interest in this Deed of Trust?</p> <p>20 <b>A. It would be coded in our system as a HUD</b></p> <p>21 <b>loan, and it's not.</b></p> <p>22 Q. What about Fannie Mae or Freddie Mac?</p> <p>23 <b>A. They do not either. And again, it would</b></p> <p>24 <b>listed in our system if they were the investor, and</b></p> <p>25 <b>they're not.</b></p> <p style="text-align: right;">Page 42</p>
<p>1 referenced, do you know when it was recorded?</p> <p>2 <b>A. Recently.</b></p> <p>3 MS. HABERMAS: Yes, I believe it starts</p> <p>4 at USB00667.</p> <p>5 BY MS. SCHIMMING:</p> <p>6 Q. Looking at USBank 667, for the record, it</p> <p>7 appears to be titled "A Corporate Assignment of</p> <p>8 Deed of Trust," recorded on June 1, 2018, as</p> <p>9 instrument number 20180601-000-3171. And it</p> <p>10 appears to be assigning the interest in the Deed of</p> <p>11 Trust from Eagle Home Mortgage, LLC, formerly known</p> <p>12 as Universal American Mortgage Company, LLC, to</p> <p>13 Greenpoint Mortgage Funding, Incorporated, and it</p> <p>14 is signed, dated 5/17/2018; is that correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you recognize this document as</p> <p>17 something that was part of your business records?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And do you know why having endorsed the</p> <p>20 note over to Greenpoint, at least prior to 2015</p> <p>21 based on our review of the note, that an assignment</p> <p>22 of the Deed of Trust was not entered until 2018?</p> <p>23 <b>A. I know that we requested this from</b></p> <p>24 <b>Universal American, and they advised us that they</b></p> <p>25 <b>would only give us an assignment to the entity they</b></p> <p style="text-align: right;">Page 41</p>	<p>1 Q. Now, I'm going to ask you a silly</p> <p>2 question, but I have to ask it, because apparently</p> <p>3 there are some judges who are a little confused on</p> <p>4 this issue. If you go ahead and look at -- go to</p> <p>5 page 73 --</p> <p>6 Can we go off the record for a second.</p> <p>7 (A brief recess was taken.)</p> <p>8 BY MS. SCHIMMING:</p> <p>9 Q. Taking a look at USB73, which is the Deed</p> <p>10 of Trust, the subject of our conversations today,</p> <p>11 if you look at the bottom of that document, it</p> <p>12 states: "Nevada single family, Fannie Mae, Freddie</p> <p>13 Mac uniform instrument."</p> <p>14 Do you see that?</p> <p>15 <b>A. I do.</b></p> <p>16 Q. Am I correct to understand that that</p> <p>17 language is on this document because this is a form</p> <p>18 instrument not because Fannie Mae or Freddie Mac</p> <p>19 actually have an interest in this loan?</p> <p>20 <b>A. That's my understanding.</b></p> <p>21 Q. Did you review a payment history from</p> <p>22 prior to Ocwen having serviced this loan in your</p> <p>23 review of the business records?</p> <p>24 <b>A. I think there was one. I don't think I</b></p> <p>25 <b>reviewed it because ...</b></p> <p style="text-align: right;">Page 43</p>

<p>1 Q. Did you review any payment histories with 2 regard to this loan? 3 <b>A. I didn't.</b> 4 Q. Do you know if the borrower was ever in 5 arrears on the loan? 6 <b>A. You know, I didn't look at that, because</b> 7 <b>I just assumed they were.</b> 8 Q. Taking a look at 71, for the record, this 9 is a document titled "Nevada Important Notice, 10 Notice of Default, Election to Sell Under Deed of 11 Trust," recorded on August 26th, 2009, as 12 instrument number 20090826000352. 13 Do you recognize this document as 14 something that was part of your business records? 15 <b>A. I believe so.</b> 16 Q. This document appears -- if you look at 17 the -- well, it's still part of the first 18 paragraph, but it's where everything starts to be 19 all capitalized, and it says, "Failure to pay the 20 installments of principal, interest, and impounds, 21 which became due on 2/1 of 2009," would that 22 indicate that this loan, at least at some point, 23 became delinquent on February 1st of 2009? 24 <b>A. Yes.</b> 25 Q. And do you know if any additional steps Page 44</p>	<p>1 <b>A. I don't know if we have -- I know -- was</b> 2 <b>document payment history in one of the disclosures?</b> 3 MS. HABERMAS: There were payment 4 histories included with the third supplemental ... 5 MS. SCHIMMING: We do have some payment 6 history information. I don't have information on 7 whether or not there was a loan modification. To 8 the extent that that exists, could you maybe get it 9 to us? 10 MS. HABERMAS: We will, yes. 11 BY MS. SCHIMMING: 12 Q. Having not reviewed the payment 13 histories, I'm not sure if you still have the this 14 information somewhere, but do you know if there was 15 ever an escrow account set up for this loan? 16 <b>A. I don't know offhand.</b> 17 Q. So you couldn't know then if there were 18 ever homeowners' association dues paid as part of 19 an escrow item? 20 <b>A. Based on my review of the records,</b> 21 <b>including a letter to the borrower saying he hadn't</b> 22 <b>paid his HOA fees, my best estimate is that they</b> 23 <b>were not.</b> 24 Q. Okay. Am I correct to understand, 25 however, that the Deed of Trust does allow for, if Page 46</p>
<p>1 were taken to foreclose on this loan after this 2 notice of default was recorded? 3 <b>A. I don't think I ever saw a notice of sale</b> 4 <b>or anything.</b> 5 Q. Do you know if this notice of default was 6 ever rescinded? 7 <b>A. I don't know one way or the other.</b> 8 Q. Okay. And I believe we can look in 9 public records and find out if it does exist. I 10 didn't see it in the records, but it may. 11 Do you know if there was -- based on your 12 review of the records, were there any loan 13 modifications of this loan? 14 <b>A. I will tell you there was a folder that</b> 15 <b>said, "Loan modifications" in the collateral</b> 16 <b>folder, but I didn't -- again, I didn't look into</b> 17 <b>the borrower's default at all, so I don't know.</b> 18 Q. Is there a reason you didn't look into 19 that information at all? 20 <b>A. I really was focused on the HOA portion</b> 21 <b>of things, and I just -- it slipped my mind to look</b> 22 <b>into where the borrower was with us.</b> 23 Q. So to the extent that it's covered in a 24 topic, it was just something that you missed as you 25 were doing -- Page 45</p>	<p>1 so chosen, the lender to pay the association dues 2 and include that as part of the Deed of Trust? 3 <b>A. Lender successors and assigns, yes.</b> 4 Q. Did you just say in your review of the 5 file, you found information that the borrower 6 contacted the bank or the bank contacted the 7 borrower? 8 <b>A. That the attorneys we -- that BOA hired</b> 9 <b>contacted the borrower.</b> 10 Q. And was that information that was in your 11 business records or information that was in the 12 disclosures you reviewed? 13 <b>A. Like I stated earlier, I don't recall</b> 14 <b>whether it was in our business records and the</b> 15 <b>disclosures or just the disclosures.</b> 16 Q. Is that information you would typically 17 see in your business records? 18 <b>A. Again, my best estimate is that generally</b> 19 <b>if we produce it, it's something that's in our</b> 20 <b>business records, if it's not something that has</b> 21 <b>been produced by another party.</b> 22 Q. Did you see any references in the 23 servicing notes from Bank of America regarding 24 hiring counsel to handle any matters related to the 25 homeowners' association? Page 47</p>



<p>1 <b>A. I don't recall. I will say I can't</b>  2 <b>remember if it was Ocwen or BOA that the borrower</b>  3 <b>did say at some point after the sale that it had</b>  4 <b>been sold at an HOA sale to the servicer.</b>  5 Q. Okay. I'm going to have you go ahead and  6 flip to what is Bates stamped, in somewhat hard to  7 read, USB686. If you look at the date. Are you at  8 686?  9 <b>A. I am.</b>  10 Q. For the record, we're looking at what  11 appears to be a payment history from Bank of  12 America. Are you familiar with this type of  13 payment history?  14 <b>A. Generally, yes.</b>  15 Q. Looking at the item dated 12/6 of 2011,  16 it states: "The fee description is an HOA fee for  17 \$405 that appears to coincide with the check that  18 is attached to the affidavit that was disclosed  19 from Miles Bauer."  20 Do you recognize that as being the case?  21 <b>A. Yes.</b>  22 Q. And then if you flip to -- two pages  23 later to USB000668, on 9/24/2012, it appears to say  24 "HOA fees" and there's a payment of \$405 instead of  25 a charge. Does that appear to be a credit back of</p> <p style="text-align: right;">Page 48</p>	<p>1 <b>But generally, we take our counsel's advice as to</b>  2 <b>what needs to be done.</b>  3 Q. All right. Based on your review of those  4 documents, did you see an indication in those  5 documents -- the Miles Bayer documents, the  6 affidavit and documents, that the attempted payment  7 to Alessi &amp; Koenig was returned?  8 <b>A. I don't recall if I saw anything in those</b>  9 <b>documents or not. I do know -- it's my</b>  10 <b>understanding that it was returned or rejected.</b>  11 Q. And is it your understanding that that  12 credit for \$405 was the credit from that money  13 being rejected?  14 <b>A. Yes.</b>  15 Q. So would I be correct then to understand  16 that as of 9/24 of 2012, U.S. Bank was aware that  17 their attempted payment of the association lien had  18 been rejected?  19 <b>A. Yes.</b>  20 Q. Based on your review of the business  21 records, do you see any indication that U.S. Bank  22 took any action after that rejection of payment  23 with regard to the association lien?  24 <b>A. I don't believe so.</b>  25 Q. Nothing to indicate that they contacted</p> <p style="text-align: right;">Page 50</p>
<p>1 that amount?  2 <b>A. Yes.</b>  3 Q. Now if we go to -- based on your review  4 of the servicing notes of Bank of America, do you  5 recall any entries regarding this credit back of  6 \$405 on 9/24/2012?  7 <b>A. I don't recall seeing anything. And</b>  8 <b>looking at this right now, I don't see an entry.</b>  9 Q. Did you know how that \$405 was  10 calculated?  11 <b>A. I know that the firm that was hired by</b>  12 <b>Bank of America believed that to be the priority</b>  13 <b>lien amount.</b>  14 Q. And how do you know that information?  15 <b>A. From the letter they send to Alessi &amp;</b>  16 <b>Koenig with the check.</b>  17 Q. Independent from that letter and that  18 check, is there any other reason that you believe  19 that that was their position?  20 <b>A. No.</b>  21 Q. And was that position uniform with the  22 position of U.S. Bank?  23 <b>A. Again, we weren't servicing them. I've</b>  24 <b>not been able to see anything in the servicing</b>  25 <b>notes related to whether BOA thought at the time.</b></p> <p style="text-align: right;">Page 49</p>	<p>1 Alessi &amp; Koenig?  2 <b>A. I've only seen what the attorney's firm</b>  3 <b>provided with that affidavit. I don't know if</b>  4 <b>there was any subsequent communication between them</b>  5 <b>and Alessi &amp; Koenig.</b>  6 Q. Based on your business records, did you  7 see anything in the business records evidencing any  8 further communications?  9 <b>A. I don't recall seeing anything.</b>  10 Q. Did you see any evidence of any  11 communications with the homeowners' association?  12 <b>A. I don't recall seeing anything.</b>  13 Q. Did you see any evidence regarding any  14 communication where the borrower --  15 <b>A. Again, I don't recall exactly the date.</b>  16 <b>I do know -- I guess it would have been after the</b>  17 <b>sale that he called in and said it had been sold.</b>  18 Q. I'm going to have you go ahead and flip  19 to USB143.  20 MS. HABERMAS: I'm sorry, what was that  21 number?  22 MS. SCHIMMING: 143.  23 BY MS. SCHIMMING:  24 Q. For the record, this is the notice of  25 default election to sell under homeowners'</p> <p style="text-align: right;">Page 51</p>

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<p>1 association lien, recorded February 17, 2011, as 2 instrument number 201102170001289. 3 Do you recognize this document as 4 something that was part of your business records? 5 <b>A. Yes.</b> 6 Q. And it's your understanding that this 7 document was received by U.S. Bank at or near this 8 2/17/2011 date; correct? 9 <b>A. It's my understanding that Bank of 10 America did receive it. I don't know when they 11 received it. Prior to the sale.</b> 12 Q. Prior to sale it was received, though; 13 correct? 14 <b>A. Yes, yes.</b> 15 Q. Okay. I'll have you turn to the next 16 page, 144. It's a notice of trustee sale, dated -- 17 recorded August 11, 2011, as instrument 18 201108110003087. And based on your review of the 19 business records, this is one of the three notices 20 of sale that was received by Bank of America; 21 correct? 22 <b>A. Yes.</b> 23 Q. And it was received prior to the sale; 24 correct? 25 <b>A. Yes.</b></p> <p style="text-align: right;">Page 52</p>	<p>1 <b>A. I believe so.</b> 2 Q. I'm going to have you flip to page 735. 3 Between 735 and 804, these appear to be the 4 servicing notes from Bank of America; is that 5 correct? 6 <b>A. That's my understanding.</b> 7 Q. Do you know how to tell -- is there a way 8 to tell from this document when these entries were 9 made? 10 <b>A. Not that I can see.</b> 11 Q. On USB759, the first entry that's not 12 blacked out says, "Route to risk management HOA 13 super lien." 14 Do you see that? 15 <b>A. I do.</b> 16 Q. Do you know what that was referencing? 17 <b>A. No.</b> 18 Q. Do you know when U.S. Bank first became 19 aware that Miles Bayer was advising that Alessi &amp; 20 Koenig rejected their attempted payment? 21 <b>A. I do not.</b> 22 Q. Do you know if there's any way to find 23 that information in your business records? 24 <b>A. I mean, this is what we have for Bank of 25 America, so if it's not on here, then I don't know</b></p> <p style="text-align: right;">Page 54</p>
<p>1 Q. Moving to page 145, notice of trustee 2 sale, recorded April 16th, 2012, as instrument 3 number 201204160000922. 4 Do you recognize this document as 5 something that was part of your business records? 6 <b>A. Yes.</b> 7 Q. And this is also the second notice of 8 trustee sale that was received by Bank of America; 9 correct? 10 <b>A. Yes.</b> 11 Q. And that was received prior to the sale; 12 correct? 13 <b>A. Yes.</b> 14 Q. And page 146 is also a notice of trustee 15 sale, recorded July 2nd, 2012, as instrument number 16 2012070001432. And this is the third notice of 17 trustee sale. 18 Do you recognize this as a document 19 that's part of your business records? 20 <b>A. Yes.</b> 21 Q. And this was also a document received by 22 Bank of America; correct? 23 <b>A. Yes.</b> 24 Q. It was received prior to the sale; 25 correct?</p> <p style="text-align: right;">Page 53</p>	<p>1 <b>how we would find it.</b> 2 MS. SCHIMMING: Counsel, I would imagine 3 that anything that's redacted is not related to the 4 homeowners' association lien. But if you can look 5 through it and see if there's anything -- 6 MS. HABERMAS: I will confirm that with 7 the responsible attorney who redacted, and I'll 8 include that in the response on the loan mod 9 question. 10 MS. SCHIMMING: Perfect. 11 BY MS. SCHIMMING: 12 Q. Did anyone representing U.S. Bank in any 13 capacity, whether that be a servicer or counsel or 14 otherwise, as far as you're aware and based on your 15 review of the business records, record anything 16 against the property to let a third-party know that 17 money had been -- that an attempted payment had 18 been made on the homeowners' association lien? 19 <b>A. I don't believe so. At least not prior 20 to the sale.</b> 21 Q. Based on your review of the business 22 records, did U.S. Bank initiate any sort of a 23 lawsuit against the association or its collection 24 company regarding the association lien prior to the 25 foreclosure sale?</p> <p style="text-align: right;">Page 55</p>

## U.S. Bank National Association vs. SFR Investments Pool 1, LLC, et al.

<p>1 <b>A. Not that I'm aware of.</b></p> <p>2 Q. And did U.S. Bank file any sort of a</p> <p>3 complaint with the Nevada Real Estate Division or</p> <p>4 the ombudsman office regarding a lien dispute prior</p> <p>5 to the foreclosure sale?</p> <p>6 <b>A. Not that I'm aware of.</b></p> <p>7 Q. Did U.S. Bank file any sort of a similar</p> <p>8 administrative action disputing the association</p> <p>9 lien or the sale prior to the sale?</p> <p>10 <b>A. Not that I'm aware of.</b></p> <p>11 Q. Outside of the discussed attempted</p> <p>12 payment of \$405, based on your review of the</p> <p>13 business records, did you see any payments made to</p> <p>14 the homeowners' association by the bank?</p> <p>15 <b>A. Not that I'm aware of.</b></p> <p>16 Q. Based on your review of the business</p> <p>17 records, did U.S. Bank attend the foreclosure sale?</p> <p>18 <b>A. I don't believe so.</b></p> <p>19 Q. Did anyone from Ocwen attend the</p> <p>20 foreclosure sale?</p> <p>21 <b>A. We definitely wouldn't have, because we</b></p> <p>22 <b>were not servicing it at the time.</b></p> <p>23 Q. Based on your review of your business</p> <p>24 records, did anybody from Bank of America attend</p> <p>25 the foreclosure sale?</p> <p style="text-align: right;">Page 56</p>	<p>1 the CC&amp;Rs became part of U.S. Bank's business</p> <p>2 records?</p> <p>3 <b>A. Ocwen wouldn't be able to tell when it</b></p> <p>4 <b>became part of U.S. Bank's business records. It</b></p> <p>5 <b>was with all the documents that came in when we</b></p> <p>6 <b>started servicing it.</b></p> <p>7 Q. Based on your review of the business</p> <p>8 records, did you see any notes, comments, or other</p> <p>9 communications within the business records that</p> <p>10 suggested the original lender relied on any</p> <p>11 particular provisions of the CC&amp;Rs when giving the</p> <p>12 loan?</p> <p>13 <b>A. I don't know one way or another whether</b></p> <p>14 <b>they did. Obviously, I believe there was a PUD</b></p> <p>15 <b>or --</b></p> <p>16 Q. PUD rider?</p> <p>17 <b>A. PUD rider to the mortgage. But other</b></p> <p>18 <b>than that.</b></p> <p>19 Q. And based on your review of the business</p> <p>20 records, did you see anything to suggest that the</p> <p>21 trust relied on any particular provisions of the</p> <p>22 CC&amp;Rs when it obtained its interest in the loan?</p> <p>23 <b>A. I don't know whether they did or did not.</b></p> <p>24 Q. But you see nothing in your business</p> <p>25 records to indicate one way or another?</p> <p style="text-align: right;">Page 58</p>
<p>1 <b>A. Not that I have seen.</b></p> <p>2 Q. Based on your review of the business</p> <p>3 records, did anybody else representing the trust</p> <p>4 attend the foreclosure sale?</p> <p>5 <b>A. Not that I have seen.</b></p> <p>6 Q. Did U.S. Bank have a policy and procedure</p> <p>7 in place at the time of the foreclosure sale</p> <p>8 regarding whether or not to attend those types of</p> <p>9 sales?</p> <p>10 <b>A. I don't know whether they did or did not,</b></p> <p>11 <b>but it is my understanding based on my years of</b></p> <p>12 <b>working with trusts, that no one from the trust or</b></p> <p>13 <b>the trustee would ever attend the foreclosure sale.</b></p> <p>14 Q. I'm going to have you flip to the very</p> <p>15 beginning, page USB1. For the record, this is a</p> <p>16 copy of the declarations of covenants, conditions,</p> <p>17 and restrictions for Antelope Homeowner's</p> <p>18 Association, recorded in 2004. It is not a</p> <p>19 complete copy of the CC&amp;Rs. It is only a copy of</p> <p>20 the first couple of pages. But based on your</p> <p>21 review of your business records in this case, was</p> <p>22 there a copy of the CC&amp;Rs in your business records?</p> <p>23 <b>A. Yes. We have the full deal.</b></p> <p>24 Q. And based on your review of the business</p> <p>25 records, were you able to tell when that copy of</p> <p style="text-align: right;">Page 57</p>	<p>1 <b>A. I've not seen anything, no.</b></p> <p>2 Q. And did you look where you would</p> <p>3 ordinarily find that information if it were to</p> <p>4 exist?</p> <p>5 <b>A. I don't know that I've ever seen anything</b></p> <p>6 <b>in our records suggesting that the trust relied on</b></p> <p>7 <b>this or not so ...</b></p> <p>8 Q. Okay. Do you know if there was policy of</p> <p>9 title insurance obtained at or near inception of</p> <p>10 the loan?</p> <p>11 <b>A. I believe so, yes.</b></p> <p>12 Q. And I believe there are several copies.</p> <p>13 Let's take this one, because it's right in front of</p> <p>14 me. It starts at 720 -- no, 7 --</p> <p>15 <b>A. 715?</b></p> <p>16 Q. Sure. It's upside down. Yeah, 715.</p> <p>17 This is titled "Policy of Title Insurance." It's</p> <p>18 dated May 23rd of 2005.</p> <p>19 Do you recognize this document as part of</p> <p>20 U.S. Bank's business records?</p> <p>21 <b>A. Sorry. Where is it dated?</b></p> <p>22 Q. It goes on 717, it's dated.</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Does this appear to be the title policy</p> <p>25 obtained at origination?</p> <p style="text-align: right;">Page 59</p>

<p>1 <b>A. Yes.</b></p> <p>2 Q. And do you know what the purpose of</p> <p>3 obtaining a title policy at origination is?</p> <p>4 <b>A. My understanding is that the purpose is</b></p> <p>5 <b>to protect the buyer if anything comes up saying</b></p> <p>6 <b>they don't have title.</b></p> <p>7 Q. Okay. Are there any -- is there any</p> <p>8 indication in your review of the business records</p> <p>9 that there was any specific provisions of the title</p> <p>10 policy that were relied upon by the lender when</p> <p>11 they originated the loan?</p> <p>12 <b>A. There's nothing in our records that</b></p> <p>13 <b>indicate what or what not the originator relied</b></p> <p>14 <b>upon.</b></p> <p>15 Q. Based on your review of the business</p> <p>16 records, do you know if homeowners' association</p> <p>17 dues and the amount of assessments were considered</p> <p>18 when qualifying the borrower for the loan?</p> <p>19 <b>A. I don't remember what the loan</b></p> <p>20 <b>application said.</b></p> <p>21 MS. SCHIMMING: Counsel, to the extent</p> <p>22 the loan application has information with regard to</p> <p>23 homeowners' association dues, can you provide that</p> <p>24 information?</p> <p>25 MS. HABERMAS: We will. Presuming we</p> <p style="text-align: right;">Page 60</p>	<p>1 <b>preliminary title report, because that e-mail is</b></p> <p>2 <b>dated in 2011.</b></p> <p>3 Q. As is the title report.</p> <p>4 <b>A. Oh, it is.</b></p> <p>5 Q. May 2nd of 2011.</p> <p>6 <b>A. Oh, okay. So this would have been for</b></p> <p>7 <b>foreclosure purposes.</b></p> <p>8 Q. Actually, looking at the report itself,</p> <p>9 looking at number 15, it does indicate that there</p> <p>10 homeowners' association assessment lien on the</p> <p>11 property; correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And in the e-mail that corresponds to it,</p> <p>14 it also indicates the title is not clear in one of</p> <p>15 the items -- actually, more than one of the items</p> <p>16 listed on that list is a homeowners' association</p> <p>17 lien; correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Do you have any reason to dispute that</p> <p>20 the borrower was delinquent to the association at</p> <p>21 the time of the foreclosure sale?</p> <p>22 <b>A. I have no way of knowing one way or the</b></p> <p>23 <b>other.</b></p> <p>24 Q. Do you have any reason to believe that</p> <p>25 the amount in the homeowners' association notice of</p> <p style="text-align: right;">Page 62</p>
<p>1 have a copy of it, which --</p> <p>2 THE WITNESS: I think we do.</p> <p>3 MS. HABERMAS: We will certainly check.</p> <p>4 MS. SCHIMMING: And that goes the same</p> <p>5 with any loan modification information, which</p> <p>6 you're already looking into.</p> <p>7 MS. HABERMAS: Okay.</p> <p>8 BY MS. SCHIMMING:</p> <p>9 Q. There appears to be another title policy</p> <p>10 that was obtained by the bank prior to the sale.</p> <p>11 Let's see if I can find it to refer you to it.</p> <p>12 Actually, it appears to be on USB639. It appears</p> <p>13 to be dated May 2nd of 2011. It is a preliminary</p> <p>14 title report; is that correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you know what the purpose of obtaining</p> <p>17 this title report would be?</p> <p>18 <b>A. I don't deal with origination a lot, so I</b></p> <p>19 <b>would be guessing, so I don't. Not specifically.</b></p> <p>20 Q. Looking at -- there appears to be an</p> <p>21 e-mail attached to the second to last -- or</p> <p>22 actually the last page of the title report, at</p> <p>23 USB646, that indicates it is an e-mail from Joshua</p> <p>24 Ramirez, DIL support; is that correct?</p> <p>25 <b>A. I don't think that this is part of that</b></p> <p style="text-align: right;">Page 61</p>	<p>1 default was inaccurate?</p> <p>2 <b>A. I have no way to know one way or the</b></p> <p>3 <b>other.</b></p> <p>4 Q. Do you have any reason to believe that</p> <p>5 the amount in the notice of sale was accurate?</p> <p>6 <b>A. I have no reason to know one way or the</b></p> <p>7 <b>other.</b></p> <p>8 Q. Based on your review of the business</p> <p>9 records of this case, is there anything in your</p> <p>10 notes to indicate that when Bank of America</p> <p>11 received these notices, they disputed the amount of</p> <p>12 debt the association was stating in the notice?</p> <p>13 <b>A. I've not seen anything related to that.</b></p> <p>14 Q. Based on your review of the business</p> <p>15 records, did the association or Alessi take any</p> <p>16 action that caused the bank or anybody on its</p> <p>17 behalf to be unable to attend the sale?</p> <p>18 <b>A. Not that I'm aware of.</b></p> <p>19 MS. SCHIMMING: I have to further</p> <p>20 questions at this time. I would reserve the right</p> <p>21 to recall the witness if it were to become</p> <p>22 necessary based on the documents and the</p> <p>23 information that we receive that we discussed</p> <p>24 through this deposition.</p> <p>25 MS. HABERMAS: And I have no questions.</p> <p style="text-align: right;">Page 63</p>

1 THE COURT REPORTER: Would you like a  
2 copy?  
3 MS. HABERMAS: I would. Electronic  
4 please.  
5 MS. SCHIMMING: Our standard, which I  
6 believe is e-tran or whatever that might be.  
7 (Thereupon, the taking of the deposition  
8 was concluded at 4:04 p.m.)  
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CERTIFICATE OF DEPONENT

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DECLARATION OF DEPONENT

I, KATHERINE ORTWERTH, deponent herein, do hereby declare the within and foregoing transcription to be my deposition in said action under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
KATHERINE ORTWERTH  
Deponent

1                               REPORTER'S DECLARATION  
STATE OF NEVADA)  
2       COUNTY OF CLARK)

3               I, Lisa Makowski, CCR No. 345, declare as  
follows:

4               That I reported the taking of the deposition of  
5       the witness, KATHERINE ORTWERTH, commencing on  
6       Thursday, June 14, 2018, at the hour of 2:16 p.m.

7               That prior to being examined, the witness was by  
8       me duly sworn to testify to the truth, the whole  
9       truth, and nothing but the truth; that, before the  
10      proceedings' completion, the reading and signing of  
11      the deposition has been requested by the deponent or  
12      a party.

13              That I thereafter transcribed said shorthand  
14      notes into typewriting and that the typewritten  
15      transcript of said deposition is a complete, true and  
16      accurate transcription of said shorthand notes taken  
17      down at said time.

18              I further declare that I am not a relative or  
19      employee of any party involved in said action, nor a  
20      person financially interested in the action.

21              Dated at Las Vegas, Nevada this 28th day of  
22      June, 2018.

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25

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Lisa Makowski, CCR 345





<p><b>allonge</b> 33:9 37:3, 7  <b>allonges</b> 29:7, 9  <b>allow</b> 46:25  <b>America</b> 14:11, 14, 16 15:3 17:4, 21 21:19, 23 35:20 47:23 48:12 49:4, 12 52:10, 20 53:8, 22 54:4, 25 56:24 63:10  <b>American</b> 22:21 34:21 36:16 41:12, 24  <b>America's</b> 16:20 17:2, 18 35:17 37:18  <b>amount</b> 26:14, 15 29:3 30:6 35:6 49:1, 13 60:17 62:25 63:5, 11  <b>analyst</b> 8:25 9:1, 3  <b>answer</b> 8:3 21:7  <b>answers</b> 9:10  <b>ANTELOPE</b> 1:11 11:24 57:17  <b>anybody</b> 18:23 19:3, 5 40:19 56:24 57:3 63:16  <b>anybody's</b> 35:22  <b>anymore</b> 27:14, 15  <b>anyway</b> 28:7  <b>apparently</b> 43:2  <b>appear</b> 9:13 25:21 33:1 34:20 36:11 48:25 54:3 59:24  <b>appearance</b> 4:21  <b>APPEARANCES</b> 2:7  <b>appears</b> 23:13 28:23 29:15, 19 33:17 35:3, 9 36:25 41:7, 10 44:16 48:11, 17, 23 61:9, 12, 12, 20  <b>applicable</b> 19:20  <b>application</b> 60:20, 22  <b>April</b> 8:2 53:2  <b>arrears</b> 44:5  <b>ascertain</b> 27:8  <b>Aside</b> 18:22</p>	<p><b>asked</b> 37:16 39:9  <b>asking</b> 31:2 34:6  <b>aspects</b> 23:3  <b>assessment</b> 62:10  <b>assessments</b> 60:17  <b>ASSET-BACKED</b> 1:6 2:14 4:25 9:25 12:21  <b>assign</b> 7:20 25:21  <b>assigned</b> 7:20  <b>assigning</b> 35:3, 9 41:10  <b>assignment</b> 25:20 34:25 35:14, 19 40:13, 18, 20, 25 41:7, 21, 25 42:2, 6  <b>assignments</b> 34:4 40:7, 16  <b>assigns</b> 47:3  <b>ASSOCIATION</b> 1:4, 12 2:13 4:23 9:24 11:22, 24, 25 12:3, 7, 16 20:6, 10, 17 21:5 22:4 46:18 47:1, 25 50:17, 23 51:11 52:1 55:4, 18, 23, 24 56:8, 14 57:18 60:16, 23 62:10, 16, 20, 25 63:12, 15  <b>assumed</b> 44:7  <b>Assuming</b> 27:24  <b>attached</b> 33:10 37:2 48:18 61:21  <b>attempted</b> 50:6, 17 54:20 55:17 56:11  <b>attend</b> 56:17, 19, 24 57:4, 8, 13 63:17  <b>attorney</b> 13:15, 16, 20, 23 18:22 19:8, 12, 14 55:7  <b>attorneys</b> 9:6 19:15 39:9 47:8  <b>attorney's</b> 51:2  <b>auction</b> 4:16 12:2  <b>August</b> 44:11 52:17  <b>authority</b> 7:22  <b>Avenue</b> 2:16  <b>aware</b> 5:25 14:22 15:6 19:21 50:16 54:19 55:14 56:1,</p>	<p>6, 10, 15 63:18  <b>awfully</b> 19:23  <b>&lt; B &gt;</b>  <b>BAC</b> 33:19  <b>back</b> 25:9 36:7 37:22 38:20 42:12 48:25 49:5  <b>background</b> 6:20, 21 7:2  <b>BANK</b> 1:4 2:13 4:23 7:14, 15, 25 8:1, 12 9:23 12:15, 16, 22 13:5, 11, 24 14:2, 11, 14, 16 15:3, 15, 19 16:20 17:2, 3, 17, 21 19:3, 9, 11 20:8, 11, 14, 15 21:19, 23 22:1 33:19 34:7 35:17, 20 37:17 47:6, 6, 23 48:11 49:4, 12, 22 50:16, 21 52:7, 9, 20 53:8, 22 54:4, 18, 24 55:12, 22 56:2, 7, 14, 17, 24 57:6 61:10 63:10, 16  <b>Bank's</b> 58:1, 4 59:20  <b>based</b> 16:8 24:13 26:24 38:1, 18, 21 41:21 45:11 46:20 49:3 50:3, 20 51:6 52:18 55:14, 21 56:12, 16, 23 57:2, 11, 20, 24 58:7, 19 60:15 63:8, 14, 22  <b>basic</b> 6:2  <b>basically</b> 7:19 8:18 9:16 16:3  <b>Bates</b> 11:4, 6 48:6  <b>Bauer</b> 48:19  <b>Bayer</b> 50:5 54:19  <b>Beach</b> 7:7  <b>began</b> 25:13, 14  <b>beginning</b> 57:15  <b>behalf</b> 9:13 12:3 13:6 63:17  <b>believe</b> 6:22 12:25 14:6, 11 17:17 20:18 22:8 23:19,</p>	<p>23, 24 24:20 28:8 31:4 33:11 37:12, 15 38:5 41:3 42:4 44:15 45:8 49:18 50:24 54:1 55:19 56:18 58:14 59:11, 12 62:24 63:4 64:6  <b>believed</b> 49:12  <b>beneficiary</b> 22:22  <b>Best</b> 7:15 46:22 47:18  <b>better</b> 30:23  <b>blacked</b> 54:12  <b>blank</b> 33:5, 9 37:1, 4 40:22, 24  <b>BOA</b> 47:8 48:2 49:25  <b>board</b> 16:6  <b>boarding</b> 15:22 16:11  <b>BOA's</b> 27:17  <b>body</b> 9:16  <b>borrower</b> 26:10 31:20 44:4 45:22 46:21 47:5, 7, 9 48:2 51:14 60:18 62:20  <b>borrowers</b> 11:19 26:11 30:3  <b>borrower's</b> 45:17  <b>bottom</b> 10:9 11:4 12:24 33:5, 23, 25 43:11  <b>box</b> 33:14  <b>brief</b> 6:21 7:2 42:10 43:7  <b>briefly</b> 37:25  <b>building</b> 25:10  <b>business</b> 14:24, 25 21:2, 12, 17 23:1, 17 25:2, 5, 16 27:13 30:19, 21 34:17, 18 35:12 36:2 38:1, 18, 21 40:16, 19 41:17 43:23 44:14 47:11, 14, 17, 20 50:20 51:6, 7 52:4, 19 53:5, 19 54:23 55:15, 21 56:13, 16, 23 57:2, 21, 22, 24 58:1, 4, 7, 9, 19, 24</p>
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# **EXHIBIT 3**

# **EXHIBIT 3**

**DDW**

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*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,

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,

**Case No.: A-16-739867-C**

**Dept. No.: XXXI**

**PLAINTIFF/COUNTER-DEFENDANT  
U.S. BANK NATIONAL  
ASSOCIATION'S INITIAL  
DISCLOSURE OF WITNESSES AND  
DOCUMENTS**

1 MORTGAGE LOAN ASSET-BACKED  
2 CERTIFICATES, SERIES 2005-A8;  
3 MORTGAGE ELECTRONIC  
4 REGISTRATION SYSTEMS, INC., a  
5 Delaware corporation, as nominee beneficiary  
6 for UNIVERSAL AMERICAN MORTGAGE  
7 COMPANY, LLC, a foreign limited liability  
8 company; HENRY E. IVY, an individual; and  
9 FREDDIE S. IVY, an individual,

Counter/Cross Defendants,

10 Pursuant to Nevada Rule of Civil Procedure (“N.R.C.P.”) Rule 16.1(a)(1)  
11 Plaintiff/Counter-defendant, U.S. Bank, National Association as Trustee for Merrill Lynch  
12 Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (“U.S.  
13 Bank” or “Plaintiff”) hereby produces the following documents and witness list.

14 **A. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION UNDER**  
15 **N.R.C.P. Rule 16.1(a)(1).**

- 16 1. Corporate Designee for U.S. Bank, National Association as Trustee for  
17 Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed  
18 Certificates, Series 2005-A8  
19 c/o Wright, Finlay and Zak LLP  
20 7785 W. Sahara Avenue, Suite 200  
21 Las Vegas, Nevada 89117

22 This witness is expected to have knowledge concerning the facts and circumstances of  
23 this case, including the subject loan and deed of trust, communication with the HOA and its  
24 foreclosure trustee, and notice and tender.

- 25 2. Corporate Designee for Universal American Mortgage Company, LLC  
26 c/o CT Corporation Systems  
27 1200 South Pine Island Road  
28 Plantation, FL 33324

Universal American Mortgage Company, LLC was the Lender on the original note and  
Deed of Trust. This witness is expected to have knowledge concerning the facts and  
circumstances of this case, including the subject loan and deed of trust, communication with the  
HOA and its foreclosure trustee, and notice and tender.

1                   3. Corporate Designee for Antelope Homeowners' Association  
2                   c/o Complete Association Management Company, LLC  
3                   5980 S. Durango Drive, Ste. 131  
4                   Las Vegas, NV 89113

5                   This witness is expected to have knowledge concerning the facts and circumstances of  
6 this case.

7                   4. Corporate Designee for Alessi & Koenig, LLC  
8                   c/o Steven T. Loizzi, Jr., Esq.  
9                   9500 W. Flamingo Road #205  
10                  Las Vegas, NV 89147

11                  This witness is expected to have knowledge concerning the facts and circumstances of  
12 this case.

13                  5. Corporate Designee for SFR Investments Pool 1, LLC  
14                  c/o Kim Gilbert Ebron  
15                  7625 Dean Martin Drive, Suite 110  
16                  Las Vegas, Nevada 89139

17                  This witness is expected to have knowledge concerning the facts and circumstances of  
18 this case.

19                  6. Corporate Designee for Clark County Assessor  
20                  500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
21                  Las Vegas, NV 89155

22                  This witness is expected to have knowledge concerning the facts and circumstances of  
23 this case including the ownership history, physical characteristics and valuation of and  
24 recordings affecting the subject property.

25                  7. Corporate Designee for Clark County Recorder  
26                  500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
27                  Las Vegas, NV 89155

28                  This witness is expected to have knowledge concerning the facts and circumstances of  
this case including the ownership history, physical characteristics and valuation of and  
recordings affecting the subject property.

This witness is expected to have knowledge concerning the facts and circumstances of

1 this case.

2 U.S. Bank reserves the right to amend, supplement, or add to this list of individuals as  
3 discovery progress.

4 U.S. Bank reserves the right to call any witness listed in any other parties' disclosures of  
5 individuals as discovery progresses.

6 U.S. Bank reserves the right to call upon any witness(es) for purposes of  
7 rebuttal/impeachment.

8 **B. DOCUMENTS WHICH ARE DISCOVERABLE UNDER N.R.C.P, 16.1(a)(1).**

9 U.S. Bank hereby identifies and/or produces the following documents:

11 Date	Description	Bates Stamped
12 6/23/2004	Declaration of Covenants, Conditions and 13 Restrictions for Antelope Homeowners' Association	USB00001-USB00063
14 09/14/2006	Second Amendment to the Declaration of 15 Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	USB00064-USB00066
16 5/23/2005	Grant, Bargain, Sale Deed	USB00067-USB00070
17 8/26/2009	Notice of Default and Election to Sell Under Deed of Trust	USB00071-USB00072
18 5/23/2005	Deed of Trust	USB00073-USB00094
19 5/23/2005	Deed of Trust (Second)	USB00095-USB00107
20 10/20/2005	Deed of Trust re-recorded to add correct Adjustable Rate Rider	USB00108-USB00133
21 10/03/2006	Grant, Bargain, Sale Deed re-recorded to correct 22 vesting to show Henry E. Ivy and Freddie S. Ivy, husband and wife as joint tenants with rights of 23 survivorship	USB00134-USB00139
24 11/12/2009	Notice of Delinquent Assessment (Lien)	USB00140
25 10/19/2010	Notice of Delinquent Violation Lien	USB00141-USB00142
26 2/17/2011	Notice of Default and Election to Sell Under Homeowners Association Lien	USB00143
27 8/11/2011	Notice of Trustee's Sale	USB00144
28 4/16/2012	Notice of Trustee's Sale	USB00145

1	7/02/2012	Notice of Trustee's Sale	USB00146
2	8/03/2012	Trustee's Deed Upon Sale	USB00147-USB00148
3	9/20/2012	Release of Notice of Delinquent Assessment Lien	USB00149
4	1/17/2013	Rescission of Election to Declare Default	USB00150-USB00151
5	6/07/2013	Notice of Delinquent Violation Lien	USB00152-USB00153
6	11/05/2014	Request for Notice Pursuant to NRS 116.31168	USB00154-USB00156
7	7/13/2016	Notice of Lis Pendens	USB00157-USB00160

8 U.S. Bank reserves the right to amend, supplement, or add to this list of documents as  
9 discovery progresses.

10 U.S. Bank reserves the right to use any document(s) listed in any other parties'  
11 disclosures of documents as discovery progresses.

12 U.S. Bank reserves the right to use any document(s) for purposes of  
13 rebuttal/impeachment.

#### 14 **C. COMPUTATION OF DAMAGES**

15 Should U.S. Bank's Complaint be successful in quieting title against Buyer and fictitious  
16 Defendants or setting aside the HOA Sale, Buyer and fictitious Defendants will have been  
17 unjustly enriched by the proceeds from the HOA Sale and use of the Property, and U.S. Bank  
18 will have suffered damages if Buyer and fictitious Defendants are allowed to retain their interests  
19 in the Property and the funds received from the HOA Sale. Should U.S. Bank's Complaint be  
20 unsuccessful in quieting title against Buyer and fictitious Defendants or setting aside the HOA  
21 Sale, U.S. Bank will have suffered damages from its payment of taxes, insurance or  
22 homeowner's association assessments since the time of the HOA Sale, as well as the fair market  
23 value of the property. U.S. Bank may pursue attorneys' fees and costs incurred in this case.

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**D. INSURANCE AGREEMENTS**

North American Title Insurance Company Policy identified as Policy No.: 799401.

U.S. Bank reserves the right to amend or to supplement these disclosures if it appears at any time that omissions or errors have been made or that additional or more accurate information becomes available to it.

DATED this 2nd day of December, 2016.

WRIGHT, FINLAY & ZAK, LLP

/s/Shadd A. Wade, Esq.

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*Attorneys for Plaintiff, 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**

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing **PLAINTIFF/COUNTER-DEFENDANT U.S. BANK NATIONAL ASSOCIATION’S INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS** was made on the 2nd day of December, 2016, by e-service through the Eighth Judicial District EFP system pursuant to NEFR 9, as follows:

**Kim Gilbert Ebron**

Name	Email	Select	
Diana Cline Ebron	<a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
E-Service for Kim Gilbert Ebron	<a href="mailto:eservice@kgelegal.com">eservice@kgelegal.com</a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Michael L. Sturm	<a href="mailto:mike@kgelegal.com">mike@kgelegal.com</a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tomas Valerio	<a href="mailto:staff@kgelegal.com">staff@kgelegal.com</a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

/s/Sara Aslinger  
An Employee of WRIGHT, FINLAY & ZAK, LLP



20040623-0002016

Fee \$72.00  
06/23/2004 10:07:00 T20040043959  
Req: NORTH AMERICAN TITLE COMPANY  
Frances Deane  
Clark County Recorder Pos: 59

APN: 125-18-112-0054thm008  
079 4thm 098  
107 4thm 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.

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

USB00001  
ADD062

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**DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
ANTELOPE**

THIS DECLARATION (the "Declaration") is made by Greystone Nevada, LLC, a Nevada limited liability company (the "Declarant").

**I.**

**Recitals**

**1.01 Real Property.** Declarant is the owner of certain real property located entirely in Clark County, Nevada, more particularly described in Exhibit "A" attached hereto (the "Property"). The Property shall include any additional real property that may from time to time be annexed thereto.

**1.02 Planned Community.** Declarant desires to develop the Property and, if Declarant so elects, the adjacent land described in Section 2.02 (the "Annexable Area") as a residential community and to establish covenants, conditions, and restrictions relating to the use, enjoyment, maintenance, improvement, and occupancy of the Property. The residential community shall be developed as a planned community under a general plan of development pursuant to the Act (as hereinafter defined) and shall be named Antelope (the "Development"). If the entire Annexable Area is annexed as provided herein, the planned community will consist of up to a maximum of Two Hundred and Ninety-Two (292) Lots (as hereinafter defined).

**1.03 Owners Association.** Declarant desires to establish Antelope Homeowners' Association, a Nevada nonprofit corporation (the "Association"), for the purpose of maintaining and administering the Common Area (as hereinafter defined) of the Property, administering and enforcing these covenants, conditions, and restrictions, and collecting and disbursing funds pursuant to Assessments and charges established by these covenants, conditions, and restrictions. Each Lot shall have appurtenant to it a membership in the Association.

**1.04 The Development.** Declarant contemplates developing the Property, constructing the Development, and conveying the Association Property (as hereinafter defined) to the Association in a planned multi-phase development. Although Declarant contemplates completing all phases of the Development and subjecting the Annexable Area to this Declaration, there is no guarantee that any or all of the phases of the Development or that any or all of the Annexable Area will be developed by Declarant.

**1.05 Covenants Running With Land.** This Declaration shall run with the Property and all parts and parcels thereof and shall be binding on all parties having any right, title, or interest in the Property and their heirs, successors, successors-in-title, and assigns and on the Association and all of its successors in interest and shall inure to the benefit of each owner or member thereof. Each of the limitations, easements, uses, obligations, covenants, conditions, and restrictions imposed hereby shall be deemed to be and construed as equitable

1. This Declaration is subject to the Antelope Declaration.

USB00006  
ADD067



**servitudes enforceable by any of the owners of any portion of the Property subject to this Declaration against any other owner, tenant, or occupant of the Property or portion thereof similarly restricted by this Declaration.**

**1.06 Declaration.** Declarant hereby declares that all of the Property shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Property.

## 11.

## Definitions

In addition to the terms elsewhere defined herein, the following terms shall have the following meanings whenever used in this Declaration.

**2.01** "Act" shall mean the Nevada Common Interest Ownership Act, NRS 116.001 et seq.

**2.02 "Annexable Area" shall mean the real property described in Exhibit "B" hereto.**

**2.03** "Architecture Committee" shall mean the committee created by Article VII of this Declaration.

**2.04** "Articles" shall mean the articles of incorporation of the Association as may be amended from time to time.

**2.05 "Assessment"** shall mean those Assessments set forth in Article V of this Declaration.

**2.06** "Association" shall mean Antelope Homeowners' Association, a Nevada nonprofit corporation, and its successors and assigns.

**2.07** "Association Property" shall mean all property, real and personal, owned or leased by the Association, including, without limitation, the Common Area.

**2.08 "Board" shall mean the Board of Directors of the Association.**

**2.09** "Bylaws" shall mean the Bylaws of the Association as may be amended from time to time.

**2.10** "Common Area" shall mean all real property (including the improvements thereto) designated as common elements on the Site Development Plan (as hereinafter defined) or any Subdivision Map of the Property, that is now or hereafter conveyed by Declarant to

the Association, including (as applicable) any private streets, sewer and water lines, easements, landscaped greenbelt areas, park areas, pools, clubhouses, entry gates, and other such property.

2.11 "Declarant" shall mean Greystone Nevada, LLC, a Nevada limited liability company, and its successors and assigns.

2.12 "Design Guidelines" shall mean the guidelines adopted by the Architecture Committee as set forth in Article VII.

2.13 "Development" shall mean the residential community referred to as Antelope being developed by Declarant as a planned community pursuant to the Act.

2.14 "Eligible Holder" shall mean the Persons (as hereinafter defined) described in Article VIII of this Declaration.

2.15 "Improvement" shall mean the buildings, structures, improvements, roadways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping of every type and kind upon the Property.

2.16 "Lessee" shall mean any Person who rents, leases, or subleases any Lot from an Owner (as hereinafter defined) or a Person in privity with an Owner.

2.17 "Lot" shall mean each of the lots, with the exception of the Common Area, shown on the Site Development Plan or any subsequent subdivision or parcel map of the Property, and all Improvements erected, constructed, or located thereon.

2.18 "Member" shall mean each of those Owners who are members of the Association.

2.19 "Mortgage" shall mean a mortgage or deed of trust that encumbers any Lot.

2.20 "NRS" shall mean the Nevada Revised Statutes.

2.21 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

2.22 "Party Walls" shall mean those walls, other than Perimeter Walls (as hereinafter defined), located anywhere on the Development that form Lot boundaries.

2.23 "Perimeter Walls" shall mean those walls all or a part of which are located on Association Property or separate a Lot from Association Property.

2.24 "Person" shall mean a person, partnership, corporation, trustee, or other legal entity.

2.25 "Property" shall mean that real property located entirely in Clark County, Nevada, more particularly described in Exhibit "A" attached hereto. The Property shall include any additional real property that may from time to time be annexed thereto.

2.26 "Record, Recording, or Recorded" shall mean to file, the filing, or filed of record a legal instrument in the Office of the Recorder of Clark County, Nevada, or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real property in Clark County, Nevada.

2.27 "Residence" shall mean and refer to any dwelling constructed on a Lot in accordance with all local, state, and federal laws and this Declaration.

2.28 "Restrictions" shall mean this Declaration, the Articles, the Bylaws, the Rules and Regulations of the Association, the Design Guidelines, and any rules and regulations of the Architecture Committee from time to time in effect.

2.29 "Rules and Regulations" shall mean the rules and regulations adopted by the Board from time to time pursuant to Section 4.10 of this Declaration.

2.30 "Site Development Plan" shall mean the general plot plan of the Development attached hereto as Exhibit "C."

2.31 "Subdivision Map" shall mean either that certain Final Map of Antelope--Unit 1, recorded on March 10, 2004, in Book 115, Page 0087 (Official Records Book 20040310, Instrument 01037) and that Certain Final Map of Antelope--Unit 2, recorded on March 26, 2004, in Book 116, Page 20 (Official Records Book 20040326, Instrument 372) or any other maps or plats of the Development Recorded or to be Recorded in the Office of the Recorder of Clark County, Nevada.

### III.

#### Property and Property Rights

3.01 Description of the Property. The Property shall consist of the Lots and the Common Area.

3.02 Lots.

(a) Reciprocal Easements. Each Lot and its Owner shall have an easement and the same is hereby granted by the Declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original construction,

settlement or shifting of the land, or any other cause; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to construction or alteration by the Owner (except Declarant) or the negligence or willful misconduct of the Owner. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor unintentional encroachments over adjoining Lots not to exceed one (1) foot shall be permitted and that there shall be easements for the maintenance of the encroachments so long as they shall exist.

(b) Association Easements. There are hereby reserved to the Association such easements across the Property as are necessary to perform the duties and obligations of the Association.

(c) Utilities Easement. There is hereby granted in favor of Declarant, the Association, and their respective licensees an easement across each Lot for purposes of installing, facilitating, maintaining, repairing, replacing, or inspecting sewer, drainage, underground power lines, cable television systems, or other utilities over, under, and across the Property. All utility hook-ups and fixtures and improvements relating thereto shall be the property of the Association.

(d) Emergency Repairs Easement. In addition to all other easements reserved or granted herein, there is hereby reserved to the Association an easement across each Lot as is necessary to permit a reasonable right of entry onto each Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Development.

(e) Maintenance Obligation of Owners. It shall be the duty of each Owner at its sole cost and expense, subject to the provisions of this Declaration requiring approval of the Architecture Committee, to maintain, repair, replace, and restore (including any maintenance, repairs, replacement, or restoration required as a result of any damage or destruction of the Property by casualty or otherwise) any Residence, Improvements, and landscaping located on its Lot and the Lot itself in a neat, sanitary, and attractive condition and in accordance with the Restrictions. If any Owner shall permit any Residence, Improvements, or the Lot to fall into disrepair or to become unsafe, unsightly, or unattractive or otherwise violate the Restrictions, the Association shall have the right to seek any remedies at law or in equity it may have. In addition, the Board shall have the right, but not the duty, if such unacceptable maintenance is not corrected within thirty (30) days of written notice from the Association (or such longer period if reasonably necessary under the circumstances, provided the owner is diligently performing such maintenance or repairs), to enter upon such Owner's Lot and make such repairs and perform such maintenance and charge the costs thereof to Owner. Such costs shall be enforced, including penalty fees and costs, as an Assessment on the Lot pursuant to Article V hereof.

(f) Insurance Obligations of Owners. Each Owner shall insure the Residence and Improvements on its Lot against loss or damage by fire or by any other casualty in an

amount as near as practical to the full replacement value of the Residence and pertinent Improvements, without deduction for depreciation or coinsurance.

### **3.03 Association Property.**

(a) **Conveyance of Association Property.** The Declarant hereby covenants for itself, its successors, and assigns, at the time of the conveyance of the twelfth (12th) Lot in the Property to an Owner not the Declarant, that it will convey title to the Association Property on the Property to the Association free and clear of all encumbrances and liens, except utility easements, covenants, conditions, and reservations then of record, including, without limitation, those set forth in this Declaration. Similar conveyances shall be made to the Association at the time of the conveyance to an Owner not the Declarant of the first Lot in each subsequent phase of the Development.

(b) **Common Area Ownership.** The Common Area shall be owned by the Association in fee simple for the use, enjoyment, and convenience of the Owners and shall contain the private roadways, walkways, landscaped areas, recreational areas, parking areas, storage and trash areas, utility easements, all Perimeter Walls, and all other areas of the Property not a part of the Lots. Each Lot and its Owner shall have an easement over all of the Common Area, and such easement is hereby granted, transferred, and conveyed to all Owners by the Declarant for the benefit of the Lots, the Owners, and each of them, and for their respective families, guests, and invitees for all of the foregoing purposes. In furtherance of the establishment of this easement, the individual deeds to the Lots may, but shall not be required to, set forth the foregoing easements.

(c) **Use.** Each Member or Lessee who resides on the Property and their respective families, guests, and invitees who reside with them shall be entitled to use the Common Area subject to the following:

(i) the right of the Association to charge reasonable dues, use fees, and other fees for those facilities or amenities for which fees are normally charged or assessed;

(ii) the right of the Association to suspend the rights to the use of any Association Property by any Member or Lessee and their families, guests, and invitees for any period during which any Assessment against the Member's property remains past due and unpaid, and after notice and hearing by the Board, the right of the Association to invoke any remedy set forth in Article V of this Declaration;

(iii) the right of the Association to require that security deposits be made and deposited with the Association to secure all sums payable to the Association and to guarantee performance of all duties due and owing or to become due and owing to the Association;

(iv) the right of the Association to allow the general public, or certain segments thereof, to use any Association Property, and in the discretion of the Board, to

charge use or other fees therefor subject to subsection (i) above provided that the Association may not charge fees for access to public parks and sport fields;

(v) such rights to use the Association Property as may have been granted by the Association to others;

(vi) such covenants, conditions, and restrictions as may have been imposed by the Association or prior owners on the Association Property;

(vii) such rules and regulations for the use of the Association Property as may be imposed by the Association from time to time; and

(viii) the right of Declarant to use the Common Area for sales, development, and related activities pertaining to the Development.

(d) Maintenance of Association Property. The Association shall be responsible for all of the costs and maintenance of the Association Property. The Association may at any time and without any approval of the Owners being required:

(i) reconstruct, repair, replace or refinish any Improvement, structure, fixture, or facility located on the Common Area or any portion thereof in accordance with: (A) the last plans thereof approved by the Board; (B) the original plans for development of the Property; or (C) if neither (A) nor (B) is applicable and if such Improvement was previously in existence, then in accordance with the original designs, plans, finishing, or standards of construction of such Improvement as it was originally constructed;

(ii) construct, reconstruct, repair, replace, or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, or parking area;

(iii) replace injured and diseased trees or other vegetation on the Common Area and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(iv) place and maintain upon any such area such signs, markers, and lights as the Board may deem appropriate for the proper identification, use, and regulation thereof;

(v) remove all papers, debris, and refuse from the Common Area, wash or sweep paved areas as required, and clean and relamp lighting fixtures as needed;

(vi) repaint striping, markers, directional signs, and similar devices as necessary;

(vii) maintain, repair, and replace, as necessary, the Perimeter Walls; notwithstanding the foregoing, Owners of Lots bounded by Perimeter Walls shall be responsible for all aesthetic maintenance and repair of that side of the Perimeter Walls bounding the Owners' respective Lots;

(viii) pay all real estate and personal property taxes and Assessments on the Common Area;

(ix) pay all electrical, water, gas, sewer, trash collection, telephone, and other utility charges or fees for services furnished to the Common Area and all water charges or fees for services furnished to the Lots;

(x) pay for and keep in force at the Association's expense public liability, casualty, and fire insurance with companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded document affecting the Property, such insurance to name the Association, the Owners, or both as named insureds; and

(xi) do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof in accordance with the general purposes for use and enjoyment of the Property described in this Declaration;

The Board shall be the sole judge as to the appropriate maintenance of all portions of the Common Area. Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a manager.

(e) Improvements on Common Area. Any other provision of this Declaration to the contrary notwithstanding, until Declarant has sold ninety percent (90%) of the Lots, no land within the Common Area may be improved by any Improvement, used, or occupied except in such manner as shall have been approved by Declarant in its sole and absolute discretion. Declarant may delegate its right to grant such approvals to the Board. No approval shall be granted that would be in contravention of the zoning or other local regulation then in effect for the area in question.

(f) Damages. Each Owner or Lessee shall be liable to the Association for any damage to the Association Property that may be sustained by reason of the negligent or intentional misconduct of such Owner or Lessee or of its family, guests, or invitees. If the Lot, the ownership or leasing of which entitles the Owner or Lessee thereof to use the Association Property, is owned or leased jointly or in common, the liability of all such joint or common Owners or Lessees shall be joint and several. The amount of such damage may, in addition to any other rights or remedies, be assessed against such Person's real and personal property on or within the Property, including the leasehold estate of any Lessee, and may be collected as provided in Article V below for the collection of Assessments.

(g) Damage and Destruction. In the case of destruction of or damage to the Association Property by fire or other casualty, the Board shall have the following rights and privileges.

(i) Liberty to Reconstruct. If the cost to repair or replace the Association Property, over and above all insurance proceeds, is less than Twenty Thousand Dollars (\$20,000), the Board may, without the consent of the Members, determine to repair or replace the damaged property with property substantially the same as those that were destroyed or damaged.

(ii) Decision to Reconstruct. If the cost to repair or replace the Association Property, over and above all insurance proceeds, is equal to or greater than Twenty Thousand Dollars (\$20,000) and the Board determines to rebuild any Association Property destroyed or damaged in the form substantially the same as those that were destroyed or damaged, it shall prepare plans and obtain bids following the notice proceeding for a special Assessment as set forth in Article V hereof. The Board shall submit the plans and bids to the Members for approval, which approval shall require the affirmative vote of sixty-seven percent (67%) of the Members entitled to vote. The Board will modify the plans until the required vote is obtained or the restoration becomes subject to subsection 3.03(g)(i) or (iii) hereof. If approved, the Board shall cause the repairs or replacements to be done and assess the Members for the costs as a special Assessment.

(iii) Decision Not to Reconstruct. If the Board determines not to rebuild any Association Property so destroyed or damaged or to build facilities substantially different from those that were destroyed or damaged, it shall submit its decision to the Members for their approval or disapproval, which approval shall require the consent of eighty percent (80%) of the Members entitled to vote. If the Members elect to approve the decision, the Board shall act accordingly; but if the Members do not approve the decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility pursuant to subsection 3.03(g)(i) or (ii) hereof.

(iv) Damage During Declarant Control Period. Should any Association Property become destroyed or damaged before Declarant has sold all of the Lots, the Association shall rebuild or repair such Association Property in a manner consistent with its original condition as constructed by Declarant.

(v) Damage or Destruction by Owner. In the event any portion of the Common Area is damaged or destroyed by an Owner, a Lessee, or any of their respective guests, tenants, licensees, or agents, the Board may repair said damaged area. In the event the Board determines to repair said damage, the amount necessary for such repairs shall be paid by the Owner or Lessee, upon demand, to the Board. If said amounts are not immediately paid, they shall be deemed to be Assessments, and the Board may enforce collection of same in the same manner as provided in Article V hereof for collection and enforcement of Assessments.



**3.04 Special Declarant's Rights.** Declarant and its agents shall have the following rights and privileges, all of which shall terminate immediately upon the sale by Declarant of the last Lot within the Property:

(a) **Easement for Repairs.** A nonexclusive easement over the Association Property for the purpose of making repairs to the Association Property and the Lots if access thereto is not reasonably available;

(b) **Easement for Sales.** A nonexclusive easement over the Association Property (which easement shall extend to the sales agents, customers, prospective customers, guests, and representatives of Declarant) for sales, display, access, ingress, egress, exhibits, and other purposes deemed useful by Declarant and its agents in advertising and promoting the sale of Lots (including the erection of signs, flags, and banners) until all Lots are sold by Declarant. In exercising the easement, Declarant shall not unreasonably interfere with the rights and enjoyment of the Owners;

(c) **Easement for Development.** A nonexclusive easement over the Association Property (which easement shall be in favor of Declarant and its agents, contractors, and licensees) for access, ingress, and egress over, in, upon, under, and across the Association Property, including, but not limited to, the right to store materials thereon and to make such other use thereof as may be reasonable, necessary, or incidental to Declarant's development of the Property; provided, however, that no such rights or easements shall be exercised in such a manner as to reasonably interfere with the occupancy, use, enjoyment, or access by any Owner;

(d) **Right to Lease.** The right to lease any unsold Lot. Furthermore, anything herein to the contrary notwithstanding, Declarant and its affiliates reserve the right to continue to use one (1) or more Lots and the Residences constructed thereon as model Lots and Residences for other communities developed by Declarant or its affiliates pursuant to sale-leaseback or other similar arrangements even after Declarant sells the last Lot in the Property to an Owner other than Declarant, in which case all of the rights and easements set forth in this Section 3.04 shall continue in full force and effect; and

(e) **Other Rights.** Each of the developmental rights and special declarant's rights set forth in NRS 116.11034 and 116.110385.

#### **IV.**

#### **Owners' Association; Membership and Voting Rights**

##### **4.01 Association.**

(a) **Organization.** The Association is a nonprofit Nevada corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law

(b) Successor Associations. In the event the Association is dissolved at any time this Declaration is in force or effect, a nonprofit unincorporated association shall automatically and without further action or notice be formed to succeed to all the rights and duties of the Association. The successor unincorporated association shall be governed by the laws of the State of Nevada and, to the extent not inconsistent therewith, by the Articles and Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association. In the event an unincorporated association is formed pursuant to this subsection 4.01(b), the appropriate officers of the Association or the successor association shall take all reasonable efforts to restore or reincorporate the Association as a nonprofit Nevada corporation.

#### **4.03 Control of Association.**

(iii) five (5) years after any right to annex new Lots was last exercised by Declarant.

Provided, however, that Declarant may, but is not obligated to, voluntarily surrender the right to appoint and remove officers and Board members as provided herein before the termination period set forth above, provided that Declarant may require that specified actions of the Association or the Board may require Declarant approval prior to becoming effective. Such surrender of rights shall only be by a recorded instrument.

(b) Composition of the Board. Not later than sixty (60) days after conveyance by Declarant of twenty-five percent (25%) of the Lots that may be created within the Property to Owners other than Declarant, at least one (1) member of the Board and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance by Declarant of fifty percent (50%) of the Lots that may be created within the Property to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board must be elected by Owners other than Declarant. Upon expiration of the Declarant control period set forth in subsection (a) above, one hundred percent (100%) of the Board shall be elected by Owners other than Declarant.

(c) Removal of Board Members. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds (2/3) vote of all Persons present and entitled to vote at any meeting of the Owners at which a quorum (as determined by reference to the Bylaws) is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(d) Joint or Common Ownership. If any property interest, ownership of which entitles the Owner thereof to vote, is held jointly or in common by more than one (1) Person, the vote or votes to which such property interest is entitled shall also be held jointly or in common in the same manner. However, the vote or votes for such property interest shall be cast, if at all, as a unit, and neither fractional votes nor split votes shall be allowed. In the event joint or common Owners are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose the right to cast their vote or votes on the matter in question. In the event more than one vote is cast for a particular membership, none of the votes shall be counted, and all such votes shall be deemed void. Any joint or common Owner shall be entitled to cast the vote or votes belonging to the joint or common Owners unless another joint or common Owner shall have delivered to the Secretary of the Association prior to the time for casting such vote a written statement to the effect that the Owner wishing to cast the vote or votes has not been authorized to do so by the other joint or common Owner or Owners.

(e) Proxy Voting. Except as otherwise provided in this Section, votes allocated to a Lot may be cast pursuant to a revocable written proxy executed by the Owner thereof, authorizing the holder to cast the Owner's votes on any matter. An Owner may give a proxy only to a member of his immediate family, his Lessee who resides in the Development, another Owner who resides in the Development, or any other Person permitted by the Act. If a Lot is owned by more than one Person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a proxy. A vote may not be cast

by proxy if: (i) it is not dated; (ii) it purports to be revocable without notice; (iii) it does not designate the meeting for which it is executed; (iv) it does not designate the agenda item or items for which the Owner has executed a proxy, except that this requirement shall not apply if the proxy is to be used solely for establishing whether a quorum (as determined by reference to the Bylaws) is present for the meeting; or (v) the holder of the proxy does not disclose at the beginning of the meeting for which the proxy is executed, the number of proxies pursuant to which he will be casting votes and the voting instructions received for each proxy. If a proxy is for more than one agenda item, the proxy should designate whether the vote on that matter must be cast in the affirmative or in the negative. If the proxy does not so provide for a particular agenda item, the proxy must be treated as if the Owner were present but did not vote on that item. Every proxy shall terminate immediately after the conclusion of the meeting for which it was executed. An Owner may revoke a proxy only by actual notice of revocation to the person presiding over a meeting of the Association. A vote may not be cast pursuant to a proxy for the election or removal of a member of the Board. Any proxy that fails to comply with the requirements of this Section shall be void.

**4.04 Meetings of Members.** The Association shall hold an annual meeting of the Members. The annual meeting of the Members shall be held on or about one (1) year after the date of the last annual meeting. If the Members have not held a meeting for one (1) year, a meeting of the Members must be held in accordance with the Act. The Association shall also hold at least one (1) regular meeting other than the annual meeting each year. Special meetings of the Members may be called at any reasonable time and place by notice by the President of the Association, the Board, or Members having ten percent (10%) or more of the total votes.

(a) **Notice.** Not less than ten (10) days (twenty-one (21) days in the event of a meeting at which an Assessment for a capital improvement or commencement of a civil action is to be considered or action is to be taken on such an Assessment) nor more than sixty (60) days in advance of each meeting of the Members, the Secretary shall cause notice of the meeting to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must also include notification of the right of an Owner (i) to have a copy of the minutes or a summary of the minutes of the meeting distributed to the Owner upon request and, if required by the Board, upon payment to the Association of the cost of making the distribution, and (ii) to speak to the Association.

(b) **Agenda.** The agenda for each meeting of the Owners must consist of (i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the Declaration or Bylaws, any fees or Assessments to be imposed or increased by the Association, any budgetary changes, and any proposal to remove an officer or member of the Board, (ii) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items, and (iii) a period devoted to comments by Owners and discussion of those

comments. In an Emergency (as hereinafter defined), the Owners may take action on an item which is not listed on the agenda. The notice, agenda, and Owner comment requirements of subsection 4.04(a) and this subsection 4.04(b) apply to both regular and special meetings of the Members.

(c) Emergency. As used in this Section 4.04, "Emergency" means any occurrence or combination of occurrences that (i) could not have been reasonably foreseen, (ii) affects the health, welfare, and safety of the Owners, (iii) requires the immediate attention of, and possible action by, the Board, and (iv) makes it impracticable to comply with the notice provisions of this Section.

(d) Organization. The Chairman of the Board, or in his or her absence the Vice-Chairman, shall call meetings of Members to order and act as chairman of such meetings. In the absence of both of said officers, any Member entitled to vote thereat or any proxy of any such Member may call the meeting to order, and a chairman of the meeting shall be elected. The Secretary of the Association, or in his or her absence the Assistant Secretary, shall act as secretary of the meeting. In the absence of both the Secretary and the Assistant Secretary, a secretary shall be selected in the same manner as that provided above for selecting a chairman of the meeting.

(e) Action by Members. Except as provided otherwise in this Declaration or the Bylaws, any action (including any approvals required under this Declaration) may be taken at any legally convened meeting of the Members at which a quorum (as determined by reference to the Bylaws) is present upon the affirmative vote of the Members having a majority (or such greater percentage as may be required elsewhere in this Declaration for approval of the Members of any matter) of the total votes present at such meeting in person or by proxy. Only votes cast in person, by secret ballot, or by proxy may be counted.

(g) Minutes. Not more than thirty (30) days after any meeting of the Members, the Secretary shall cause the minutes or a summary of the minutes of the meeting to be made available to the Members. A copy of the minutes or a summary of the minutes must be provided to any Member who pays the Association the cost of providing the copy.

**4.05 Duties of the Association**. Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties for the benefit of the Members of the Association:

(a) Members. The Association shall accept all Owners as Members.

(b) Recreation and Open Space Areas and Common Area. The Association shall accept, own, operate, and maintain all recreation and open space and Common Area that may be conveyed, leased, licensed, or otherwise enjoyed by it, together with all improvements of whatever kind and for whatever purpose that may be located in said areas. The Association shall accept, own, operate, and maintain all other property easements or

rights of use, whether real or personal, for which the Association, the Members, or the Property receive any benefits, whether aesthetic or tangible.

(c) Title to Property Upon Dissolution. The Association shall pay over or convey, upon dissolution of the Association, the assets of the Association to one or more exempt organizations of the kind described in Section 501(c) of the Internal Revenue Code of 1986, as amended from time to time.

(d) Repair and Maintenance of Association Property. The Association shall maintain in good repair and condition the Common Area and other Association Property enjoyed by, owned by, licensed to, or leased to the Association.

(e) Payment of Taxes. The Association shall pay all real and personal property taxes and other taxes and Assessments levied upon or with respect to any Association Property to the extent that such taxes and Assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and Assessments.

(f) Insurance. The Association shall obtain and maintain in effect policies of insurance of such kind and in such amounts as the Board, in its opinion, deems adequate or desirable, but in no event less than that required by law, including the requirements of NRS § 116.3113 and, so long as the Federal National Mortgage Association ("FNMA") or the Government National Mortgage Association ("GNMA") holds a security interest in a Lot, the requirements of FNMA or GNMA. Without limiting the generality of the preceding sentence, during any time Declarant is the owner of more than five (5) Lots such policies of insurance shall include:

(i) Fire and extended coverage insurance on all improvements owned by or leased to the Association in an amount not less than one hundred percent (100%) of the aggregate full insurable value, meaning actual replacement cost exclusive of the costs of excavations, foundations, and footings. Such insurance shall insure the Association and any mortgagees, as their interests may appear. As to each such policy that will not be thereby voided or impaired, the Association hereby waives and releases all claims against the Board and Declarant, and the officers, agents, and employees of each thereof, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any duty or agreement by said Persons, but only to the extent that insurance proceeds are received in compensation for the loss. If the foregoing exculpatory clause is held to be invalid, then the liability of the insurance company shall be primary, and the liability of the Board, Declarant, and the officers, agents, and employees of the Board and of Declarant shall be secondary:

(ii) Liability insurance, with limits in amounts reasonably determined by the Board, insuring against liability for bodily injury or property damage arising from activities of the Association or with respect to the Association Property, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The liability insurance policies referred to above shall name as separately protected insureds





(j) Audit. Within one hundred twenty (120) days of the end of the Association's fiscal year, the Association shall, at its own cost, conduct an annual audit by an independent certified public accountant of the accounts of the Association and make a copy of such audit available to each Member during normal business hours at the principal office of the Association. Upon written request, the Association shall provide to any Eligible Holder, insurer, or guarantor of any Mortgage a copy of the annual audit. Any Member may at any time and at its own expense cause an audit or inspection to be made of the books and records of the Association by a certified public accountant provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Association. The Association shall maintain copies of the then current Declaration, Articles, Bylaws, and Rules and Regulations, as amended, at the principal office of the Association, and the same shall be available during normal business hours for inspection by Declarant, any Owner, prospective purchasers of Lots, Eligible Holders, insurers, and any guarantors of a Mortgage.

(k) Books and Records. The Board shall, upon the request of a Member, make available for review at the business office of the Association or other suitable location during the regular working hours of the Association, the books, records and other papers of the Association, including, without limitation, (i) the financial statement of the Association, (ii) the budgets of the Association, and (iii) the study of the reserves of the Association required to be conducted pursuant to subsection 5.03(b) of this Declaration. The Board shall provide a copy of any of the records to a Member within fourteen (14) days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing a copy, but not to exceed twenty-five cents (\$.25) per page. The provisions of this subsection 4.05(k) do not apply to the personnel records of the employees of the Association and the records of the Association relating to another Owner.

(l) Other. The Association shall carry out all duties of the Association set forth in the Rules and Regulations, the Articles, or the Bylaws.

**4.06 Powers and Authority of the Association**. The Association shall have all of the powers of a nonstock, nonprofit corporation organized under the laws of the State of Nevada in operating for the benefit of its members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done under and by virtue of this Declaration and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety, or general welfare of the Owners. Without in any way limiting the generality of the foregoing, the Association and the Board shall have the following powers and authority to exercise in their discretion:

(a) Right of Entry and Enforcement. Subject to any limitations or restrictions imposed by FNMA, which are incorporated herein by this reference, the Board and its agents and representatives shall have the power and right to enter upon any Lot and the Improvements thereon without liability to any Owner for the purpose of enforcing any of the provisions of this Declaration or for the purpose of maintaining and repairing the Improvements located



on said Lot as provided in this Declaration or if the Owner thereof fails to maintain and repair any portion of a Lot as required by this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or on the behalf of any Owner or Owners who consent thereto to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration. The costs of any such action or suit, including reasonable attorneys' fees, shall be paid to the prevailing party as part of its judgment.

(b) Civil Actions. Except as otherwise provided in this subsection 4.06(b), the Association may commence a civil action only upon a vote or written agreement of the Members holding at least a majority of the voting power of the Association. The Association shall provide written notice to each Owner of a meeting at which commencement of a civil action is to be considered at least twenty-one (21) days before the meeting. The provisions of this subsection do not apply to a civil action that is commenced: (i) to enforce the payment of an Assessment; (ii) to enforce the provisions of the Declaration, Bylaws, or Rules and Regulations; (iii) to proceed with a counterclaim; or (iv) to protect the health, safety and welfare of the Members. If a civil action is commenced pursuant to this subsection without the required vote or agreement, the action must be ratified within ninety (90) days after the commencement of the action by a vote or written agreement of the Members holding at least a majority of the voting power of the Association. If the Association, after making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the Association may thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the Members holding at least a Majority of the voting power of the Association was obtained at the time the approval to commence or ratify the action was sought. At least ten (10) days before an Association commences or seeks to ratify the commencement of a civil action, the Association shall provide a written statement to all Members that includes reasonable estimate of the costs of the civil action, including reasonable attorney's fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all disclosures that are required to be made upon the sale of property within the Development. No Person other than an Owner may request the dismissal of a civil action commenced by the Association on the ground that the Association failed to comply with any provision of this subsection.

(c) Easements and Rights-of-Way. The Board shall have the power to grant and convey to any third party easements, licenses, and rights-of-way, in, on, over, or under any Common Area conveyed or otherwise transferred to the Association or under its jurisdiction, subject to the conditions contained in NRS § 116.3112.

(d) Employment of Manager. The Board shall have the power to employ, by written agreement, the services of a manager or management company, subject to the direction and control of the Board, to manage and carry out the affairs of the Association and, to the extent consistent with the laws of the State of Nevada and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the manager any of the

powers of the Board or the officers of the Association. In no event shall any management agreement be for a term greater than one (1) year, except with the approval of a majority of the Members, and any such agreement shall provide for termination without penalty on a minimum of thirty (30) days written notice. Except as otherwise provided in the Act, any manager so appointed must hold either a permit to engage in property management pursuant to NRS Chapter 645 or a certificate issued by the Nevada Real Estate Commission.

(e) Services. The Board shall have the power to provide for and engage the services of others for the maintenance, protection, and preservation of the Association Property, including the Common Area, such as grounds keepers, painters, plumbers, and such other maintenance personnel, as the nature and character of the Common Area may require and including any such necessary personnel as the nature and character of any recreational facilities within the Common Area may require; provided, however, that no contract for such services shall be for a duration of more than one (1) year, except with the approval of a majority of the Members, and any such agreement shall provide for termination without penalty on a minimum of ninety (90) days written notice.

(f) Utilities. The Board shall have the power to contract, use, and pay for utility services to the Association Property.

(g) Other Property. The Board shall have the power to acquire and hold, as trustee for the benefit of the Members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

(h) Mergers. The Association shall have the power, to the extent permitted by NRS § 116.2121, to participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association.

(i) Dedication. The Board shall have the power to dedicate any of the Association Property to an appropriate public authority for public use, provided that any such dedication shall comply with NRS § 116.3112, and that such dedication is subject to the existing easements and rights of use of all of the Members.

(j) Delegation. The Board may delegate any of its powers to any committees, officers, or employees as it deems necessary and proper.

(k) Construction on Association Property. The Board shall have the power to construct new Improvements or additions to the Association Property or demolish existing Association Property or Improvements subject to the approval of the Architecture Committee as is required in this Declaration.

(l) Maintenance of Entry and Exit Measures. The Board shall have the power to implement measures regulating entrance and exit at all points of entry and exit to or from the Property, which may or may not be guarded.

- (i) parks, parkways, or other recreational facilities;
- (ii) roads, streets, ways, driveways, trails, and paths;
- (iii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iv) sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; and
- (v) any similar public, quasi-public, or private improvements or facilities.

(n) Legal and Accounting Services. The Board shall have the power to retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of the Association Property, the enforcement of the Rules and Regulations, or in the performance of any other duty, right, power, or authority of the Association.

(p) Other Areas. The Board shall have the power to maintain and repair easements, roads, roadways, rights of way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes, entry details, entry houses, Perimeter Walls, perimeter landscaped areas, or other Common Area whether owned by or leased to the Association and to contribute toward the cost of operation and maintenance of private roads and any other Improvements or other facilities owned by or leased to the Association.

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uses; lakes and ponds for swimming, fishing, and other water sports; and other similar and dissimilar recreational facilities.

(r) Other Services and Properties. The Board shall have the power to obtain and pay for any other property and services and to pay any other taxes or Assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, the Rules and Regulations, the Articles, or the Bylaws.

(s) Contracts. The Board shall have the power to enter into contracts with Declarant and other Persons, on such terms and provisions as the Board shall determine, to operate and maintain any Common Area and Improvements thereon or to provide any service to the Property (including, but not limited to, cable television and laundry facilities).

#### **4.07 Indemnification.**

(a) Indemnification. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that it is or was a director, officer, employee, servant, or agent of the Association against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by it in connection with such action, suit, or proceeding until and unless it is proved that it acted with willful or wanton misfeasance or with gross negligence and provided it acted in good faith and in a manner it reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the Person did not act in good faith or in a manner it reasonably believed to be in or not opposed to the best interests of the Association, or with respect to any criminal action or proceeding, had reasonable cause to believe that its conduct was unlawful.

Board members are not liable to the victims of crimes that may occur on the Property. Punitive damages may not be recovered against the Association but may be recovered only from Persons whose intentional activities are proved to have resulted in damages.

(b) Determination. Any indemnification that the Association has elected to provide under this Section 4.07 (unless ordered by a court) shall be made by the Association only as authorized in the specific case by a determination that indemnification of the officer, director, employee, servant, or agent is proper in the circumstances because it has met the applicable standard of conduct set forth in subsection 4.07(a). Such determination shall be made: (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding; or (ii) if such a quorum is not obtainable, or even if obtainable and a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; provided, however, that if a director, officer, employee, servant,



#### **4.10 Rules.**

(a) Rulemaking Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact, and amend rules and regulations to be known as the "Rules and Regulations" that relate to the management, operation, and control of the Association or the Common Area. The Rules and Regulations shall become effective and binding on all Owners only after adoption by the Board. Such Rules and Regulations may concern, but need not be limited to, matters pertaining to use of the Common Area; signs; collection and disposal of refuse; minimum standards of maintenance of property; parking and traffic restrictions; limitations on maintenance of landscaping or other improvements on any property; standards for Residences; limitations on the type of furniture, fixtures, equipment, and other objects maintained on Lots in view of other Owners; limitations on the number and type of animals that may be allowed on the Property; limitations on the display of flags; and any other subject or matter within the jurisdiction of the Association as provided in this Declaration. The Rules and Regulations may restrict and govern the use of the Common Area by any Member or Lessee, by the family of such Member or Lessee, or by any invitee, licensee, or guest of such Member or Lessee. Declarant retains the right to establish rules relating to the use of any portion of the Common Area owned by it until annexation and conveyance to the Association, and the Association may incorporate such rules in its Rules and Regulations.

(b) Notification of Rules and Regulations. A copy of the Rules and Regulations, as they may be from time to time adopted, amended, or repealed, shall be mailed or otherwise delivered to each Member and may, but are not required to, be recorded. The adoption of the Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. No Rules and Regulations may be adopted that materially impair the rights, preferences, or privileges of any Owner as specifically set forth herein.

**4.11 Breach of Rules, Regulations, or Restrictions.** In the event of a breach of any provision of the Rules and Regulations or of any of the restrictions contained in this Declaration by an Owner its family, guests, employees, invitees, licensees, or Lessees, the Board, for and on behalf of itself and all other Owners, shall have the right to enforce the obligations of each Owner to obey the Rules and Regulations or the restrictions of this Declaration in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action, suspension of the Owner's right to use the facilities of the Common Area for a reasonable time, or suspension of the Owner's voting rights for a reasonable time. Subject to Section 4.12 and 4.13 below and in addition to the other remedies herein set forth, including, without limitation, assessing the cost of repair of any damage resulting from a violation of the Rules and Regulations, the Board, by majority vote, may levy a fine or penalty against such Owner. After compliance with the requirements of Section 4.12 and 4.13, if the Board determines that a violation has occurred and that a fine or penalty shall be imposed, the determination of the Board shall be final. In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement

prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs, and reasonable attorneys' fees.

**4.12 Construction Penalties.** In addition to its power to assess fines as set forth in this Declaration, the Association shall have the power to assess construction penalties upon the failure of an Owner to adhere to any time line setting forth time periods relative to the construction of any Improvement on any Lot as established by the Board, by the Architecture Committee, or by any other body of the Association authorized by the Restrictions, including, without limitation, for: (a) completion of the design of an Improvement to a Lot; (b) commencement of construction of a Residence or the construction of any Improvement to a Lot; (c) the completion of construction to a Residence or the construction of an Improvement to the Lot; or (d) the issuance of any permit which is necessary for the occupancy of a Lot or for the use of any Improvement to a Lot. The Owner shall receive notice of the alleged violation which informs such Owner that he or she has a right to a hearing on the alleged violation. The maximum amount that the Association may charge in construction penalties is one hundred dollars (\$100) per day that each of the time period(s) in question is/are exceeded, up to one thousand dollars (\$1,000) for each violation, exclusive of any interest costs, or charges that may be collected by the Association. If construction penalties are imposed pursuant to this Section and the violation is not cured within fourteen (14) days or such longer period as the Board establishes, the violation shall be deemed a continuing violation and the Board may impose additional construction penalties for the violation, not to exceed one hundred dollars (\$100) for each seven (7) day period or part thereof the violation remains uncured. The Association may not separately assess any fines pursuant to Section 4.13 for failure of an Owner to adhere to any construction schedule. The Association may foreclose a lien by sale for the failure to pay construction penalties as provided in the Act.

**4.13 Fines.** Every fine must be commensurate with the severity of the violation. The fine must not exceed one hundred dollars (\$100) for each violation or a total amount of five hundred dollars (\$500), whichever is less; provided, however, that the foregoing limitations do not apply to any interest, charges or costs that may be collected if the fine becomes past due. The Rules and Regulations may be enforced by the assessment of a fine only if: (a) at least thirty (30) days before the alleged violation, the Person in violation was given written notice of the rule or regulation (or any amendment to the rule or regulation) that the Person allegedly violated; and (b) within a reasonable time of discovery of the violation, the Person alleged to have violated the Rules and Regulations is provided with: (i) written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation, and (ii) a reasonable opportunity to contest the violation at the hearing. The Board must hold a hearing before it may impose the fine, unless the Person against whom the fine will be imposed: (a) pays the fine; (b) executes a written waiver of the right to a hearing; or (c) fails to appear at the hearing after being provided with notice of the hearing. If a fine is imposed pursuant to this Section and the violation is not cured within fourteen (14) days or such longer cure period as the Board establishes, the violation shall be deemed a continuing violation and the Board may thereafter impose additional fines for the violation not to exceed One Hundred Dollars (\$100) per each seven (7) day period



or portion thereof that the violation remains uncured. Any additional fine may be imposed without notice and an opportunity to be heard.

Any past due fine: (y) shall bear interest at a rate determined by the Board, not to exceed the legal rate of interest; and (z) may include any collection fee, filing fee, recording fee, referral fee, postage or delivery fee, and any other fee or cost that the Association may reasonably incur for the collection of the past due fine, as well as costs incurred by the Association in bringing a civil action to enforce the payment of the past due fine. If the past due fine is for a violation that does not threaten the health, safety, or welfare of the residents, the past due rate established by the Association for the costs of collecting the fine: (i) may not exceed \$20, if the outstanding balance of the underlying fine is less than \$200; (ii) may not exceed \$50, if the outstanding balance of the underlying fine is \$200 or more but less than \$500; (iii) may not exceed \$100, if the outstanding balance of the underlying fine is \$500 or more, but less than \$1,000; (iv) may not exceed \$250, if the outstanding balance of the underlying fine is \$1,000 or more, but less than \$5,000; and (v) may not exceed \$500, if the outstanding balance of the underlying fine is \$5,000 or more.

Except as otherwise provided herein, the Association may not foreclose a lien for the assessment of a fine for a violation of the Declaration, Bylaws, or Rules and Regulations, unless the violation is of a type that threatens the health, safety, or welfare of the residents of the Development.

**4.14 Liability of Members of Board.** No member of the Board shall be personally liable to any of the other Board members, to the Members, or to any other Person, including Declarant, for any error or omission of the Association, its representatives and employees, or the Architecture Committee, provided that such Board member has, upon the basis of such information as may be possessed by him or her, acted in good faith.

**4.15 Amendment.** Notwithstanding anything to the contrary in Section 10.03, the provisions of Sections 4.01, 4.02, 4.03, and 4.04 shall not be amended without the vote or written consent of two-thirds (2/3rds) of the Owners.

## **V.**

### **Covenant for Maintenance Assessments**

**5.01 Assessments.** The Owner of any Lot, by acceptance of a deed therefor, covenants and agrees to pay to the Association annual Assessments and special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided. The annual Assessment, special Assessment, interest, costs, and reasonable attorneys' fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made until paid. Each Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent



Assessments shall not be extinguished upon the sale or the conveyance of a Lot, but any purchaser of a Lot shall not be liable for any unpaid Assessments or fee greater than the amounts set forth in the statement of unpaid Assessments described in Section 5.07.

**5.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property, for the improvement and maintenance of the Common Area, and for the daily operating expenses of the Association.

**5.03 Regular Assessments.**

(a) **Annual Assessment.** The Board shall fix the annual Assessment at an amount sufficient to cover the estimated budget of the Association prior to the beginning of each fiscal year. The Board may increase the annual Assessment by up to fifteen percent (15%) of the previous year's annual Assessment without the consent of the Owners. The Board shall, not less than thirty (30) days or more than sixty (60) days before the beginning of each fiscal year of the Association, prepare and distribute to each Owner a copy of the budget for the daily operation of the Association. The budget must include, without limitation, the estimated revenue and expenditures of the Association for the coming year and any contributions to be made to the reserve funds established by subsection 5.03(b) hereof. In lieu of distributing copies of the budget, the Board may distribute summaries of the budget, accompanied by a written notice that the budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request.

(b) **Reserve.** The annual Assessment of the Association shall, in addition to being sufficient to cover anticipated expenses, include adequate reserves for the repair, replacement, and restoration of the major components of the Common Area. The reserve funds may be used only for those purposes and not for daily maintenance. Money in the reserve accounts may not be withdrawn without the signatures of at least two (2) members of the Board or the signatures of at least one (1) member of the Board and one (1) officer of the Association who is not a member of the Board.

The Board shall, not less than thirty (30) days or more than sixty (60) days before the beginning of the fiscal year of the Association prepare and distribute to each Owner a copy of the reserve budget. In lieu of distributing copies of the reserve budget, the Board may distribute summaries of the budget, accompanied by a written notice that the budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request.

The reserve budget must include, without limitation: (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Area; (ii) as of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current

amount of accumulated cash reserves that are set aside, to repair, replace, or restore the major components of the Common Area; (iii) a general statement describing the procedures used for said estimation and accumulation of cash reserves, including, without limitation, the qualifications of the Person responsible for the preparation of the reserve studies required under this subsection; and (iv) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component of the Common Area or to provide adequate reserves for that purpose.

The Board shall cause to be conducted at least once every five (5) years, a study of the reserves required to be maintained by this subsection, review the results of that study at least annually to determine if those reserves are sufficient, and make any adjustments it deems necessary to maintain the required reserves. The study must be conducted by a person qualified by training and experience to conduct such a study, including a member of the Board, an Owner, or the manager of the Association who is so qualified. The study must include, without limitation: (i) a summary of an inspection of the major components of the Common Area that the Association is obligated to repair, replace, or restore; (ii) an identification of the major components of the Common Area that the Association is obligated to repair, replace, or restore which have a remaining useful life of less than thirty (30) years; (iii) an estimate of the remaining useful life of each major component so identified; (iv) an estimate of the cost of repair, replacement, or restoration of each major component so identified; and (v) an estimate of the total annual Assessments that may be required to cover the cost of repair, replacement, or restoration of the major components so identified after subtracting the reserves of the Association as of the date of the study.

(c) Increases of Annual Assessment. The annual Assessment may not be increased by more than fifteen percent (15%) of the annual Assessment for the previous year without a vote or written consent of fifty-one percent (51%) of the Members; provided, however, that following the termination of the Declarant control period described in subsection 4.03(a) hereof, any such increase shall have the vote or written consent of: (i) fifty-one percent (51%) of the Members, and (ii) fifty-one percent (51%) of the Members other than Declarant. In the event that the annual Assessment is increased by more than fifteen percent (15%) of the previous year's annual Assessment, the Board shall, within thirty (30) days after the adoption of any proposed budget, provide a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider and ratify the budget not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless a majority of all Owners at the meeting reject the budget (whether or not a quorum is present), the budget is ratified. If the budget is rejected, the budget last ratified shall continue to be the budget for the Association.

(d) Inadequacy of Annual Assessment. In the Board's sole and absolute discretion, should the annual Assessment be inadequate for any reason, including, without limitation, nonpayment of any Member's annual Assessment, to provide for the Association's costs and expenses, the Board may at any time and from time to time levy further Assessments in the same manner as described in this Section 5.03.

(e) Financial Statement. A financial statement for the Association shall be prepared each fiscal year, which shall include a balance sheet showing the profit and loss of the Association and the funds held in reserve by the Association.

(f) Initial Contribution. In addition to the allocable portion of the installment of the regular Assessment for the month escrow closes on the sale of a Lot by Declarant to an Owner other than Declarant, each Owner shall be required to make at close of escrow an initial capital contribution to the reserve fund described in subsection (b) above in the amount of One Hundred, Seventy-five Dollars (\$175.00). This initial capital contribution is not an advance payment on the Owner's annual Assessments and is not refundable to the Owner or its successors or assigns.

**5.04 Special Assessments.** In addition to the annual Assessments authorized above, the Board may levy special Assessments for the purpose of construction, reconstruction, repair, or replacement of a capital Improvement upon the Common Area, including fixtures and personal property related thereto. Any such Assessment must be approved by a majority of the Members. The Association shall provide written notice to Owners of any meeting at which an Assessment for capital Improvements is to be considered at least twenty-one (21) calendar days before the meeting.

**5.05 Notice of Special Assessments; Time for Payment.** The Association may, in its discretion, give written notice of special Assessments to each Owner, which notice shall specify the amount of the special Assessment and the date or dates of payment of the same. No payment shall be due fewer than fifteen (15) days after the written notice has been given. Failure of the Association to give notice of the special Assessment shall not affect the liability of the Owner of any Lot, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after the notice shall have been given.

**5.06 Collection of Assessments.** Annual Assessments shall commence with respect to each Lot in the original Property on the first (1<sup>st</sup>) day of the month immediately following the first (1<sup>st</sup>) close of escrow for the sale by Declarant to an Owner other than Declarant of a Lot in the original Property. Annual Assessments shall so commence with respect to each Lot in any Annexable Area annexed to the Property in accordance with Article IX hereof on the first (1<sup>st</sup>) day of the month immediately following the first close of escrow for the sale by Declarant to an Owner other than Declarant of a Lot in that portion of the Annexable Area so annexed.

**5.07 Unpaid Assessments.** The amount of any delinquent Assessment, whether regular or special, assessed against any Lot, a late payment charge of five percent (5%) of the delinquent Assessment, plus interest on such Assessment and late payment charge at a rate not to exceed eighteen percent (18%) per annum simple interest, and the costs of collecting such Assessment, late payment charge, and interest, including reasonable attorneys' fees, shall be a lien upon the Lot assessed until paid. Such lien shall be prior

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

by Developer to an Owner other than Developer of a Lot within that particular portion of the Annexable Area); including those Lots owned by Declarant that have not been sold to Owners other than Declarant; provided, however, that Declarant may receive as a credit the costs or value of any maintenance or repair performed by Declarant on the Association Property.

## **VI.**

### **Permitted Uses and Restrictions**

In addition to all of the covenants contained herein, the use of the Property and each Lot therein is subject to the following:

**6.01 Improvements and Use.** Except as expressly provided herein, the Lots shall be used exclusively for single-family residential purposes. Timesharing is prohibited. No mobile home may be placed or located on any Lot.

**6.02 Animals.** No animals of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept on a Lot provided that they are not kept, bred, or maintained for any commercial purpose nor in violation of any applicable local ordinance or any other provision of this Declaration. A "reasonable number" shall ordinarily mean three (3) or fewer pets per Lot. All pets within the Property shall be leashed or otherwise under the direct control of the pet owner when not within an enclosed area of a Lot. It shall be the absolute duty and responsibility of each Owner or Lessee to remove any solid animal waste after such animals have used any portion of the Property or any public property in the vicinity of the Property. No pet shall be permitted to be kept within any portion of the Property if it makes excessive noise or is otherwise determined by the Board to be a nuisance. If a pet is determined to be a nuisance, the Board may give notice to the Owner or Lessee to resolve the offending problem within seventy-two (72) hours, and if the problem is not resolved during that period of time, order the removal of the pet.

**6.03 Commercial Activities.** No commercial, professional, industrial, institutional, or other non-residential use (including residential day care facilities, and transient commercial uses) shall be conducted on any Lot without the written approval of the Board, except such temporary uses as shall be permitted by Declarant while the Development is being constructed and Lots are being sold by Declarant. Any owner wishing to conduct any commercial, institutional, or other non-residential uses on any Lot shall first apply to the Board for approval of such use and shall provide to the Board any information deemed necessary by the Board to evaluate the impacts of such use on the neighborhood. The Board shall determine if such use diminishes the residential character of the Lot or neighborhood or imposes a nuisance on the neighborhood. The decision of the Board shall be final and conclusive. The Board may review, and repeal, any such approval from time to time at the discretion of the Board if, in the opinion of the Board, the use has changed or increased to a level not consistent with the original approval. This provision may not be amended or deleted without the approval



**6.10 Laundry.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot. No washing machine or dryer shall be kept on any Lot, except within a Residence, without the prior written approval of the Board.

**6.11 Propane Tanks.** Only propane tanks used in connection with barbecue grills shall be permitted on any Lot; provided, however, that such tanks are in compliance with all applicable codes and laws.

**6.12 Maintenance of Lawn and Plants.** All Lots, landscaping, driveways, and exteriors must be kept neat and tidy at all times. No landscape trimmings shall be placed for removal on or near any public road within the Property or in a place upon the Lot where they are visible from any other Lot or the Common Area.

**6.13 Vehicle Parking.**

(a) **Owner and Occupant Parking; Priorities.** It is the intent of this Subsection to limit on-street parking within the Property. Accordingly, each Owner and the occupants of his Residence shall park all of their vehicles first within the garage and then on the driveway adjacent the Owner's Lot; provided, however, that the number of vehicles parked on any driveway adjacent to a Lot shall not exceed the maximum number of three (3). Garage doors must be kept closed at all times, except as reasonably required for ingress and egress to and from the garage. Only after all parking areas first within the garage and then on the driveway are full shall an Owner be allowed to park a vehicle on the streets within the Property. In addition, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, in its sole and absolute discretion.

(b) **Guest Parking.** Notwithstanding the provisions of Subsection 6.13(a), Persons other than Owners and occupants of the Property, including, without limitation, their guests, invitees, and licensees, may park their vehicles on the streets of the Property between the hours of 7:00 a.m. and 10:00 p.m. Pacific Standard Time. During times other than these hours, including overnight stays, vehicles of such other persons must be parked in accordance with the provisions of Subsection 6.13(a).

(c) **Campers, Boats, RVs, Trailers and Non-Passenger Vehicles.** No campers, boats, trailers, trailer coaches, camp trailers, recreational vehicles, camper units, house/cars, motor homes, mobile homes, aircraft, jet skis, wave runners, four-wheelers, off-road vehicles, buses, recreational trailers, non-passenger vehicles, or any other similar vehicles, rolling stock, equipment, implements, or accessories shall be parked, stored, or kept anywhere within the Property except within a fully-enclosed garage located on a Lot, and approved by the Board and Architectural Committee pursuant to the terms hereof, or, as applicable, in locations within the Development specifically designated for such purposes by the Board and otherwise in full compliance with any Rules and Regulations from time to time promulgated



by the Board, as well as and including any federal, state, or local laws, rules, or ordinances. The use of any areas within the Property designated for purposes of parking recreational vehicles or the other vehicles described above are subject to the imposition of monthly fees by the Board, as reasonably determined by the Association and as adjusted from time to time. The Board shall have the right to deny any Owner the use of any such parking area for reasons of non-payment and for reasons of violations of any Rules and Regulations promulgated by the Board.

(d) Commercial Vehicles. No commercial vehicles, including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck, shall be kept or stored on or near any Lot unless approval of the Board is granted. For purposes of this Subsection 6.13(d), "commercial vehicle" shall mean any vehicle: (i) designed, maintained, or used primarily for the transportation of property or passengers in furtherance of any commercial enterprise; (ii) that is over eight thousand five hundred (8,500) pounds gross unloaded weight; or (iii) that bears commercial insignia, names, or other common indicia indicating that the vehicle is used for commercial purposes and that is larger than a nineteen (19) foot van or three-quarter (3/4) ton pickup truck. Commercial vehicles that are temporarily parked on or near any Lot for the sole purpose of serving such Lot are exempt from this restriction. The Board shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on or near a Lot. Any Owner wishing to keep a commercial vehicle on or near any Lot shall apply for approval to the Board, and shall provide such information as the Board, in its sole authority, may require. The Board may from time to time in its sole discretion review the approval to keep a commercial vehicle on or near any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the Board, any vehicle shall be removed or otherwise brought into compliance with the requirements of this Section 6.13.

(e) Disabled, Inoperable and Unregistered Vehicles. No disabled, inoperable or unregistered vehicles, campers, boats, trailers, recreational vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may be kept or stored on any street within the Property for any period in excess of forty-eight (48) hours, nor placed on or near any Lot unless fully screened from view.

(f) Vehicle Maintenance. No dismantling, assembling or maintenance (other than emergency maintenance) of motor vehicles, boats, trailers, recreational vehicles, or other machinery, implements, accessories or equipment shall be permitted in the streets within the Property, or in any parking area, driveway or yard adjacent to a street, or that is not screened from view.

(g) Authority to Review. The Board shall have the absolute authority to determine from time to time whether a vehicle or accessory is operable, adequately screened from public view, and otherwise in compliance with the provisions of this Section 6.13. Upon an adverse determination by the Board, the vehicle or accessory shall be removed or otherwise brought into compliance with this Section 6.13.



(h) Parking Rules and Regulations. The Board may adopt Rules and Regulations consistent with this Section 6.13 to further regulate vehicle parking in the Property.

**6.14 Lease Restrictions.**

(a) Hotel and Transient Purposes. No Lot or any portion thereof shall be rented or leased for hotel or transient purposes. A lease for a period of less than six (6) months shall be deemed to be for transient purposes. A lease pursuant to which the lessor provides any services normally associated with a hotel, including, but not limited to, room service, maid service, laundry or linen services, or bellboy services, shall be deemed to be for hotel purposes.

(b) Entire Lot and Parking Space. No Owner or resident of a Lot shall rent or lease less than the entire Lot. Additionally, no Owner or resident shall rent or lease any exclusive use areas, including any garage or parking area that the Owner has the exclusive right to use, separate and apart from the Lot to which these areas are appurtenant.

(c) Percentage Limitations. No more than twenty percent (20%) of the total number of Lots in the Property shall be rented or leased at any given time, or used for any purpose other than as the primary residence of the Owner, as determined by the Board in its discretion.

(d) Board Approval Required. All leases shall be subject to Board approval, and prior to entering into any lease agreement, the Owner shall contact the Board to confirm that entering into the lease agreement does not violate the lease restrictions imposed by this Section 6.14.

(e) Requirements for Lease Agreements. All leases shall be in writing, have a term of at least six (6) months, be executed by all parties thereto, and expressly provide that the lease is subject in all respects to the Restrictions and that any failure of the Lessee to comply with the terms of the Restrictions shall be a default under the lease.

(f) Submission of Lease Agreements. Copies of all leases shall be submitted by the Owner to the Board within fifteen (15) days after the lease is executed. Additionally, Declarant may, in its discretion, require potential purchasers of Lots in the Property to execute a disclosure form stating whether they intend to reside in the Residence on the Lot or instead use the Lot and Residence for investment and rental purposes. Finally, all leases, and the Lessees thereunder, shall be registered with the Association, and the Association shall have the right to charge each leasing Owner an appropriate registration fee, as determined by the Board, for each new Lessee registered with the Association.

(g) Hardship Exemption. Anything herein to the contrary notwithstanding, any Owner may petition the Board for an exemption from the lease restrictions set forth in

(h) Enforcement. The Board is hereby empowered with the right to enforce the lease restrictions set forth in this Section 6.14 by pursuing any remedies available under the Restrictions, at law, or in equity, including, without limitation, imposing fines upon the violating Owner and his Lot in accordance with the Restrictions and/or seeking an injunction to prevent a violation or threatened violation of the lease restrictions, it being expressly agreed and understood that any violation of the lease restrictions would irreparably harm Declarant, the Association, the Owners, and their respective interests in the Property. Any Owner who leases his Lot in violation of any lease restriction set forth in this Section 6.14 shall be subject to enforcement action. Without limiting the generality of the foregoing, any Owner who fails to provide the Association with a copy of the lease agreement for any Lot within the applicable time period set forth above shall, until such time as the Association receives a copy of the lease, be deemed to be in violation of the lease restrictions set forth in this Section 6.14 and subject to enforcement action. Additionally, if a lease is entered into at a time when less than twenty percent (20%) of all the Lots in the Property are being rented or leased but is not disclosed to or discovered by the Association until after more than twenty percent (20%) of all the Lots in the Property are being rented or leased, then the Owner shall be in violation of the lease restrictions set forth in this Section 6.14 and subject to enforcement action.

(j) **Model Home and Declarant Exemption.** Anything herein to the contrary notwithstanding, the provisions of this Section 6.14 shall not apply to any Lot: (i) owned by Declarant or an affiliate of Declarant; or (ii) any Lot the Residence of which is then being used as a model home for the Development or for any other community developed by Declarant or an affiliate of Declarant, whether such Lot is owned by Declarant, its affiliate, or some other Owner pursuant to a sale-leaseback or other similar arrangement.

**6.15 Resubdivision.** No Lot shall be resubdivided nor shall less than an entire Lot be sold.

**6.16 Improvements.** All Lot Improvements, including any species of plant material and placement of plants, shall be subject to the control and approval of the Architecture Committee as set forth in Article VII of this Declaration.

**6.17 Taxes.** Each Owner shall pay when due and before delinquency all taxes, Assessments, levies, fees, and all other public charges and utility fees and charges of every kind and nature imposed upon or assessed against its Lot.

**6.18 Rules and Regulations.** The Board is hereby expressly authorized to establish all rules and regulations as it shall deem necessary for the purpose of implementing, enforcing, and administering the purposes of this Declaration.

**6.19 Hazardous Substances.** No activity shall be permitted on any Lot or the Common Area that, in the sole opinion of the Board, will create or emit offensive, hazardous, or excessive quantities of dust, dirt, ash, smoke, noise, fumes, odors, or vibrations or create risk of fire, explosion, or other hazards or is not in harmony and consistent with the Property. Activities prohibited hereunder include, but are not limited to, activities that result in the disposal of hazardous substances in any form upon the Property. For the purposes of this Declaration, the term "Hazardous Substance" shall mean any product, substance, chemical, material, or waste whose presence, nature, quantity, or intensity of existence, use, manufacture, disposal transportation, spill, release, or effect, either by itself or in connection with other materials expected to be found upon any Lot, is either: (i) potentially injurious to the public health, safety, or welfare or the environment or the Property; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of Declarant or any Owner to any governmental agency or third party under any applicable state or common law principle.

**6.20 Party Walls.** Owners of Party Walls shall share equally the responsibility and cost of all maintenance, repair, or replacement, as necessary, of their respective Party Walls. Notwithstanding the foregoing, an Owner causing any damage to any Party Walls by its acts shall be solely responsible and liable for any maintenance, repair, or replacement, as required, and for any cost or liability necessary to repair such damaged Party Walls.

**6.21 Sight Visibility Zones and View Obstructions.** No walls, fences, trees, shrubs, utility appurtenances, or other landscaping or sight-restricting Improvements of any kind, other than traffic control devices or street lights, shall be constructed, installed, or encroach upon or over any area of the Property (whether on the Common Area or on any Lot) designated on the Site Development Plan or any Subdivision Map of the Property as a Sight Visibility Zone or the like, unless such landscaping or Improvement is maintained at less than twenty-four inches (24") in height measured from the top of the curb and otherwise in full compliance with any other restrictions imposed by any Subdivision Map. Compliance with the foregoing sight visibility restriction shall be determined by the Association and/or the City of Las Vegas



Window treatments other than draperies, curtains or blinds (horizontal or vertical) are subject to the prior written approval of the Board. Aluminum foil and similar material shall not be permitted in any exterior windows. Window tinting shall require the prior written approval of the Board, and shall be properly installed and maintained so as not to become damaged, scratched, discolored, or otherwise unsightly.

## **VII.**

### **Architecture Committee**

**7.01 Establishment of Committee.** There shall be an architectural and landscape control committee (the "Architecture Committee"), and except as to construction of Improvements by Declarant, no Improvement shall be made or placed on a Lot until plans and specifications showing the nature, kind, shape, colors, materials, and location of the Improvement have been submitted to and approved in writing by the Architecture Committee.

**7.02 Members of Committee.** The Architecture Committee shall consist of three (3) members, all of whom shall first be appointed by Declarant. There shall also be two (2) alternate members of the Architecture Committee, who shall be designated by the Architecture Committee, to act as substitutes on the Architecture Committee in the event of absence or disability of any member. Each member of the Architecture Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the Architecture Committee may be removed at any time without cause. Until ninety percent (90%) of all Lots have been sold, Declarant shall have the sole power to appoint and remove the members of the Architecture Committee. Thereafter, the Board shall have the power to appoint and remove all members of the Architecture Committee. Members of the Architecture Committee need not be Members of the Association.

**7.03 Architectural Design Guidelines.** The Architecture Committee shall from time to time and in its sole discretion adopt, amend, and repeal by unanimous vote rules and regulations to be known as "Design Guidelines," which shall interpret and implement the provisions of this Declaration, set forth fees to be charged, and promulgate procedures and design and construction criteria to be followed in submitting proposals to the Architecture Committee. A copy of the Design Guidelines as they may from time to time be adopted, amended, or repealed, certified by any member of the Architecture Committee, shall be maintained at the office of the Association and shall be available for inspection and copying by any Member at any reasonable time during the business hours of the Association. The following minimum standards and restrictions shall apply to all Improvements made on the Property:

(a) all Improvements shall be constructed in full compliance with all applicable zoning laws, building codes, and other laws, ordinances, and regulations applicable to the construction, use, and occupancy of Improvements; and

(b) all Improvements shall be constructed in accordance with the Design Guidelines.

**7.04 Landscape Standards.** The Architecture Committee shall, as part of the Design Guidelines, establish guidelines for plant and landscaping material that shall reflect desert landscaping to the extent practicable. Such guidelines may restrict the species and placement of any tree, plant, bush, ground cover, or other growing thing planted or placed on the Property. The Architecture Committee shall adopt a list of approved plant species that may be altered or augmented from time to time.

**7.05 Review of Proposed Improvements.** Whenever in this Declaration or in any supplemental declaration the approval of the Architecture Committee is required, it shall have the right to consider all of the plans and specifications for the Improvement or proposal in question and all other facts that in its sole discretion are relevant. Except as provided in Section 7.01, prior to commencement of construction of any Improvement upon the Property, the plans and specifications therefor shall be submitted to the Architecture Committee, and construction or placement thereof may not commence unless and until the Architecture Committee has approved such plans and specifications in writing. The Architecture Committee shall consider and act upon any and all plans and specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction or placement in progress to assure its conformance with plans and specifications approved by the Architecture Committee. The Architecture Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area or to the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance therefor will not become a burden on the Association. The Architecture Committee may condition its approval of plans and specifications on such changes therein as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The Architecture Committee may also issue rules or guidelines regarding anything relevant to its functions, including, but not limited to, minimum standards and procedures for the submission of plans and specifications for approval. The Architecture Committee, in its sole discretion, may require a reasonable fee to accompany each application for approval, which shall be used to cover the Architecture Committee and its members' reasonable costs. The Architecture Committee may require such detail in plans and specifications submitted for its review and such other information as it deems proper.

**7.06 Meetings of the Committee.** The Architecture Committee shall meet from time to time as necessary to perform its duties hereunder, but such meetings shall be held at least annually. The Architecture Committee may from time to time by resolution unanimously adopted in writing designate one of its members to take any action or perform any duties for and on behalf of the Architecture Committee, except the granting of variances pursuant

to Section 7.11. In the absence of such designation, the vote of a majority of all of the members of the Architecture Committee or the written consent of a majority of all of the members of the Architecture Committee taken without a meeting shall constitute an act of the Architecture Committee.

**7.07 No Waiver of Future Approvals.** The approval or consent of the Architecture Committee to any plans or specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architecture Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans or specifications or other matter whatsoever subsequently or additionally submitted for approval or consent by the same or a different Person.

**7.08 Compensation of Members.** The members of the Architecture Committee shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder. Such compensation shall be determined by Declarant while it has the right to appoint or remove the members of the Architecture Committee pursuant to Section 7.02 hereof, and thereafter, such compensation shall be determined by the Board.

**7.09 Inspection of Work.**

(a) **Completed Work.** Inspection of completed work and correction of defects therein shall proceed as follows:

(i) Upon the completion of any Improvement for which approved plans or specifications are required under this Declaration, the Owner shall give written notice of completion to the Architecture Committee within fifteen (15) days of completion.

(ii) Within such reasonable time as the Architecture Committee may set, but not to exceed thirty (30) days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

(iii) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the Architecture Committee shall notify the Board in writing of such failure. Upon notice and hearing before the Board, the Board shall issue a ruling determining whether there is a noncompliance, and if such noncompliance is found to exist, the Board shall determine the estimated cost of correcting or removing the same. The Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board,



at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a special Assessment against such Owner and the Improvement in question and the Lot upon which the Improvement is situated for reimbursement, and the special Assessment shall constitute a lien upon such Lot and Improvement.

(iv) If for any reason after receipt of said written notice of completion from the Owner, the Architecture Committee fails to notify the Owner of any noncompliance within the period provided in subsection 7.09(a)(ii) hereof, the Improvement shall be deemed to be in accordance with said approved plans and specifications.

(b) Work in Progress. The Architecture Committee may inspect all work in progress and give notice of noncompliance as provided above in subsection 7.09(a)(ii). If the Owner denies that such noncompliance exists, the procedures set out in subsection 7.09(a)(iii) shall be followed, except that, pending resolution of the dispute, no further work shall be done that would hamper correction of the noncompliance if the Board should find that such noncompliance exists.

**7.10 Nonliability of Committee Members.** Neither the Architecture Committee nor any member thereof nor the Board nor any member thereof shall be liable to the Association or to any Owner or to any other Person for any loss, damage, or injury arising out of or in any way connected with the performance of the Architecture Committee's or the Board's respective duties under this Declaration, except for the willful misconduct or bad faith of the Architecture Committee or its members or the Board or its members, as the case may be. Except insofar as its duties may be extended with respect to a particular area by a supplemental declaration filed by Declarant, the Architecture Committee shall review and approve or disapprove all plans and specifications submitted to it for any proposed Improvement, including the construction, alteration, or addition thereof or thereto, solely on the basis of aesthetic considerations and the overall benefit or detriment that would result to the surrounding area and the Property generally. In granting its approval or disapproval to plans and specifications for a proposed Improvement, the Architecture Committee shall take into consideration the aesthetic aspects of the architectural designs, landscaping, color schemes, exterior finishes, and materials and similar features. The approval of the Architecture Committee shall not be construed to be, nor shall the Architecture Committee be responsible for, approval of the structural safety, engineering soundness, or conformance with zoning, building, or other codes that may be applicable.

**7.11 Variances.** The Architecture Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplemental declaration, including restrictions upon height, bulk, size, shape, land area, placement of structures, setbacks, building envelopes, colors, materials, or similar restrictions when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may, in its sole and absolute discretion, warrant. Such variances must be consistent with



any and all applicable laws. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Architecture Committee. If such a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any provisions of this Declaration, the Design Guidelines, or any supplemental declaration for any purpose except as to the particular property and particular provision and in the particular instance covered by the variance.

**7.12 Obligations with Respect to Zoning and Subdivisions.** The Architecture Committee shall require all Persons to comply fully with the zoning and master plan designations and any special use permits and with all applicable federal, state, and local laws, regulations, and ordinances insofar as the same are applicable and as the same may hereafter be amended from time to time.

**7.13 Indemnification of Architecture Committee.** The members of the Architecture Committee shall be deemed the appointed agents of the Board, and the Architecture Committee is hereby authorized to carry out and adhere to the provisions of this Article VII. The Owners hereby collectively agree that the members of the Architecture Committee shall be indemnified and held harmless for any liability, damages, or other obligation (including reasonable attorneys' fees) resulting from the reasonable and prudent exercise of their duties as members of the Architecture Committee as specified in this Article VII.

## **VIII.**

### **Mortgage Provisions**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws notwithstanding any other provisions contained therein.

**8.01 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such requestor and the street address of the Lot to which its interest relates, thereby becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of the Property or that affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder when such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration or the Bylaws relating to such Lot or the Owner that is not cured within sixty (60) days.

Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under this Declaration or the Bylaws that is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Holders.

**8.02 Special Provision.** Unless at least sixty-seven percent (67%) of the Eligible Holders and voting Members representing at least sixty-seven percent (67%) of the total Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area that the Association owns directly or indirectly. The granting of easements for public utilities or other similar purposes consistent with the intended uses of the Common Area shall not be deemed a transfer within the meaning of this subsection;

(b) Change the method of determining the obligations, Assessments, dues, or other charges that may be levied against an Owner of a Lot;

(c) By act or omission change, waive, or abandon the Subdivision Map or this Declaration or change, waive, or abandon any scheme of regulations or enforcement relating to architectural design, exterior appearance, or maintenance of the Lots and the Common Area. The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision;

(d) Fail to maintain insurance as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums of property insurance policies, or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**8.03 Other Provisions for First Mortgages.** To the extent possible under Nevada law:

(a) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(c) Any election to terminate the Association other than for the causes described in subsection 8.03(b) shall require the approval of the Eligible Holders on Lots to which at least sixty-seven percent (67%) of the votes of the Lots subject to the mortgages held by such Eligible Holders are allocated.

**8.04 No Priority.** No provision of the Declaration or the Bylaws gives or should be construed as giving any Owner or another party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

**8.05 Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**8.06 Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without the approval of the Owners, may Record an amendment to this Article to reflect such changes.

**8.07 Applicability.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Nevada law for any of the acts set out in this Article.

**8.08 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of such Mortgagee's receipt of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## IX.

### Annexation

**9.01 Annexation of Additional Property by Association.** Upon the approval of two-thirds (2/3) or more of the Members of the Association, the owner of any real property who desires to subject that property to the covenants, conditions, and restrictions of this Declaration and subject that property to the jurisdiction of the Association may Record a Declaration of Annexation, which shall extend the covenants, conditions, and restrictions of this Declaration to such property.

**9.02 Annexation by Declarant.** If within seven (7) years of the date of the recording of this Declaration in the Official Records of the Clark County Recorder Declarant desires to develop additional phases in the Annexable Area, such additional phases or any portion thereof may be added to the Property, be subjected to this Declaration, and be included within the jurisdiction of the Association by action of Declarant without the consent of the Members or Eligible Holders. All Common Area Improvements in each phase of the Annexable Area will be substantially completed prior to annexation. Improvements constructed or located in the Annexable Area shall be consistent in terms of quality of construction and architectural design with the Improvements located elsewhere on the Property.

**9.03 Procedure for Annexation.** Any annexation may be accomplished by the Recording of a Declaration of Annexation, which shall state that Owners of Lots in the Annexable Area shall also be Members. At the time of Recording of the Declaration of Annexation, Declarant shall also by deed or assignment, as the case may be, transfer to the Association the Association Property in the area being annexed. The obligation of an Owner to pay Assessments or fees to the Association and the right of an Owner to exercise voting rights in the Association in any Annexable Area shall not commence until both of the following occur: (a) such portion of the Annexable Area containing the Lot owned by the Owner 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 of a Lot by Declarant to an Owner other than Declarant in that particular portion of the Annexable Area.

**9.04 Deannexation.** Declarant may delete all or any portion of the phase of development from coverage of this Declaration and the jurisdiction of the Association so long as Declarant is the owner of all of that phase and provided that:

(a) the Notice of Deannexation is Recorded in the same manner as the applicable Declaration of Annexation was Recorded;

(b) Declarant has not exercised any rights to vote with respect to any portion of such phase;

(c) Assessments have not yet commenced with respect to any portion of such phase;

(d) no Lot has been sold in such phase to a member of the general public; and

(e) the Association has not made any expenditures or incurred any obligation respecting any portion of such phase.

## X.

### General Provisions

**10.01 Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until the date fifty (50) years hereafter, unless amended as herein provided. After the date fifty (50) years hereafter, this Declaration, including all such covenants, conditions, and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by at least two thirds (2/3) of the Owners and recorded in the Official Records of the County Recorder of Clark County, Nevada.

**10.02 Resale of Lots.** The seller of any Lot shall furnish to the purchaser before execution of any contract for the sale of the Lot or otherwise before conveyance:

(a) a copy of this Declaration, the Articles, Bylaws, and Rules and Regulations;

(b) a statement setting forth the amount of the annual Assessments for common expenses and any unpaid Assessment of any kind currently due from the selling Owner; and

(c) a copy of the current operating budget of the Association.

The selling Lot Owner shall also at such time notify the Association of the proposed sale and provide the Association with the name and address of the new Owner and the proposed date of sale. Nothing in this Section 10.02 shall be construed to require any approval by the Association of the sale of any Lot.

### **10.03 Amendment.**

(a) **Majority Vote.** Except as provided in subsection 10.03(c), no amendment of this Declaration shall be effective unless adopted by a majority of the Members. Notwithstanding the foregoing, the consent of sixty-seven percent (67%) of the Members entitled to vote and of Declarant, so long as the Declarant owns any land subject to this Declaration, and the approval of Eligible Holders on Lots to which at least fifty-one percent

(51%) of the votes of Lots subject to a Mortgage shall be required to materially amend any provisions of this Declaration, the Bylaws, Articles, or to add any material provisions thereto that establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) Assessments, Assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Property;
- (vii) expansion or contraction of the Property or the annexation or withdrawal of real property to or from the jurisdiction of the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any restrictions on an Owner's right to sell or transfer its Lot;
- (xi) establishment of self-management by the Association after professional management has been required by an Eligible Holder;
- (xii) any provisions in this Declaration, the Bylaws, or Articles that are for the express benefit of Eligible Holders, guarantors, or insurers of first Mortgages on Lots;
- (xiii) reallocation of interests in the Common Area; or
- (xiv) convertibility of Lots into Common Area or vice versa.

(b) Board Amendment. Notwithstanding anything herein to the contrary, the Board may unilaterally amend this Declaration to comply with the Act, as the Act may be amended from time to time.

(c) Recording of Amendment. Every amendment of this Declaration must be recorded in the Official Records of the Clark County Recorder, and no amendment of this Declaration shall be effective until executed and so Recorded. Every amendment must

be indexed in the grantee's index in the name of the Association and in the grantor's index in the name of the party executing the amendment. Every amendment of this Declaration must be prepared, executed, recorded, and certified on behalf of the Association by the officer of the Association designated in the Bylaws for that purpose, or in the absence of such designation, by the President of the Association.

(d) Persons Entitled to Amend. This Declaration may be amended in accordance with NRS §§ 116.2109, 116.2110 by Declarant for the purpose of exercising any developmental rights as set forth in this Declaration.

(e) Restrictions on Amendment. Except to the extent expressly permitted or required by the provisions of the Act, no amendment may change the boundaries of any particular Lot, the allocated interests of a particular Lot, or the uses to which a particular Lot is restricted in the absence of the consent of the Owner of the Lot affected and the consent of a majority of the Owners of the remaining Lots. No action to challenge the validity of an amendment adopted by the Association pursuant to NRS § 116.2117 may be brought more than one (1) year after the amendment is recorded.

(f) Declarant Amendment. Notwithstanding any provision of this Declaration to the contrary, for so long as Declarant owns any portion of the Property, but no later than five (5) years from Recordation of this Declaration, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to correct technical errors, for clarification, and to conform this Declaration to the requirements of the City of North Las Vegas, the Veterans Administration, the Department of Housing and Urban Development, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, FNMA, or GNMA.

(g) Delivery of Amendments to Owners. If any change is made to this Declaration or any of the other governing documents of the Association, the Secretary of the Association shall, within thirty (30) days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner, a copy of the change that was made.

#### **10.04 Enforcement and Nonwaiver.**

(a) Right of Enforcement. Subject to NRS Chapter 38 and except as otherwise provided herein, any Owner (at its own expense), Declarant, and the Board shall have the right to enforce, by any proceeding at law or in equity and including arbitration proceedings and other forms of mediation, all of the restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration against any property within the Property and the Owners thereof. Such right of enforcement shall include both damages for and injunctive relief against the breach of any such provision. The right of any Owner to so enforce such provisions shall be equally applicable without

regard to whether the property (or other interest) of the Owner seeking such enforcement or the property (or other interest) whereon or with respect to which a violation of such provision is alleged is initially set forth on Exhibit "A" or is hereafter subjected to this Declaration pursuant to Article IX hereof.

(b) Violation as a Nuisance. Every act or omission by which any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at its own expense), by Declarant, or by the Board, whether or not the relief sought is for negative or affirmative action. However, only Declarant, the Board, and the duly authorized agents of either of them may enforce by self-help any of the provisions of this Declaration and then only if such self-help is preceded by reasonable notice to the Owner in question.

(c) Violation of Law. Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

(e) Nonwaiver. The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision herein.

(f) Attorneys' Fees. In the event the Board engages legal counsel or takes any legal action, including, but not limited to, arbitration proceedings pursuant to NRS Chapter 38, to enforce the provisions of this Declaration, it shall be entitled to its costs, including reasonable attorneys' fees, incurred in connection therewith.

**10.05 Notices.** Any notice or communication to be given under the terms of this Declaration shall be in writing and shall be personally delivered or sent by facsimile, overnight delivery, or registered or certified mail, return receipt requested. Notice shall be effective: (a) if personally delivered, when delivered; (b) if by facsimile, on the day of transmission thereof on a proper facsimile machine with confirmed answerback; (c) if by overnight delivery, on the day after delivery thereof to a reputable overnight courier service; and (d) if mailed, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid. Notices shall be addressed to the Person at the address given by such Person to the Association for the purpose of service of notices or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such Person to the Association.

#### **10.06 Construction.**



(a) Restrictions Severable. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(b) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

(c) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the Sections or Articles hereof.

(d) Liberal Construction. It is the intention of Declarant that this Declaration be liberally construed to promote the purpose of a well-planned community, reserving to Declarant the rights necessary to develop the Property and to insure the integrity of the interrelated land uses.

**10.07 State Law**. The provisions of this Declaration shall be governed and interpreted according to the laws of the State of Nevada.

**10.08 Priorities, Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

**10.09 Severability.** The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one (1) provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

Declarant has executed this Declaration this 3 day of June, 2004.

**DECLARANT**

Greystone Nevada, LLC,  
a Nevada limited liability company

By: [Signature]

(Signature)

Name: Tim Kent

(Print Name)

Title: President

(Print Title)

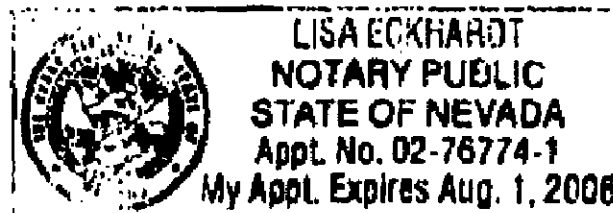
STATE OF NEVADA )

) ss:

COUNTY OF CLARK )

On the 3 day of June, 2004, before me, a Notary Public in and for said County and State, personally appeared Tim Kent, known to me to be the President of Greystone Nevada, LLC, a Nevada limited liability company, and who acknowledged to me that he/she executed the within instrument.

[Signature]  
Notary



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

**LOTS FIVE (5) THRU EIGHT (8) INCLUSIVE IN BLOCK "A"; LOTS ONE HUNDRED FOURTY-NINE (149) THRU ONE HUNDRED SIXTY-EIGHT (168) INCLUSIVE IN BLOCK "B"; LOTS ONE HUNDRED SEVENTY-SEVEN (177) THRU ONE HUNDRED EIGHTY-EIGHT (188) INCLUSIVE IN BLOCK "C" AND COMMON ELEMENT LOTS 1A, 1B, 1C, 1D, 1E AND ALL PRIVATE DRIVES AS SHOWN ON THE FINAL MAP OF ANTELOPE - UNIT 1 (ACOMMON 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.**

USB00057  
ADD118

**EXHIBIT "B"**

**ANNEXABLE PROPERTY**

**LOTS ONE (1) THRU FOUR (4) INCLUSIVE IN BLOCK "A"; LOTS NINE (9) THRU FIFTY (50) INCLUSIVE IN BLOCK "A"; LOTS ONE HUNDRED TWENTY-ONE (121) THRU ONE HUNDRED FORTY-EIGHT (148) INCLUSIVE IN BLOCK "B"; LOTS ONE HUNDRED EIGHTY-NINE (189) THRU TWO HUNDRED TWELVE (212) INCLUSIVE IN BLOCK "C"; LOTS TWO HUNDRED THIRTEEN (213) THRU TWO HUNDRED FORTY-FOUR (244) INCLUSIVE IN BLOCK "D" AND LOTS TWO HUNDRED FORTY-FIVE (245) THRU TWO HUNDRED FIFTY-TWO (252) INCLUSIVE IN BLOCK "E" 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.**

USB00058  
ADD119

**Exhibit "C"**

**Site Development Plan**

1-11-13 10:40:00 AM 10/15/2016 10:40:00 AM

USB00059  
ADD.120



20040709-0004842

Fee: \$17.00  
07/09/2004 13:52:45 T20040053969  
Req: NORTH AMERICAN TITLE COMPANY  
Frances Deane  
Clark County Recorder Pgs. 4

APN: 125-18-112-005 4th 02

Recording requested by, and 079 4th 026  
when recorded return to: 107 4th 118

Santoro, Driggs, Walch,  
Kearney, Johnson & Thompson  
400 South Fourth Street  
Suite 300  
Las Vegas, Nevada 89101  
Attn: David G. Johnson, Esq.

**FIRST AMENDMENT TO DECLARATION  
OF RESTRICTIONS AND GRANT OF EASEMENTS FOR  
ANTELOPE HOMEOWNERS' ASSOCIATION**

By this First Amendment (this "First Amendment") to the Declaration of Restrictions and Grant of Easements for Antelope Homeowners' Association (the "Declaration"), recorded on June 23, 2004 as Document Number 0002016 in Book 20040623 of the Official Records of Clark County, Nevada, Greystone Nevada, LLC, a Delaware limited liability company ("Declarant") hereby amends the Declaration as follows.

**Recitals**

A. Exhibit "C" was inadvertently left off of the Declaration when it was recorded. Declarant desires to amend the Declaration as set forth herein, in order to rectify this oversight.

Now therefore, Declarant hereby amends the Declaration as follows:

1. Exhibit C. The current Exhibit C attached to the Declaration shall be replaced in its entirety with the Exhibit C attached to this First Amendment.

2. No Other Amendment. Except as modified hereby, the Declaration shall remain in full force and effect as written.

DATED this 7<sup>th</sup> day of July, 2004.

**DECLARANT**


GREYSTONE NEVADA, LLC,  
a Delaware limited liability company

By: Name: Jim KentTitle: President

USB00060  
ADD121

COUNTY OF CLARK )

Law Expert  
Notary Public

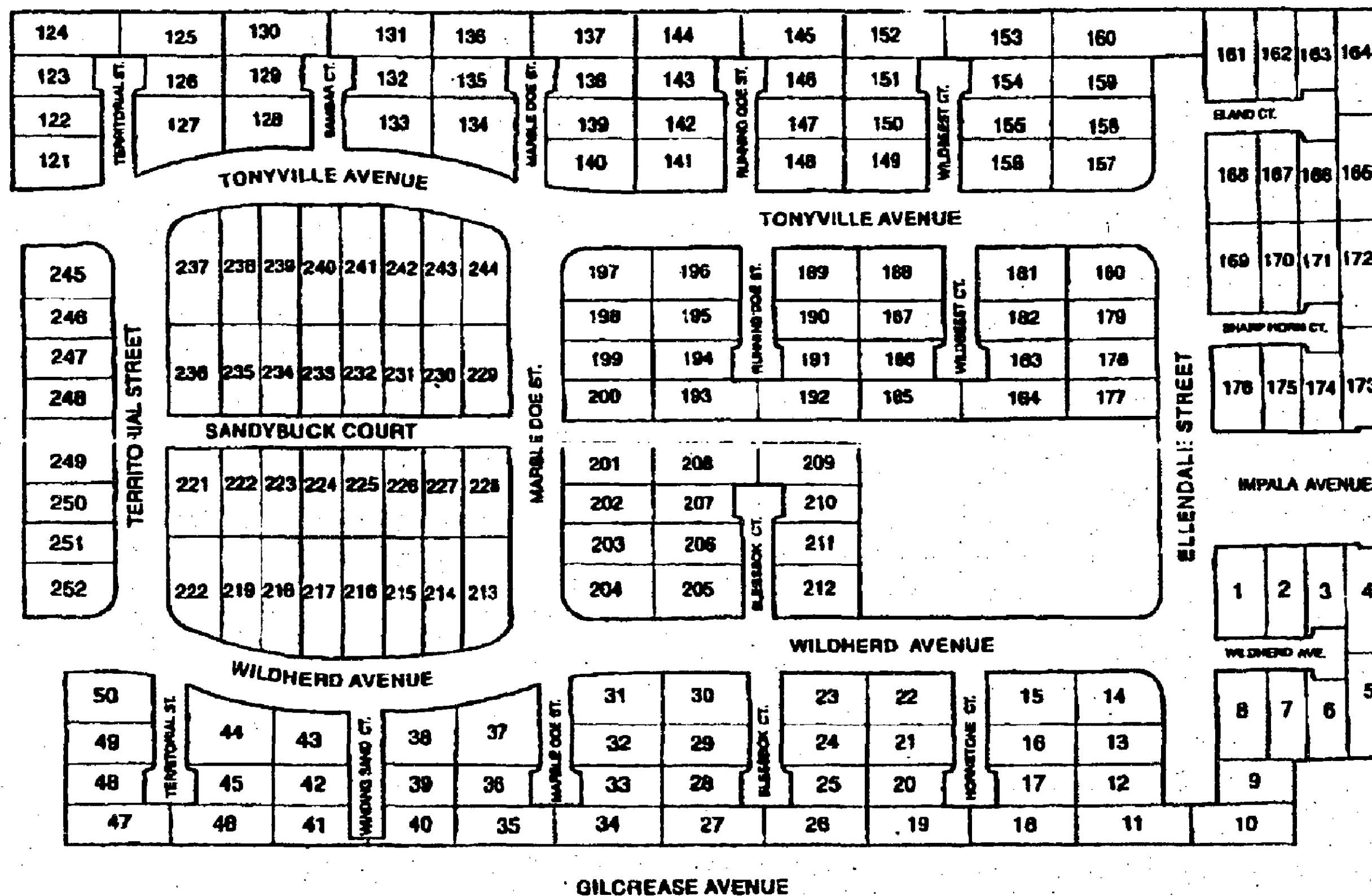
 LISA ECKHARDT  
NOTARY PUBLIC  
STATE OF NEVADA  
Appt. No. 02-75774-1  
My Appt. Expires Aug. 1, 2006

**Exhibit "C"**

**SITE DEVELOPMENT PLAN**

**[See Attached]**





3

20060914-0003739

APN: 125-18-112-005 thru 008  
079 thru 098  
107 thru 118

Fee: \$16.00  
N/C Fee: \$0.00  
09/14/2006 14:22:29  
T20060160395  
Requestor:  
NORTH AMERICAN TITLE COMPANY  
Charles Harvey, Acting LEX  
Clark County Recorder Pgs: 3

When Recorded Mail To:  
GOOLD, PATTERSON, ALES & DAY  
4496 S. PECOS RD  
LAS VEGAS, NEVADA 89121  
ATTN: MICHELLE D. BRIGGS, ESQ.

**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR ANTELOPE HOMEOWNERS' ASSOCIATION**

This Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association is made this 31st day of August, 2006 by Greystone Nevada, LLC, a Delaware limited liability company ("Declarant").

**RECITALS**

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association was recorded in the office of the Clark County Recorder on June 23, 2004 in Book No. 20040623, Instrument No. 0002016 and the First Amendment to the Declaration of Restrictions, and Grant of Easements for Antelope Homeowners' Association was recorded in the office of the Clark County Recorder on July 9, 2004, in Book 20040709, Instrument No. 0004842 (collectively, the "Declaration");

WHEREAS, Declarant desires to amend the Declaration to correct a scrivener's error relating to the description of the Annexable Area set forth on Exhibit B;

WHEREAS, pursuant to Section 10.03(f) of the Declaration, the Declarant may amend the Declaration within five (5) years from the recording date of the Declaration so long as Declarant owns any portion of the Property to correct an error;

WHEREAS, Declarant is an owner of a portion of the Property;

NOW THEREFORE, the Declaration is hereby amended, changed, and modified as follows.

1. Exhibit B. Exhibit "B" of the Declaration shall be amended to include the following:

ALL THAT REAL PROPERTY LOCATED WITHIN THE BOUNDARY LINES OF ANTELOPE-UNIT 2 (A COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 116, PAGE 20 OF PLATS IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY NEVADA

2. Exhibit C. Exhibit "C" of the Declaration shall be amended to include the Site Development Plan set forth on Exhibit "C" attached hereto.

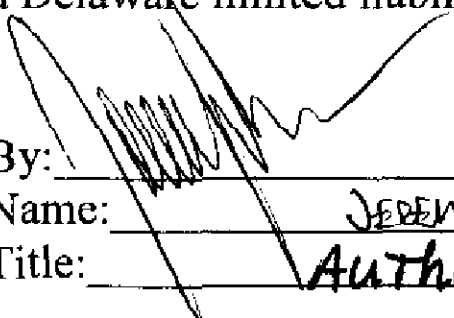
3. Defined Terms. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to such terms in the Declaration.

4. Priorities; Inconsistencies. If there are conflicts or inconsistencies between this Amendment and the Declaration, the terms and provisions of this Amendment shall prevail. Except as specifically modified by this Amendment, each and every provision of the Declaration shall remain in full force and effect.

Dated this 31 day of August, 2006.

**Declarant:**

Greystone Nevada, LLC  
a Delaware limited liability company

By:   
Name: JEREMY PARNES  
Title: AUTHORIZED AGENT

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on August 31, 2006, by Jeremy Parness, the Authorized Agent of Greystone Nevada, LLC, a Delaware limited liability company.

  
Notary Public

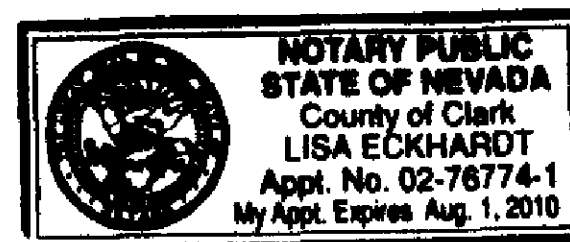
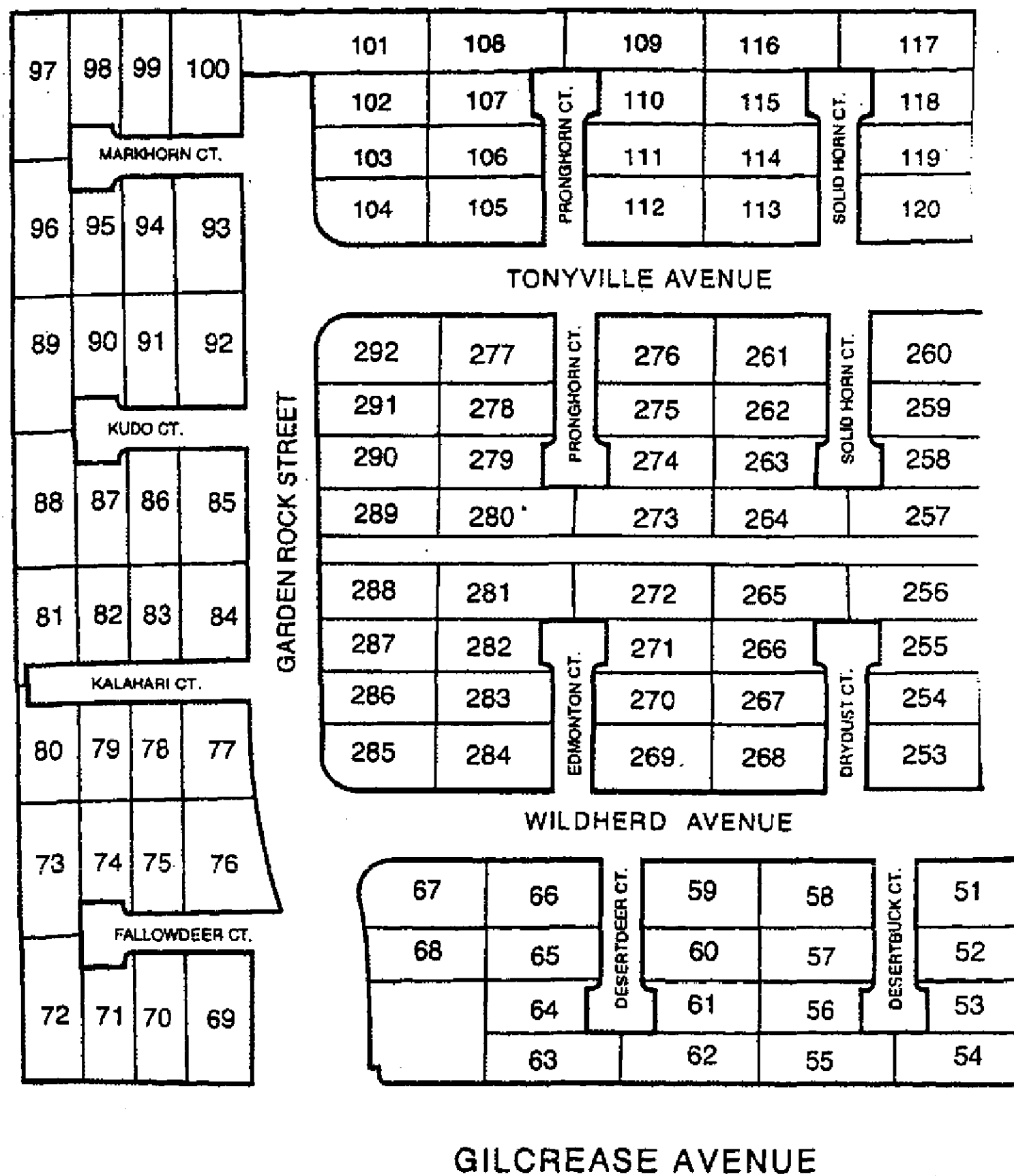



EXHIBIT "C"  
SITE DEVELOPMENT PLAN



USB00066  
ADD127

  
 20050523-0004227
APN: 125-18-112-069ESCROW NUMBER: NV204-4278984RPTT: 1,356.60Recording Requested by:  
NORTH AMERICAN TITLE COMPANY

Please mail tax statements to:

When recorded please mail to:

Henry E. Ivy  
1868 Marble Doc  
San Vegas, NM 89149 33
Fee: \$17.00 RPTT: \$1,356.60  
N/C Fee: \$0.0005/23/2005 14:40:47  
T20050095701Requestor:  
NORTH AMERICAN TITLE COMPANYFrances Deane ADF  
Clark County Recorder Pas. 4**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That

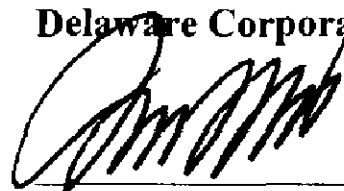
**GREYSTONE NEVADA LLC., A DELAWARE LIMITED LIABILITY COMPANY**

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.

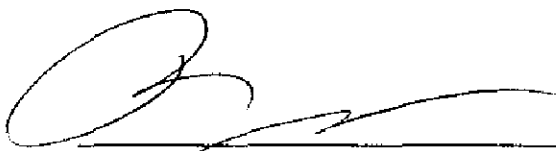
Together with all tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversions, remainder and remainders, rents, issues of profits thereof.

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**


by: Tim Kent, Authorized Agent

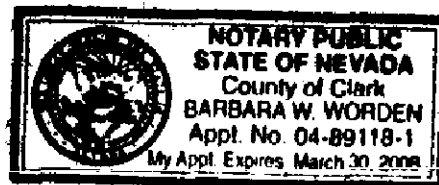
State of Nevada  
County of Clark

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 33  
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**

\$ 265,999.00

Deed in Lieu of Foreclosure Only (value of property) ( \_\_\_\_\_ )

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: Henry E. Joffe

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 Escrow #: NV 204-4275 gey

Address: 4955 S. Durango Drive Ste 111

City: Las Vegas 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.**



Inst#:200908260000352 Fees:\$65.00 N/C Fee:\$0.00 08/26/2009 08:00:15 AM  
Receipt#:31512 Requestor:FIDELITY NATIONAL DEFAULT SOLUTIONS Recorded By:JFK  
Pgs:2 DEBBIE CONWAY CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**  
**WHEN RECORDED MAIL TO:**  
**RECONTRUST COMPANY**  
**2380 Performance Dr, TX2-985-07-03**  
**Richardson, TX 75082**  
**Attn:**  
**TS No. 09-0101143**  
**Title Order No. 090498933**

**APN No. 125-18-112-069**

---

**NEVADA IMPORTANT NOTICE**  
**NOTICE OF DEFAULT/ELECTION TO SELL UNDER DEED OF TRUST**

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, N.A., is the duly appointed Trustee under a Deed of Trust dated 05/13/2005, executed by HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP as Trustor, to secure certain obligations in favor of UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC as beneficiary recorded 05/23/2005, as Instrument No. 0004228 (or Book 20050523, Page ) of Official Records in the Office of the County Recorder of Clark County, Nevada. Deed of Trust Re-Recorded on 05/23/2005, Instrument No.: 0004228, Book: 20050523, Page: \_\_\_\_ Said obligation including ONE NOTE FOR THE ORIGINAL sum of \$212,750.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 02/01/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES, PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY, INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 06/01/2035 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

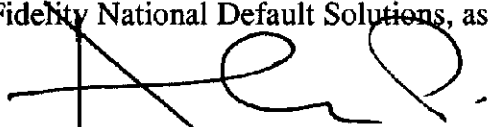
**NOTICE**

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.

Instrument # 200908260000352 Page: 2 End of Document

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:  
BAC Home Loans Servicing, LP, c/o RECONTRUST COMPANY, 2380 Performance  
Dr.,TX2-985-07-03, Richardson, TX 75082, PHONE: (800) 281-8219. Should you wish to  
discuss possible options for loan modification, you may contact the Home Retention Division at  
1-800-669-6650. If you meet the requirements of Section NRS 107.085, you may request  
mediation in accordance with the enclosed Election/Waiver of Mediation Form and instructions.  
You may also contact the Nevada Fair Housing Center at 1-702-731-6095 or the Legal Aid  
Center at 1-702-386-1070 for assistance.

RECONTRUST COMPANY, as agent for the Beneficiary  
By: Fidelity National Default Solutions, as Agent

  
By: LSI Title Agency, Inc., an Illinois Corporation, as Agent  
**Anselmo Pagkaliwangan**

State of: California  
County of: Orange

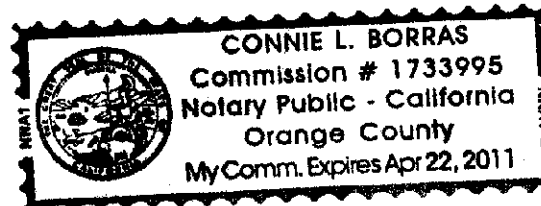
On 8/25/2009, before me, Connie L. Borrás, Notary  
Public, personally appeared Anselmo Pagkaliwangan, who proved to me on the basis of satisfactory  
evidence to be the person whose name is subscribed to the within instrument and acknowledged to me  
that he executed the same in his authorized capacity and that by his signature on the instrument the  
person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Connie L. Borrás (Seal)

**Connie L. Borrás**



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

204-04275624

[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

Pas: 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 Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

VMP -6(NV) (0307)

Page 1 of 15

Initials: HEI. FSD

VMP Mortgage Solutions (800)521-7291

Loan # 0006650683

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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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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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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.

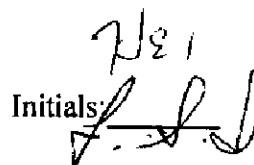
**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if 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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Initials



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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.

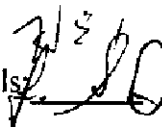
All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and 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.

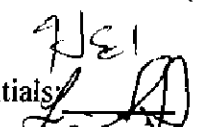
Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**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).

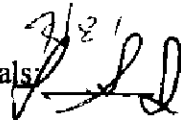
As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, 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.

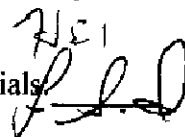
If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary 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.

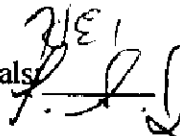
**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained 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

**Loan # 0006650683**

A1918


BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

**Witnesses:**

---

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

---

 (Seal)  
**FREDDIE S IVY** -Borrower

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

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

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

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

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

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

**FORM -6(NV) (0307)**

Page 14 of 15

Form 3029 1/01



Loan # 0006650683

A1918

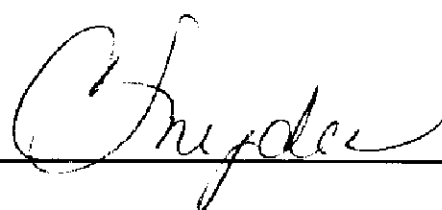
STATE OF NEVADA

COUNTY OF *Clark*

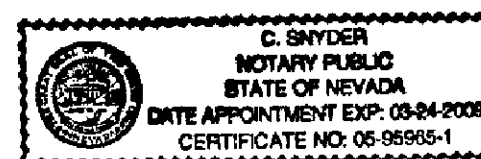
This instrument was acknowledged before me on  
**HENRY E IVY, FREDDIE S IVY**

*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

Initials: *HEI*  
*FSI*

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

00275MU 04/02  
Revision 02/25/04

Loan # 0006650683

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)  
HENRY E IVY Borrower

(Seal)

---

**FREDDIE S IVY** Borrower

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

 -7R (0411)

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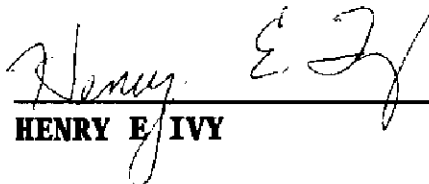
Initials: \_\_\_\_\_

Form 3150 1/01

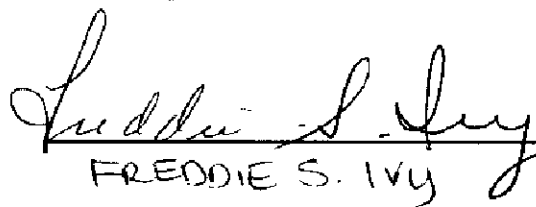
Loan # 0006650683

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

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

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-Borrower

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(Seal)  
-Borrower

VMP-7R (0411)

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Form 3150 1/01



20050523-0004229

Fee: \$29.00  
N/C Fee: \$0.00

05/23/2005 14:40:47  
T20050095701

Requestor:  
NORTH AMERICAN TITLE COMPANY

Frances Deane ADF  
Clark County Recorder Pas: 13

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

204-042756RY  
Loan # 0006650782

**DEED OF TRUST**

D076N1NV

MIN 100059600066507828

THIS DEED OF TRUST is made this **13th** day of **May, 2005**,  
among the Grantor, **HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE**

*with rights of Survivorship*

(herein "Borrower"),

**Stewart Title Company**

(herein "Trustee"), and the Beneficiary,

Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. **Universal American Mortgage Company, LLC, a Florida limited liability company**

existing under the laws of **Florida**  
**700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139**

, ("Lender") is organized and  
, and has an address of

**NEVADA- SECOND MORTGAGE-1/80-FNMA/FHLMC UNIFORM INSTRUMENT WITH MERS**

Form 3829 Amended 2/04

VMP-76N(NV) (0402)

Page 1 of 8

Initials: *[Signature]*

VMP Mortgage Solutions

(800)521-7291

Loan # 0006650782

D076N1NV

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of **CLARK**, State of Nevada:  
**\*\* SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE APART HEREOF.**

which has the address of **7868 MARBLE DOE STREET**, **LAS VEGAS**,  
[Street] [City]  
Nevada **89149** (herein "Property Address");  
[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property". Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note dated **May 13, 2005** and extensions and renewals thereof (herein "Note"), in the principal sum of U.S. \$ **53,150.00**, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on **June 01, 2020**; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

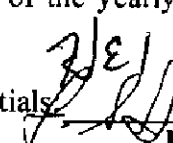
Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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

- 1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note. **\*\* SEE ATTACHED BALLOON RIDER**
- 2. Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and

 -76N(NV) (0402)

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Initials  Form 3829

Loan # 0006650782

D076N1NV

assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such a holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

**3. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

**4. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

**5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

 -76N(NV) (0402)

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Initials: 

Form 3829

Loan # 0006650782

D076N1NV

**6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**7. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

**8. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

**10. 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 Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

**12. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**13. Governing Law; Severability.** The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the

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Loan # 0006650782

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provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**14. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

**15. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**16. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust.

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 delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

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

**17. Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust 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 breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a 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 the Property or some part thereof is located. Lender shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other 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 lapse of such time as may be 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 such order as Trustee may determine. 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 Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

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Initials: 

Form 3829

Loan # 0006650782

D076N1NV

**18. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of: (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assume that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**19. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

**20. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**21. Substitute Trustee.** Lender, at Lender's 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 the Trustee herein and by applicable law.

**22. Waiver of Homestead.** Except to the extent prohibited by law, borrower waives all right of homestead exemption in the Property.

**23. Assumption Fee.** Lender may charge an assumption fee of U.S. \$ **0.00**.  
☒ **PUD Rider** ☐ **Condo Rider**

**REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

 76N(NV) (0402)

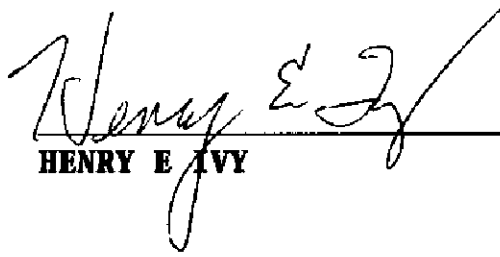
Page 6 of 8

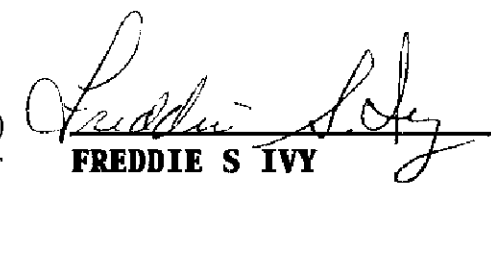
Initials  Form 3829

Loan # 0006650782

D076N1NV

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

 (Seal)  
HENRY E IVY -Borrower

 (Seal)  
FREDDIE S IVY -Borrower

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

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

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

Loan # 0006650782

D076N1NV

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

 -76N(NV) (0402)

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Initials: *HEI*  
*FLD* Form 3829



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 # 0006650782

3150/FNMA

MIN # 100059600066507828

## 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 # 0006650782

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.

 -7R (0411)

Page 2 of 3

Initials: 

Form 3150 1/01

Loan # 0006650782

3150/FNMA


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

	(Seal)		(Seal)
HENRY E IVY	-Borrower	FREDDIE S IVY	-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

 -7R (0411)

Page 3 of 3

Form 3150 1/01

\_\_\_\_\_[Space Above This Line For Recording Data]\_\_\_\_\_  
LOAN # **0006650782** **C06D077**

**BALLOON PAYMENT RIDER**

Borrower's Name: **HENRY E IVY**  
**FREDDIE S IVY**

Property Address: **7868 MARBLE DOE STREET**  
**LAS VEGAS, NEVADA 89149**

Loan Number: **0006650782**

THE TERMS OF THE LOAN CONTAIN PROVISIONS WHICH WILL REQUIRE A BALLOON PAYMENT AT MATURITY.

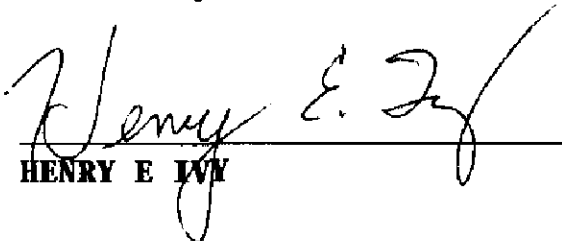
THE AMORTIZATION OF PRINCIPAL AND INTEREST IS BASED ON A THIRTY YEAR FACTOR AND WOULD AMORTIZE THE PRINCIPAL LOAN ON A **30** YEAR SCHEDULE, BUT SINCE THE FULL BALANCE IS PAYABLE IN **180** MONTHS, A BALLOON PAYMENT OF **\$43,243.19** WILL BE REQUIRED ON **June 01, 2020**

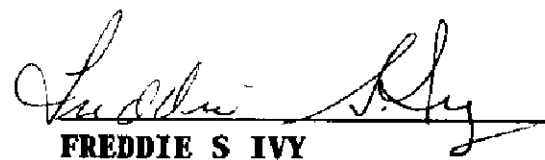
This loan is payable in full at the end of **Fifteen** years. You must repay the entire principal balance of the loan and the unpaid interest then due. The lender is under no obligation to refinance the loan at that time. You will therefore be required to make payment out of other assets you may own, or you will have to find a lender willing to lend you the money at the prevailing market rate, which may be considerably higher or lower than the rate on this loan.

If you refinance this loan at maturity, you may have to pay some or all closing costs normally associated with a new loan, even if you obtain refinancing from the same lender.

I/We hereby acknowledge receipt of the above notice relating to the balloon payment provision of this loan, which have also been explained to me/us.

**DATE: May 13, 2005**

  
\_\_\_\_\_  
**HENRY E IVY**

  
\_\_\_\_\_  
**FREDDIE S IVY**

Balloon Payment Rider (2nds) - (02/90) MFCD9611-  
GRPTBALR.UFF

ISSUED 09/07/00

  
20051020-0003872

Fee: \$39.00

N/C Fee: \$25.00

10/20/2005

14:14:23

T20050193551

Requestor:

UNIVERSAL AMERICAN MORTGAGE COMPANY

Frances Deane

ARO

Clark County Recorder

Page 26

Parcel Number: 125-18-112-069Deed of Trust

(Type of Document)

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

RE - RECORDED



Recording requested by:

Donna Murphy

Return to:

Attn.: Donna Murphy

Universal American Mortgage Company

311 Park Place Blvd., Suite 500

Clearwater, FL 33759

Reason for Re-Recording:

To add corrected Adjustable Rate Rider

This page added to provide additional information required by NRS 111.312,  
Sections 1-2 (Additional recording fee applies)

This cover must be typed or printed clearly in black ink only

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

204-042756RY

[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

ADF

Clark County Recorder

Pas: 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***\*\*RE-RECORD TO ADD CORRECTED ADJUSTABLE RATE RIDER\*\***

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 Mae/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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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**

which currently has the address of

**7868 MARBLE DOE STREET**

[Street]

**LAS VEGAS**[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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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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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.

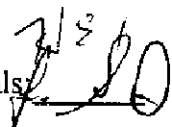
All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and 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).

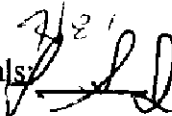
As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, 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.

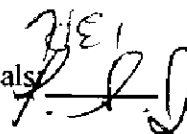
**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained 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**

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Initials: 

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**Loan # 0006650683**

A1918

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

**Witnesses:**

\_\_\_\_\_

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

[illegible]

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

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

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

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

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

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

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

**FORM -6(NV) (0307)**

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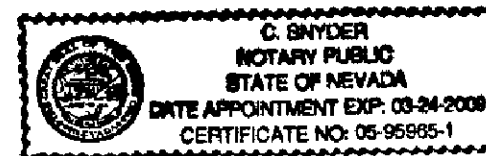
Form 3029 1/01

Loan # 0006650683

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STATE OF NEVADA  
COUNTY OF*Clark*This instrument was acknowledged before me on  
**HENRY E IVY, FREDDIE S IVY***5/18/05*

by

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

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Initials: *HEI*

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

Doc ID: C06D054

**ADJUSTABLE RATE RIDER****(LIBOR 6 -Month Index (As Published In The Wall Street Journal))**

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 month(s) 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 6 month U.S. dollar-denominated deposits in the London market as published by The Wall Street Journal, "Money Rates" table. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs 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.

(i) Interest-Only Payment Period. The "interest-only payment period" is the period from the date of this Note up to but not including July 1, 2015. For the monthly payments due during the interest-only payment period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

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(LIBOR 6

-Month Index (As Published In The Wall Street Journal)

Page 1 of 3

HO458MU 04/02 (Rev.02/04)  
Issued: 5/2/02  
Revised: 05/24/04

Loan #: 0006650683

Doc ID: C06D054

**(ii) Amortization Payment Period.** The "amortization payment period" is the period after the interest-only period. For the monthly payments due during the amortization payment period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal balance 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**

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 THE 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 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. 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.

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HO458MU 04/02 (Rev.02/04)

(LIBOR 6

-Month Index (As Published In The Wall Street Journal)

Issued: 5/2/02

Revised 05/31/04

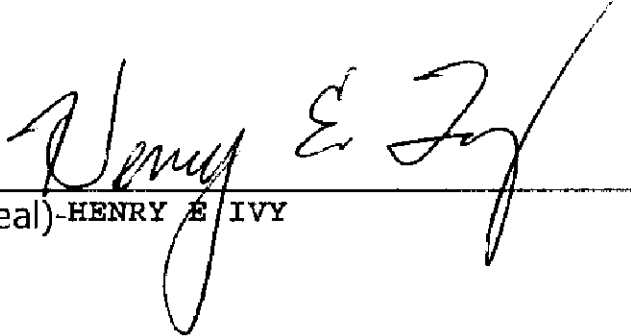


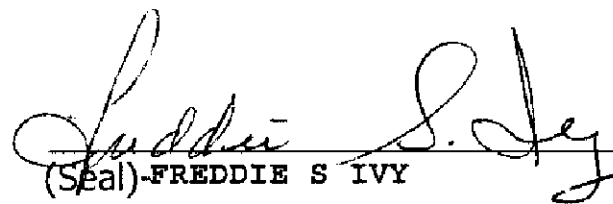
Loan #: 0006650683

Doc ID: C06D054

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.

  
(Seal)-HENRY E IVY

  
(Seal)-FREDDIE S IVY

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(Seal)-

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(Seal)-

\_\_\_\_\_  
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-Month Index (As Published In The Wall Street Journal)

HO458MU 04/02 (Rev.02/04)  
Issued: 5/2/02  
Revised 05/31/04

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.

Loan # 0006650683

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

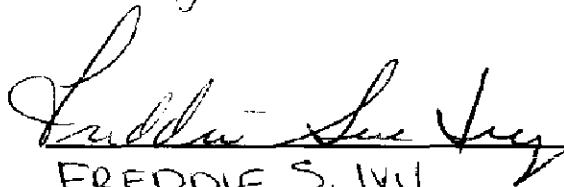
C06D057

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

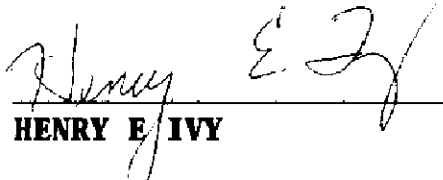
Initials: \_\_\_\_\_

Form 3150 1/01

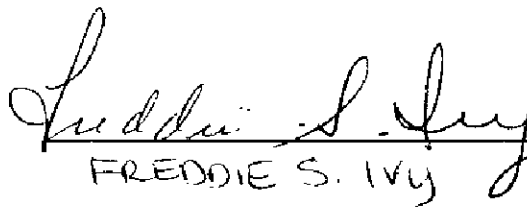
Loan # 0006650683

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

VMP-7R (0411)

Page 3 of 3

Form 3150 1/01

⑥-1

APN:125-18-112-069

WHEN RECORDED RETURN TO  
AND MAIL TAX STATEMENTS TO:  
Henry E. Ivy  
7868 Marbledoe Street  
Las Vegas, NV 89149-3740

Grant, Bargain, Sale Deed

Being re-recorded to correct vesting to show  
Henry E. Ivy and Freddie S. Ivy,  
husband and wife as joint tenants  
with rights of survivorship

This page added to provide additional information required by  
NRS 111.312 Sections 1-2  
(Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only

20061003-0004304

Fee: \$18.00 RPTT: EX#003  
N/C Fee: \$0.00

10/03/2006 14:45:05  
T20060172084

Requestor:  
NORTH AMERICAN TITLE COMPANY

Charles Harvey STN  
Clark County Recorder Pgs: 6

**RE-RECORDED**



APN: 125-18-112-069ESCROW NUMBER: NV204-427584RPTT: 1,356.60Recording Requested by:  
NORTH AMERICAN TITLE COMPANY

Please mail tax statements to:

When recorded please mail to:

Henry E. Ivy1668 Marble AveSan Vegas, NM 89149

33

**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.

\*\*\*\*\* AS JOINT TENANTS

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



by: Tim Kent, Authorized Agent



20050523-0004227

Fee: \$17.00 RPTT: \$1,356.60  
N/C Fee: \$0.0005/23/2005 14:40:47  
T20050095701Requestor:  
NORTH AMERICAN TITLE COMPANYFrances Deane ADF  
Clark County Recorder Pas. 4

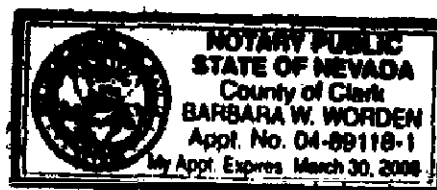
State of Nevada  
County of Clark

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 33  
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**

\$ 265,999.00

Deed in Lieu of Foreclosure Only (value of property)

( \_\_\_\_\_ )

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 J. Blackstead Capacity Authorized Agent

Signature Henry E. Jf 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: Henry E. Jf

Address: 7600 S. Primm Blvd #1095

City: LAS VEGAS

State: NEVADA Zip: 89139

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

Print Name: North American Title Company

Escrow #: NV 204-4275 gey

Address: 4955 S. Durango Drive Ste 111

City: Las Vegas

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.**

**RE-RECORDED**

## STATE OF NEVADA DECLARATION OF VALUE

### 1. Assessor Parcel Number(s):

- a) 125-18-112-069  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

### FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument# \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

### 2. Type of Property:

- a) ☐ Vacant Land  
b) ☒ Single Family Residence  
c) ☐ Condo/Townhouse  
d) ☐ 2-4 Plex  
e) ☐ Apartment Building  
f) ☐ Commercial/Industrial  
g) ☐ Agricultural  
h) ☐ Mobile Home  
i) ☐ Other

### 3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
Transfer Tax Value: \$ \_\_\_\_\_  
Real Property Transfer Tax Due: \$ \_\_\_\_\_

### 4. If Exemption Claimed:

- a) Transfer Tax Exemption, per NRS 375.090, Section: EXEMPT 3  
b) Explain Reason for Exemption: Re-recorded to Vesting to add rights of Survivorship  
5. Partial Interest: Percentage being transferred: \_\_\_\_\_%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_ Capacity Authorized Agent  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

### SELLER (GRANTOR) INFORMATION

(REQUIRED)

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

### BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Henry Juy  
Address: 7600 S. Rainbow # 1095  
City: Las Vegas  
State: NV Zip: 89139

### COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

### North American Title Company

4955 S. Durango Drive, Suite 111  
Las Vegas, NV 89113  
(702) 257-6282

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

4304

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

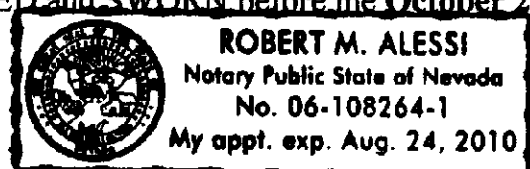
Alessi & Koenig, LLC on behalf of **Antelope Homeowners Association**

State of Nevada

County of Clark

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

(Seal)



(Signature)

NOTARY PUBLIC

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





Inst #: 201102170001289  
Fees: \$14.00  
N/C Fee: \$0.00  
02/17/2011 09:33:20 AM  
Receipt #: 680059  
Requestor:  
ALESSI & 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**

Inst #: 201108110003087  
Fees: \$14.00  
N/C Fee: \$0.00  
08/11/2011 09:59:58 AM  
Receipt #: 876604  
Requestor:  
ALESSI & 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 Jetic on behalf of Antelope Homeowners Association

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

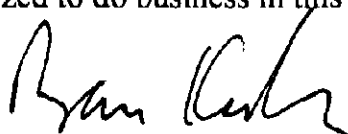
**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, 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

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

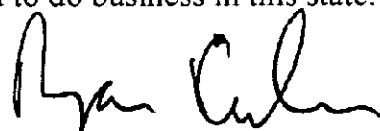
**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, 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

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&Koenig, LLC

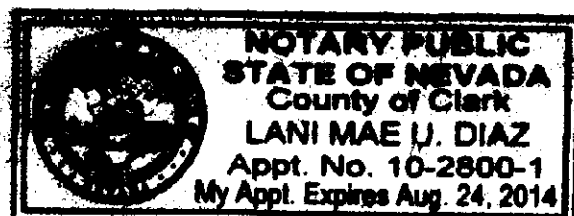
State of Nevada )  
 County of **Clark** )

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

Inst #: 201209200001210

Fees: \$17.00

N/C Fee: \$0.00

09/20/2012 08:03:54 AM

Receipt #: 1313788

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: BGN Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:

**THE ALESSI & KOENIG, LLC****9500 W. Flamingo Rd., Ste 205****Las Vegas, Nevada 89147****Phone: (702) 222-4033**A.P.N. **125-18-112-069**Trustee Sale No. **18842-7868****RELEASE OF NOTICE OF DELINQUENT ASSESSMENT LIEN**

In accordance with the provisions of Nevada Revised Statutes chapter 116.3116 et al., the Notice of Delinquent Assessment Lien, recorded by **Antelope Homeowners Association**, is released. Said lien was recorded on **November 12, 2009** in Book **20091112** as instrument number **0004474**, against the property legally described as **Lot 139 Block B**, as per map recorded in Book **115**, Pages **89** inclusive of maps recorded in the County recorder of **Clark County, Nevada**.

The owner(s) of record as reflected on the public record as of the date of Lien recordation is (was):

**HENRY E & FREDDIE S IVY**Property Address: **7868 Marbledoe Ct., Las Vegas, NV 89149**Dated: **September 6, 2012**

  
By: Naomi Eden of Alessi & Koenig, LLC on behalf of **Antelope Homeowners Association**

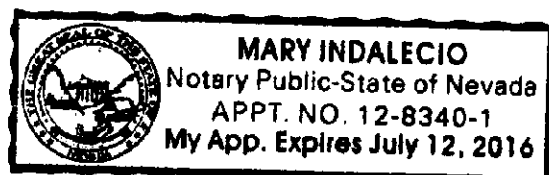
State of Nevada

County of Clark

On **September 6, 2012**, before me personally appeared Naomi Eden, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)



(Signature)

  
NOTARY PUBLIC

FIDELITY NATIONAL  
RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:  
Owner of Record  
7868 MARBLE DOE STREET  
LAS VEGAS, NV 89149

Inst #: 201301170002014  
Fees: \$18.00  
N/C Fee: \$0.00  
01/17/2013 02:56:05 PM  
Receipt #: 1463561  
Requestor:  
LSI TITLE AGENCY INC.  
Recorded By: GILKS Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

NVRES\_2011.11.0\_11/2011

TS No. 09-0101143

Title Order No. 090498933

APN No. 125-18-112-069

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**RESCISSION OF ELECTION TO DECLARE DEFAULT  
NEVADA**

NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N.A., Trustee for the Beneficiary does hereby rescind, cancel and withdraw the Notice of Default and Election to Sell hereinafter described, provided, however, that this rescission shall not be construed as waiving, curing, extending to, or affecting any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be made pursuant to such Notice of Default and Election to Sell, and it shall not in any way alter or change any of the rights remedies or privileges secured to Beneficiary and/or Trustee under such Deed of Trust, nor modify, nor alter in any respect any of the terms, covenants, conditions or obligations therein contained Said NOTICE OF DEFAULT AND ELECTION TO SELL under Deed of Trust specifically described therein was:

Recorded on 08/26/2009, as Instrument No. 200908260000352, in Book N/A, Page N/A, of Official Records of Clark County, Nevada.

The DEED OF TRUST affected by this notice recorded on 05/23/2005 as Instrument No. 0004228 in Book 20050523 Page and Re-Recorded on 05/23/2005, Instrument No.: 0004228, Book: 20050523, Page: \_\_\_\_\_, executed by HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP, as Trustor in Clark County, Nevada.



DATED: January 16, 2013

RECONTRUST COMPANY, N.A.

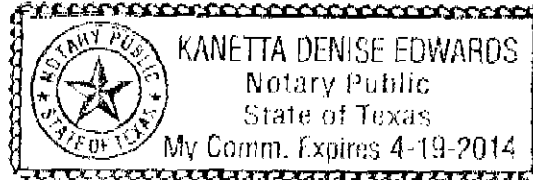
State of: Texas  
County of: TarrantBY: Nicole Hooten 1/16/13  
Nicole Hooten AVP

On 1-16-13 before me Kanetta Denise Edwards, personally appeared  
Nicole Hooten AVP, know to me (or proved to me on the oath of  
— or through —) to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Witness my hand and official seal.

Kanetta Denise Edwards

Notary Public's Signature



Inst #: 201306070001057

Fees: \$18.00

N/C Fee: \$0.00

06/07/2013 10:56:51 AM

Receipt #: 1646645

Requestor:

CAMCO

Recorded By: ECM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:  
Attn: Yvette Saucedo  
**Antelope**  
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** of CC&Rs recorded: **06/23/04**  
**Instrument No: 0002016 Book No: 20040623** County of CLARK, and any and all amendments or annexations of record there to.

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: SFR Investments Pool I LLC

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

Owner's mailing address: 5030 Paradise Rd. #B-214 Las Vegas, NV 89119-1225

**DELINQUENCY FOR ACCT #152514**

Total Amount due as of <b>06/05/13</b>	<b>\$5,415.00</b>
--	-------------------

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**

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

DATED: 6/5/13

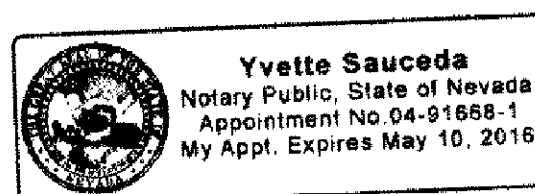
Brittney O'Connor  
Brittney O'Connor, HOA Accounting Clerk

STATE OF NEVADA  
COUNTY OF CLARK

On 6/6/13 before me, the undersigned, a Notary Public in and for said county, personally appeared, Brittney O'Connor 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.

Yvette Saucedo  
Yvette Saucedo, Notary Public



(3)

APN: 125-18-112-069

RECORDING REQUESTED BY:  
Wright, Finlay & Zak LLP  
5532 South Fort Apache Road, Suite 110  
Las Vegas, Nevada 89148

WHEN RECORDED MAIL TO:  
Ocwen Loan Servicing, LLC  
1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409

Inst #: 20141105-0003181  
Fees: \$19.00  
N/C Fee: \$0.00  
11/05/2014 04:01:44 PM  
Receipt #: 2211487  
Requestor:  
WRIGHT FINLAY & ZAK LLP  
Recorded By: LEX Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

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**REQUEST FOR NOTICE PURSUANT TO NRS 116.31168**

The undersigned, **UNIVERSAL AMERICAN MORTGAGE COMPANY**, is the Holder of the Note secured by Deed of Trust recorded May 23, 2005, as Book and Instrument Number 20050523-0004228 in the Recorder's Office, County of Clark, State of Nevada, which identified Henry E. Ivy and Freddie S. Ivy, husband and wife with rights of survivorship, as Borrower/Grantor, Stewart Title Company as the Trustee, and Universal American Mortgage Company as the Lender, as parties thereto.

Said Deed of Trust encumbers the real property commonly known as 7868 Marble Doe Street, Las Vegas, Nevada 89149, APN 125-18-112-069, which is legally described as follows:

**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).

As of the date of recording this Request for Notice, the name of the unit's owner is SFR Investments Pool 1 LLC.

**The undersigned hereby demands, in writing, all notices against said real property required to be mailed or recorded pursuant to NRS Chapters 116 and 107, including without limitation, any Notice of Delinquent Assessment, Notice of Default and Election to Sell, or Notice of Sale.**

This Request for Notice is directed to all common interest community/communities in which the subject real property is located, including, without limitation:

Antelope Homeowners' Association  
c/o Complete Association Management Company, LLC  
5980 South Durango Drive, Suite 131  
Las Vegas, Nevada 89113

The undersigned demands that written notice be sent to the following address:

UNIVERSAL AMERICAN MORTGAGE COMPANY  
c/o Ocwen Loan Servicing, LLC  
1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409

**THIS PORTION INTENTIONALLY LEFT BLANK**

In witness whereof the undersigned caused this instrument to be executed this 5th day of November, 2014.

WRIGHT, FINLAY & ZAK, LLP, as  
Attorneys for UNIVERSAL AMERICAN  
MORTGAGE COMPANY

Christopher L Benner  
(Signature)

Christopher L. Benner  
(Printed Name)

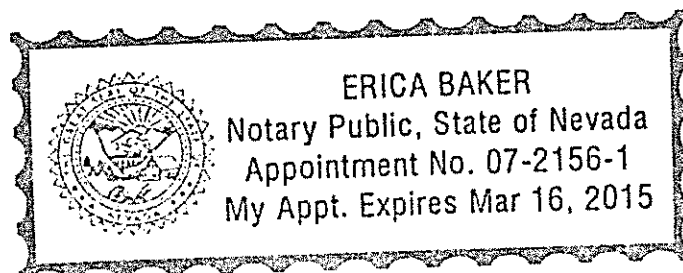
Attorney  
(Title)

STATE OF NEVADA       )  
                                      ) ss  
COUNTY OF CLARK     )

On 11-5-14, this instrument was acknowledged before me, by  
Christopher L. Benner, as Attorney for  
UNIVERSAL AMERICAN MORTGAGE COMPANY, personally known to me (or proved to  
me on the basis of satisfactory evidence) to be the person whose name is subscribed to this  
instrument and he/she executed the same in his/her authorized capacity on behalf of the entity  
upon which the he/she acted.

WITNESS my hand and official seal.

[Signature]  
NOTARY PUBLIC'S SIGNATURE



21

Inst #: 20160713-0002695  
Fees: \$20.00  
N/C Fee: \$0.00  
07/13/2016 03:38:16 PM  
Receipt #: 2816689  
Requestor:  
NATIONWIDE LEGAL  
Recorded By: RYUD Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

# RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

APN# 125-18-112-069

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

## TITLE OF DOCUMENT

(DO NOT Abbreviate)

LIS PENDES

Document Title on cover page must appear EXACTLY as the first page of the document  
to be recorded.

## RECORDING REQUESTED BY:

WRIGHT, FINLAY & ZAK LLP

RETURN TO: Name WRIGHT, FINLAY & ZAK LLP

Address 7785 W. SAHARA AVE # 200

City/State/Zip LAS VEGAS, NV 89117

## MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

This page provides additional information required by NRS 111.312 Sections 1-2.

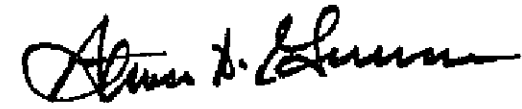
An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

USB00157  
ADD218



CLERK OF THE COURT

LIS

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Jake R. Spencer, Esq.

Nevada Bar No. 12282

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

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

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

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

*Attorneys for Plaintiff, 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; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No.: A-16-739867-C

Dept. No.: XXXI

**LIS PENDENS**

PLEASE TAKE NOTICE that Plaintiff, U.S. Bank, National Association as Trustee for  
Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-  
A8 ("Plaintiff" or "U.S. Bank"), by and through its attorneys of record, Dana Jonathon Nitz,  
Esq., and Jake R. Spencer, Esq., of the law firm of Wright, Finlay & Zak, LLP, complains  
against SFR INVESTMENTS POOL 1, LLC ("Buyer") in the above-entitled action concerning  
and affecting title to real property as described herein. U.S. Bank's Complaint was filed on July  
12, 2016. The above-captioned matter is pending in the Clark County District Court, located at  
200 Lewis Avenue, Las Vegas, Nevada.



1 This action, and the affirmative relief that U.S. Bank requests in its Complaint, affects  
2 title to specific real property and the right to possession of specific real property situated in Clark  
3 County, Nevada, commonly known as 7868 Marbledoe Street, Las Vegas, NV 89149  
4 (hereinafter "Property") and more particularly described as:

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

8 and more particularly described as Clark County Assessor Parcel No. 125-18-112-069.

9 In its Complaint, U.S. Bank has asked the Court to provide the following affirmative  
10 relief:

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

24 ///

25 ///

26 ///

27 ///

28 ///

1           6.     For a preliminary and permanent injunction that Buyer, and its successors,  
2                 assigns, and agents are prohibited from conducting a sale or transfer of the  
3                 Property, or from encumbering the title to the Property.

4     DATED this 12<sup>th</sup> day of July, 2016.

6                                 WRIGHT, FINLAY & ZAK, LLP

7                                 /s/ Jake R. Spencer, Esq.

8                                 Dana Jonathon Nitz, Esq.

9                                 Nevada Bar No. 0050

10                                Jake R. Spencer, Esq.

11                                Nevada Bar No. 12282

12                                7785 W. Sahara Ave., Suite 200

13                                Las Vegas, NV, 89117

14                                Attorneys for Plaintiff, U.S. Bank, National

15                                Association as Trustee for Merrill Lynch Mortgage

16                                Investors Trust, Mortgage Loan Asset-Backed

17                                Certificates, Series 2005-A8

26   CERTIFIED COPY  
27   DOCUMENT ATTACHED IS A  
28   TRUE AND CORRECT COPY  
  OF THE ORIGINAL ON FILE

*John D. L. [Signature]*  
  CLERK OF THE COURT

  JUL 13 2016

# **EXHIBIT 4**

# **EXHIBIT 4**

1 **SLWD**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Regina A. Habermas, Esq.

4 Nevada Bar No. 8481

5 Jamie S. Hendrickson, Esq.

6 Nevada Bar No. 12770

7 7785 W. Sahara Ave., Suite 200

8 Las Vegas, NV, 89117

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

9 [rhabermas@wrightlegal.net](mailto:rhabermas@wrightlegal.net)

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

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

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

26 Defendants.

Case No.: A-16-739867-C

Dept. No.: XXXI

**PLAINTIFF U.S. BANK NATIONAL  
ASSOCIATION'S SECOND  
SUPPLEMENTAL DISCLOSURE OF  
WITNESSES AND DOCUMENTS**

27 Pursuant to Nevada Rule of Civil Procedure ("N.R.C.P.") Rule 16.1(a)(1) Plaintiff, U.S.  
28 Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage  
Loan Asset-Backed Certificates, Series 2005-A8 ("U.S. Bank" or "Plaintiff") hereby produces  
the following second supplement to its documents and witness list. **Supplemental or amended  
information appears in bold typeface.**

///

///

///

1       **A. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION UNDER**  
2       **N.R.C.P. Rule 16.1(a)(1).**

- 3               1. Corporate Designee **and Custodian of Records** for U.S. Bank, National  
4               Association as Trustee for Merrill Lynch Mortgage Investors Trust,  
5               Mortgage Loan Asset-Backed Certificates, Series 2005-A8  
6               c/o Wright, Finlay and Zak LLP  
7               7785 W. Sahara Avenue, Suite 200  
8               Las Vegas, Nevada 89117

9               This witness is expected to have knowledge concerning the facts and circumstances of  
10              this case, including the subject loan and deed of trust, communication with the HOA and its  
11              foreclosure trustee, and notice and tender.

- 12              2. Corporate Designee **and Custodian of Records** for Universal American  
13              Mortgage Company, LLC  
14              c/o CT Corporation Systems  
15              1200 South Pine Island Road  
16              Plantation, FL 33324

17              Universal American Mortgage Company, LLC was the Lender on the original note and  
18              Deed of Trust. This witness is expected to have knowledge concerning the facts and  
19              circumstances of this case, including the subject loan and deed of trust, communication with the  
20              HOA and its foreclosure trustee, and notice and tender.

- 21              3. Corporate Designee **and Custodian of Records** for Antelope Homeowners'  
22              Association  
23              c/o Complete Association Management Company, LLC  
24              5980 S. Durango Drive, Ste. 131  
25              Las Vegas, NV 89113

26              This witness is expected to have knowledge concerning the facts and circumstances of  
27              this case.

- 28              4. Corporate Designee **and Custodian of Records** for Alessi & Koenig, LLC  
                c/o Steven T. Loizzi, Jr. Esq.  
                9500 W. Flamingo Road #205  
                Las Vegas, NV 89147

                This witness is expected to have knowledge concerning the facts and circumstances of  
this case.

1                   5. Corporate Designee **and Custodian of Records** for SFR Investments Pool 1,  
2                   LLC  
3                   c/o Kim Gilbert Ebron  
4                   7625 Dean Martin Drive, Suite 110  
5                   Las Vegas, Nevada 89139

6                   This witness is expected to have knowledge concerning the facts and circumstances of  
7                   this case.

8                   6. **Rule 30(b)(6) Witness** for Clark County Assessor  
9                   500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
10                  Las Vegas, NV 89155

11                  This witness is expected to have knowledge concerning the facts and circumstances of  
12                  this case including the ownership history, physical characteristics and valuation of and  
13                  recordings affecting the subject property.

14                  7. **Rule 30(b)(6) Witness** for Clark County Recorder  
15                  500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
16                  Las Vegas, NV 89155

17                  This witness is expected to have knowledge concerning the facts and circumstances of  
18                  this case including the ownership history, physical characteristics and valuation of and  
19                  recordings affecting the subject property.

20                  8. Rock K. Jung, Esq.  
21                  c/o Dana Jonathon Nitz, Esq.  
22                  Wright, Finlay & Zak, LLP  
23                  7785 West Sahara Avenue, Suite 200  
24                  Las Vegas, Nevada 89117

25                  This witness is expected to have knowledge concerning the facts and circumstances of  
26                  this case, including the subject loan and deed of trust, communication with the HOA and its  
27                  foreclosure trustee, and notice and tender.

28                  U.S. Bank reserves the right to amend, supplement, or add to this list of individuals as  
discovery progress.

U.S. Bank reserves the right to call any witness listed in any other parties' disclosures of  
individuals as discovery progresses.

U.S. Bank reserves the right to call upon any witness(es) for purposes of

rebuttal/impeachment.

**B. DOCUMENTS WHICH ARE DISCOVERABLE UNDER N.R.C.P, 16.1(a)(1).**

U.S. Bank hereby identifies and/or produces the following documents:

Date	Description	Bates Stamped
6/23/2004	Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	USB00001-USB00063
09/14/2006	Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	USB00064-USB00066
5/23/2005	Grant, Bargain, Sale Deed	USB00067-USB00070
8/26/2009	Notice of Default and Election to Sell Under Deed of Trust	USB00071-USB00072
5/23/2005	Deed of Trust	USB00073-USB00094
5/23/2005	Deed of Trust (Second)	USB00095-USB00107
10/20/2005	Deed of Trust re-recorded to add correct Adjustable Rate Rider	USB00108-USB00133
10/03/2006	Grant, Bargain, Sale Deed re-recorded to correct vesting to show Henry E. Ivy and Freddie S. Ivy, husband and wife as joint tenants with rights of survivorship	USB00134-USB00139
11/12/2009	Notice of Delinquent Assessment (Lien)	USB00140
10/19/2010	Notice of Delinquent Violation Lien	USB00141-USB00142
2/17/2011	Notice of Default and Election to Sell Under Homeowners Association Lien	USB00143
8/11/2011	Notice of Trustee's Sale	USB00144
4/16/2012	Notice of Trustee's Sale	USB00145
7/02/2012	Notice of Trustee's Sale	USB00146
8/03/2012	Trustee's Deed Upon Sale	USB00147-USB00148
9/20/2012	Release of Notice of Delinquent Assessment Lien	USB00149
1/17/2013	Rescission of Election to Declare Default	USB00150-USB00151
6/07/2013	Notice of Delinquent Violation Lien	USB00152-USB00153
11/05/2014	Request for Notice Pursuant to NRS 116.31168	USB00154-USB00156

7/13/2016	Notice of Lis Pendens	USB00157-USB00160
	Miles, Bauer, Bergstrom & Winters, LLP Tender Documents	USB00161-USB00175
5/13/2005	Deed of Trust, Note, and Lost Note Affidavit	USB00176-USB00441
	Alessi & Koenig, LLC Collection File	USB00442-USB00617
3/22/2018	<b>Affidavit of Doug Miles and Backup</b>	<b>USB00618-USB00638</b>
5/2/2011	<b>Title Insurance Policy – First American Title Insurance Company – NV08000274-11/IVY</b>	<b>USB00639-USB00649</b>
5/23/2005	<b>Title Insurance Policy – North American Title Insurance Company – A92-799401</b>	<b>USB00650-USB00666</b>

U.S. Bank reserves the right to amend, supplement, or add to this list of documents as discovery progresses.

U.S. Bank reserves the right to use any document(s) listed in any other parties' disclosures of documents as discovery progresses.

U.S. Bank reserves the right to use any document(s) for purposes of rebuttal/impeachment.

### **C. COMPUTATION OF DAMAGES**

Should U.S. Bank's Complaint be successful in quieting title against Buyer and fictitious Defendants or setting aside the HOA Sale, Buyer and fictitious Defendants will have been unjustly enriched by the proceeds from the HOA Sale and use of the Property, and U.S. Bank will have suffered damages if Buyer and fictitious Defendants are allowed to retain their interests in the Property and the funds received from the HOA Sale. Should U.S. Bank's Complaint be unsuccessful in quieting title against Buyer and fictitious Defendants or setting aside the HOA Sale, U.S. Bank will have suffered damages from its payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale, as well as the fair market value of the property. U.S. Bank may pursue attorneys' fees and costs incurred in this case.

### **D. INSURANCE AGREEMENTS**

1. North American Title Insurance Company Policy identified as Policy No.: 799401.
2. First American Title Insurance Company – NV08000274-11/IVY



1 U.S. Bank reserves the right to amend or to supplement these disclosures if it appears at  
2 any time that omissions or errors have been made or that additional or more accurate  
3 information becomes available to it.

4 DATED this 24th day of April, 2018.

5  
6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Jamie S. Hendrickson

8 Regina A. Habermas, Esq.

9 Nevada Bar No. 0050

10 Jamie S. Hendrickson, Esq.

11 Nevada Bar No. 12770

12 7785 W. Sahara Ave., Suite 200

13 Las Vegas, Nevada 89117

14 *Attorneys for Plaintiff, U.S. Bank, National*

15 *Association as Trustee for Merrill Lynch Mortgage*

16 *Investors Trust, Mortgage Loan Asset-Backed*

17 *Certificates, Series 2005-A8*

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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 24th day of April, 2018; I did cause a true copy of **PLAINTIFF U.S. BANK NATIONAL ASSOCIATION’S SECOND SUPPLEMENTAL DISCLOSURE OF WITNESSES AND DOCUMENTS** to be e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

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

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

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**MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT**

---

State of California     }  
                                      }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.       I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP formerly known as Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.       I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.       Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

4.       The information in this affidavit is taken from Miles Bauer's business records, including records maintained in ProLaw. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: 223563767

Borrower(s): Henry E. Ivy

Property Address: 7868 Marbledoe Street, Las Vegas, 89149

6. Attached hereto as **Exhibit 1** is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

8. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of an October 11, 2011 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Antelope Homeowners Association, care of The Alessi & Koenig, LLC.

9. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a Statement of Account from Alessi & Koenig dated October 21, 2011 received by Miles Bauer in response to the letter identified above.

10. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of a December 16, 2011 letter from Mr. Jung to Alessi & Koenig enclosing a check for \$405.00.

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11. Based on Miles Bauer's business records, Alessi & Koenig returned the \$405.00 check to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was rejected is attached as **Exhibit 1**.

FURTHER DECLARANT SAYETH NOT.

Date: 3/22/18



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 22<sup>nd</sup> day of March, 2018,  
by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal).  
(Signature of Notary Public)



# **Exhibit 1**

Matters

File Edit View Help

Matter ID: 11-H1638 Desc: Ivy, Henry E  
Client Sort: BANK OF AMERICA, N.A. (CFP) BANA v. Ivy HOA

General Notes Billing Contacts Matters Events Inquiry Settlement Civil Contract Info Custom Deed Info New Invoice

Date (all)

1/1/2004 8/23/2004

- 4/23/2013: EMT Matt Compton re: follow-up on monitor & past due Bulk
- 4/12/2013: EMT Matt Compton re: outstanding past due invoices; attached A/R Aging
- 4/1/2013: EMF Ana Alvarado to Lori Garcia re: past due invoices do not belong to
- 2/22/2013: EMT Jane Cashel w/2 spreadsheets (Bulk & non-Bulk) attached
- 1/18/2013: EMF Jane Cashel (MFT) re: pls provide 2 spreadsheets - Bulk Loan & non
- 12/30/2012: EMF CLNT re: invoice processed for payment
- 12/19/2012: EMT CLNT (Keith Goloth) re: resent Rebilled Part 2, Nov. & Dec.
- 11/12/2012: EMT CLNT w/closing invoices and spreadsheet attached.
- 10/17/2012: EMF RKJ re: closing file (prop sold at HOA sale)
- 10/16/2012: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; F/U 10/17
- 9/20/2012: 11-H1638, scanned items from physical file.PDF
- 9/10/2012: new owner a/o 08/03/12
- 8/14/2012: EMF Acct re: Trust Transfer & Refunds complete
- 3/6/2012: EMF RKJ re: Summary update to new contact, Tiki Alakija
- 1/5/2012: EMT CLNT re: sent invoice
- 12/30/2011: EMF RKJ re: Status of Payoff Funds (Rejected), 11-H1638, 7868 Marbledo
- 12/29/2011: 12/29 CHECK RETURNED; FU 9/10 MONITOR EX PARTE
- 12/16/2011: EMF RKJ re: Payoff Funds, 11-H1638, 7868 Marbledo St
- 12/16/2011: 12/16 CHECK SENT TO HOA; FU 12/28 SEE IF CHECK WAS
- 12/9/2011: FUNDS RCVD 12/9; F/U 12/16 CONFIRM FUNDS TO
- 12/5/2011: EMF Cht re: wire submitted
- 12/2/2011: EMT CLNT RE REMINDER STATUS UPDATE, SALE DATE
- 12/2/2011: EMT Cht re: reminder status update
- 11/14/2011: EMF RKJ re: status update w/po & figures
- 10/27/2011: EMF Trustee re: no payments on property
- 10/25/2011: 10/25 EMT CLIENT HOA UPDATE WITH PO ATTACHED; FU
- 10/17/2011: h/o called, filed BK, claimed bank said hoa fees were taken care of on
- 10/11/2011: EMF RKJ re: initial letters to borrower & HOA
- 10/11/2011: 10/11 EMT CLIENT WITH INITIAL LETTERS ATTACHED; FU
- 10/7/2011: EMF RKJ re: acceptance of referral
- 10/7/2011: RCVD REFERRAL; OPENED 10/07/11
- 10/7/2011: EMF AWB re: New Referral

Rules



# **Exhibit 2**

DOUGLAS E. MILES \*  
Also Admitted in California and  
Illinois

RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*  
MARK T. DOMEYER\*

Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*

L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*

GINA M. CORENA

WAYNE A. RASH \*

ROCK K. JUNG

VY T. PHAM \*

KRISTA J. NIELSON

HADI R. SEYED-ALI \*

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN \*

ANNA A. GHAJAR \*

CORI B. JONES \*

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and  
California

CATHERINE K. MASON \*

CHRISTINE A. CHUNG \*

HANH T. NGUYEN \*

THOMAS B. SONG \*



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Phone: (702) 369-5960

Fax: (702) 369-4955

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

October 11, 2011

Antelope Homeowners Association  
C/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 7868 Marbledoe Street, Las Vegas, NV 89149*  
*MBBW File No. 11-H1638*

Dear Sirs:

This letter is in response to your Notice of Sale with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...  
*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

ADD236  
USB000625

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

**The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

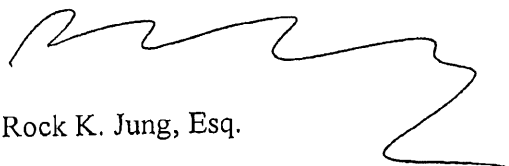
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know the status of the Foreclosure sale that is scheduled for November 30, 2011. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.

# **Exhibit 3**

DAVID ALESSI\*  
 THOMAS BAYARD\*  
 ROBERT KOENIG\*\*  
 RYAN KERBOW\*\*\*

\* Admitted to the California Bar  
 \*\* Admitted to the California, Nevada  
 and Colorado Bars  
 \*\*\* Admitted to the Nevada and California Bar



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 205  
 Las Vegas, Nevada 89147  
 Telephone: 702-222-4033  
 Facsimile: 702-222-4043  
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
 PHONE: 818- 735-9600

RENO NV  
 PHONE: 775-626-2323

&  
 DIAMOND BAR CA  
 PHONE: 909-861-8300

*Handwritten:* 11-H7638

**FACSIMILE COVER LETTER**

<b>To:</b>	A Bham	<b>Re:</b>	7868 Marbledoe Ct./HO #18842
<b>From:</b>	Ryan Kerbow	<b>Date:</b>	Friday, October 21, 2011
<b>Fax No.:</b>		<b>Pages:</b>	1, including cover
		<b>HO #:</b>	18842

Dear A Bham:

This cover will serve as an amended demand on behalf of Antelope Homeowners Association for the above referenced escrow; property located at 7868 Marbledoe Ct., Las Vegas, NV. The total amount due through October 31, 2011 is \$4,111.61. The breakdown of fees, interest and costs is as follows:

10/27/2009 Notice of Delinquent Assessment Lien -- Nevada	\$295.00
1/7/2011 Notice of Default	\$395.00
12/20/2010 Pre NOD	\$150.00
6/12/2011 Pre-Notice of Trustee Sale	\$90.00
6/20/2011 Notice of Trustee Sale	\$275.00
6/20/2011 Foreclosure Fee	\$150.00
<b>Total</b>	<b>\$1,355.00</b>
<b>1. Attorney and/or Trustees fees:</b>	<b>\$1,355.00</b>
<b>2. Notary, Recording, Copies, Mailings, and PACER</b>	<b>\$375.00</b>
<b>3. Assessments Through October 31, 2011</b>	<b>\$1,611.61</b>
<b>4. Late Fees Through October 31, 2011</b>	<b>\$150.00</b>
<b>5. Fines Through October 21, 2011</b>	<b>\$0.00</b>
<b>6. Interest Through October 31, 2011</b>	<b>\$0.00</b>
<b>7. RPIR-GI Report</b>	<b>\$85.00</b>
<b>8. Title Research (10-Day Mailings per NRS 116.31163)</b>	<b>\$210.00</b>
<b>9. Management Company Audit Fee</b>	<b>\$25.00</b>
<b>10. Management Account Setup Fee</b>	<b>\$0.00</b>
<b>11. Publishing and Posting of Trustee Sale</b>	<b>\$175.00</b>
<b>13. Conduct Foreclosure Sale</b>	<b>\$125.00</b>
<b>14. Capital Contribution</b>	<b>\$0.00</b>
<b>15. Progress Payments:</b>	<b>\$0.00</b>
<b>Sub-Total:</b>	<b>\$4,111.61</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

ADD239  
 USB000628

DAVID ALESSI\*  
THOMAS BAYARD\*  
ROBERT KOENIG\*\*  
RYAN KERBOW\*\*\*

\* Admitted to the California Bar

\*\* Admitted to the California, Nevada  
and Colorado Bars

\*\*\* Admitted to the Nevada and California Bar



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PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-861-8300

***FACSIMILE COVER LETTER***

**Total Amount Due:**

**\$4,111.61**

Please have a check in the amount of \$4,111.61 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

ADD240  
**USB000629**

## Resident Transaction Detail

Active Flag Yes

Void Flag No

### ANTELOPE

Account #: 58066

Property Address: 7868 MARBLEDOE ST

Code	Date	Amount	Balance	Check#	Memo
MA	6/1/2005	39.00	39.00		
CC	6/1/2005	175.00	214.00		
PMT	6/2/2005	-253.00	-39.00		
MA	7/1/2005	39.00	0.00		
PMT	7/13/2005	-10.00	-10.00		
MA	8/1/2005	39.00	29.00		
PMT	8/12/2005	-29.00	0.00		
MA	9/1/2005	39.00	39.00		
PMT	9/12/2005	-68.00	-29.00		
MA	10/1/2005	39.00	10.00		
PMT	10/17/2005	-10.00	0.00	1775	101705.usb
MA	11/1/2005	39.00	39.00		
MA	12/1/2005	39.00	78.00		
PMT	12/12/2005	-78.00	0.00	1930	121205.usb
MA	1/1/2006	39.00	39.00		
PMT	1/13/2006	-39.00	0.00	1950	011306.usb
MA	2/1/2006	39.00	39.00		
LF	2/16/2006	1.95	40.95		
MA	3/1/2006	39.00	79.95		
PMT	3/13/2006	-78.00	1.95	1879	031306.usb
MA	4/1/2006	39.00	40.95		
PMT	4/17/2006	-39.00	1.95	1823	041706.usb
MA	5/1/2006	39.00	40.95		
LF	5/16/2006	1.95	42.90		
MA	6/1/2006	39.00	81.90		
LFI	5/30/2006	0.58	82.48		
LF	6/16/2006	1.95	84.43		
PMT	6/15/2006	-79.95	4.48	1904	061506.usb
MA	7/1/2006	39.00	43.48		
LF	7/16/2006	1.95	45.43		
MA	8/1/2006	39.00	84.43		
LFI	7/30/2006	0.58	85.01		
PMT	8/12/2006	-126.00	-40.99	1910	
MA	9/1/2006	39.00	-1.99		
MA	10/1/2006	39.00	37.01		
MA	11/1/2006	39.00	76.01		
PMT	11/15/2006	-76.01	0.00	1979	111506.usb
MA	12/1/2006	39.00	39.00		
PMT	11/30/2006	-115.00	-76.00	1954	113006.USB
MA	1/1/2007	39.00	-37.00		

## Resident Transaction Detail

Active Flag Yes

Void Flag No

### ANTELOPE

MA	2/1/2007	39.00	2.00	
MA	3/1/2007	39.00	41.00	
PMT	3/14/2007	-41.00	0.00 1971	031407.usb
PMT	3/29/2007	-80.00	-80.00 2027	032907.usb
MA	4/1/2007	39.00	-41.00	
MA	5/1/2007	39.00	-2.00	
MA	6/1/2007	39.00	37.00	
PMT	6/28/2007	-76.00	-39.00 2062	062807.usb
MA	7/1/2007	39.00	0.00	
MA	8/1/2007	39.00	39.00	
LF	8/16/2007	1.95	40.95	
LFI	8/30/2007	0.58	41.53	
MA	9/1/2007	39.00	80.53	
LF	9/16/2007	3.90	84.43	
MA	10/1/2007	39.00	123.43	
LFI	9/30/2007	1.17	124.60	
PMT	10/1/2007	-119.00	5.60 2123	100107.usb
MA	11/1/2007	39.00	44.60	
LF	11/16/2007	1.95	46.55	
LFI	11/30/2007	0.58	47.13	Late Fee Processed
MA	12/1/2007	39.00	86.13	
LF	12/16/2007	3.90	90.03	Late Fee Processed
LFI	12/30/2007	1.17	91.20	Late Fee Processed
MA	1/1/2008	39.00	130.20	Assessment
LF	1/16/2008	5.85	136.05	Late Fee Processed
LFI	1/30/2008	1.75	137.80	Late Fee Processed
MA	2/1/2008	39.00	176.80	Assessment
PMT	2/4/2008	-125.13	51.67 01076	020408.usb
MA	3/1/2008	39.00	90.67	Assessment
PMT	3/3/2008	-90.67	0.00 1053	
MA	4/1/2008	39.00	39.00	Assessment
LF	4/16/2008	1.95	40.95	Late Fee Processed
PMT	4/30/2008	-79.95	-39.00 01104	043008.usb
MA	5/1/2008	39.00	0.00	Assessment
MA	6/1/2008	39.00	39.00	Assessment
PMT	6/2/2008	-39.00	0.00 01135	060208.usb
MA	7/1/2008	39.00	39.00	Assessment
PMT	7/14/2008	-39.00	0.00 01111	071408.usb
MA	8/1/2008	39.00	39.00	Assessment
LF	8/16/2008	1.95	40.95	Late Fee Processed
LFI	8/30/2008	0.58	41.53	Late Fee Processed
MA	9/1/2008	39.00	80.53	Assessment
LF	9/16/2008	3.90	84.43	Late Fee Processed



## Resident Transaction Detail

Active Flag Yes

Void Flag No

### ANTELOPE

LFI	9/30/2008	1.17	85.60	Late Fee Processed
MA	10/1/2008	39.00	124.60	Assessment
LF	10/16/2008	5.85	130.45	Late Fee Processed
LFI	10/30/2008	1.75	132.20	Late Fee Processed
MA	11/1/2008	39.00	171.20	Assessment
LF	11/16/2008	7.80	179.00	Late Fee Processed
LFI	11/30/2008	2.34	181.34	Late Fee Processed
PMT	12/1/2008	-210.00	-28.66 01191	120108.usb
MA	12/1/2008	39.00	10.34	Assessment
PMT	12/29/2008	-49.34	-39.00 01279	122908.usb
MA	1/1/2009	39.00	0.00	Assessment
MA	2/1/2009	39.00	39.00	Assessment
LF	2/16/2009	1.95	40.95	Late Fee Processed
LFI	2/28/2009	0.58	41.53	Late Fee Processed
MA	3/1/2009	39.00	80.53	Assessment
LF	3/16/2009	3.90	84.43	Late Fee Processed
PMT	3/27/2009	-126.00	-41.57 1328	
MA	4/1/2009	39.00	-2.57	Assessment
MA	5/1/2009	39.00	36.43	Assessment
PMT	5/12/2009	-84.00	-47.57 01357	051209].usb
MA	6/1/2009	39.00	-8.57	Assessment
MA	7/1/2009	39.00	30.43	Assessment
MA	8/1/2009	39.00	69.43	Assessment
LF	8/16/2009	3.47	72.90	Late Fee Processed
LFI	8/30/2009	1.04	73.94	Late Fee Processed
MA	9/1/2009	39.00	112.94	Assessment
LF	9/16/2009	5.42	118.36	Late Fee Processed
INTENT	9/17/2009	100.00	218.36	INTENT TO LIEN
LFI	9/30/2009	1.63	219.99	Late Fee Processed
MA	10/1/2009	39.00	258.99	Assessment
LF	10/16/2009	7.37	266.36	Late Fee Processed
LFI	10/30/2009	0.65	267.01	Late Fee Processed
MA	11/1/2009	39.00	306.01	Assessment
LF	11/16/2009	9.32	315.33	Late Fee Processed
LFI	11/30/2009	0.82	316.15	Late Fee Processed
MA	12/1/2009	39.00	355.15	Assessment
LF	12/16/2009	11.27	366.42	Late Fee Processed
LFI	12/30/2009	0.99	367.41	Late Fee Processed
MA	1/1/2010	42.90	410.31	Assessment
Late Fee	1/16/2010	13.42	423.73	Late Fee Processed
Interest	1/30/2010	1.18	424.91	Late Fee Processed
Assessment	2/1/2010	42.90	467.81	Assessment
Late Fee	2/16/2010	15.56	483.37	Late Fee Processed

## Resident Transaction Detail

Active Flag Yes

Void Flag No

### ANTELOPE

Interest	2/28/2010	1.37	484.74	Late Fee Processed
Assessment	3/1/2010	42.90	527.64	Assessment
Late Fee	3/16/2010	17.71	545.35	Late Fee Processed
Interest	3/30/2010	1.56	546.91	Late Fee Processed
Assessment	4/1/2010	42.90	589.81	Assessment
Late Fee	4/16/2010	19.85	609.66	Late Fee Processed
Interest	4/30/2010	1.75	611.41	Late Fee Processed
Assessment	5/1/2010	42.90	654.31	Assessment
Late Fee	5/16/2010	22.00	676.31	Late Fee Processed
Interest	5/30/2010	1.94	678.25	Late Fee Processed
Assessment	6/1/2010	42.90	721.15	Assessment
Late Fee	6/16/2010	24.14	745.29	Late Fee Processed
Interest	6/30/2010	2.12	747.41	Late Fee Processed
Assessment	7/1/2010	42.90	790.31	Assessment
Late Fee	7/16/2010	26.29	816.60	Late Fee Processed
Interest	7/31/2010	2.31	818.91	Late Fee Processed
Assessment	8/1/2010	42.90	861.81	Assessment
Late Fee	8/16/2010	45.24	907.05	Late Fee Processed
Interest	8/31/2010	2.50	909.55	Late Fee Processed
Assessment	9/1/2010	42.90	952.45	Assessment
Late Fee	9/16/2010	2.15	954.60	Late Fee Processed
Assessment	10/1/2010	42.90	997.50	Assessment
Late Fee	10/16/2010	8.58	1,006.08	
Late Fee	10/31/2010	4.39	1,010.47	
Assessment	11/1/2010	42.90	1,053.37	Assessment
Late Fee	11/16/2010	8.58	1,061.95	
Late Fee	11/30/2010	4.67	1,066.62	
Assessment	12/1/2010	42.90	1,109.52	Assessment
Late Fee	12/16/2010	8.58	1,118.10	
Late Fee	12/31/2010	4.92	1,123.02	
Assessment	1/1/2011	45.00	1,168.02	Assessment
Late Fee	1/16/2011	8.58	1,176.60	
Late Fee	1/31/2011	5.18	1,181.78	
Assessment	2/1/2011	45.00	1,226.78	Assessment
Late Fee	2/16/2011	8.58	1,235.36	
Assessment	3/1/2011	45.00	1,280.36	Assessment
Late Fee	3/16/2011	8.58	1,288.94	
Late Fee	3/31/2011	5.67	1,294.61	
Assessment	4/1/2011	45.00	1,339.61	Assessment
Late Fee	4/16/2011	2.25	1,341.86	
Late Fee	4/30/2011	5.90	1,347.76	
Assessment	5/1/2011	45.00	1,392.76	Assessment
Late Fee	5/16/2011	2.25	1,395.01	

## Resident Transaction Detail

Active Flag Yes

Void Flag No

### ANTELOPE

Assessment	6/1/2011	45.00	1,440.01	Assessment
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Count: 1

Total Units: 300

# Exhibit 4

DOUGLAS E. MILES \*  
Also Admitted in California and  
Illinois

RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM

Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*

MARK T. DOMEYER\*  
Also Admitted in District of  
Columbia & Virginia

TAMI S. CROSBY\*  
L. BRYANT JAQUEZ \*  
GINA M. CORENA  
WAYNE A. RASH \*

ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
HADI R. SEYED-ALI \*

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN \*

ANNA A. GHAJAR \*

CORI B. JONES \*

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and

California

CATHERINE K. MASON \*

CHRISTINE A. CHUNG \*

HANH T. NGUYEN \*

THOMAS B. SONG \*

S. SHELLY RAISZADEH \*

SHANNON C. WILLIAMS \*

ABTIN SHAKOURI \*

LAWRENCE R. BOIVIN \*



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
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\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

December 16, 2011

ALESSI & KOENIG, LLC  
9500 W. FLAMINGO ROAD, SUITE 100  
LAS VEGAS, NV 89147

Re: *Property Address:* 7868 Marbledoe Street  
HO #: 18842  
LOAN #: 22353767  
MBBW File No. 11-H1638

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,111.61. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...  
*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

ADD247  
USB000636

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
  - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

**The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

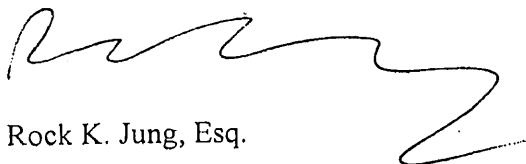
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$405.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$405.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 7868 Marbledoe Street have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

Payee: Alessi & Koenig, LLC

11-H1638

Initials: SRN

Check #: 12254 Date: 12/9/2011 Amount: 405.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/9/2011	18842	To Cure HOA Deficiency	405.00			

Miles, Bauer, Bergstrom & Winters, LLP  
Trust Account  
1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9100

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-66/1220  
1020  
11-H1638  
Loan # 22353767

12254

Date: 12/9/2011

Amount \$\*\*\*\* 405.00

Pay \$\*\*\*\*\*Four Hundred Five & No/100 Dollars  
to the order of

Alessi & Koenig, LLC

Check Void After 90 Days



Security features. Details on back.

ADD249  
USB000638

⑈ 12254⑈ ⑆ 122400724⑆ 501006876973⑈

# **First American Title Insurance Company**

NATIONAL DEFAULT TITLE SERVICES – TSG DIVISION  
3 FIRST AMERICAN WAY, SANTA ANA, CA 92707

**TRUSTEE CORPS  
17100 GILLETTE AVENUE  
IRVINE, CA 92614  
ATTN: MARK D. HORN**

REFERENCE: **NV08000274-11/IVY**  
OUR ORDER NUMBER: **5438443**

PROPERTY ADDRESS:

**7868 MARBLE DOE STREET, LAS VEGAS, NV 89149**

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE, THIS COMPANY HEREBY REPORTS THAT IT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE DESCRIBING THE LAND AND THE ESTATE OR INTEREST THEREIN HEREINAFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION BELOW OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF THE POLICY FORMS.

THE PRINTED EXCEPTIONS AND EXCLUSIONS FROM THE COVERAGE OF THE POLICY OR POLICIES ARE SET FORTH IN EXHIBIT A ATTACHED. COPIES OF THE POLICY FORMS SHOULD BE READ. THEY ARE AVAILABLE FROM THE OFFICE WHICH ISSUED THIS REPORT.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT A OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

DATED AS OF MAY 2, 2011 AT 7:30 A.M.

***First American Title Insurance Company***

BY DENNIS J. GILMORE - PRESIDENT

BY MARIE CRUZ  
ASSISTANT SECRETARY  
TITLE OFFICER  
PH: 714-250-4433  
FX: 714-800-7866

THE FORM OF POLICY OF TITLE INSURANCE CONTEMPLATED BY THIS REPORT IS:

**ALTA OWNERS POLICY**

ADD250  
**USB000639**



TITLE TO THE ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**HENRY E. IVY AND FREDDIE S. IVY, HUSBAND AND WIFE AS JOINT TENANTS WITH RIGHTS OF SURVIVROSHIP.**

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

**A FEE AS TO PARCEL 1, AN EASEMENT AS TO PARCEL 2.**

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN THE POLICY FORM WOULD BE AS FOLLOWS:

1. GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR **2011-2012** A LIEN NOT YET DUE OR PAYABLE.
2. PROVISIONS OF THE ARTICLES OF INCORPORATION AND BY-LAWS OF THE **ANTELOPE HOMEOWNERS ASSOCIATION, A NEVADA NONPROFIT CORPORATION**, AND ANY TAX, FEE, ASSESSMENTS OR CHARGES AS MAY BE LEVIED BY SAID ASSOCIATION.
3. RESERVATIONS AND PROVISIONS AS CONTAINED IN PATENT FROM THE UNITED STATES OF AMERICA, RECORDED **DECEMBER 10, 1956**, IN BOOK **115** OF OFFICIAL RECORDS , AS INSTRUMENT NO. **95147**.

NOTE 1: A DOCUMENT ENTITLED "**A PARTIAL RELINQUISHMENT OF PATEN RIGHTS**" RECORDED **JUNE 26, 2003** IN BOOK **20030626** AS INSTRUMENT NO. **03495** OF OFFICIAL RECORDS.

4. RESERVATIONS AND PROVISIONS AS CONTAINED IN PATENT FROM THE UNITED STATES OF AMERICA, RECORDED **AUGUST 01, 1957**, IN BOOK **136** OF OFFICIAL RECORDS , AS INSTRUMENT NO. **111918**.

NOTE 1: A DOCUMENT ENTITLED "**A PARTIAL RELINQUISHMENT OF PATENT RIGHTS**" RECORDED **JUNE 26, 2003** IN BOOK NO. **20030626** AS INSTRUMENT NO. **03495** OF OFFICIAL RECORDS.

5. RESERVATIONS AND PROVISIONS AS CONTAINED IN PATENT FROM THE UNITED STATES OF AMERICA, RECORDED **FEBRUARY 01, 1960**, IN BOOK **230** OF OFFICIAL RECORDS , AS INSTRUMENT NO. **186727**.

NOTE 1: A DOCUMENT ENTITLED "**A PARTIAL RELINQUISHMENT OF PATENT RIGHTS**" RECORDED **JUNE 26, 2003** IN BOOK NO. **20030626** AS INSTRUMENT NO. **03495** OF OFFICIAL RECORDS.

6. ANY EASEMENSTS NOT VACATED BY THAT CERTAIN ORDER OF RELINQUISHMENT RECORDED **NOVEMBER 06, 2003** IN BOOK NO. **20031106** AS DOCUMENT NO. **01457** OF OFFICIAL RECORDS
7. ANY EASEMENTS AS SHOWN ON THE MAP OF **ANTELOPE - UNIT 1**, ON FILE IN BOOK NO. **115** OF PLATS, AT PAGE **89**, OF OFFICIAL RECORDS.

NOTE : AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED **APRIL 12, 2004** IN BOOK **20040412** AS INSTRUMENT NO. **02013** OF OFFICIAL RECORDS

8. AN EASEMENT FOR **ELECTRICAL LINES** AND INCIDENTAL PURPOSES, RECORDED **MARCH 15, 2004** IN BOOK NO. **20040315** AS INSTRUMENT NO. **01081** OF OFFICIAL RECORDS.  
GRANTED TO: **NEVADA POWER COMPANY.**  
AFFECTS: **A PORTION OF SAID LAND.**

9. AN EASEMENT FOR **ELECTRICAL AND COMMUNICATION LINES** AND INCIDENTAL PURPOSES, RECORDED **MARCH 15, 2004** IN BOOK NO. **20040315** AS INSTRUMENT NO. **01092** OF OFFICIAL RECORDS.  
GRANTED TO: **NEVADA POWER COMPANY AND CENTRAL TELEPHONE COMPANY.**  
AFFECTS: **A PORTION OF SAID LAND.**

10. AN EASEMENT FOR **MAINTAINING ELECTRICAL FACILITIES** AND INCIDENTAL PURPOSES, RECORDED **MAY 04, 2004** IN BOOK NO. **20040504** AS INSTRUMENT NO. **03071** OF OFFICIAL RECORDS.  
GRANTED TO: **NEVADA POWER COMPANY.**  
AFFECTS: **A PORTION OF SAID LAND.**

11. COVENANTS, CONDITIONS AND RESTRICTIONS IN THE DOCUMENT RECORDED JUNE 23, 2004 IN BOOK NO. 20040623 AS INSTRUMENT NO. 02016 OF OFFICIAL RECORDS, WHICH PROVIDE THAT A VIOLATION THEREOF SHALL NOT DEFEAT OR RENDER INVALID THE LIEN OF ANY FIRST MORTGAGE OR DEED OF TRUST MADE IN GOOD FAITH AND FOR VALUE, BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, MARITAL STATUS, ANCESTRY, DISABILITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN OR SOURCE OF INCOME, TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(C), OF THE UNITED STATES CODES.

NOTE : DECLARATION OF ANNEXATION RECORDED APRIL 04, 2005 IN BOOK NO. 20050404 AS INSTRUMENT NO.0001107 OF OFFICIAL RECORDS.

12. A DEED OF TRUST TO SECURE AN ORIGINAL INDEBTEDNESS OF \$212,750.00, AND ANY AMOUNTS OR OBLIGATIONS SECURED THEREBY, RECORDED MAY 23, 2005 IN BOOK 20050523 AS INSTRUMENT NO. 0004228 AND RE-RECORDED OCTOBER 20, 2005 IN BOOK 20051020 AS INSTRUMENT NO. 0003872, BOTH OF OFFICIAL RECORDS.

DATED: MAY 13, 2005.  
TRUSTOR: HENRY E. IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP.  
TRUSTEE: STEWART TITLE COMPANY.  
BENEFICIARY: UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, LIMITED LIABILITY COMPANY.

NOTE 1: NOTICE OF DEFAULT RECORDED AUGUST 26, 2009 IN BOOK 20090826 AS INSTRUMENT NO. 0000352 OF OFFICIAL RECORDS.

13. A DEED OF TRUST TO SECURE AN ORIGINAL INDEBTEDNESS OF \$53,150.00, AND ANY OTHER AMOUNTS OR OBLIGATIONS SECURED THEREBY, RECORDED MAY 23, 2005 IN BOOK 20050523 AS INSTRUMENT NO. 0004229 OF OFFICIAL RECORDS.

DATED: MAY 13, 2005.  
TRUSTOR: HENRY E IVY AND FREDDIE S. IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP.  
TRUSTEE: STEWART TITLE COMPANY.  
BENEFICIARY: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS NOMINEE FOR  
LENDER: UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, LIMITED LIABILITY COMPANY.

14. A CLAIM OF LIEN RECORDED OCTOBER 23, 2009, IN BOOK 20091023, AS INSTRUMENT NO. 0000229, OF OFFICIAL RECORDS.

LIEN CLAIMANT: REPUBLIC SERVICES OF SOUTHERN NEVADA.  
PO BOX 98508.  
LAS VEGAS, NV 89193-8508.  
PHONE: 702-735-5151.  
AMOUNT: \$91.70.

15. A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED NOVEMBER 12, 2009 IN BOOK NO. 20091112 AS INSTRUMENT NO. 0004474 OF OFFICIAL RECORDS.

ASSOCIATION: ANTELOPE HOMEOWNERS ASSOCIATION.  
AMOUNT: \$692.36, AND ANY OTHER AMOUNTS DUE THEREUNDER.

NOTE 1: NOTICE OF DEFAULT RECORDED FEBRUARY 17, 2011 IN BOOK 20110217 AS INSTRUMENT NO. 0001289 OF OFFICIAL RECORDS.

16. A CLAIM OF LIEN RECORDED AUGUST 23, 2010 IN BOOK 20100823, AS INSTRUMENT NO. 00004765, OF OFFICIAL RECORDS.

LIEN CLAIMANT: CITY OF LAS VEGAS SEWER.  
400 E STEWART AVE.  
LAS VEGAS, NV 89101.  
PHONE: 702-229-6281.  
AMOUNT: \$271.38.

ORDER NO: 5438443  
REFERENCE NO: NV08000274-11  
TITLE OFFICER: MARIE CRUZ  
PRODUCT TYPE: NEVADA PRELIM

17. A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED **OCTOBER 19, 2010** IN BOOK NO. **20101019** AS INSTRUMENT NO. **0001557** OF OFFICIAL RECORDS.

ASSOCIATION: **ANTELOPE HOA.**

AMOUNT: **\$3,010.00**, AND ANY OTHER AMOUNTS DUE THEREUNDER.

18. RIGHTS OF PARTIES IN POSSESSION.

19. STATEMENTS OF INFORMATION FROM ALL PARTIES TO THE TRANSACTION.

ORDER NO: 5438443  
REFERENCE NO: NV08000274-11  
TITLE OFFICER: MARIE CRUZ  
PRODUCT TYPE: NEVADA PRELIM

## DESCRIPTION

THE LAND REFERRED TO IN THIS DESCRIPTION SITUATED IN THE **STATE OF NEVADA,**  
**COUNTY OF CLARK, CITY OF LAS VEGAS** AND IS DESCRIBED AS FOLLOWS:

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.

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).

125-18-112-069

ORDER NO: 5438443  
REFERENCE NO: NV08000274-11  
TITLE OFFICER: MARIE CRUZ  
PRODUCT TYPE: NEVADA PRELIM

\* \* \* \* \*

## **WARNING**

"THE MAP ATTACHED HERETO MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED THEREON. YOU SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM RELIANCE UPON THIS MAP".

\* \* \* \* \*

### **INFORMATIONAL NOTES**

Any failure by the foreclosing Trustee or Beneficiary to comply with the requirements of a County or City Ordinance, if any, as it pertains to the maintenance of the property described herein, prior to or during the foreclosure process.

NOTE 1: TAXES FOR THE FISCAL YEAR JULY 1, 2010, THROUGH JUNE 30, 2011, INCLUDING ANY SECURED PERSONAL PROPERTY TAXES COLLECTED BY THE COUNTY TREASURER.

PARCEL NO.: 125-18-112-069.  
TAX DISTRICT: 200.  
TOTAL TAX: \$1,519.30, PAID.

NOTE 2: ACCORDING TO THE PUBLIC RECORDS, THERE HAVE BEEN NO DEEDS CONVEYING THE LAND DESCRIBED HEREIN WITHIN A PERIOD OF TWENTY-FOUR MONTHS PRIOR TO THE DATE OF THIS REPORT, EXCEPT AS FOLLOWS:

**NONE.**

NOTE 3: THE FOLLOWING INFORMATION SHOULD BE USED FOR ALL FUNDS TO BE WIRED FOR THIS ORDER. PLEASE INCLUDE THE ESCROW OFFICERS NAME AND ESCROW NUMBER WHEN WIRING FUNDS TO:

**FIRST AMERICAN TRUST CO.  
5 FIRST AMERICAN WAY  
SANTA ANA, CA 92707  
ABA #122241255  
ACCOUNT #3097860000**

CREDIT: FIRST AMERICAN TITLE NATIONAL DEFAULT TITLE SERVICES

TITLE OFFICER: MARIE CRUZ

TITLE ORDER NO.: 5438443

ORDER NO: 5438443  
REFERENCE NO: NV08000274-11  
TITLE OFFICER: MARIE CRUZ  
PRODUCT TYPE: NEVADA PRELIM

## DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE **STATE OF NEVADA,**  
**COUNTY OF CLARK, CITY OF LAS VEGAS,** AND IS DESCRIBED AS FOLLOWS:

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.

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).

125-18-112-069

## DIL SUPPORT

---

**From:** Ramirez, Joshua [jramirez@trusteecorps.com]  
**Sent:** Monday, May 16, 2011 5:26 PM  
**To:** DIL SUPPORT  
**Subject:** 22353767 \*\*\*TITLE IS NOT CLEAR \*\*\*  
**Attachments:** TSG.PDF.pdf

Good Afternoon,

PLEASE FORWARD AUTHORIZATION TO: [docapproval@trusteecorps.com](mailto:docapproval@trusteecorps.com) or  
[DILFollowup@trusteecorps.com](mailto:DILFollowup@trusteecorps.com)

TITLE IS NOT CLEAR DUE TO THE FOLLOWING EXCEPTIONS:

\* A DEED OF TRUST, RECORDED MAY 23, 2005 IN BOOK 20050523 AS INSTRUMENT NO. 0004229,  
DATED: MAY 13, 2005. \$53,150.00 (PLEASE CONFIRM IF THIS IS WITH BOA)

\* A CLAIM OF LIEN RECORDED OCTOBER 23, 2009, IN BOOK 20091023, AS INSTRUMENT NO.  
0000229. \$91.70-REPUBLIC SERVICES OF SOUTHERN NEVADA

\* A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED NOVEMBER 12,  
2009 IN BOOK NO. 20091112 AS INSTRUMENT NO. 0004474. \$692.36. ANTELOPE HOMEOWNERS  
ASSOCIATION

\* A CLAIM OF LIEN RECORDED AUGUST 23, 2010 IN BOOK 20100823, AS INSTRUMENT NO.  
00004765,\$271.38. CITY OF LAS VEGAS SEWER

\* A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED OCTOBER 19, 2010  
IN BOOK NO. 20101019 AS INSTRUMENT NO. 0001557. \$3,010.00-ANTELOPE HOA

\*\*\*\*\*PLEASE TAKE NOTE EXCEPTIONS MAY APPEAR ON UPDATED TITLE SEARCHES WHICH  
WILL BE PROVIDED TO YOU AT THAT TIME\*\*\*\*\*

PLEASE ADVISE IF OUR OFFICE IS TO PROCEED WITH THE DEED IN LIEU DOCUMENTS, PLACE  
OUR FILE ON HOLD PENDING FURTHER REVIEW, OR CLOSE DUE TO THE DEED IN LIEU BEING  
DENIED/DECLINED.

TRUSTEE CORPS  
17100 GILLETTE AVENUE  
IRVINE, CA 92614  
TEL: 949-252-3800

FREDDIE MAC DESIGNATED COUNSEL IN AZ, CA & NV  
FANNIE MAE DESIGNATED COUNSEL IN AZ & CA  
PROVIDING DEFAULT SERVICES IN AZ, CA, ID, MT, NV, OR, TX & WA

### NOTICE OF CONFIDENTIALITY

THIS E-MAIL MESSAGE AND ATTACHMENTS, IF ANY, ARE INTENDED SOLELY FOR THE USE OF  
THE ADDRESSEE HEREOF, IN ADDITION, THIS MESSAGE AND ATTACHMENTS, IF ANY, MAY

CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS MESSAGE, YOU ARE PROHIBITED FROM READING, DISCLOSING, REPRODUCING, DISTRIBUTING, DISSEMINATING, OR OTHERWISE USING THIS TRANSMISSION. DELIVERY OF THIS MESSAGE TO ANY PERSON OTHER THAN THE INTENDED RECIPIENT IS NOT INTENDED TO WAIVE ANY RIGHT OR PRIVILEGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE PROMPTLY NOTIFY THE SENDER BY E-MAIL AND IMMEDIATELY DELETE THIS MESSAGE FROM YOUR SYSTEM

This message has been sent from a law firm and may contain information that is confidential or privileged. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have any questions, please feel free to call us. Thank you.



**Snipes, Paul**

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**From:** DIL SUPPORT  
**Sent:** Monday, May 16, 2011 9:48 PM  
**To:** Snipes, Paul  
**Subject:** Title Received Loan# 22353767 - Ivy  
**Attachments:** TSG.PDF.pdf

\*\*\*\*\*TITLE RECEIVED\*\*\*\*\*

Title dated MAY 2, 2011 available in iPortal.

Title Results: not clear

**From:** Ramirez, Joshua [mailto:[jramirez@trusteecorps.com](mailto:jramirez@trusteecorps.com)]  
**Sent:** Monday, May 16, 2011 5:26 PM  
**To:** DIL SUPPORT  
**Subject:** 22353767 \*\*\*TITLE IS NOT CLEAR \*\*\*

Good Afternoon,

PLEASE FORWARD AUTHORIZATION TO: [docapproval@trusteecorps.com](mailto:docapproval@trusteecorps.com) or [DILFollowup@trusteecorps.com](mailto:DILFollowup@trusteecorps.com)

TITLE IS NOT CLEAR DUE TO THE FOLLOWING EXCEPTIONS:

\* A DEED OF TRUST, RECORDED MAY 23, 2005 IN BOOK 20050523 AS INSTRUMENT NO. 0004229, DATED: MAY 13, 2005. \$53,150.00 (PLEASE CONFIRM IF THIS IS WITH BOA)

\* A CLAIM OF LIEN RECORDED OCTOBER 23, 2009, IN BOOK 20091023, AS INSTRUMENT NO. 0000229. \$91.70-REPUBLIC SERVICES OF SOUTHERN NEVADA

\* A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED NOVEMBER 12, 2009 IN BOOK NO. 20091112 AS INSTRUMENT NO. 0004474. \$692.36. ANTELOPE HOMEOWNERS ASSOCIATION

\* A CLAIM OF LIEN RECORDED AUGUST 23, 2010 IN BOOK 20100823, AS INSTRUMENT NO. 00004765,\$271.38. CITY OF LAS VEGAS SEWER

\* A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED OCTOBER 19, 2010 IN BOOK NO. 20101019 AS INSTRUMENT NO. 0001557. \$3,010.00-ANTELOPE HOA

\*\*\*\*PLEASE TAKE NOTE EXCEPTIONS MAY APPEAR ON UPDATED TITLE SEARCHES WHICH WILL BE PROVIDED TO YOU AT THAT TIME\*\*\*\*

PLEASE ADVISE IF OUR OFFICE IS TO PROCEED WITH THE DEED IN LIEU DOCUMENTS, PLACE OUR FILE ON HOLD PENDING FURTHER REVIEW, OR CLOSE DUE TO THE DEED IN LIEU BEING DENIED/DECLINED.

TRUSTEE CORPS  
17100 GILLETTE AVENUE  
IRVINE, CA 92614  
TEL: 949-252-3800

FREDDIE MAC DESIGNATED COUNSEL IN AZ, CA & NV  
FANNIE MAE DESIGNATED COUNSEL IN AZ & CA  
PROVIDING DEFAULT SERVICES IN AZ, CA, ID, MT, NV, OR, TX & WA

NOTICE OF CONFIDENTIALITY

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This message has been sent from a law firm and may contain information that is confidential or privileged. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have any questions, please feel free to call us. Thank you.

0 202351581

# POLICY OF TITLE INSURANCE

ISSUED BY



SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, NORTH AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
  - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
  - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
8. Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage; or
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

**NORTH AMERICAN TITLE INSURANCE COMPANY**

BY

PRESIDENT

ATTEST

SECRETARY



A92 799401

USB000650



North American Title Insurance Company

**SCHEDULE A**

Customer Ref.: 0006650683

File Number: NV204-04275GRY

Policy Number: 799401

Amount of Insurance: \$ 212,750.00

Date of Policy:

Premium: \$ 381.85

May 23, 2005 at 02:40 PM

1. Name of Insured:

UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, ITS SUCCESSORS AND ASSIGNS

2. The estate or interest in the land which is encumbered by the insured mortgage is:

FEE AND EASEMENT

3. Title to the estate or interest in the land is vested in:

HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP

4. The insured mortgage and assignments thereof, if any, are described as follows:

DEED OF TRUST DATED 05/13/05 FROM HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP, AS TRUSTOR TO STEWART TITLE COMPANY, AS TRUSTEE TO UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC AS BENEFICIARY, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$212,750.00 RECORDED 05/23/05 IN BOOK 20050523 AS DOCUMENT NO. 4228 OF OFFICIAL RECORDS.

5. The land referred to in this policy is described as follows:

SEE SCHEDULE C ATTACHED HERETO

**NORTH AMERICAN TITLE INSURANCE  
COMPANY**

By:

Steven Marshall

**NORTH AMERICAN TITLE COMPANY**  
Authorized Agent

North American Title Insurance Company

SCHEDULE B

Customer Ref.: 0006650683

File Number: NV204-04275GRY

Policy Number: 799401

EXCEPTIONS FROM COVERAGE  
PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. TAXES FOR THE FISCAL YEAR 2004 TO 2005 HAVE BEEN PAID IN FULL IN THE AMOUNT OF \$462.03.

APN: 125-18-112-069

2. ANY SUPPLEMENTAL TAXES WHICH MAY BECOME A LIEN ON THE SUBJECT PROPERTY BY REASON OF INCREASED VALUATIONS DUE TO LAND USE OR IMPROVEMENT, NRS 361-260, OR OTHERWISE.

ANY SPECIAL ASSESSMENTS WHICH MAY BE DUE AND PAYABLE AND WHICH ARE NOT ASSESSED THROUGH THE CLARK COUNTY TREASURER'S OFFICE AND ARE BEING BILLED BY THE ENTITY WHERE THE PARCEL IS LOCATED..

3. THE HEREIN DESCRIBED PROPERTY LIES WITHIN THE BOUNDARIES OF THE CLARK COUNTY SANITATION DISTRICT AND IS SUBJECT TO ANY AND ALL ASSESSMENTS AND OBLIGATIONS THEREOF.

4. WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.

5. RESERVATIONS IN THE PATENT FROM THE UNITED STATES OF AMERICA, RECORDED 12/10/56 IN BOOK 115 AS DOCUMENT NO. 95147 OF OFFICIAL RECORDS.

SAID PATENT FURTHER RESERVES AND IS SUBJECT TO A RIGHT-OF-WAY NOT EXCEEDING THIRTY-THREE (33) FEET IN WIDTH FOR ROADWAY AND PUBLIC UTILITY PURPOSES:

A PARTIAL RELINQUISHMENT OF PATENT RIGHTS.

BY: NEVADA POWER COMPANY, A NEVADA CORPORATION  
RECORDED: 06/26/03  
BOOK: 20030626  
DOCUMENT NO.: 3495, OFFICIAL RECORDS

6. RESERVATIONS IN THE PATENT FROM THE UNITED STATES OF AMERICA, RECORDED 08/01/57 IN BOOK 136 AS DOCUMENT NO. 111918 OF OFFICIAL RECORDS.

SAID PATENT FURTHER RESERVES AND IS SUBJECT TO, A RIGHT-OF-WAY NOT EXCEEDING THIRTY-THREE (33) FEET IN WIDTH FOR ROADWAY AND PUBLIC UTILITY PURPOSES:

A PARTIAL RELINQUISHMENT OF PATENT RIGHTS.

BY: NEVADA POWER COMPANY, A NEVADA CORPORATION  
RECORDED: 06/26/03  
BOOK: 20030626  
DOCUMENT NO.: 3495, OFFICIAL RECORDS.

7. RESERVATIONS IN THE PATENT FROM THE UNITED STATES OF AMERICA, RECORDED 02/01/60

ALTA Loan/Construction Loan Policy  
Schedule B - Part I (10/17/92)

(NV204-04275GRY.PFD/NV204-04275GRY/37)

ADD264  
USB000653

**SCHEDULE B - PART I**  
(Continued)

File Number: NV204-04275GRY

Policy Number: 799401

IN BOOK 230 AS DOCUMENT NO. 186727 OF OFFICIAL RECORDS

SAID PATENT FURTHER RESERVES AND IS SUBJECT TO, A RIGHT-OF-WAY NOT EXCEEDING THIRTY-THREE (33) FEET IN WIDTH FOR ROADWAY AND PUBLIC UTILITY PURPOSES:

A PARTIAL RELINQUISHMENT OF PATENT RIGHTS.

BY: NEVADA POWER COMPANY, A NEVADA CORPORATION  
RECORDED: 06/26/03  
BOOK: 20030626  
DOCUMENT NO.: 3495, OFFICIAL RECORDS.

8. TERMS, COVENANTS, CONDITIONS AND PROVISIONS IN AN INSTRUMENT ENTITLED "MEMORANDUM OF INFRASTRUCTURE PARTICIPATION AGREEMENT", RECORDED 06/23/03 IN BOOK 20030623 AS DOCUMENT NO. 1943 OF OFFICIAL RECORDS.
9. ANY EASEMENTS NOT VACATED BY THAT CERTAIN ORDER OF RELINQUISHMENT RECORDED 11/06/03 IN BOOK 20031106 AS DOCUMENT NO. 1457 OF OFFICIAL RECORDS.
10. RIGHT-OF-WAY GRANT AFFECTING THAT PORTION OF SAID LAND AND FOR THE PURPOSES THEREIN AND INCIDENTAL PURPOSES THERETO:

IN FAVOR OF: CITY OF LAS VEGAS  
FOR : STREETLIGHTS, FIRE HYDRANT AND APPURTENANCES  
RECORDED: 11/06/03  
BOOK: 20031106  
DOCUMENT NO.: 1457, OF OFFICIAL RECORDS

11. DEDICATIONS AND EASEMENTS AS SHOWN ON THE RECORDED MAP REFERRED TO HEREIN, ON FILE IN BOOK 115 OF PLATS, PAGE 89, OF OFFICIAL RECORDS.
12. RIGHT OF ENTRY AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSE STATED THEREIN, AND INCIDENTAL PURPOSES.

IN FAVOR OF: NEVADA POWER COMPANY

NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT.

FOR: ELECTRICAL LINES  
RECORDED: 03/15/04  
BOOK NO.: 20040315  
DOCUMENT NO.: 1081

13. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSE STATED THEREIN, AND INCIDENTAL PURPOSES.

IN FAVOR OF: NEVADA POWER COMPANY AND CENTRAL TELEPHONE COMPANY

NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT.

FOR: ELECTRICAL AND COMMUNICATION LINES  
RECORDED: 03/15/04

**SCHEDULE B - PART I**  
(Continued)

File Number: NV204-04275GRY

Policy Number: 799401

BOOK NO.: 20040315  
DOCUMENT NO.: 1092

14. COVENANTS, CONDITIONS AND RESTRICTIONS (BUT DELETING THEREFROM ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION, OR DISCRIMINATION, BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN) AS CONTAINED IN THE DECLARATION OF RESTRICTIONS RECORDED 06/23/04 IN BOOK 20040623 AS DOCUMENT NO. 2016.

SAID COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDE THAT A VIOLATION THEREOF SHALL NOT DEFEAT THE LIEN OF ANY MORTGAGE OR DEED OF TRUST MADE IN GOOD FAITH AND FOR VALUE.

AFFECTS: Lots 5 thru 8 in Block A  
Lots 149 thru 168 in Block B  
Lots 177 thru 188 in Block C

THE RIGHT TO LEVY CERTAIN CHARGES OR ASSESSMENTS AGAINST SAID LAND WHICH SHALL BECOME A LIEN IF NOT PAID AS SET FORTH IN THE ABOVE DECLARATION OF RESTRICTIONS AND IS CONFERRED UPON: ANTELOPE HOMEOWNERS ASSOCIATION, INCLUDING ANY UNPAID DELINQUENT ASSESSMENT AS PROVIDED THEREIN.

(PAID CURRENT)

SAID COVENANTS, CONDITIONS AND RESTRICTIONS WERE MODIFIED BY AN INSTRUMENT RECORDED 07/09/04 IN BOOK NO. 20040709 AS DOCUMENT NO. 4842.

THE PROVISIONS OF SAID COVENANTS, CONDITIONS AND RESTRICTIONS WERE EXTENDED TO INCLUDE THE HEREIN DESCRIBED LAND BY A DECLARATION OF ANNEXATION RECORDED 04/04/05 IN BOOK NO. 20050404 AS DOCUMENT NO. 1107.

AFFECT LOTS:

ONE HUNDRED THIRTY FOUR (134) - ONE HUNDRED FORTY-EIGHT (148) IN BLOCK B



**North American Title Insurance Company**

**SCHEDULE B**

**Customer Ref.: 0006650683**

**File Number: NV204-04275GRY**

**Policy Number: 799401**

**PART II**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule C is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

DEED OF TRUST DATED 05/13/05 FROM HENRY E IVY AND FREDDIE S IVY, HUSBAND AND WIFE WITH RIGHTS OF SURVIVORSHIP, AS TRUSTOR TO STEWART TITLE COMPANY, AS TRUSTEE TO MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS BENEFICIARY, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$53,150.00 RECORDED 05/23/05 IN BOOK 20050523 AS DOCUMENT NO. 4229 OF OFFICIAL RECORDS

**PROPERTY DESCRIPTION**

The land referred to in this Policy is described as follows:

**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.**

**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).**

CLTA Form 100 (Rev. 6-14-96)  
ALTA - Lender

***Restrictions, Encroachments & Minerals***

**ENDORSEMENT**

Attached to Policy No. 799401

Issued By

**NORTH AMERICAN TITLE INSURANCE COMPANY**

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The existence of any of the following:
  - (a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
  - (b) Present violations on the land of any enforceable covenants, conditions or restrictions;
  - (c) Except as shown in Schedule B, encroachments of buildings, structures or improvements located on the land onto adjoining lands, or any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2.
  - (a) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of the title to the estate or interest referred to in Schedule A if the insured shall acquire such title in satisfaction of the indebtedness secured by the insured mortgage;
  - (b) Unmarketability of the title to the estate or interest referred to in Schedule A by reason of any violations on the land, occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
  - (a) Which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;

(b) Resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.

4. Any final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.

Wherever in this endorsement any or all the words "covenants," "conditions" or "restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or restrictions contained in any lease.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Policy Date: May 23, 2005 at 02:40 PM

NORTH AMERICAN TITLE INSURANCE  
COMPANY

By Steven Marshall 194

North American Title Company  
Authorized Agent

Page Two of Two

Order No.: NV204-04275GRY  
Customer Ref.: 0006650683

CLTA Form 116 (Rev. 6-14-96)  
ALTA - Lender

*Designation of Improvements, Address*

**ENDORSEMENT**

Attached to Policy No. 799401

Issued By

**NORTH AMERICAN TITLE INSURANCE COMPANY**

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of the failure of (i) a single family residence known as 7868 Marbledoe Street, Las Vegas, NV 89149, to be located on the land at Date of Policy, or (ii) the map attached to this policy to correctly show the location and dimensions of the land according to the public records.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Policy Date: May 23, 2005 at 02:40 PM

**NORTH AMERICAN TITLE INSURANCE  
COMPANY**

By Steven Marshall  
North American Title Company  
Authorized Agent

Order No.: NV204-04275GRY  
Customer Ref.: 0006650683

CLTA Form 115.2 (Rev. 3-27-92)  
ALTA Endorsement Form 5 (Planned Unit Development)

*Planned Unit Development*

**ENDORSEMENT**

Attached to Policy No. 799401

Issued By

**NORTH AMERICAN TITLE INSURANCE COMPANY**

The Company insures the Insured against loss or damage sustained by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the land, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
2. The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any insured mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Policy Date: May 23, 2005 at 02:40 PM

**NORTH AMERICAN TITLE INSURANCE  
COMPANY**

By Steven Marshall  
North American Title Company  
Authorized Agent

CLTA Form 110.9 (Rev. 3-13-87)  
ALTA Endorsement Form 8.1 (3-27-87)

*Environmental Lien*

**ENDORSEMENT**

Attached to Policy No. 799401

Issued By

**NORTH AMERICAN TITLE INSURANCE COMPANY**

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for residential purposes.

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the Insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Policy Date: May 23, 2005 at 02:40 PM

**NORTH AMERICAN TITLE INSURANCE  
COMPANY**

By Steven Marshall Hall  
North American Title Company  
Authorized Agent

CLTA Form 111.5 (Rev. 3-13-87)  
ALTA Form 6 (Variable Rate Mortgage)

Variable Rate

**ENDORSEMENT**  
Attached to Policy No. 799401  
Issued By  
**NORTH AMERICAN TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Policy Date: May 23, 2005 at 02:40 PM

**NORTH AMERICAN TITLE INSURANCE  
COMPANY**

By Steven Marshall  
North American Title Company  
Authorized Agent



# NOTES

This map is for assessment only and does not represent a survey. No liability is assumed for the accuracy of the data exhibited herein. Information on roads and other non-assessed parcels may be obtained from the deed document listing in the assessor's office. This map is compiled from official records, including surveys and deeds. Not only contains the information required for assessment. See the recorder's documents for more detailed legal information.

SEE THE SEPARATE UNIT MAPS FOR THE UNIT MAPS.

# MAP LEGEND

ASSESSOR'S PARCELS - CLARK CO., NV.  
M. W. Schofield, Assessor

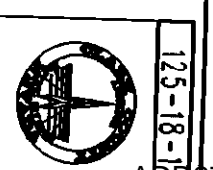
Parcel Boundary  
Sub Boundary  
Road Easement  
Paved Boundary  
Non-Parcel Lot Line  
Match Line / Leader Line  
Road Number

Parcel Number  
100  
Parcel Sub/Size Number  
202  
Plat Recording Number  
5  
Block Number  
5  
Lot Number  
5  
Cov. Lot Number

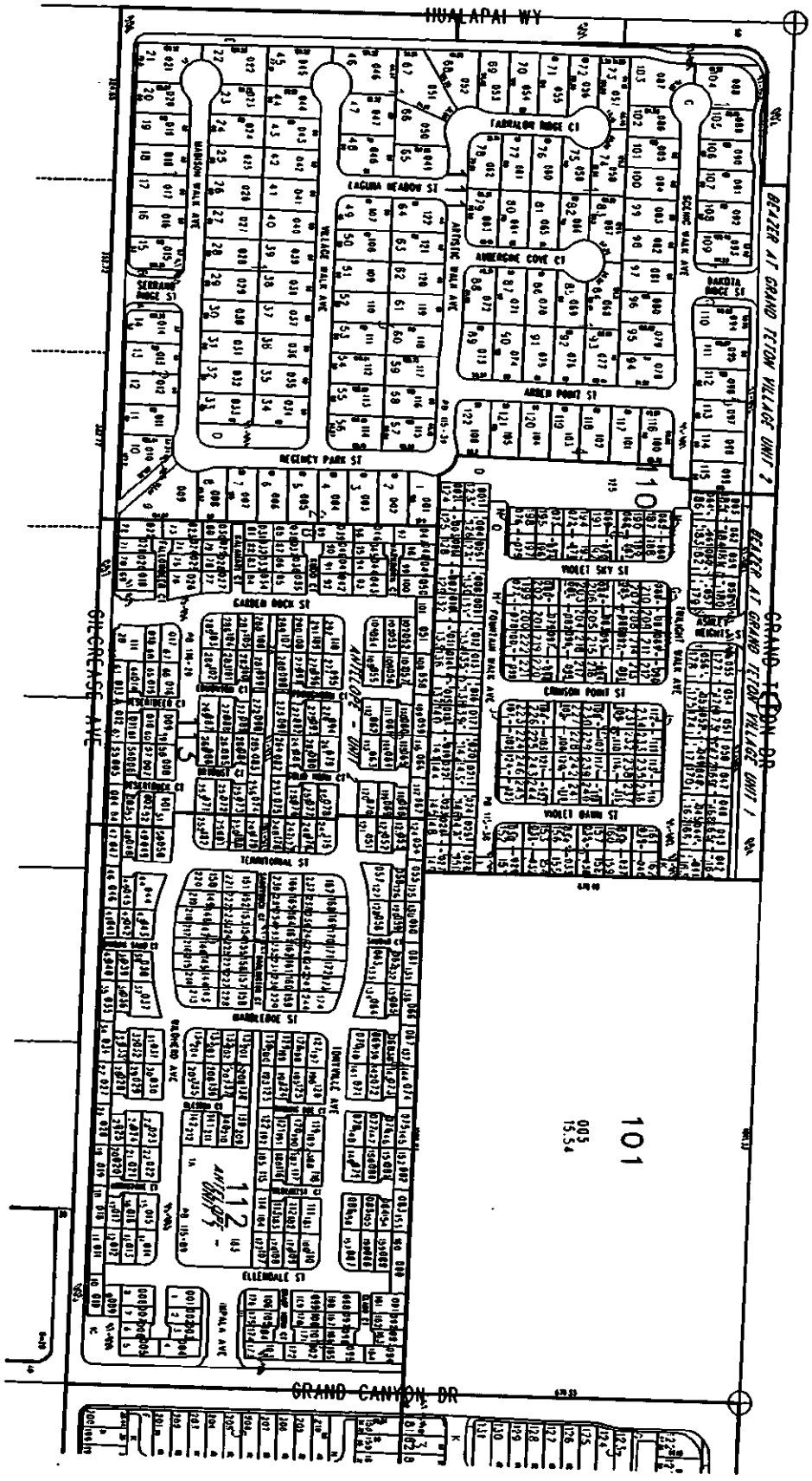
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Scale	1"=200'	1"=400'	1"=600'	1"=800'	1"=1000'

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Scale	1"=200'	1"=400'	1"=600'	1"=800'	1"=1000'
Scale	1"=200'	1"=400'	1"=600'	1"=800'	1"=1000'



ADD 275  
USB000664



TAX DIST 200

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

- (i) The amount of insurance stated in Schedule A;
- (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary

to Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs (i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

### 7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

### 8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

### (b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

### (c) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

### 13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The laws of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

### 14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 15. SEVERABILITY.

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

### 16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and be addressed to it at its main office at 2185 N. California Blvd., Suite 575, Walnut Creek, California 94596.

ADD276  
USB000665

# **POLICY OF TITLE INSURANCE**

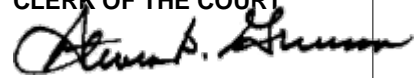


# **EXHIBIT 5**

# **EXHIBIT 5**

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

Electronically Filed  
7/16/2018 3:08 PM  
Steven D. Grierson  
CLERK OF THE COURT



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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,

Case No. A-16-739867-C

Dept. No. XXXI

**SFR INVESTMENTS POOL 1, LLC'S PRE-  
TRIAL DISCLOSURES**

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.

SFR Investments Pool 1, LLC hereby makes its pre-trial disclosures as follows:

**I. SFR's Witnesses Pursuant to NRCP 16.1(a)(3)(1)**

**A. SFR expects to present the following witnesses at trial:**

1. Christopher Hardin for SFR Investments Pool 1, LLC  
Kim Gilbert Ebron  
7625 Dean Martin Drive, Ste 110  
Las Vegas, Nevada 89139  
(702) 485-3300

SFR reserves the right to call any witness named or otherwise called by any other party.  
SFR reserves the right to call any witness as may be necessary for purposes of impeachment or  
rebuttal.

**B. SFR has subpoenaed the following witnesses for trial:**

None.

**C. SFR may call the following witnesses if the need arises:**

2. David Alessi for Alessi & Koenig, LLC  
9500 W. Flamingo Road, Suite #205  
Las Vegas, NV 89147  
(702) 222-4033
3. Ray Wooge  
c/o Gibbs Giden Locher Turner Senet & Wittbrodt, LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144-0596  
(702) 836-9800

**II. WITNESSES WHOSE TESTIMONY IS EXPECTED TO BE PRESENTED  
BY DEPOSITION TESTIMONY AT TRIAL IS AS FOLLOWS:**

SFR may read into evidence the following portions of Katherine Ortwerth, the 30(b)(6)  
witness for U.S. Bank, deposition testimony: 5:3-6; 7:4-5; 9:20-25 through 10:1-6; 12:19-  
25 through 13:1-8; 9-15; 14:4-8; 21:25 through 22:1-5; 24:9-12; 25:5-11; 4:2-7; 43:16-20;

44:1-3; 50:20-24; 55:12-20; 55:21-25 through 56:1-6; 63:8-18.

SFR may use the following transcripts for impeachment purposes:

Trial Testimony of Rock Jung, Esq. in Case No. A-15-727274-C on November 28th, 2017

Deposition testimony of Douglas Miles in Case No. 2:17-cv-00210-JCM-CWH (July 20, 2017) Depo International 702-386-9322 [SFR423- SFR449]

Transcript of the trial testimony of Rock Jung, Esq., in Eighth Judicial District Court Case No. A-14-695002-C (Department 7) (April 22, 2016)

Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case No. A-14-695002-C (Department 7) (April 22, 2016)

Transcript of the trial testimony of Douglas Miles, Esq., in Eighth Judicial District Court Case No. A-14-698509-C (Department 26) (June 7, 2016)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-13-684630-C on July 2, 2015 (Court Reporter: Depo International, 702-386-9322)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-14-698102-C on July 2, 2015 (Court Reporter: Depo International, 702-386-9322)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-14-698511-C on June 1, 2015 (Court Reporter: Depo International, 702-386-9322)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-14-694435-C on June 1, 2015 (Court Reporter: Depo International, 702-386-9322)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-14-698568-C on June 16, 2015 (Court Reporter: Depo International, 702-386-9322)

Transcript of the Deposition taken of R. Scott Dugan in the Eighth Judicial District Court, State of Nevada, Case No. A-15-718988-C on August 21, 2017 [Transcript to be provided on a later date]

### **III. SFR's EXHIBITS PURSUANT TO NRCP 16.1(a)(3)(1)**

#### **A. The following are documents SFR intends to offer at trial:**

1. Trustee's Deed Upon Sale

**B. The following are documents SFR may offer if the need arises:**

2. Letter to Senator Hammond dated December 7, 2012
3. Korbel Decision
4. Email Re: URGENT WIRE REQUEST: Status Update re: 10-H1715 (1st) De Vera
5. BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure
6. Deed of Trust recorded on May 23, 2005
7. Corporate Assignment of Deed of Trust recorded on June 1, 2018

DATED this 16th day of July, 2018.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of July, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S PRE-TRIAL DISCLOSURES** to the following parties:

Wright, Finlay & Zak, LLP

Name	Email	Served
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*

Lipson Neilson P.C.

Karen Kao, Esq.

[kkao@lipsenneilson.com](mailto:kkao@lipsenneilson.com)

*Attorneys for Antelope Homeowners Association*

*/s/ Karen L. Hanks*  
An employee of KIM GILBERT EBRON

# **EXHIBIT 6**

# **EXHIBIT 6**

1 WRIGHT, FINLAY & ZAK, LLP  
2 Regina A. Habermas, Esq.  
3 Nevada Bar No. 8481  
4 Jamie S. Hendrickson, Esq.  
5 Nevada Bar No. 12770  
6 7785 W. Sahara Ave., Suite 200  
7 Las Vegas, NV 89117  
8 (702) 475-7964; Fax: (702) 946-1345  
9 [rhabermas@wrightlegal.net](mailto:rhabermas@wrightlegal.net)  
10 [jhendrickson@wrightlegal.net](mailto:jhendrickson@wrightlegal.net)

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

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

23 SFR INVESTMENTS POOL 1, LLC, a Nevada  
24 limited liability company; ANTELOPE  
25 HOMEOWNERS ASSOCIATION, a Nevada  
26 non-profit corporation; DOE INDIVIDUALS I  
27 through X, inclusive; and ROE  
28 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

**U.S. BANK NATIONAL  
ASSOCIATION'S PRE-TRIAL  
DISCLOSURES**

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; HENDRY E. IVY, an individual; and  
FREDDY S. IVY, an individual,

Counter/Cross Defendants.

Pursuant to N.R.C.P. Rule 16.1(a)(3), 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 ("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, hereby identifies and/or produces the following pre-trial disclosures.

**I. WITNESSES:**

**A. U.S. Bank Expects to Call the Following Witnesses at Trial:**

1. Corporate Designee for U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8  
c/o Wright, Finlay & Zak, LLP  
7785 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117
2. Custodian of Records for U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8  
c/o Wright, Finlay & Zak, LLP  
7785 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117
3. Corporate Designee for SFR Investments Pool 1, LLC  
c/o Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139
4. Custodian of Records for SFR Investments Pool 1, LLC  
c/o Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

- 1 5. Chris Hardin  
2 SFR Investments Pool 1, LLC  
3 c/o Kim Gilbert Ebron  
4 7625 Dean Martin Drive, Suite 110  
5 Las Vegas, Nevada 89139
- 6 6. Corporate Designee for Alessi & Koenig, LLC  
7 c/o HOA Lawyers Group, LLC  
8 9500 West Flamingo Road, Suite 101  
9 Las Vegas, Nevada 89147
- 10 7. Custodian of Records for Alessi & Koenig, LLC  
11 c/o HOA Lawyers Group, LLC  
12 9500 West Flamingo Road, Suite 101  
13 Las Vegas, Nevada 89147
- 14 8. David Alessi  
15 c/o HOA Lawyers Group, LLC  
16 9500 West Flamingo Road, Suite 101  
17 Las Vegas, Nevada 89147
- 18 9. Corporate Designee for Antelope Homeowners' Association  
19 c/o Lipson Neilson P.C.  
20 9900 Covington Cross Street, Suite 120  
21 Las Vegas, Nevada 89144
- 22 10. Custodian of Records for Antelope Homeowners' Association  
23 c/o Lipson Neilson P.C.  
24 9900 Covington Cross Street, Suite 120  
25 Las Vegas, Nevada 89144
- 26 11. Corporate Designee for Universal American Mortgage Company, Inc.  
27 c/o CT Corporation Systems  
28 1200 South Pine Island Road  
Plantation, Florida 33324
12. Custodian of Records for Universal American Mortgage Company, Inc.  
c/o CT Corporation Systems  
1200 South Pine Island Road  
Plantation, Florida 33324
13. Rock K. Jung, Esq.  
c/o Wright, Finlay Zak, LLP  
7785 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117

1 14. Rule 30(b)(6) Witness for Clark County Assessor  
2 500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
3 Las Vegas, Nevada 89155

4 15. Rule 30(b)(6) Witness for Clark County Recorder  
5 500 South Grand Central Parkway, 2<sup>nd</sup> Floor  
6 Las Vegas, Nevada 89155

7 16. R. Scott Dugan, SRA  
8 R. Scott Dugan Appraisal Company, Inc.  
9 8930 West Tropicana Avenue, Suite 1  
10 Las Vegas, Nevada 89147

11 U.S. Bank reserves the right to call any additional witnesses previously identified or  
12 disclosed within discovery responses and initial, supplemental, and/or expert disclosures by any  
13 party in this action. In addition, U.S. Bank reserves the right to call any witness as may be  
14 necessary for the purpose of impeachment or rebuttal. U.S. Bank reserves the right to amend this  
15 disclosure as may be necessary. By listing witnesses, U.S. Bank does not waive the right to  
16 object to any witnesses at the time of trial.

17 **B. U.S. Bank's Witnesses Who Have Been Subpoenaed for Trial.**

18 None at this time. U.S. Bank reserves the right to subpoena any witnesses it deems  
19 necessary prior to trial.

20 **II. U.S. BANK EXPECTS TO PRESENT THE FOLLOWING DEPOSITIONS AT**  
21 **TRIAL PURSUANT TO NRCP 16.1(a)(3)(B)**

22 **A. U.S. Bank Expects to Use the Depositions as Allowed Under Nevada Law.**

23 None at this time.

24 **B. U.S. Bank Expects to Present the Following Deposition Testimony If the Witness Is**  
25 **Unavailable at the Time of Trial.**

- 26 1. Deposition of David Alessi, 30(b)(6) witness for Alessi & Koenig, LLC (including all  
27 volumes of transcripts and all accompanying exhibits referenced therein)  
28 2. Deposition of David Bembas, 30(b)(6) witness for SFR Investments Pool 1, LLC  
(including all volumes of transcripts and all accompanying exhibits referenced  
therein)

**C. The Following Deposition Testimony Will Be Presented For Impeachment, If the Need Arises.**

1. Deposition of David Alessi, 30(b)(6) witness for Alessi & Koenig, LLC (including all volumes of transcripts and all accompanying exhibits referenced therein)
2. Deposition of David Bembas, 30(b)(6) witness for SFR Investments Pool 1, LLC (including all volumes of transcripts and all accompanying exhibits referenced therein)

U.S. Bank reserves the right to use any deposition designated by any other party related to this matter. U.S. Bank further reserves the right to use any testimony given in the above-named depositions during the trial of this matter regardless of the subject matter, including for impeachment purposes.

By disclosing deposition testimony, including any additional volumes of the transcript and exhibits attached thereto, U.S. Bank does not waive the right to challenge and exclude such deposition testimony and/or exhibits, or portions thereof, on any basis.

**III. EXHIBITS**

**A. U.S. Bank's Exhibits Which It Expects to Offer at Trial:**

Date	Description	Bates Stamped
6/23/2004	Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	USB00001-USB00063
09/14/2006	Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	USB00064-USB00066
5/23/2005	Grant, Bargain, Sale Deed	USB00067-USB00070
8/26/2009	Notice of Default and Election to Sell Under Deed of Trust	USB00071-USB00072
5/23/2005	Deed of Trust	USB00073-USB00094
5/23/2005	Deed of Trust (Second)	USB00095-USB00107
10/20/2005	Deed of Trust re-recorded to add correct Adjustable Rate Rider	USB00108-USB00133
10/03/2006	Grant, Bargain, Sale Deed re-recorded to correct vesting to show Henry E. Ivy and Freddie S. Ivy, husband and wife as joint tenants with rights of survivorship	USB00134-USB00139

11/12/2009	Notice of Delinquent Assessment (Lien)	USB00140
10/19/2010	Notice of Delinquent Violation Lien	USB00141- USB00142
2/17/2011	Notice of Default and Election to Sell Under Homeowners Association Lien	USB00143
8/11/2011	Notice of Trustee's Sale	USB00144
4/16/2012	Notice of Trustee's Sale	USB00145
7/02/2012	Notice of Trustee's Sale	USB00146
8/03/2012	Trustee's Deed Upon Sale	USB00147- USB00148
9/20/2012	Release of Notice of Delinquent Assessment Lien	USB00149
1/17/2013	Rescission of Election to Declare Default	USB00150- USB00151
6/07/2013	Notice of Delinquent Violation Lien	USB00152- USB00153
11/05/2014	Request for Notice Pursuant to NRS 116.31168	USB00154- USB00156
7/13/2016	Notice of Lis Pendens	USB00157- USB00160
	Miles, Bauer, Bergstrom & Winters, LLP Tender Documents	USB00161- USB00175
5/13/2005	Deed of Trust, Note, and Lost Note Affidavit	USB00176- USB00441
	Alessi & Koenig, LLC Collection File	USB00442- USB00617
3/22/2018	Affidavit of Doug Miles and Backup	USB00618- USB00638
5/2/2011	Title Insurance Policy – First American Title Insurance Company – NV08000274-11/IVY	USB00639- USB00649
5/23/2005	Title Insurance Policy – North American Title Insurance Company – A92-799401	USB00650- USB00666
6/01/2018	Corporate Assignment of Deed of Trust, recorded as Book and Instrument No.	USB00667- USB00668
	Title Policies	USB00669- USB00679 & USB00704- USB00731
	Bank of America, N.A.'s Payment History	USB00680- USB00692
	Greenpoint's Payment History	USB00693- USB00703
	Bank of America, N.A.'s Servicing Notes	USB00732- USB01011
5/13/2005	Copy of Promissory Note and Allonges	USB01012- USB01027



	Pooling and Servicing Agreement	USB01028- USB01243
	Mortgage Loan Schedule for PSA	USB01244- USB01262
7/02/2018	Corporate Assignment of Deed of Trust	USB01263- USB01264
	Exhibit 1 to Deposition of David Alessi – Subpoena for Deposition of N.R.C.P. 30(b)(6) Witness for Alessi & Koenig, LLC	
	Exhibit 2 to Deposition of David Alessi – Account Ledger	
	Exhibit 3 to Deposition of David Alessi – Notice of Delinquent Assessment (Lien)	
	Exhibit 4 to Deposition of David Alessi – Notice of Delinquent Violation Lien	
	Exhibit 5 to Deposition of David Alessi – Notice of Default and Election to Sell Under Homeowners Association Lien	
	Exhibit 6 to Deposition of David Alessi – Notice of Trustee’s Sale	
	Exhibit 7 to Deposition of David Alessi – Second Notice of Trustee’s Sale	
	Exhibit 8 to Deposition of David Alessi – Third Notice of Trustee’s Sale	
	Exhibit 9 to Deposition of David Alessi – Request for Payoff by Miles Bauer	
	Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request	
	Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer	
	Exhibit 12 to Deposition of David Alessi – Trustee’s Deed Upon Sale	
	Exhibit 1 to Deposition of David Bembas – Notice of Taking Deposition of SFR Investments Pool 1, LLC	
	Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)	
	Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien	
	Exhibit 4 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 5 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 6 to Deposition of David Bembas – Notice of Trustee’s Sale	
	Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11	

1	Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11	
2	Exhibit 9 to Deposition of David Bembas – Trustee’s Deed Upon Sale	

3 U.S. Bank incorporates by this reference each document designated as an exhibit for trial  
4 by any other party to this action, regardless of whether the document is subsequently withdrawn  
5 or not offered by the proposing party.

6 U.S. Bank reserves the right to use any documents disclosed or identified by any other  
7 party to this litigation. U.S. Bank further reserves the right to use any documents deemed  
8 necessary for impeachment or rebuttal purposes. By disclosing documents, U.S. Bank does not  
9 waive the right to challenge and exclude documents, or portions thereof, on any basis.

10 **IV. DEMONSTRATIVE EXHIBITS**

11 **A. U.S. Bank May Offer, At Trial, Certain Exhibits For Demonstrative Purposes**  
12 **Including, But Not Limited To, the Following:**

- 13 a. Demonstrative and actual photographs
- 14 b. Timeline of events
- 15 c. Enlarged exhibits
- 16 d. Story boards and computer digitized power point images; and
- 17 e. Projected Images Using Elmo or related devices

18 U.S. Bank reserves the right to use any demonstrative exhibits as disclosed in this  
19 matter. U.S. Bank reserves the right to introduce such other demonstrative exhibits into  
20 evidence as may be necessary for the purposes of impeachment, rebuttal, or both. By disclosing  
21 demonstrative exhibits, U.S. Bank does not waive the right to object to demonstrative exhibits  
22 disclosed by any party at the time of trial.

23 ///  
24 ///  
25 ///  
26

1 U.S. Bank reserves the right to object to the introduction of exhibits and witnesses not  
2 previously disclosed, and further reserves its objections to any exhibit offered based on  
3 foundation and relevancy. U.S. Bank further reserves the right to supplement its pre-trial  
4 disclosure statement as necessary.

5 DATED this 13<sup>th</sup> day of July, 2018.

6 WRIGHT, FINLAY & ZAK

7 /s/ Jamie S. Hendrickson

8 Regina A. Habermas, Esq.

9 Nevada Bar No. 8481

10 Jamie S. Hendrickson, Esq.

11 Nevada Bar No. 12770

12 7785 W. Sahara Avenue, Suite 200

13 Las Vegas, Nevada 89117

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

18 **CERTIFICATE OF SERVICE**

19 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &  
20 ZAK, LLP, and that on this 13<sup>th</sup> day of July, 2018, I did cause a true copy of **U.S. BANK**  
21 **NATIONAL ASSOCIATION'S PRE-TRIAL DISCLOSURES** to be e-served through the  
22 Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

23 KIM GILBERT EBRON:

24 Diana S. Ebron, Esq. – [diana@kgelegal.com](mailto:diana@kgelegal.com)

25 HOA LAWYERS GROUP, LLC:

26 Steven T. Loizzi, Jr., Esq. – [steve@nrs116.com](mailto:steve@nrs116.com)

27 LIPSON NEILSON P.C.:

28 J. William Ebert, Esq. – [BEbert@lipsonneilson.com](mailto:BEbert@lipsonneilson.com)

LAW OFFICE OF DALE E. HALEY:

Dale E. Haley, Esq. – [daleehaley@gmail.com](mailto:daleehaley@gmail.com)

/s/ Dekova Huckaby

An Employee of WRIGHT, FINLAY & ZAK, LLP