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

District Court Case No.: A739867C

Appeal from the Eighth Judicial District Court In and For the County of Clark
The Honorable Joanna A. Kishner, District Court Judge

JOINT APPENDIX – VOLUME III

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DOCUMENT	VOL	BATES
Affidavit of Service	I	JA00063
Affidavit of Service	I	JA00138
Affidavit of Service	I	JA00139
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Amended Proposed Findings of Fact and Conclusions of Law	XII	JA02268-JA02283
Bench Memorandum Regarding Whether Defendant is a Bona Fide Purchase is Irrelevant	X	JA01939-JA01943
Complaint	I	JA00001-JA00062
Court's Trial Exhibit 1 - Alessi & Koenig Fax Dated 7-11-12 from Ryan Kerbow to A. Bhame Re: 7868 Marbledoe Ct./HO #18842	X	JA01896-JA01897
Court's Trial Exhibit 2 – Excerpts of Deposition of Ortwerth Dated 6/14/18	X	JA01898-JA01899
Defendant Antelope Homeowners' Association's Answer and Affirmative Defenses	III	JA00434-JA00443
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Findings of Fact and Conclusions of Law and Judgment	XII	JA02300-JA02318
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Joint Trial Exhibit 1 - Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	III	JA00523-JA00585
Joint Trial Exhibit 2 - Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	III	JA00586-JA00588
Joint Trial Exhibit 3 - Grant, Bargain, Sale Deed	III	JA00589-JA00592
Joint Trial Exhibit 4 - Notice of Default and Election to Sell Under Deed of Trust	III	JA00593-JA00594
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Joint Trial Exhibit 6 - Deed of Trust (Second)	III	JA00617-JA00629
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Joint Trial Exhibit 8 - 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	IV	JA00656-JA00661
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Joint Trial Exhibit 12 - Notice of Trustee's Sale	IV	JA00666
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Joint Trial Exhibit 23 - Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP	IV	JA00688-JA00694

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Joint Trial Exhibit 24 - Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC	IV	JA00695-JA00697
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Joint Trial Exhibit 69 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Interrogatories	X	JA01846-JA01857

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Joint Trial Exhibit 70 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Requests for Admissions	X	JA01858-JA01870
Joint Trial Exhibit 71 - SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Request for Production of Documents	X	JA01871-JA01882
Joint Trial Exhibit 72 - Email Re: URGENT WIRE REQUEST: Status Update re: 10- H1715 (1st) De Vera Relevance, Hearsay, Authenticity, and Foundation	X	JA01883-JA01888
Joint Trial Exhibit 73 - BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure Relevance, Hearsay, Authenticity, and Foundation	X	JA01889-JA01893
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Notice of Entry of Order	X	JA01974-JA01983
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Second Amended Proposed Findings of Fact and Conclusions of Law and Judgment	XII	JA02284-JA02299
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SFR Investments Pool 1, LLC's Trial Brief Re Admissibility of Certain Proposed Exhibits	III	JA00489-JA00510
SFR Investments Pool 1, LLC's Trial Brief Re Statute of Limitations	III	JA00511-JA00522
Stipulation and Order to Amend Caption	X	JA01953-JA01958
Stipulation and Order Dismissing Henry E. Ivy and Freddie S. Ivy Without Prejudice	II	JA00357-JA00360
Stipulation and Order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice	II	JA00263-JA00266
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Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association	II	JA00275-JA00277
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U.S Bank's Bench Memorandum Regarding Pre-Foreclosure Satisfaction of the Superpriority Portion of the HOA's Lien	X	JA01932-JA01938
U.S. Bank's Bench Memorandum Regarding Standing to Maintain Its Claims in this Action and Standing to Enforce the Deed of Trust and Note	X	JA01919-JA01931
U.S. Bank's Bench Memorandum Regarding Statute of Limitations	X	JA01912-JA01918

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U.S. Bank's Objections to SFR Investments Pool 1, LLC's Pre-Trial Disclosures	II	JA00368-JA00372
U.S. Bank's Reply to SFR Investments Pool 1, LLC's Counterclaim	I	JA00115-JA00125

VOLUME III

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08/23/18	Notice of Entry of Order	III	JA00426-JA00433
09/07/18	Defendant Antelope Homeowners' Association's Answer and Affirmative Defenses	III	JA00434-JA00443
09/21/18	Recorder's Transcript of Hearing: All Pending Motions	III	JA00444-JA00464
10/10/18	Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment	III	JA00465-JA00468
10/11/18	Notice of Entry of Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment	III	JA00469-JA00474
03/29/19	Objections to U.S. Bank's Amended Pre-Trial Disclosures	III	JA00475-JA00479
04/15/19	Proposed Findings of Fact and Conclusions of Law	III	JA00480-JA00488
04/15/19	SFR Investments Pool 1, LLC's Trial Brief Re Admissibility of Certain Proposed Exhibits	III	JA00489-JA00510

DATE	DOCUMENT	VOL	BATES
04/15/19	SFR Investments Pool 1, LLC's Trial Brief Re Statute of Limitations	III	JA00511-JA00522
04/16/19	Joint Trial Exhibit 1 - Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association	III	JA00523-JA00585
04/16/19	Joint Trial Exhibit 2 - Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association	III	JA00586-JA00588
04/16/19	Joint Trial Exhibit 3 - Grant, Bargain, Sale Deed	III	JA00589-JA00592
04/16/19	Joint Trial Exhibit 4 - Notice of Default and Election to Sell Under Deed of Trust	III	JA00593-JA00594
04/16/19	Joint Trial Exhibit 5 - Deed of Trust	III	JA00595-JA00616
04/16/19	Joint Trial Exhibit 6 - Deed of Trust (Second)	III	JA00617-JA00629

DATED this 15th day of June, 2020.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

I certify that I electronically filed on the 15th day of June, 2020, the foregoing **JOINT APPENDIX – VOLUME III** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[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
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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, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; ANTELOPE HOMEOWNERS ASSOCIATION, a Nevada non-profit organization; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-16-739867-C Dept. No.: XXXI **ORDER DENYING THE ANTELOPE HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter/Cross Claimant, vs. U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED	

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

Counter-Defendant/Cross-Defendants.

This matter having come on for hearing on July 31, 2018, on Defendant Antelope Homeowners Association's ("HOA") Motion to Dismiss with Karen Kao, Esq. of Lipson Neilson, P.C., appearing for the HOA, Jason G. Martinez, Esq. appearing for SFR Investments Pool 1, LLC, and Jamie S. Hendrickson, Esq. appearing for 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"). The Court having reviewed the pleadings filed herein, being fully advised in the premises, having heard the arguments of counsel, and good cause appearing rules as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the HOA's Motion to Dismiss U.S. Bank's First Amended Complaint is DENIED WITHOUT PREJUDICE.

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IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that the HOA shall file and serve an answer to U.S. Bank's First Amended Complaint within ten (10) days after the notice of the Court's order. N.R.C.P. 12(a)(4)(A).

IT IS SO ORDERED.

DATED this 17th day of August, 2018.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully Submitted By:

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Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, Defendant.	CASE#: A-16-739867-C DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER,

DISTRICT COURT JUDGE

TUESDAY, AUGUST 14, 2018

RECORDER'S TRANSCRIPT OF HEARING

ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff:	JAMIE S. HENDRICKSON, ESQ.
For the Defendant Antelope Homeowner's Association:	KAREN KAO, ESQ.
For the Defendant SFR Investments Pool 1, LLC:	JASON MARTINEZ, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Las Vegas, Nevada, Tuesday, August 14, 2018

[Case called at 10:35 a.m.]

THE COURT: Oh, I'm sorry. I misstated. I meant to say U.S. Bank vs. SFR Investments as pages 1 and 2. Counsel, can I have your appearance on 739867?

MR. HENDRICKSON: Jamie Hendrickson on behalf of U.S. Bank.

MR. MARTINEZ: Good morning, Your Honor. Jason Martinez on behalf of SFR.

MS. KAO: Good morning, Your Honor. Karen Kao on behalf of Antelope HOA.

THE COURT: Okay. Thank you. And thank you for your -- sorry for your wait, but this is what happens, unfortunately, when other counsel don't appear or don't appear with any information, so unfortunately, we have to recall matters, and unfortunately, that log-jams up things a little bit more than we'd like.

So pages 1 and 2. We have Motion For Summary Judgment, U.S. Bank's Opposition and Countermotion For Summary Judgment, SFR's Opposition and Countermotion to Strike Countermotion. Okay. Walk me through -- I mean, I -- I've got -- some -- I mean, I've got some timeliness questions, and I've got some tender questions. Go ahead, counsel. If you want to know the -- the short gist of where my questions are going to be. Go ahead.

MR. MARTINEZ: Yeah. And I think -- I think obviously the first thing we can address is the Countermotion to Strike the Motion -- the Bank's Countermotion For Summary Judgment is -- because it was untimely. Specifically, the dispositive motion deadline that was set as to the -- SFR and the Bank, and this is prior to when the HOA came in to reopen discovery, et cetera, so that -- that discussion we can get into, but -- if it's necessary. The scheduling order that was relevant at the time was the dispositive motion deadline was set for July 9. And SFR timely filed its motion for summary judgment. Instead of filing a -- an MSJ on the dispositive motion deadline, the Bank turned around and filed an opposition countermotion some three weeks later.

Now, the only response that the Bank has to our countermotion to strike -- which I'll run through the specifics there -- the only response they have is that EDCR 2.20(f) allows for countermotions. I don't disagree. You can absolutely have a countermotion. However, if that motion is dispositive in nature, it must be filed before the dispositive motion deadline. And that falls directly under NRCP 16(f), which calls for the failure of a party or the party's attorney to comply with the scheduling order, which then necessitates a sanction under NRCP 37(b)(2)(c), which is specifically to strike the pleading because it fails to comply with the scheduling order.

And that's -- that's as simple as our argument is, is that it was filed after the dispositive motion deadline. There's no dispute

there. It was certainly filed after what the original dispositive motion deadline was. And the Bank doesn't really substantively address the 16(f) and NRCP 37(b) arguments. In that respect, 2.20(f) doesn't save -- they're untimely filed.

THE COURT: Okay. Do you want me to deal with the procedural aspect first, or do you want me to just go on to the merits?

MR. MARTINEZ: Yeah, I -- I'd appreciate it if you would, because then I can just tailor the --

THE COURT: Sure.

MR. MARTINEZ: -- approach that way.

THE COURT: Okay. Do you want to address the -- so we're addressing the countermotion to strike. You acknowledge it's untimely. Or you don't acknowledge --

MR. HENDRICKSON: Well, I mean, we -- we filed the countermotion within the opposition deadline. If the Court is inclined to find that untimely and strike it, then all the arguments would still weigh towards the opposition of SFR's motion, and we'd just file a motion -- a dispositive motion again, in -- with -- now that discovery's been opened and we have a new dispositive motion deadline. So, I mean, all the arguments within the opposition, you know, relate to opposing SFR's motion and showing that there are genuine issues of material fact related to SFR's BFP status, related to the issues of tender and whether the tender was valid or not.

So I -- I have no problem if the Court's position is to view

the counter -- view the countermotion as an opposition. Regardless, either way, it's -- it's fine. In reviewing this, you know, we looked at the rules. I addressed the rule with my managing counsel, and this is the -- the option that they presented. And so we looked at the rules, believed that the countermotion -- and we've done this in other cases before, so we believed that this was appropriate. If the Court finds otherwise, treat it as an opposition.

THE COURT: But -- here -- I mean, NRCP takes precedence over local rules. I mean, I've got to follow the NRCP versus EDCR. In fact, the Supreme Court's come down on some of those when they're inconsistent, and NRCP trumps because obviously it's statewide.

MR. HENDRICKSON: And I wouldn't want there to be an issue with appeal, so if, you know, if we're to treat this as a -- as an opposition, that's fine.

THE COURT: Okay. But -- but -- here's the question, though. And I just need to -- for -- since this is the down-the-road-question too. Do all parties view that since the HOA came into this case and that the trial is now moved into the March 2019 stack, that dispositive motions will open up to all claims as to all parties, or was it just HOA related claims? And I just need to know if that's an issue that I'm going to have down the road that -- I'd rather at least know it now. Go ahead, counsel.

MR. MARTINEZ: Yes, Your Honor. And it's actually the latter. And this is the -- was the primary purpose of us opposing --

or limited opposition to the HOA's motion to reopen, was that the Bank's not going to get a second bite of the apple as to the claims between SFR and U.S. Bank. If they failed to file their MSJ on time, if they didn't do the discovery that was necessary, they had their time to do that, and that time has passed. The only reopening of the discovery deadlines, including the dispositive motion deadline, was going to be as to the Bank's claims against the HOA or -- or vice versa, if the HOA were to file counterclaims against the Bank. And that was my understanding of the Court's ruling when we dealt with the motion to reopen and -- because we -- I had a specific discussion about the expert deadlines, because, as you'll recall --

THE COURT: Right.

MR. MARTINEZ: -- the Bank had untimely filed an expert dead -- or disclosure in this case, which was stricken as well, for failing to comply with the scheduling order. And just because they bring the HOA in late and the HOA needs to -- without being prejudice, needs to open discovery, doesn't give the Bank the second bite at an expert, at discovery, or even dispositive motions as to the claims of SFR.

THE COURT: Counsel for HOA, I just want kind of your viewpoint. Because I have a certain recollection, but once again, I want to make sure that somebody didn't have some agreement after what was stated here in court.

MS. KAO: Your Honor, I -- I agree with SFR's counsel on it -- on what he just said about deadlines and -- and claims and things

of that nature.

THE COURT: Okay. Counsel for the Bank, go ahead.

MR. HENDRICKSON: I would just say I don't recall any discussion at the hearing on the HOA's motion to continue the trial where the dispositive motion -- now, we did discuss as to discovery would be limited to claims, but as between the HOA and the Bank, but there was no discussion, and -- and I would ask the Court to pull the transcript if there's any dispute about that. There was no discussion about any limiting of dispositive motions only as to claims between the HOA and the Bank, assuming that with a new scheduling order issuing and moving the dispositive motion deadline out to January or -- or I believe it was January, is when the -- January 2019 is when the dispositive motion deadline is. It might be February. But there was no discussion that that would only entail claims between the HOA and the Bank. Now, if that was the intention of SFR, if that was the intention of the HOA, that should have been on the record, and it should have been explicitly put in the order granting the HOA's motion, and I saw nothing of the sort, else I would have objected to it when I signed it. So, you know, we can't just amend the Court's findings after the fact in this kind of haphazard manner, because I don't remember any discussion of this taking place.

Now, I will agree that our -- we don't get to reopen our -- our expert deadline, you know, and we only get a rebuttal expert if the HOA names an expert. We don't get to reopen discovery as

between SFR. But there was no discussion of the dispositive motion deadline.

THE COURT: Well, instead of -- we've got other parties waiting to hear their matters, so we're not going to go there today. The Court's not going to take a position. I was looking to see whether you got a new trial order yet. I have the -- I have the hearing transcript from the 7/19 hearing, but -- and I want to remind -- there's still some compliance on that 7/19 hearing.

MR. HENDRICKSON: Yes --

THE COURT: Just -- I -- not before me today, just -- it was 30 days compliance. Today is August 14th, so we have not gotten any notice of compliance.

MR. HENDRICKSON: I -- and that will be resolved tomorrow. It's just --

THE COURT: No, of course -- I wasn't -- just -- okay. So here's what the Court's going to do. At the time these were filed, there was -- and a new trial order has not yet issued, so the dates that were in effect for filing of dispositive motions were the dates in effect at the time of the dispositive motions.

So the Court's going to treat the U.S. Bank's opposition for its opposition context and is going to strike it as a countermotion for summary judgment under the NRCP because it was untimely for that. The Court in so doing is not taking a position as to whether or not dispositive motions have or have not been reopened. That's going to have to be by written motion practice to

this Court if you want a ruling on that one way or another. Or, who knows, it may come up someone tries to file it and there's an opposition, then you get a ruling of the Court. But the Court has to look at what was in effect at the time in the countermotion. Since it is a dispositive motion, it has to fall within the dispositive motion deadline. It is untimely, and so the Court's going to treat it as an opposition.

In so treating it as an opposition, the Court now has an inclination on SFR's motion for summary judgment to deny without prejudice with regards to the tender issue. The Court thinks that there's material issues of fact with regards to tender. There is enough unpublished cases, some of which I can look at for certain factors, some of which I can't even mention. But there is, within those that I cannot mention -- and of course, I'd never rely on something I cannot mention -- has citations to things that the Court can look at. And when I look at that whole trend, I think that it's more appropriate there's material issues of fact on whether there is or is not a tender as the current status of Nevada law. That's the Court's inclination. Go ahead, counsel.

MR. MARTINEZ: Thank you, Your Honor. I understand the Court's inclination, so I think this one's a -- a little bit different because it has an evidentiary issue, which, although I don't agree with Your Honor's position as to the material issue of fact on the tender defense, because I don't think they've met their burden, and I also think it's impermissibly conditional. I'm not going to actually

get into the merits on the tender. I'm going to first focus on the evidentiary issue --

THE COURT: Sure. Go ahead.

MR. MARTINEZ: -- with their inability to actually present the evidence to put forward their tender defense. And specifically, I'm -- I'm looking at the affidavit of Rock Jung, which is Exhibit 14 to the Bank's opposition. And specifically, this is because this is how the Bank is attempting to authenticate what they call the tender documents. I'll just refer to them as the Miles Bauer documents. That's what they're trying to authenticate, the Miles Bauer documents.

Now, Mr. Jung does state in his affidavit that he is an ex-employee of Miles Bauer. He's actually the signatory on the letter that contains the check. However, there's an authentication issue. First off, the declaration on its face is insufficient to establish authenticity for the documents. All -- all that it says is that he was an employee of Miles Bauer. It doesn't specify when. He doesn't talk about his familiarity with the records system. He doesn't talk about his familiarity with the program, things are kept, how they're preserved, anything like that, how changes are -- are recorded or logged. He doesn't discuss any of that. And the biggest issue is that Mr. Jung has testified in trial that he, himself, does not have access to the Miles Bauer system today and -- and that testimony was attached to our reply. And I can get the specific exhibit, but the trial testimony was on April 22 of 2016, and as of that date, he

hadn't been working at Miles Bauer. There wasn't any testimony within there when he had left Miles Bauer, but his testimony was that as of that day, April 22, 2016, he no longer had access to Miles Bauer's system, which means that he actually cannot authenticate the records that are purportedly coming from Miles Bauer's system because he, himself, did not pull them. He cannot go into the system to verify that those are actually true and accurate copies of the documents that are in there.

Additionally, his declaration is insufficient in the fact that it is also testimonial. Because he's talking about -- and if you -- specifically, I'll direct the Court to paragraph 8 of his declaration, where Mr. Jung declares that this check was rejected by Alessi & Koenig and returned via runner without being cashed. However, he -- there's no documentation to prove that, number one.

Number two, this is a testimonial declaration, so you can't authenticate a record that doesn't exist. And he doesn't have access to Miles Bauer's system and hasn't had access since he left the firm, which means that to the extent he's trying to authenticate Miles Bauer documents, he cannot authenticate Miles Bauer documents. He can't compare whatever copies, however they obtained them -- he cannot compare those documents to the originals in Miles Bauer's system.

And in one of the cases that was cited in our brief was the In re Vinhnee case. It's a -- it's a bankruptcy court case, 9th Circuit B.A.P. But it discusses in the circumstances of electronic records

what types of things need to be prevalent or in -- in a declaration in order to authenticate a record such as those. And one of the things they talked about is that when a business record is in electronic format, the focus is on the circumstances of preservation of the records during the time it was in the file so as to assure that the document proffered is the same as that originally created.

And that -- that goes right to the point, is that we're trying to confirm that the document that's being presented under the declaration of Mr. Jung and in this motion for summary judgment is authentic. And that -- that's the first step to getting it to be admissible. But you can't come forward on an opposition to a motion for summary judgment with inadmissible evidence. That's right under NRCP 56.

Now, the Vinhnee case actually goes further and indicates some details as to what the purported custodian of records needs to identify in his declaration. And specifically, you cannot just identify the programming which the documents are maintained. Which keep in mind, this declaration doesn't even identify which program maintains it. Miles Bauer's system has no discussion of that. But Mr. Jung would have been required to actually outline the policies and procedures for the use of the equipment, the database, and the system by which the documents are kept. You also must identify how to -- how access to the system is controlled, specifically, who has it, who can get to it, who is restricted. And then also, like I mentioned before, you have to be able to identify

how changes are recorded and logged in the system and how it's backed up. And all this goes to verifying the authenticity or genuine nature of the original document that he's purporting to authenticate, but he does not have access to the records. He's never had access to the records since he left Miles Bauer, and --

THE COURT: Let me interrupt you for a quick second.

MR. MARTINEZ: Sure.

THE COURT: A lot of what you're saying I have via your argument, right? I don't have it via any evidence to say that he doesn't have access to any of that. I have it -- right? Because you're having me look at the fact that it's not specifically in his affidavit. And I appreciate you're saying in other cases he said that, but I'm looking for this case. Do I know in this case that he does not have access to the records as of July 20, 2018? While I'm appreciative of testimony that has come about in cases in -- in this department by Mr. Jung, how -- I don't see how I can take that into account to know what he did or did not have access to on July 20, 2018, the day he did his affidavit.

MR. MARTINEZ: Well, his affidavit doesn't indicate that he has access to the records either, so it's still insufficient on its face. Even if, like, what Your Honor's suggesting is that --

THE COURT: I'm not suggesting. I'm asking.

MR. MARTINEZ: Well, inferring, I guess -- is that even -- even though Mr. Jung testified in trial on April 22, 2016, that, number one, he was no longer with Miles Bauer, and he doesn't

have access to the records, and he hasn't had access to the records since he worked there. It's my understanding Mr. Jung works at Mr. Hendrickson's firm, who currently represents the Bank in this particular case. He does not work at Miles Bauer. I don't know the last time he's been deposed, but I've been at many trial testimony where he's said the exact same thing.

The -- the inference is that maybe he, sometime between April 22, 2016, obtained access to Miles Bauer's systems, specifically to identify these documents. That would be the very limited circumstance where he could have done that. But his declaration does not indicate that. His declaration on its face is insufficient to authenticate the records. Whether or not I know he doesn't work at Miles Bauer or he's testified otherwise, his declaration doesn't indicate that.

THE COURT: Okay.

MR. MARTINEZ: His declaration specifically says he was an ex-employee. He doesn't talk about the system. He doesn't talk about how he obtained the documents. He doesn't -- there's nothing there to authenticate those records.

THE COURT: Okay.

MR. MARTINEZ: And on that basis, they don't have admissible evidence to present their tender defense to a point where they can defeat the presumptions in favor of SFR, one being foreclosure and the deed itself are valid, and then the, obviously, legal effect resulting therefrom is that the deed is presumptively

extinguished and that the sale included two proprietary amounts. All of those things are presumptions in our favor.

And then I can get into the merits of the tender just because of the fact that there is also no evidence that this letter -- even if the Court were to rule that this was the perfect tender -- even if Your Honor were to reach that conclusion, the Bank has provided no proof that it has been actually delivered to the HOA. And it doesn't matter how good that tender is. If it never makes it to the party it's supposed to go to, it's ineffectual. And there's no proof of delivery. There's no run slip, no voided check. There's just that blank declaration by Mr. Jung in his -- in his declaration that -- that was delivered and rejected. There's absolutely no actual evidence of that. And his testimony is not sufficient because he doesn't actually have personal knowledge of that. He doesn't indicate that he does.

In his declaration, he doesn't indicate that he is basing that off of a review of the records. He's not basing that testimony off of any specific document that was attached to their motion for summary judgment or their opposition to our motion for summary judgment, which means that they've now failed to meet their burden under 56, in order to come forward with admissible evidence to demonstrate a genuine issue of material fact. But because they haven't demonstrated that the tender was actually there, delivered, regardless, they can't prevail at defeating our summary judgment.

And then the only other side points, then I'll leave the remainder of the arguments -- because I've argued them to Your Honor many, many times. They're in the brief. I understand Your Honor's ruling as to those, regarding recording and good faith basis for rejection. I will note that in this particular case, Mr. Alessi -- talking about these letters in general, because he did not have a record of whether or not this letter was actually delivered. He specifically discussed it, indicating that his belief at the time was that accepting a letter that was drafted in the way it was drafted -- it was so broad, and it contained conditions that he thought would force him to waive his client's super-priority rights.

And this actually goes to my impermissibly conditional argument which invalidates tender in the very beginning, although his testimony goes directly to whether or not it's good faith basis for rejection. What he's discussing is that he felt that if he would have accepted the payment that was being made or -- or tendered, as the Bank puts it -- with the conditions therein, number one, he'd be waiving potential super-priority rights -- and -- that was his understanding. That's -- that's cited in our briefs and in his deposition testimony, which was actually attached to the Bank's opposition, wherein he discusses the fact that, number one, he doesn't even know if -- if that would waive a portion of the super-priority right, and he also doesn't even know if that would waive the HOA's ability to collect on the remainder of the lien, sub-priority, or the fines or anything, because he thought the language

was so broad.

One final point on the unjust enrichment, because we moved for summary judgment on the Bank's unjust enrichment claim. The Bank actually provided zero evidence. There's nothing attached to their opposition as to the unjust enrichment claim. Candidly, I'd say they barely substantively addressed our arguments on unjust enrichment, just that they conferred a benefit and discussed something about payments of taxes prior to SFR's acquisition, which clearly can't be attributed to SFR. That was in their opposition.

THE COURT: But was it prior to SFR's acquisition, or is it both?

MR. MARTINEZ: Well, they're claiming it's both.

THE COURT: That's -- I was going to say, I thought that was the assertion, that it was both.

MR. MARTINEZ: Correct. I'm referring to the ones that -- obviously, pre-SFR acquiring the property. You cannot get an unjust enrichment claim against me for payments you made when I didn't own it or when SFR didn't own it, so those clearly don't apply. But as a whole, they really didn't -- they didn't provide any evidence to justify their unjust enrichment claim, substantiate it, i.e., the actual payments being made. It's just argument of counsel, and on that basis alone, it's effectively unopposed, and I think it should be granted on that basis.

THE COURT: Do you deny that they've paid taxes?

MR. MARTINEZ: I can't -- I don't -- I have no idea. They've provided no evidence. I have no way of understanding whether or not the Bank has actually made any payments. If they made payments for taxes, assessments, or -- or anything like that, they haven't provided any evidence.

THE COURT: Okay. I appreciate it. Counsel, you -- you have heard the --

MR. HENDRICKSON: So --

THE COURT: -- issues.

MR. HENDRICKSON: -- just -- yeah.

THE COURT: Let's deal with the unjust enrichment first. Did you provide any evidence to show that your client has paid the taxes and other --

MR. HENDRICKSON: We did throughout the discovery process. We didn't highlight it in our motion. We provided payment histories to indicate that. And -- and our client has deposition testimony to indicate that our client's been paying taxes since the HOA sale --

THE COURT: Is that in front of me for the purposes of the motion for summary judgment, though?

MR. HENDRICKSON: We -- we didn't include that in the -- the motion for summary judgment.

THE COURT: So then how -- hearing defendant's arguments, that you didn't provide any evidence to respond to the -- okay. If they're asking for summary judgment on the unjust

enrichment, in your opposition, right, under Rule 56, you have to provide something, right, to rebut it. I'm just trying to have a -- asking you what you provided to rebut their assertion that I should grant summary judgment on unjust enrichment.

MR. HENDRICKSON: I'm -- I'm not really concerned about the unjust enrichment claim.

THE COURT: Okay.

MR. HENDRICKSON: The reality is, we want the property. So if the Court grants summary judgment on that grounds, you know -- these are alternative claims, so it's -- we never anticipate getting monetary judgments against the HOA, collecting on these unjust enrichment claims. Our --

THE COURT: Are you sure you want to be saying -- I'm --

MR. HENDRICKSON: It's an -- it's a claim in the alternative. So if the Court were to rule against us, that's the only point at which it would become operative.

THE COURT: But for purposes of a summary judgment motion, right, I have to look at it claim by claim.

MR. HENDRICKSON: We didn't -- so what I'm telling you, Your Honor, is we did not provide that information in our opposition. If the Court's inclination, then, is to deny that claim, I understand.

THE COURT: Is to grant -- okay. Well, the Court's going to grant the --

MR. HENDRICKSON: Grant or --

THE COURT: -- summary judgment -- yeah, on the unjust --

MR. HENDRICKSON: If you grant summary judgment on that claim to SFR, I understand.

THE COURT: Okay. That part's taken care of. So now we'll go to the quiet title portion that you heard the Court's inclination was to deny without prejudice because issues of tender. You heard defense counsel's response, that your evidentiary support -- and he phrased it more eloquently, gave us more examples, but in essence, that Rock Jung's affidavit is insufficient from an evidentiary standpoint to really be viewed as an opposition.

MR. HENDRICKSON: I will address that. Let me circle back to the unjust enrichment. Because the claim's in the alternative, I don't even know that it's operative unless we lose on quiet title. So in our estimation, the claim would still be operative in the -- unless, you know, we lost on the quiet title aspect.

But moving on to the evidentiary aspects of the declaration. Rock Jung is not testifying as a 30(b)(6) witness of Miles Bauer who has no knowledge of any of these matters except by review of records. He drafted the letter. He sent the letter. He was handling counsel from start to finish. So he can testify on his personal knowledge, regardless of whether or not he has any knowledge of how the Miles Bauer records were kept or that -- that -- that he even has access of -- to the records, because he drafted it.

If you asked me about a case I handled five years ago, and you said, did you draft this letter, I don't need to be the custodian of records or testify in a declaration that I'm the custodian of records to know I drafted that letter. I can say I drafted communication to this party without even referencing the letter. So Rock's -- Mr. Jung's testimony is based on his personal knowledge, not as a 30(b)(6) witness for Miles Bauer, which he's not. So he can certainly testify to things like, I drafted the letter and sent it to Alessi & Koenig. He could testify that the letter was rejected, because he knows that. He was the handling counsel. He does not have to have access to the records.

Now, he does have access to the records through Akerman. Akerman provides us with all of the Miles Bauer records. And in addition to the records in this particular case, we reviewed not just the Akerman records, but the Miles Bauer billing records that -- that Mr. Jung created contemporaneously with his -- his work product, so he knows very well what these letters encompass. And let's be honest. These were form letters. If you take, you know, any Miles Bauer letters to any of these trustees, they're going to be almost exactly the same except if the dates and the specific amounts to the HOAs. So it's not as if he needs to, well, is this record -- is this letter the exact letter that was provided. He can look at it and say, yeah, we've dealt with thousands of these, and he knows what he drafted.

So I -- I don't think any of those arguments are -- are really

appropriate or effective. Besides, Mr. Jung is able to testify to his personal knowledge, and that's really all he needs to do. And SFR's presented no evidence to rebut his personal knowledge. His testimony apart from any of the documents would be sufficient to establish tender, where SFR has no evidence to present to the contrary. Just calling into question, well, we don't know if the check was delivered -- we have a witness that says it was. We don't need a run slip. He says it was. There's no evidence to the contrary. There's just, well, we don't know that that happened. That's like saying I don't know that there's satellites that orbit the Earth because I don't see them. Well, that's -- that's irrelevant to the issue.

So Rock can certainly testify to his knowledge, and that's what he does. We do have access -- and we do have a more robust Miles Bauer, Doug Miles' record that has the -- how all of the records are kept. The only thing is, Doug Miles didn't handle these cases. He was a partner who probably has no personal knowledge, but he just had access as the partner of the firm.

THE COURT: I'm not sure you want to make that assertion. Mr. Miles has testified in a number of cases in this department --

MR. HENDRICKSON: I don't know that he was the --

THE COURT: Are you saying that he was not accurate in his -- I'm sure you're not saying that he wasn't accurate in testimony.

MR. HENDRICKSON: I'm not saying he wasn't accurate. I'm saying I doubt that he could testify with the level of accuracy that, I drafted this, I handled the case, I spoke to counsel. He would testify as managing partner that, you know, I can review the records, and I can say this happened. But Rock can testify -- I think his testimony carries more weight, which is why we used the actual handling attorney who drafted the letters when we used that testimony. So we think that's appropriate.

As to the terms of the conditional nature of the -- the Miles Bauer tender, Rock has testified many times, and -- and every attorney, whether it be Paterno, Jory Garabedian, any of the ones that -- that drafted these letters have all -- and their testimony has all been consistent. This letter, in our view -- and this comes from the person who drafted it, said that, we're just trying to confirm that our obligation is to pay the super-priority amount regarding this lien and nothing else. Now, they're not saying, you know, for all possible ongoing assessments that could come due in the future at some point, if the Bank were to foreclose and the property becomes REO, the Bank would then have no obligation to pay me -- that's not what was said here. This was always in the context of this specific lien. And on this specific lien, they just wanted the HOA trustee -- in this case, it was Alessi & Koenig -- to understand that their position was that we're responsible for nine months of assessments on this lien. That is a valid tender of the super-priority lien.

Now, in Mr. Alessi's deposition, he actually said two things that were interesting. One, he said that his reason for objecting this was -- rejecting this tender was that he felt -- it wasn't even so much that -- that -- that tender was brought. He said he felt that under the Corbell decision -- Corbell trust decision -- that the super-priority lien included fees and costs and that he had a good faith belief for that. And he -- his exact words were: Miles Bauer does not get to be judge, jury, and executioner as to what the super-priority lien consists of. So that's why he rejected this.

Now, the fact that there was different legal authorities at the time, the fact that there's been subsequent caselaw that has defined what the super-priority is makes his good faith belief irrelevant, and that's what the Nevada Supreme Court said in BAC vs. Aspinwall Court Trust. They said that it -- your belief -- and I don't think it -- I don't know if it was Alessi & Koenig, but the trustee, whoever it was in that case, said, we believed that the super-priority lien included fees and costs, and therefore, we had a good faith basis to reject the tender. And the Nevada Supreme Court said their good faith belief was irrelevant in light of caselaw. Why? Because the caselaw, when it's decided, assumes that that was the law from the start.

Now, we've -- the Bank's faced the same issue regarding the retroactivity of SFR. We can't say, well, SFR created new law, therefore, it only applies prospectively going forward, but moving backwards -- we had a good faith belief in not attending the sale.

We had a good faith belief in not issuing tender, because we didn't think this could --

THE COURT: Counsel, we need to get you to finish up because we've got other parties that are waiting --

MR. HENDRICKSON: Sure. So --

THE COURT: Thank you so much.

MR. HENDRICKSON: In the -- in the instances where the law was the law, we were right about it, David Alessi took the position where he gambled, and he was wrong. The safe position would have been for him to accept the tender and take no position, and then we could have resolved it later. But he didn't do that. So he rejected the tender. We believe that that discharges the sub-priority portion -- or that satisfied the super-priority portion of the lien.

Now, where this goes from here I don't know because we've had conflicting opinions from the Nevada Supreme Court. It seems like at one point there were opinions stating that, you know, you could take subject to the deed of trust as the -- the -- the super-priority portion of the lien was extinguished by the tender. Now they're saying -- it appears that the recent case says void the sales. So I -- I don't know where this Court views that. It seems that there's been a change in the process. If whether that means that this -- you know, the – the proper instance is to void the sale or to take subject to the deed of trust, I -- I would leave to the Court, but I'll submit it on that grounds.

THE COURT: Okay. Real brief reply, please.

MR. MARTINEZ: Yes, Your Honor. Specifically, counsel just conceded that Rock Jung does not have access to Miles Bauer's records, meaning that he can't himself go in and pull those documents. He has to go through an entirely different law firm, who isn't Miles Bauer, and isn't the custodian of records, because Mr. Miles has testified that he is the custodian of records multiple times in trial, various affidavits appearing about all these litigation -- all this litigation, that Doug Miles is the custodian of records for the Miles Bauer documents.

Now, what counsel's just conceded is that the point Your Honor asked me before and that inference in that Mr. Jung could have attained access, but again, we don't -- now we've got another party in the chain of title as to these documents. Now Akerman, who's obviously a law firm representing other banks, has purportedly pulled these documents from Miles Bauer's system -- Akerman's not anybody from Miles Bauer. They're not Doug Miles. So not only did Doug Miles not pull these documents, they're not directly from Miles Bauer. They're actually indirectly -- based on counsel's own representation that says, I can't confirm that -- indirectly, through a totally different law firm. And Mr. Jung doesn't include any of that in his declaration. He's not explaining how he obtained these documents.

He -- now, here -- here's another inference that can be drawn. When the documents were pulled to Akerman -- and not

that I'm insinuating they would do anything like that, but now there's another hand on these documents. I can't confirm that that is a true and accurate copy, nor can Mr. Young, because he can't testify from the source. He's getting it from a third party who got it from the source, purportedly. I mean, and that -- that right there tells you that Mr. Jung's declaration and his inability to authenticate the documents is glaringly obvious at that point. That's based on the concessions of counsel. Not the mention, this was seven years ago, purportedly, in 2011. Give Mr. Jung some credit if he can remember exactly what happened on all of these thousands of cases which were form letters to be identical.

And I have all these cases with SFR. I have to individually prep for every case because all the facts are different. I'm not -- I don't have that kind of memory. I can't remember 600 cases. And that's today. I can't imagine that Mr. Jung can remember thousands of cases that occurred over three or four years, all substantially similar or nearly identical. So to that extent, I don't think Mr. Jung's declaration is sufficient to support the fact that they can authenticate these Miles Bauer documents, based on the concessions of counsel, which just shored up, in my opinion, my original argument and answered the Court's question on the inference.

THE COURT: Okay. I do appreciate it. The Court is going to deny in part and grant in part SFR's motion for summary judgment. Motion for summary judgment as to unjust enrichment

is going to be granted. Really, it's granted both pursuant to EDCR 2.20. There was no evidence provided in opposition thereto, and so -- and then also on the merits because there's no other evidence provided to the Court that would show anything different than the contentions of SFR. The Court's not saying whether or not in reality world may mean things were paid or not paid.

With regards to the idea that it was an alternative, it is -- the complaint shows it is a cause of action or claim. When I have a motion for summary judgment under Rule 56, you can go after claims, causes of action, however you'd like to phrase it, and so therefore it was presented to the Court, and therefore, the Court does need to rule on it.

With regards to the remaining motion for summary judgment, the Court denies it without prejudice. The Court finds the material issues fact, specifically on the tender.

Let's walk through a couple things. First off, Mr. Alessi's deposition was referenced in that he supposedly had a different viewpoint than Mr. Jung. Well, that in and of itself would create material issues of fact in dispute. And even more significantly, Page 29 of the deposition that was referencing Mr. Alessi, he says he's not -- when he was asked:, are you familiar with this document? Yes. How are you familiar with it? I'm familiar with the general nature of the document. I don't know that I'm familiar with the exact document.

So even he's saying he doesn't know about this specific

letter, so he can't raise the issues that are raised in the argument on why it would not be material issue of fact. So therefore, don't have any evidentiary support that's been provided that the declaration of Rock Jung isn't what it appears on its face. If we're looking at it purely under Rule 56, the Court can't take into consideration other information that it has from other cases. Okay? Once again, those are nice arguments from counsel, but I have to look at this particular letter in this particular case for this particular Rule 56 motion. In so doing, the Court needs to find that there are material issues of fact in dispute with regards to the tender.

The Court, therefore, doesn't need to go to the issue of whether or not, depending on what happens down the road, whether it would be void or voidable or whether it would be subject to, because we're not there yet. Sounds to me like you both are saying you're going to have a very interesting trial and that you're on the bench trial stack of March 18, 2019, unless you decide to resolve it sooner.

And with that, I'm going to -- since I granted in part and denied in part, I'm going to end. Since I granted the motion to strike the countermotion, that means SFR I think is volunteering to prepare the detailed order and provide it to all other parties and provide it back to the Court, right? SFR, is that what you're volunteering to do?

MR. MARTINEZ: Yes, Your Honor. And can we ask for a little more time, since we do have some room --

THE COURT: Of course you may.

MR. MARTINEZ: I am going to send a separate request for the transcript. But I know there's been a lot, and I don't want to jam up the --

THE COURT: Since we don't -- since trial's not until March, looks like you've got some time. So do you want 30 days from today for -- to get the order in?

MR. MARTINEZ: If it could be --

THE COURT: I mean, how --

MR. MARTINEZ: I don't know how fast we're going to have the transcript turned around.

THE COURT: Depends on how much money you want to pay for the transcript -- or if you're asking for the DVD.

MR. MARTINEZ: No, I don't need the DVD.

MR. HENDRICKSON: The transcript of this hearing, is what you're referring to?

MR. MARTINEZ: Correct.

MR. HENDRICKSON: Okay.

MR. MARTINEZ: We want detailed findings, and we want to be accurate.

THE COURT: Rule 56 says it. So what do you want?

MR. MARTINEZ: Well, I -- I'll -- I'll take -- if -- if I can get 30 days from when I get the transcript, then I'll -- I'll order it on a faster pace.

THE COURT: Well, if you order the 30 days on the

transcript, then you're really asking for 60 days, which does present a challenge, just because with your -- some of your upcoming motions -- sorry, your upcoming deadlines. But --

MR. MARTINEZ: I can order --

THE COURT: -- why don't I give you 45 days from today. And if you need more time, the parties need to notify the Court. Okay?

MR. MARTINEZ: Can I get a -- a specific date for that, just so I that I can be --

THE COURT: Madame Clerk, what would be that 45th date?

LAW CLERK: September 25th.

MR. MARTINEZ: Perfect.

THE COURT: Okay. And if you need more time, just give us written notification, cc it to all the parties, all parties in agreement. Okay?

MR. HENDRICKSON: And the Court will have the notice of compliance referenced --

THE COURT: No worries.

MR. HENDRICKSON: -- tomorrow.

THE COURT: No worries. I just -- making sure people aren't inadvertently -- there's -- lots of people have lots of things on their plates. There's 600 cases, right? Isn't that what you told me?

MR. MARTINEZ: Yes, Your Honor.

THE COURT: Thank you very much. Do appreciate it.

[Hearing concluded at 11:14 a.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Nicole Flaherty
Transcriber

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Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8, Plaintiff, v. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; ANTELOPE HOMEOWNERS' ASSOCIATION, a Nevada non-profit corporation; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-16-739867-C DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter/Cross Claimant, vs. U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INV., a	

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

Counter/ Cross Defendants.

NOTICE OF ENTRY OF ORDER

Please take notice that the Order Granting Antelope Homeowners' Association's Motion to Re-Open Discovery and Continue Trial and Denying SFR's Motion for Attorney's Fees against U.S. Bank was filed with the court this 21st day of August, 2018, a copy of which is attached.

DATED this 23rd day of August, 2018.

LIPSON NEILSON P.C.

/s/ Karen Kao

By: _____

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KAREN KAO, ESQ. (NV Bar No. 14386)
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 23rd day of August, 2018, I served the foregoing **NOTICE OF ENTRY OF ORDER** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

WRIGHT, FINLAY & ZAK, LLP Dana Jonathon Nitz, Esq. Jamie S. Hendrickson, Esq. 7785 W. Sahara Ave., Suite 200 Las Vegas, NV 89117 rhabermas@wrightlegal.net jhendrickson@wrightlegal.net	**KIM GILBERT EBRON** Diana Cline Ebron, Esq. 7626 Dean Martin Drive, Suite 110 Las Vegas, NV 89139 diana@kgelegal.com

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

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Attorneys for Defendant Antelope Homeowners' Association

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

CASE NO.: A-16-739867-C
DEPT. NO.: XXXI

ORDER GRANTING ANTELOPE HOMEOWNERS' ASSOCIATION MOTION TO RE-OPEN DISCOVERY AND CONTINUE TRIAL AND DENYING SFR'S MOTION FOR ATTORNEY'S FEES AGAINST U.S. BANK

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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.

Defendant Antelope Homeowners' Association ("HOA") filed a Motion to Re-Open Discovery, Extend Dispositive Motion Deadline and Continue Trial on Order Shortening Time, and Defendant SFR Investments Pool 1, LLC ("SFR") filed a Limited Opposition to Motion to Re-Open Discovery and Continue Trial and Counter-motion for Attorneys' Fees Against U.S. Bank having come on regularly for hearing on July 31, 2018, and HOA being represented by Karen Kao, Esq., and SFR being represented by Jason G. Martinez, Esq., and U.S. Bank being represented by Jamie S. Hendrickson, Esq., and the Court having reviewed the moving papers and oppositions thereto, and being fully apprised in the premises, and good cause appearing therefor;

IT IS HEREBY ORDERED that the HOA's Motion to Re-Open Discovery, Extend Dispositive Motion Deadline and Continue Trial is granted.

IT IS HEREBY FURTHER ORDERED that the period for the HOA to conduct discovery be as follows:

Discovery shall close on December 18, 2018.

The last day for the HOA to amend pleadings is September 19, 2018.

The last day for the HOA to serve initial expert disclosures is September 19, 2018.

The last day to serve rebuttal expert disclosures related to the HOA's initial expert disclosures, if any, is October 16, 2018.

Dispositive motions must be filed by January 14, 2019.

The Pre-Trial Conference is set for February 14, 2019, at 10:15 a.m.

Calendar Call is set for March 12, 2019, at 9:00 a.m.

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IT IS HEREBY FURTHER ORDERED that this matter is set for a bench trial commencing on the March 18, 2019 five-week stack at 9:00 a.m.

IT IS HEREBY FURTHER ORDERED that the trial set for September 10, 2018, and all related pre-trial hearings and calendar call, related to that setting are hereby vacated.

IT IS HEREBY FURTHER ORDERED that SFR's Counter-motion for Attorney's Fees Against U.S. Bank is denied.

DATED this 17th day of August, 2018.

JOANNA S. KISHNER

THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
A-16-739867-C

Approved as to form and content by:
WRIGHT, FINLAY, & ZAK, LLP

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IT IS HEREBY FURTHER ORDERED that this matter is set for a bench trial commencing on the March 18, 2019 five-week stack at 9:00 a.m.

IT IS HEREBY FURTHER ORDERED that the trial set for September 10, 2018, and all related pre-trial hearings and calendar call, related to that setting are hereby vacated.

IT IS HEREBY FURTHER ORDERED that SFR's Counter-motion for Attorney's Fees Against U.S. Bank is denied.

DATED this _____ day of August, 2018.

THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
A-16-739867-C

Approved as to form and content by:
WRIGHT, FINLAY, & ZAK, LLP

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Respectfully Submitted By:

LIPSON NEILSON P.C.

By:_____
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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, v. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; ANTELOPE HOMEOWNERS' ASSOCIATION, a Nevada non-profit corporation; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-16-739867-C DEPT. NO.: XXXI **DEFENDANT ANTELOPE HOMEOWNERS' ASSOCIATION'S ANSWER AND AFFIRMATIVE DEFENSES**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter/Cross Claimant, vs. U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INV., a	

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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.

COMES NOW, DEFENDANT ANTELOPE HOMEOWNERS' ASSOCIATION ("Defendant," "HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., and hereby answers the claims filed by U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("Plaintiff") as follows:

INTRODUCTION

1. As to Paragraphs 1 and 2, HOA is without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

JURISDICTION AND VENUE

2. As to Paragraph 3, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein and, therefore, denies the same.

PARTIES

3. As to Paragraphs 4, 6, and 8, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein and, therefore, denies the same.

4. As to Paragraph 5, HOA avers that the documents referred to in the allegations contained therein speak for themselves. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein that are inconsistent with said documents and, therefore, denies the same.

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5. As to Paragraph 7, HOA admits the allegations contained therein.

GENERAL ALLEGATIONS

6. As to Paragraphs 9, 10, 11, 12, 13, 18, 19, 20, 21, 22, 39, 46, 47, 48, 52, and 53, HOA avers that the documents referred to in the allegations contained therein speak for themselves. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein that are inconsistent with said documents and, therefore, denies the same.

7. As to Paragraphs 14, 15, 16, 17, and 59, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

8. As to Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 49, 50, 51, 54, 55, 58, 60, 61, and 62, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

9. As to Paragraphs 56, and 57, HOA denies the allegations in the manner and form alleged therein.

FIRST CAUSE OF ACTION

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

10. As to Paragraph 63, HOA incorporates its answers to paragraphs 1 through 62 as if fully set forth herein.

11. As to Paragraphs 64, 65, 66, 67, 68, 70, 71, and 72, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

12. As to Paragraphs 69 and 73, HOA denies the allegations contained therein.

SECOND CAUSE OF ACTION

(Preliminary and Permanent Injunctions versus Buyer and fictitious Defendants)

13. As to Paragraph 74, HOA incorporates its answers to paragraphs 1 through 73 as if fully set forth herein.

14. As to Paragraphs 75, 76, 77, 78, 79, 80, 81, 82, and 83, HOA avers that the allegations contained therein are not directed toward HOA and do not require a response. To the extent that a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein that are inconsistent with said documents and, therefore, denies same.

THIRD CAUSE OF ACTION

(Wrongful Foreclosure versus the HOA and fictitious Defendants)

15. As to Paragraph 84, HOA incorporates its answers to paragraphs 1 through 83 as if fully set forth herein.

16. As to Paragraphs 85 and 86, HOA denies the allegations contained therein.

17. As to Paragraphs 87, 88, 89, HOA avers that the allegations contained therein are legal conclusions which do not require a response and the documents referred to in the allegations contained therein speak for themselves. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein and, therefore, denies the same.

18. As to Paragraphs 90 and 91, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein and, therefore, denies the same.

19. As to Paragraph 92, HOA denies the allegations contained therein.

FOURTH CAUSE OF ACTION

(Unjust Enrichment versus Buyer, HOA, and fictitious Defendants)

20. As to Paragraph 93, HOA incorporates its answers to paragraphs 1 through 92 as if fully set forth herein.

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21. As to Paragraphs 94, 95, 96, and 97, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

22. As to Paragraphs 98 and 99, HOA is without knowledge or information sufficient to form a belief as to the truth of any allegations contained therein and, therefore, denies the same.

23. As to Paragraphs 100 and 101, HOA denies the allegations contained therein.

FIFTH CAUSE OF ACTION

(Breach of Contract versus the HOA and fictitious Defendants)

24. As to Paragraph 102, HOA incorporates its answers to paragraphs 1 through 101 as if fully set forth herein.

25. As to Paragraph 103, 104, and 105, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

26. As to Paragraph 106, HOA denies the allegations contained therein.

SIXTH CAUSE OF ACTION

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

27. As to Paragraph 107, HOA incorporates its answers to paragraphs 1 through 106 as if fully set forth herein.

28. As to Paragraphs 108, 109, 110, 111, and 112, HOA avers that the allegations contained therein are legal conclusions which do not require a response. To the extent a response is required, HOA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

29. As to Paragraph 113, HOA denies the allegations contained therein.

/ / /

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred by the doctrine of laches, estoppel, waiver, unjust enrichment and unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against HOA because the alleged damages, if any, were the result of intervening, superseding conduct of others, over whom the HOA has no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate damages, if any.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by contributory and comparative negligence.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are reduced, modified and/or barred by the doctrine of collateral estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to join one or more indispensable parties.

EIGHTH AFFIRMATIVE DEFENSE

HOA owed no duty to Plaintiff and breached no duty to Plaintiff.

NINTH AFFIRMATIVE DEFENSE

The non-judicial foreclosure sale of the HOA lien complies with all the applicable statutes.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute or statutes of limitation and laches.

ELEVENTH AFFIRMATIVE DEFENSE

It has been necessary for HOA to employ the services of an attorney to defend this action and a reasonable sum should be allowed for attorney's fees, together with the associated costs incurred in this action.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint is an abuse of process and HOA reserves the right to file counterclaims or separate complaint for abuse of process to recover damages.

THIRTEENTH AFFIRMATIVE DEFENSE

HOA is not the proximate or legal cause of Plaintiff's damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

HOA reserves the right to amend or otherwise modify this Answer to assert additional affirmative defenses as they become known through formal or informal discovery.

FIFTEENTH AFFIRMATIVE DEFENSE

HOA has no contractual relationship to Plaintiff to give rise to indemnification.

SIXTEENTH AFFIRMATIVE DEFENSE

Foreclosure purchaser and Plaintiff assumed the risk of the HOA foreclosure market and is not entitled to relief against the HOA.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Foreclosure Deed is conclusive evidence of HOA abiding by Chapter 116 recitals.

EIGHTEENTH AFFIRMATIVE DEFENSE

The final price of a HOA non-judicial foreclosure sale is insufficient to set aside a foreclosure sale absent a showing of fraud, unfairness or oppression.

NINETEENTH AFFIRMATIVE DEFENSE

The HOA abided by NRS Chapter 116's requirements for the distribution of funds from the HOA non-judicial foreclosure sale.

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TWENTIETH AFFIRMATIVE DEFENSE

HOA's lien was perfected at the recording of its CC&Rs and thus the entire lien is superior to any recorded deed of trust.

TWENTY-FIRST AFFIRMATIVE DEFENSE

HOA had the right to foreclose on its entire lien pursuant to Nevada law.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Chapter 116 is facially constitutional.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Chapter 116 as applied in this foreclosure was constitutional.

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PRAYER

WHEREFORE, ANTELOPE HOMEOWNERS' ASSOCIATION respectfully requests that this Court enter judgment as follows:

1. That U.S. Bank take nothing by way of this First Amended Complaint;
2. That U.S. Bank's First Amended Complaint be dismissed with prejudice, and HOA be dismissed from this action;
3. For an award of reasonable attorney's fees and costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

DATED this 7th day September, 2018.

LIPSON NEILSON P.C.

/s/ Karen Kao

By: _____

J. William Ebert, Esq. (Bar No. 2697)
Karen Kao, Esq. (Bar No. 14386)
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Attorneys for Defendant Antelope Homeowners Association

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 7th day of September, 2018, I served the foregoing **DEFENDANT ANTELOPE HOMEOWNERS ASSOCIATION'S ANSWER AND AFFIRMATIVE DEFENSES** was made by electronic service on the parties registered to receive such service via Wiznet/ECF System as follows:

WRIGHT, FINLAY & ZAK, LLP Regina A. Habermas, Esq. Jamie S. Hendrickson, Esq. 7785 W. Sahara Ave., Suite 200 Las Vegas, NV 89117 rhabermas@wrightlegal.net jhendrickson@wrightlegal.net	**KIM GILBERT EBRON** Diana Cline Ebron, Esq. 7626 Dean Martin Drive, Suite 110 Las Vegas, NV 89139 diana@kgelegal.com

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

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Electronically Filed
9/21/2018 1:55 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK NATIONAL ASSOCIATION, Plaintiff, vs. SFR INVESTMENTS POOL 1 LLC, Defendant.	CASE#: A-16-739867-C DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER

DISTRICT COURT JUDGE

TUESDAY, JULY 31, 2018

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff:	JAMIE S. HENDRICKSON, ESQ.
For the Defendant: Antelope Homeowners' Assn.	KAREN KAO, ESQ.
For the Defendant: SFR Investments Pool 1, LLC	JASON G. MARTINEZ, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Las Vegas, Nevada, Tuesday, July 31, 2018

[Case called at 9:54 a.m.]

THE COURT: Pages 5 and 6, U.S. Bank National Association versus SFR, 739867. Counsel, can I have appearances on page 5 and 6? I do appreciate. Apearances please?

MR. HENDRICKSON: Jamie Hendrickson, bar number 12770 for U.S. Bank.

MS. KAO: Good morning Your Honor. Karen Kao on behalf of Antelope Homeowners' Association.

MR. MARTINEZ: Good morning Your Honor. Jason Martinez on behalf of SFR.

THE COURT: Okay, a real quick question. First off, to Antelope. Since you both have a motion to re-open up discovery and continue the trial and then you also have the motion to dismiss. Are you asking that they both be heard today, or did you want the motion to continue trial and the motion to re-open up discovery to be heard today and motion to dismiss on a different day?

MS. KAO: Your Honor, it's up to the Court. We would like to have both motions heard today, but --

THE COURT: Okay.

MS. KAO: -- if the Court does not have the time to do so, that's --

THE COURT: No, no, it's fine.

MS. KAO: Okay.

THE COURT: It's just -- it wasn't clear. When we get a

motion to continue, sometimes people say no we don't want our motions to dismiss because we want to deal with the first one first. But okay, let me tell you what the Court's inclination is. I'm going to give you the Court's inclination on all three motions.

The Court's inclination on the motion to re-open up discovery and continue the trial is -- the Court's inclination is to grant it for good cause for the time that Antelope Valley just recently came into the case, in order to give them sufficient time to be prepared for the case and given it's a 2016 case, the Court doesn't have issues with regard to EDCR 1.90, nor NRCP 41, and it appears, albeit, the short time because the trial was supposed to be next month, although, today is the 31st, so really it's -

MR. MARTINEZ: A couple of weeks.

THE COURT: This month ish. But The Court would find that that's appropriate. The Court would caution that really this should have been done sooner, but at the same time the Court is cognizant of the short time frame, and then talk about when the trial would be is really where the Court was inclined to go on that one. With regard -- and then discuss what actual things need to be re-opened, okay?

The Court's inclination on the motion to dismiss is to deny it without prejudice because, as pled, the claims meet the 12 standard under *Buzz Stew, SFR*. If you want we to quote the *SFR* -- I'm talking about *SFR, September 18, 2014* case, not to be confused with the party here in this case, but -- So that's the Court's inclination on the motion to dismiss. It meets the very basic standard Rule 8, 12(b) -- like I said, *SFR* and *Buzz Stew.*

With regards to the countermotion for attorney's fees, the Court's inclined to deny it because as set forth in the opposition, for the good cause of why, in light of the NRED mediation, that Antelope couldn't have been brought in sooner.

That's the Court's inclination on all the motions. So let's start -- well let's start with the motion to dismiss first. Motion to dismiss --

MS. KAO: Morning, Your Honor. Basically, the HOA would just like to address the statute of limitations issue with regard to most of the claims brought by U.S. Bank in this particular matter.

THE COURT: Sure. And the Court's question is going to be how you can do that on the pleadings. You know what I mean? Because on the pleadings they've said it enough -- and do I really have, without going outside of the pleadings, all the information necessary in order to grant your motion? Go ahead counsel.

MS. KAO: Understood Your Honor. In U.S. Bank's complaint they do address these particular dates; one being the foreclosure dates -- actually the foreclosure sale took place on July 25th of 2012. The complaint also states that the NRED claim -- or, I'm sorry -- the sale was actually recorded, the trustees deed upon sale was recorded by SFR on August 3rd and the NRED claim was not actually made until September 30th of 2015, making it past that three year statute of limitations rule that we have.

THE COURT: But was that raised in the NRED mediation?

MS. KAO: I would believe that it did, Your Honor, but I honestly, I cannot represent to the Court whether it did or it did not

because I was not the handling attorney at that time.

THE COURT: No worries. And that was part of the Court's concern. See, there's facts and information that --

MS. KAO: Correct.

THE COURT: -- Court doesn't have available to it at this juncture. Sorry, go ahead please.

MS KAO: Understandable, Your Honor. That's essentially the only reason why the HOA at least feels that, at least when it comes to the statute of limitations, the claims made against -- the claims made for unjust enrichment, breach of contract, as well as the breach of covenant of good faith and fair dealing should be dismissed just based on the statute.

THE COURT: Okay, I do appreciate it. Opposition?

MR. HENDRICKSON: I don't know if the HOA raised a statute of limitations defense in NRED, as I wasn't the handling counsel at that time either, but I have no record of that in any of the -- in any of my notes or any of the documents filed pursuant to the NRED mediation.

We believe that the proper statute of limitations for our quiet title claim is five years depending on where the Court would -- the Court could either rely on NRS 11.070 or NRS 11.0.80, either one, it's a five year statute of limitations.

As to the unjust enrichment claim, we believe that the HOA was unjustly enriched on two accounts. One, that they received the sub-priority portion of their lien when our client tendered the super-priority portion of the lien, which would be all that they otherwise would have

received in the foreclosure sale. So, to get the sub-priority portion of the lien unjustly enriched the HOA. Also, the association is paid taxes and insurance -- the insurance that is paid since the foreclosure sale has preserved the property and that benefits the association in the event that this sale is unwound, it keeps the property protected from vandalism, from you know, potential loses in the event that there would be another HOA lien that would attach later.

THE COURT: All of which I can't consider on a motion to dismiss, but go ahead.

MR. HENDRICKSON: Sure. As far as the breach of contract and the breach of the covenant of good faith and fair dealing, we believe the breach of contract claim is valid in the sense that the association is -- or the bank is an intended third-party beneficiary to the CC&R's, and we believe that this particular sale breaches the CC&R's in regard to the mortgagee protection language.

And as far as the duty of good faith and fair dealing, we believe that that claim would be a violation of the -- just bringing the claim to sale, in violation of the CC&R's, breaches the covenant of good faith and fair dealing.

THE COURT: Okay.

MR. HENDRICKSON: So we believe that those claims are valid.

THE COURT: Counsel, you get last word, it's your motion. And SFR, you didn't have a viewpoint in this, correct?

MR. MARTINEZ: No, we do not.

THE COURT: Okay go ahead, you have last word, please.

MS. KAO: Your Honor, at this point the only thing that the HOA would simply like to address is the fact that although these claims that U.S. Bank threatens against the HOA may be valid, it doesn't ultimately matter at this point because we do believe that the statute of limitations ran already at the time that the Bank brought their NRED claim.

THE COURT: Okay. I do appreciate it. Based on -- the Court has to address the pleadings and the standard under 12 and also to see if it meets Rule 8, *Buzz Stew*, *SFR,* et cetera, and the Court finds under all those standards, the motion to dismiss is properly denied without prejudice.

While I appreciate that there's an argument regards to statute of limitations, it's not clear on the face of the pleadings that the statute of limitations applies in this case, and so therefore, Court can't rule as a matter of law under Rule 12, and thus, must deny the motion without prejudice for all the reasons stated and adopting the opposition only to the extent for the denial. Court takes no viewpoint as to the merits of any claims because I'm only looking at a motion to dismiss standard on whether that's met, and it's not.

Moving on to the countermotion for attorney's fees. You heard the Court's inclination with regards to the dates and the opposition. SFR, that's your motion.

MR. MARTINEZ: Yeah Your Honor, and that was really a countermotion to respond to the motion to re-open discovery. But I know

it's a --

THE COURT: I can do that first. I just figured that one is the last one - that's got more dates and so I didn't know if you wanted this addressed quickly.

MR. MARTINEZ: I don't have anything to add on the briefs, Your Honor, so unless we want to go beyond that, I understand your position.

MR. HENDRICKSON: The only thing that I would add is that we're not --

THE COURT: I'm heading your -- I inclined your way, so if you're convincing me that I'm wrong, please let me know.

MR. HENDRICKSON: No, I don't want to talk myself out of a win, so I will rest on the briefing.

THE COURT: No worries. I want to make sure you have everything that you want for the record placed in. I just wasn't sure if you heard the Court's inclination.

MR. HENDRICKSON: I would just note that we're not the moving party on the motion to continue the trial. We could go to trial as if the trial was original set, if necessary. We joined the HOA's motion only because we think it would make for a more efficient trial to have a clear order denying, or if the Court were inclined to grant SFR's motion for summary judgment then this is all moot. But if the Court denied it we would just want clear findings of fact and just a clear order that narrows the issues for trial and I believe that that would be appropriate regardless of whether the Court were going to grant or deny the HOA's motion to

dismiss.

THE COURT: Okay.

MR. HENDRICKSON: So I would just rest on that.

THE COURT: Sure. Well, I'm going to hear then the motion to re-open up -- re-open discovery and continue the trial and I'm going to ask the movant why, when you all were brought in May, didn't file this until mid July?

MS. KAO: Your Honor, I believe that the HOA actually was not served until the end of May, and at that point in time we did request from U.S. Bank's counsel to get an extension simply because at that point in time we were not sure whether or not Lipson Neilson was taking over this case, it was a matter of who was ultimately going to be representing the HOA in this matter. So we needed an additional, I think, week or two weeks to file a response on it. And that is --

THE COURT: I'm sorry. You all are the -- okay -- Antelope Valley Homeowners' Association, the Lipson Neilson firm.

MS. KAO: Uh huh.

THE COURT: You filed your motion, right?

MS KAO: On July 9th I believe is when we filed our motion to dismiss. But the HOA was actually not served with this until the end of May. I understand that the first amended complaint was filed at the beginning of May, but I don't believe that the HOA actually received the complaint.

THE COURT: So your motion to dismiss was untimely?

MS. KAO: It was not untimely, Your Honor. I --

THE COURT: If it was served in the end of May and you didn't file it until July, your answer would have been due way before then, unless there was -- I didn't see any record of any agreement, so your responsive pleading would've been due, right?

MS. KAO: Right. And I apologize, Your Honor, if that's not clear on record. But when we did find out that we were taking over this matter, we had requested an extension from Bank's counsel to file our appearance essentially and our pleading.

THE COURT: So they granted it and so your motion to dismiss was timely?

MR. HENDRICKSON: Yes, Your Honor. Counsel did reach out to me and ask for an extension because she represented at the time that she wasn't sure whether her firm was representing the HOA and I granted her -- I believe it was a 10 day extension.

THE COURT: Friendly reminder, if it's not in a written stipulation, then the Courts don't know about it.

MS. KAO: I apologize, Your Honor.

THE COURT: And you run the risk that I really wouldn't have even heard that -- you know what I mean -- I wouldn't have heard the motion because it would've been untimely.

MS. KAO: Correct.

THE COURT: So -- but thank you for counsel confirming that. Okay, so how much time to you realistically need? You've got a motion to continue -- open discovery, extend dispositive motion deadline and continue trial.

MS. KAO: Your Honor, we --

THE COURT: So what's realistically what you need, because the question the Court is going to have is, what have you done?

MS. KAO: Right. And, Your Honor, we would request 90 days just to conduct discovery as to the Bank in this particular matter.

THE COURT: Have you been given all pleadings? Have you done a demand for prior pleadings?

MS. KAO: We have done a demand for prior discovery. We received the discovery from SFR already, however, I don't believe that we received any --

THE COURT: Bank, did you not provide it?

MR. HENDRICKSON: Umm.

THE COURT: Was it done, and did you provide it?

MR. HENDRICKSON: I believe that we provided the prior discovery, but if -- I -- well - if it hadn't received -- if the HOA hasn't received it, we'll make sure they get it by the end of the day.

THE COURT: By the end of today, day?

MR. HENDRICKSON: Yes.

THE COURT: Okay, July 31st day, okay 2018, right? Okay. And your reasoning for the late filing of the motion, even if we're talking end of May, you knew the trial date because the trial date was already set.

MS. KAO: Correct, Your Honor. And that was just an oversight. We did file, I believe that we filed the motion to re-open discovery about a week after, I think, the motion to dismiss was filed.

THE COURT: Okay, let's go back historically. Here's what I'm trying to -- I appreciate it counsel, okay. Motion to Amend was filed on 3/13, okay; the amended complaint May 8th. It says summons was issued May 24th and -- it doesn't look like Homeowners' Association -- You filed your motion to dismiss on 7/9. It doesn't look like you did anything since the amended complaint was -- the summons back in May, whether you -- service pending 5/24. And that's really what the Court's question is, you know what I mean -- I actually --

MS. KAO: I understand, Your Honor. I will represent to the Court that at that time, the HOA did reach out to both parties to see if we could get a stipulation to re-open discovery as opposed to drafting and submitting our own motion to re-open. And so there are some timing in terms of correspondence in getting responses from both parties and just try to coordinate to see whether or not we could actually just get a stipulation on file, as opposed to submitting this motion.

THE COURT: Okay, because what it looks like is, the summons was May 30th. So you would have 20 days from May 30th, right? And you didn't file this present motion until about 5 weeks later, it's really where the Court's going. And trying to have an understanding why, if you really needed the time, didn't jump on it more quickly?

MS. KAO: Right. And, Your Honor, I will -- I can't say for sure, because the handling partner actually spoke with the insurance carrier on this matter, but I believe that this was an issue that the insurance carrier wasn't quite sure with who was going to be representing the HOA; whether it was our firm or whether it was general counsel. So, I

believe that there was some kind of, not miscommunication, but just some, you know, correspondence and communication that needed to occur prior to us. And that's really the only thing that I know, Your Honor, that I can say for sure.

THE COURT: Okay, so you're asking to go on the holiday special stack. You're asking to go on the November stack or are you asking that discovery -- See, I'm trying to understand why you need 90 days for discovery when you've already had 6 weeks and really have not done anything.

MS. KAO: Your Honor, we would --

THE COURT: More than 6 weeks, because today's July 31st, so 2 months and not done anything, so that's why I'm asking.

MS. KAO: We would request 90 days, however, at the very least, Your Honor, we would maybe request just 60 days in order to be able to get discovery requests out to the Bank. And as far as the HOA is concerned, to be able to really take a look at this case, review the discovery that's already been completed by both parties, which again, I don't believe that we have U.S. Bank's completed discovery as of yet. But certainly by the end of today we'll have it and we'll take a look at that as well. But you know, to evaluate our defenses in this matter, we would request at least 60 days in order to just conduct written discovery, have an opportunity to maybe think about bringing in an expert. And that's if the Court is not inclined to grant the 90 days, I fully understand.

THE COURT: Okay, so your proposed deadline is -- amend pleadings October 19th; initial expert disclosures -- why do you need to

amend the -- I mean I'm looking at this -- you're saying dispositive motions not until February 15th and close of discovery until January, and I'm just -- you understand the challenges, you've done nothing since you came into the case it appears. And I appreciate your insurance carrier may have had an issue, but I have to look at it from whether Antelope did anything, right?

MS. KAO: Right.

THE COURT: So, if the insurance carrier -- that's kind of their issue, right?

MS. KAO: Understood.

THE COURT: Because they have an obligation to their insured.

MS. KAO: Uh huh.

THE COURT: If they choose not to fulfill it -- I'm not saying they are or aren't, but that's really their issue, not anything here.

Here's what we're going to do, we're going to take away 30 days from each of these. Amend the pleadings is going to be set -- let's make sure I don't do a weekend -- September 19th to amend the pleadings; and this is only with regards to the claims between the H -- third party claims between HOA and the Bank.

I should let SFR speak. SFR, I read your limited opposition, it seemed like you were --

MR. MARTINEZ: It seems like you're agreeing with us, so I don't necessarily want to derail you. I mean, our point was simply that the Bank and SFR have engaged in extensive discovery and litigated this

already. There's absolutely no reason to open up anything between the Bank and SFR. Simply the -- we don't object to the extension, because I understand the HOA coming in late. We only wanted 60 days and I think that's appropriate for them. I mean, specifically our objections were to anything other than potentially have the HOA depose the Bank as to the claims between the HOA and the Bank and then issue written discovery to the Bank. That was really all we --

THE COURT: Well, I can't tell the HOA that they can't depose SFR because there may be issues that they need with regards to their Bank defenses -- that SFR -- so I'm going to have to re-open for HOA to conduct it's discovery. There's going to only be discovery between the HOA and Bank, and to the -- but in doing so, the one thing the Court's going to allow is HOA could depose SFR, and if there's an issue about whether or not there's good cause on the scope of what they're deposing, then I'm going to say that you want that to come directly to me versus going to the Discovery Commissioner, I could handle that one.

MR. MARTINEZ: Okay.

THE COURT: If you want to do that, but there may be things that SFR that it helps them and assists them with their defenses, right?

MR. MARTINEZ: It's actually --

THE COURT: Historically, that's happened in a lot of cases.

MR. MARTINEZ: Right, I mean -- obviously that would be subject to limiting motion practice down the road if they were to try to depose us if we couldn't agree. But under that, I'm just saying, that's fine with me. I don't believe -- the only real point of our limited opposition is

that effectively SFR and the Bank don't get to engage in any additional discovery as to those claims, including disclosures, experts, et cetera.

THE COURT: But I think the Bank agrees, right?

MR. HENDRICKSON: Yes, Your Honor. The only thing that I would note that was not in my motion because the HOA didn't raise it --

THE COURT: Then I can't consider it, but go ahead.

MR. HENDRICKSON: Well, she did bring it up on the record that she may hire an expert. I didn't see that in the motion.

THE COURT: Yes it is, it's right here, it's under initial expert disclosures. It's on page 10 of 12.

MR. HENDRICKSON: If the HOA were to hire an expert, we should be able to hire a rebuttal expert, only to challenge --

THE COURT: Well, that would be appropriate -- I mean -- yeah.

MR. HENDRICKSON: Only just to challenge that, but we have --

THE COURT: Only -- but the HOA, but not as to SFR.

MR. HENDRICKSON: Yeah, correct. I don't think SFR has any intention to name an expert.

MR. MARTINEZ: Not at this point because obviously Your Honor is aware that their expert, late disclosed, was stricken before. So I don't -- that's my primary issues. I don't want them getting a second bite of the apple, so to speak.

THE COURT: Okay so, amend the pleadings with regards to the claims between the Bank and HOA, my informal way of phrasing it

rather than going through the titling. Everyone knows what I'm talking about, right?

MR. MARTINEZ: Uh huh.

MR. HENDRICKSON: Yes.

THE COURT: Initial expert disclosures, that's only with regards to between the HOA and the Bank; and that would be that the -- if there is -- and then there can be a rebuttal, it's going to be -- the rebuttal expert disclosure, once again, between Bank and HOA. I'm not re-opening up anything between SFR -- that includes SFR on those regards, on the expert disclosures. So that's going to be it.

So I said September 19th for initial expert disclosures; September 19th for amending pleadings; rebuttal expert disclosure, we're taking 30 days away from that, so that's going to be October 16th, okay. Close of discovery is going to be December 18th and dispositive motions is going to be January -- there we hit a holiday -- it's going to be January 12th, okay?

Now, with regards to discover -- the discovery is between HOA and Bank. Other than HOA would have an opportunity to depose and maybe potential, some small number of written discovery to SFR related only to HOA and Bank's claims. And if there's any objection to that, do you all wish to waive and come directly to this Court, or do you want to go the normal process back to Discovery Commissioner? The Court is going to be fine either way. It's just I'm trying to see if it helps you to expedite it since it's my ruling.

MR. MARTINEZ: I'd prefer to come here, it's going to be

much faster.

MS. KAO: I prefer to come here as well, Your Honor.

MR. HENDRICKSON: I have no problem with that, Your Honor.

THE COURT: Okay so, only on that limited issue. Now, if there's another discovery issue, like if you have a motion to compel, because you're not getting responses from Bank, that's going to Discovery. Only if it's -- to the extent the Court's interpretation as to the scope of what can be between HOA and SFR, okay?

Dispositive motions -- I just mentioned, I said January 12th because that was -- that means you're going to move your bench trial. This is bench trial is what we currently show, correct?

MR. MARTINEZ: Correct.

THE COURT: That means February -- that means we put you on the March stack. The March stack starts March 19th, five week stack. Oh excuse me, I just misspoke, I was looking at 2018, my apologies. March 18th, five week stack. And you'll get a new trial order, that March 18th, in which will have your pre trial conference date. But I will tell you anyway, it's Valentine's Day, February 14th at 10:15 and your calendar call currently will be March 12th. In light of that, the Court is vacating the calendar call and the trial in this case that was set for -- calendar call for 8/7 and the bench trial set for 8/15.

We still do show that there's a motion for summary judgment, opposition and countermotion set for 8/14. Do you wish that still remain on, or do you wish in light of some pending discovery that may take

place, that that's going to impact that motion in any manner?

MR. MARTINEZ: That shouldn't impact the motions at all. That's as between SFR and the Bank.

THE COURT: Okay, so 8/14 at 9:30, we still show you here.

MR. MARTINEZ: Correct.

THE COURT: Right?

MR. HENDRICKSON: That's correct.

THE COURT: Okay, so you're going to prepare the orders on the motion to -- well, it seems to me, motion to dismiss is yours because I denied that. You're also going to -- now how are you going to do the denial of the countermotion for attorney's fees? Are you going to incorporate that into your motion to extend the trial?

MS. KAO: I can incorporate it.

THE COURT: Okay, and then you'll put all the new dates in that and have everyone sign off on it?

MS. KAO: Yeah.

THE COURT: We do appreciate it. Thank you so much for your time. Have a great rest of your week.

MS. KAO: Thank you, Your Honor.

MR. HENDRICKSON: Thank you, Your Honor.

THE COURT: And just reach out -- please Bank and HOA, to make sure they get their stuff, okay?

MR. HENDRICKSON: I will.

MR. MARTINEZ: Your Honor, just so the Court's aware, we already filed the pre trial memo just now, so there won't -- in case you're

keeping track.

THE COURT: Oh, is it got all three parties on it though?

MR. MARTINEZ: Yes.

MS. KAO: Yes, all three parties are on it.

MR. MARTINEZ: I mean, we may have to do an amended one I guess at some point --

THE COURT: I'm anticipating -- okay.

MR MARTINEZ: -- if your claims were to change --

MS. KAO: Right.

MR. MARTINEZ: So could we get --

THE COURT: An amended pre trial memo date -- remind me at the time of the pre trial conference to please give you an amended pre trial memo date, because that way you'll have everything taken care of before then, okay?

MR. MARTINEZ: Alright, thank you Your Honor.

MS. KAO: Thank you, Your Honor.

THE COURT: I do appreciate it. Thanks so much and thanks for the heads up.

[Hearing concluded at 10:17 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Sandra Harrell
Court Recorder/Transcriber

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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,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

Case No. A-16-739867-C

Dept. No. XXXI

ORDER GRANTING SFR'S COUNTER-MOTION TO STRIKE AND GRANTING IN PART AND DENYING IN PART SFR'S MOTION FOR SUMMARY JUDGMENT

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

Counter/Cross Defendants.

SFR Investments Pool 1, LLC's Motion for Summary Judgment, U.S. Bank, National Association's ("Bank") Opposition and Counter-Motion for Summary Judgment, and SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment came before this Court for hearing on August 14, 2018. Jason G. Martinez, Esq. appeared for SFR, Karen Kao, Esq. appeared for Antelope Homeowners Association ("Association"), and Jamie S. Hendrickson, Esq. appeared for Bank, and the Court having reviewed the moving papers and oppositions thereto, and being fully apprised in the premises, and good cause appearing found as follows:

IT IS HEREBY ORDERED that SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment is **GRANTED**. The Court finds that the Bank violated NRCP 16.1(f) by failing to file its Counter-Motion for Summary Judgment on or before July 9, 2018, the deadline set forth in the scheduling order. As a result, pursuant to NRCP 37(b)(2)(C), the Bank's Counter-Motion for Summary Judgment is stricken, leaving the Opposition intact.

IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **GRANTED IN PART**. SFR's Motion for Summary Judgment is granted as to the Bank's unjust enrichment claim, pursuant to EDCR 2.20 and on the merits. The Bank failed to provide any evidence in opposition to SFR's Motion on the unjust enrichment claim.

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IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **DENIED IN PART WITHOUT PREJUDICE.** The Court finds that there are genuine issues of material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

IT IS SO ORDERED.

_____
DISTRICT COURT JUDGE

Submitted by:

KIM GILBERT EBRON

_____
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IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **DENIED IN PART WITHOUT PREJUDICE.** The Court finds that there are genuine issues of material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

IT IS SO ORDERED.

JOANNA S. KISHNER
DISTRICT COURT JUDGE 10-2-18

Submitted by:

KIM GILBERT EBRON

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Counter/Cross-Claimant,

vs.

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

Case No.: A-16-739867-C

Dept. No.: XXXI

NOTICE OF ENTRY OF ORDER GRANTING SFR'S COUNTER-MOTION TO STRIKE AND GRANTING IN PART AND DENYING IN PART SFR'S MOTION FOR SUMMARY JUDGMENT

MORTGAGE COMPANY, LLC, a foreign limited liability company; HENRY E. IVY, an individual; and FREDDIE S. IVY, an individual,

Counter/Cross-Defendants.

PLEASE TAKE NOTICE that on October 10th, 2018 the **Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment** was entered**.** A copy of said Order is attached hereto.

DATED this 11th day of October, 2018.

KIM GILBERT EBRON

/s/Diana S. Ebron
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF ORDER GRANTING SFR'S COUNTER-MOTION TO STRIKE AND GRANTING IN PART AND DENYING IN PART SFR'S MOTION FOR SUMMARY JUDGMENT** to the following parties:

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Anna Luz (aluz@wrightlegal.net)
DEFAULT ACCOUNT (NVefile@wrightlegal.net)
Karen Kao (kkao@lipsonneilson.com)
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/s/ Tomas Valerio
An Employee of KIM GILBERT EBRON

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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,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

Case No. A-16-739867-C

Dept. No. XXXI

ORDER GRANTING SFR'S COUNTER-MOTION TO STRIKE AND GRANTING IN PART AND DENYING IN PART SFR'S MOTION FOR SUMMARY JUDGMENT

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

Counter/Cross Defendants.

SFR Investments Pool 1, LLC's Motion for Summary Judgment, U.S. Bank, National Association's ("Bank") Opposition and Counter-Motion for Summary Judgment, and SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment came before this Court for hearing on August 14, 2018. Jason G. Martinez, Esq. appeared for SFR, Karen Kao, Esq. appeared for Antelope Homeowners Association ("Association"), and Jamie S. Hendrickson, Esq. appeared for Bank, and the Court having reviewed the moving papers and oppositions thereto, and being fully apprised in the premises, and good cause appearing found as follows:

IT IS HEREBY ORDERED that SFR's Counter-Motion to Strike Bank's Counter-Motion for Summary Judgment is **GRANTED**. The Court finds that the Bank violated NRCP 16.1(f) by failing to file its Counter-Motion for Summary Judgment on or before July 9, 2018, the deadline set forth in the scheduling order. As a result, pursuant to NRCP 37(b)(2)(C), the Bank's Counter-Motion for Summary Judgment is stricken, leaving the Opposition intact.

IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **GRANTED IN PART**. SFR's Motion for Summary Judgment is granted as to the Bank's unjust enrichment claim, pursuant to EDCR 2.20 and on the merits. The Bank failed to provide any evidence in opposition to SFR's Motion on the unjust enrichment claim.

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IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **DENIED IN PART WITHOUT PREJUDICE.** The Court finds that there are genuine issues of material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

Submitted by:

KIM GILBERT EBRON

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IT IS HEREBY ORDERED that SFR's Motion for Summary Judgment is **DENIED IN PART WITHOUT PREJUDICE.** The Court finds that there are genuine issues of material fact surrounding the Bank's alleged attempted payment prior to the foreclosure sale.

IT IS SO ORDERED.

JOANNA S. KISHNER
DISTRICT COURT JUDGE 10-2-18

Submitted by:

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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,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

Case No. A-16-739867-C

Dept. No. XXXI

OBJECTIONS TO U.S. BANK'S AMENDED PRE-TRIAL DISCLOSURES

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 the following objections to U.S. Bank's Amended Pre-Trial Disclosures:

I. WITNESSES

Corporate Designee for U.S. Bank: the disclosure is improper as it does not identify an individual.

Corporate Designee for SFR Investments Pool 1, LLC: the disclosure is improper as it does not identify an individual.

Corporate Designee for Alessi & Koenig, LLC: the disclosure is improper as it does not identify an individual

Corporate Designee for Antelope Homeowners Association: the disclosure is improper as it does not identify an individual

Corporate Designee for Universal American Mortgage Company: the disclosure is improper as it does not identify an individual

Rock Jung: this witness lacks the requisite qualifications to testify.

30(b)(6) Witness for Clark County Recorder: the disclosure is improper as it does not identify an individual

30(b)(6) Witness for Clark County Assessor: the disclosure is improper as it does not identify an individual; SFR is also not aware of any relevant testimony this witness could offer for this trial

Corporate Designee for Ocwen Loan Servicing, LLC: the disclosure is improper as it does not identify an individual

Scott Dugan: this witness was stricken by the Court as part of the Court granting SFR's Motion to Strike Late Expert Disclosure

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Custodian of Records, Corporate Designee or Teralyn Thompson for State of Nevada Department of Business and Industry Real Estate Division: this disclosure is improper as it does not identify an individual and/or was not disclosed during discovery.

II. EXHIBITS

Deed of Trust: hearsay; lacks authentication; violates best evidence rule, lacks foundation

Deed of Trust Re-recorded: hearsay; lacks authentication; violates best evidence rule, lacks foundation

Letter from Miles, Bauer, Bergstrom & Winters, LLP to Henry Ivy: hearsay, lacks authentication; lacks foundation

Letter from Miles, Bauer, Bergstrom & Winters, LLP to Antelope Homeowners Association: hearsay, lacks authentication; lacks foundation

Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP: hearsay, lacks authentication; lacks foundation

Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC: hearsay, lacks authentication; lacks foundation

Correspondence regarding corrected ARM Note: hearsay, lacks authentication; lacks foundation

Affidavit of Lost Note: hearsay, lacks authentication; lacks foundation

Affidavit of Lost Note: hearsay, lacks authentication; lacks foundation

Correspondence regarding Note: hearsay, lacks authentication; lacks foundation

Alessi & Koenig Collection File: hearsay, lacks authentication; lacks foundation

Deed of Trust, Note and Lost Note Affidavit: hearsay; lacks authentication; violates best evidence rule; lacks foundation

Affidavit of Doug Miles and Back up: hearsay, lacks authentication; lacks foundation

Title Insurance Policy: hearsay, lacks authentication; lacks foundation

Title Insurance Policy: hearsay, lacks authentication; lacks foundation

Corporate Assignment: hearsay; lacks authentication; violates best evidence rule

Title Policies: hearsay, lacks authentication; lacks foundation

Bank of America Payment History: hearsay; lacks authentication; lacks foundation

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Greenpoint Payment History: hearsay, lacks authentication; lacks foundation

Bank of America Servicing Notes: hearsay, lacks authentication; lacks foundation

Copy of Note and Allonges: hearsay, lacks authentication; lacks foundation; violates best evidence rule

Mortgage Loan Schedule: hearsay, lacks authentication; lacks foundation

Corporate Assignment: hearsay, lacks authentication; lacks foundation; violates best evidence rule

Exhibit 2 to Alessi Depo: hearsay, lacks authentication; lacks foundation

Exhibit 9 to Alessi Depo: hearsay, lacks authentication; lacks foundation

Exhibit 10 to Alessi Depo: hearsay, lacks authentication; lacks foundation

Exhibit 11 to Alessi Depo: hearsay, lacks authentication; lacks foundation

Exhibit 7 to Bembas depo: hearsay, lacks authentication; lacks foundation

Exhibit 8 to Bembas depo: hearsay, lacks authentication; lacks foundation

Antelope Homeowners Association's Initial Disclosures and all Supplements: hearsay; lacks authentication; lacks foundation

SFR objects to the general disclosure of any and all documents disclosed or identified by other parties. Without knowing which document the Bank intends to offer, SFR reserves its right to object at the time of trial.

SFR further objects to any documents for impeachment/rebuttal if not otherwise disclosed.

DATED this 29th day of March, 2019.

KIM GILBERT EBRON

/s/ Karen L. Hanks
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **OBJECTIONS TO U.S. BANK'S AMENDED PRE-TRIAL DISCLOSURES** to the following parties:

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An employee of KIM GILBERT EBRON

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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,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

Case No. A-16-739867-C

Dept. No. XXXI

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.

This matter came before the Court for trial on April 16, 17, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq. appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman, Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.Bank"). At the close of U.S. Bank's case in chief, SFR brought several NRCP 52(c) motions. Having reviewed and considered the facts, testimony of witnesses and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:[1]

FINDINGS OF FACT

Some of the following facts were stipulated to by the parties by way of their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated, the Court takes such facts and unrefuted and undisputed:

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 23, 2004, the Antelope Homeowners Association ("Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).[2] Thereafter the Association recorded a Second Amendment to CC&Rs as Instrument No. 200609140003739. (Ex. 2.)

3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada 89149; Parcel No. 125-18-112-

[1] Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.
[2] The Parties stipulated to this fact.

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069 ("Property") Henry and Freddie Ivy ("Ivies") was recorded in the Official Records of the Clark County Recorder as Instrument No. 200610030004304. (Ex. 3.)

4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument No. 200505230004228 ("Deed of Trust"). (Ex. 5.)[3]

5. On November 12, 2009, the Association, through its agent, Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODAL") in the Official Records of the Clark County Recorder as Instrument No. 200911120004474. (Ex. 9.)[4]

6. On February 17, 2011, Alessi recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") in the Official Records of the Clark County Recorder as Instrument No. 201102170001289. (Ex. 11.)[5]

7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in the Official Records of the Clark County Recorder as Instrument No. 201108110003087. (Ex. 12.)[6]

8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in the Official Records of the Clark County Recorder as Instrument No. 201204160000922. (Ex. 13.)[7]

9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the Official Records of the Clark County Recorder as Instrument No. 201207020001432. (Ex. 14.)[8]

10. Alessi, on behalf of the Association, mailed the NOD, NOS #1, NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its agent(s).[9]

[3] The parties stipulated to this fact.
[4] The parties stipulated to this fact.
[5] The parties stipulated to this fact.
[6] The parties stipulated to this fact.
[7] The parties stipulated to this fact.
[8] The parties stipulated to this fact.
[9] The parties stipulated to this fact.

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11. Universal, the then recorded beneficiary of the Deed of Trust, and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.[10]

12. The Association foreclosure sale occurred on July 25, 2012 ("Sale").[11]

13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed") was recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)[12]

14. SFR paid Alessi $5,950.00 in exchange for the Trustee's Deed.

15. At the time of the Association Sale, Universal was the owner of the Ivy Note and beneficiary of record of the Deed of Trust.[13]

16. On June 1, 2018, a Corporate Assignment of Deed of Trust was recorded in which all beneficial interest in the Deed of Trust was purportedly assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)[14]

17. On July 2, 2018, a Corporate Assignment of Deed of Trust was recorded in which all beneficial interest in the Deed of Trust was purportedly assigned to U.S. Bank National Association, as trustee, successor in interest to Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S. Bank"). (Ex. 42.)[15]

CONCLUSIONS OF LAW

Subject Matter Jurisdiction

1. At the conclusion of U.S. Bank's case in chief, SFR brought an NRCP 52(c) motion wherein it argued this Court lacked subject matter jurisdiction because at the time U.S. Bank filed its complaint (July 12, 2016), U.S. Bank was not the real party in interest and lacked standing, and therefore under NRCP 12(h)(3), dismissal of this action is mandated.

[10] The parties stipulated to this fact.
[11] The parties stipulated to this fact.
[12] The parties stipulated to this fact.
[13] The parties stipulated to this fact.
[14] The parties stipulated to this fact.
[15] The parties stipulated to this fact.

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2. Under NRCP 17(a), "[a]n action must be prosecuted in the name of the real party in interest."

3. "A real party in interest is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations omitted).

4. In short, the determination is whether the plaintiff is the correct party to bring the suit. *See Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 771 (1988) ("appellants are asserting someone else's potential legal problem; they are not the proper party to assert [this claim]"); *see also Hammes v. Brumley,* 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the person who is the true owner of the right sought to be enforced).

5. Here, the parties stipulated that at the time of the Association sale, Universal was owner of the Ivy Note and beneficiary of record of the Deed of Trust.

6. Also, at the time U.S. Bank filed its complaint (July 12, 2016), Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is another stipulated fact by the parties.

7. As such, Universal was the real party in interest on July 12, 2016, not U.S. Bank.

8. "The inquiry into whether a party is a real party in interest overlaps with the question of standing." _____The question of standing "focuses on the party seeking adjudication rather than on the issues sought to be adjudicated." *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983). In other to have standing, the party must also have suffered a legally redressable harm and the suit must be "ripe" and not "moot" (at least as to the particular plaintiff) at the time of the lawsuit. *See Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of an injury that **is personal to him** and not merely a generalized grievance.) (emphasis added.)

9. Whether a party has standing is a question that goes to the court's jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d 506, 515–16 (2002).

10. A court lacks the power to grant relief when (1) an indispensable party is absent; or

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(2) the dispute is moot or not yet ripe, or a party does not have the legal right to seek or receive the requested relief. *See State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) ("There can be no dispute that lack of subject matter jurisdiction renders a judgment void"). *See generally* John G. Roberts, Jr., *Article III Limits on Statutory Standing,* 42 Duke L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers,* 17 Suffolk U.L.Rev. 881, 881 (1983).

11. "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief" i.e. standing. *In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

12. Further, "a justiciable controversy [is] a preliminary hurdle to an award of declaratory relief." Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948) as:

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

13. Here, U.S. Bank falls short of these requirements. First, U.S. Bank had no claim of right at the time of filing the complaint because it did not become the recorded beneficiary until July 2, 2018, nearly two years after the filing of the complaint. Because U.S. Bank had no interest in the Deed of Trust at the time the complaint filed. Second, in order for U.S. Bank's interest to be adverse to SFR's, U.S. Bank would actually have to have an interest in the first place. But at the time of filing the complaint, U.S. Bank had no interest in the Deed of Trust. Third, because U.S. Bank had no interest at the time it sued SFR, it follows that U.S. Bank did not have a legally protectable interest at the time of filing. Finally, because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank asserted against SFR were not ripe for judicial determination.

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14. Based on the above, U.S. Bank has failed to show a justiciable controversy and failed to show any injury. As such, U.S. Bank lacked standing at the time the claims were filed against SFR.

15. Nor can the later assignment to U.S Bank in July 2018, while this case was pending, cure the lack of subject matter jurisdiction at the outset. This is so because subject matter jurisdiction "cannot be conferred by the parties." *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

16. Under NRCP 12(h)(3), "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

17. Because the Court finds that U.S. Bank was neither the real party in interest, nor did it have standing at the time it filed its complaint, the Court finds it lacked subject matter jurisdiction from the outset. As such, under NRCP 12(h)(3), this Court dismisses this action.

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ORDER

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this action DISMISSED on the basis the Court lacks subject matter jurisdiction.

IT IS SO ORDERED.

DATED this _____ day of _____, 2018.

_____
DISTRICT COURT JUDGE

Respectfully Submitted by:

KIM GILBERT EBRON

/s/ *Karen L. Hanks*
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Nevada Bar No. 9578
JASON G. MARTINEZ, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following parties:

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/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON

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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, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; ANTELOPE HOMEOWNERS' ASSOCIATION, a Nevada non-profit corporation; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-16-739867-C Dept. No. XXXI **SFR INVESTMENTS POOL 1, LLC'S TRIAL BRIEF RE ADMISSIBILITY OF CERTAIN PROPOSED EXHIBITS**
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;	

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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 ("SFR") hereby submits its trial brief pursuant to Rule 7.27 regarding the admissibility of certain proposed exhibits. Specifically, SFR objects to the admission of Proposed Exhibits 21-24, 30-31, 36-38. This is not the entire list of proposed exhibits SFR objects to, but the purpose of this brief is to highlight specific authentication and hearsay issues with these exhibits.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Authentication

The first step in admitting business records is through authentication which is governed by NRS 52.260. NRS 52.260(1) requires first that a business record be authenticated by "a custodian of the record or other qualified person." NRS 52.260(6)(a) defines "custodian of record" as "an employee or agent of an employer who has the care, custody and control of the records of the regularly conducted activity of the employer." In short, the custodian must be an agent/employee of the entity whose documents the custodian seeks to authenticate. In other words, the custodian of company A, who is not an agent/employee of company B, cannot authenticate the records of company B.

While NRS 52.260 does not define "other qualified person" the Ninth Circuit has defined it as "a witness who understands the record-keeping system." *United States v. Ray*, 930 F.2d 1368, 1370 (9th Cir.1990). Other courts have similarly held that the person must be familiar with and have knowledge of how the data is produced and created. *See* ***Sanchez v. Suntrust Bank***, 179 So.3d 538, 541 (Fla. 4th DCA 2015) (holding person must be familiar with and have knowledge of how the "company's data [is] produced."); ***Cayea v. CitiMortgage, Inc.***, 138 So.3d 1214, 1217 (Fla. 4th DCA 2014) (holding the witness must be "well enough acquainted with the activity to provide testimony."); ***Glarum v. LaSalle Bank Nat. Ass'n***, 83 So.3d 780, 783 (Fla.App. 4 Dist. 2016)

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(finding an employee not qualified to authenticate data entries in a computer system of his own company because employee was not familiar with how his own company produced such data.); *H& E Equipment v. Floyd*, 959 So.2d 578, 581 (Miss. App. 2007) (trial court properly excluded invoices because custodian failed to explain how the invoices, many of which were reprints, were created, or that the invoices relied on were created at the time the charges were incurred.); *Bower v. Bower*, 758 So.2d 405, 414-415 (Miss. 2000) (finding husband could not authenticate his monthly internet bills to prove wife's internet usage); *In re K.C.P.*, 142 S.W.3d 574, 578 (Tex.App.-Texarkana 2004, no pet.) (witness must have personal knowledge of the manner in which the records were prepared.)

Secondly, the custodian or other qualified person **must** verify that the record was:

• Made at or near the time of the act;

• By or from information transmitted by a person with knowledge; and

• In the course of the regularly conducted activity.

NRS 52.260(2)(a) & (b).

Here, with respect to Proposed Exhibits 21, 22, 24 and parts of 31, based on the face of these documents they appear to be documents generated by Miles, Bauer, Bergstrom & Winters, LLP (the "Miles Bauer Documents"). As such, only an agent or employee of Miles Bauer, who has the care, custody and control of the Miles Bauer Documents can authenticate them. In this case, no such witness was ever disclosed during the course of discovery, and no such witness is identified in U.S. Bank's pre-trial disclosures. Without the ability to authenticate the Miles Bauer Documents, the documents are inadmissible. SFR anticipates the Bank will attempt to rely on the affidavit Doug Miles in Ex. 31. Setting aside the hearsay, testimonial aspects of this affidavit, prior trial testimony of Mr. Miles calls into question his affidavit. Again, Mr. Miles was never disclosed, nor was custodian of records from Miles Bauer generically disclosed. On that basis alone, the Court can strike Ex. 31. Nevertheless, in previous trials, SFR established that Bank of America gave Akerman, LLP access to the Prolaw system, and counsel for the Bank prepared the

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affidavit with all of its attachments for Mr. Miles to sign.[1] SFR has every reason to believe the same arrangement occurred here as evidenced by the notary stamp of Amanda Mendoza. Mr. Miles testified in trial that Amanda Maria Mendoza, the notary who signed the affidavit, is a paralegal with Akerman.[2] Akerman is located in Los Angeles, while Mr. Miles is located in Santa Ana. The two cities are approximately 32.2 miles away. This calls into question whether Mr. Miles confirmed the affidavit was accurate. In other words, Ex. 31 should not be treated like other COR affidavits where the person with custody of the documents pulls the documents and then signs a standard affidavit attesting to their authenticity. What is more, in another trial, SFR established the robo-signing quality of Mr. Miles when it highlighted that Mr. Miles signed an affidavit attesting that a computer screenshot was a true and accurate copy despite the fact that the copy attached had a quarter of the screen cut-off (the parts showing dates and types if entry) and a letter was a true and correct copy despite the fact that it was not signed.[3]

With respect to Proposed Exhibits 23 and 30, SFR objects in part to these records as parts of these records, while contained in Alessi & Koenig's file, are not Alessi & Koenig documents. Specifically, the documents bates stamped USB 171-175 in Ex. 23 and USB 472-476; 481-485; 487-498; 527-533; 553-560; 570-577; 585-589 in Ex. 30 are documents presumably created and maintained by the Association. Mr. Alessi is not the custodian of records for the Association, and therefore cannot authenticate these documents.

With respect to Ex. 36 and 38, these are records created and maintained by Bank of America, thus, despite the fact that these records may have transferred to Ocwen Loan Servicing, an employee of Ocwen cannot authenticate records from BANA. The same is true of Ex. 37, which are identified as from Greenpoint. Again, an employee of Ocwen cannot authenticate records related to Greenpoint.

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[1] *See* Trial Transcript, Case No. A-14-695002-C, at 36-37 attached hereto as **Exhibit A.** *See also*, Trial Transcript, Case No. A-14-698509-C, at 88-89 attached hereto as **Exhibit B.**

[2] Ex. A at 11:6-9.

[3] Ex. B at 90-92.

With no ability to authenticate the records, the Court need not even deal with the hearsay nature of the records, and U.S. Bank cannot overcome the first hurdle of admissibility.

B. Hearsay

Even assuming the Bank could authenticate the documents (which it cannot), the documents constitute hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *See* NRS 51.035 generally. Hearsay is inadmissible unless it meets various exceptions or exemptions. *See* NRS 51.065. When dealing with double hearsay, or hearsay within hearsay, the general rule of inadmissibility applies unless each part of the combined hearsay conforms to an exception to the hearsay rule. *See* NRS 51.067.

The business record exception rule (NRS 51.135) tracks the same requirements of authentication for business records, with the most important part being that the witness must be the custodian or other qualified person. Simply put, documents received from another entity are not admissible under the business exception rule if the witness is not qualified to testify about the entity's record keeping. *See Powell v. Vavro, McDonald, & Assoc., L.L.C.,* 136 S.W.3d 762, 765 (Tex.App.-Dallas 2004, no pet.) (custodian of records for travel agency was not qualified to testify as to records received from third-party company, showing credits to customers' credit card account). What is more, "when a business record contains a hearsay statement, the admissibility of the record depends on whether the hearsay statement in the record would itself be admissible under some exception to the hearsay rule." *Van Zant v. State,* 372 So.2d 502, 503 (Fla. 1st DCA 1979). Additionally, "if the person who prepared the record [can] not testify in court concerning the recorded information, the information does not become admissible as evidence merely because it has been recorded in the regular course of business." ***Id.***

For example, in *Landmark American Ins. Co. v. Pin-Pon Corp.,*[4] the appellate court found the trial court erred in admitting a third-party's breakdown of costs for code upgrades prepared by a contractor because the witness proffered by Pin-Pon, the architect, could not testify as to when the documents were made or whether they were made by a person with knowledge. *Id.* at 440-442.

[4] 155 So.3d 432 (Fla. 4th DCA 2015).

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The Court reasoned that while it was not necessary for Pin–Pon to call the person who actually prepared the business records, because Pin-Pon could not establish the architect was either in charge of the activity constituting the usual business practice or was well enough acquainted with the activity to give the testimony, the record was inadmissible hearsay. *Id.* The Court stated, "[a]lthough the documents in Exhibit 98 might have qualified as the general contractor's business records, the mere fact that these documents were incorporated into the architect's file did not bring those documents within the business records exception. *Id. See also, Nat'l Car Rental Sys., Inc. v. Holland,* 269 So.2d 407, 413 (Fla. 4th DCA 1972) (fact that a document is incorporated into a business's records does not automatically bring the document within the business records exception to the hearsay rule.)

In *Holland*, the court noted that to hold otherwise, would mean "every letter which plaintiff's employer received in connection with the operation of his business and which was subsequently retained as part of his business records ipso facto would be fully competent to prove the truth of its contents." *Id.*

In the present case, Proposed Exs. 21-24, 30-31 and 36-38 are all documents from various third-parties, which constitute hearsay. In order to establish the initial hearsay exception to these exhibits, the Bank must call someone who is familiar with how the records were created, how the information contained in the records was maintained and/or that the records were created by someone with knowledge. But the Bank cannot side-step the business exception rule by merely relying on the fact that the documents were transferred to Ocwen (this is not even true for Exs. 21-22, 24 or 31) nor can it rely on the fact that Miles Bauer kept a copy of Ex. 23 in its records. As the cases cited above highlight, it is insufficient for company A to testify that because company B's records were kept in Company A's records, the business exception rule is satisfied.

But even if the Bank could overcome the first hearsay hurdle, some of the proposed exhibits have double hearsay. These include Exs. 23, 31 and 38. Each individual hearsay statement must meet an exception/exemption. One case dealt with a similar situation and excluded the documents, namely *Knight v. GTE Federal Credit Union*, 2018 WL 844352 (Fla. 2nd DCA 2018). In *GTE*, GTE called as its sole witness a default corporate representative from its loan servicer, Cenlar,

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FSB, to testify about a third-party vendor's mailing of a loan acceleration letter. *Id.* at *2. The witness testified about how information is input into the system and how the servicing platform generates letters. *Id.* Based on a letter log within the system, the witness testified a third-party company by the name of About Mail mailed the letter to the borrower. *Id.* However, the appellate court found it error to admit the letter log, finding it did not meet the business records exception. *Id.* Specifically, the Court found that because the witness testified he did not have any documents to support his testimony that About Mail mailed the letter to the borrowers on the date indicated in Cenlar's letter log and he neither visited About Mail's offices nor had any contact with About Mail's employees, the witness was not "well enough acquainted' with About Mail's business practices to authenticate his testimony that the default letter was mailed by About Mail in the regular course of About Mail's business." *Id.* citing *Cayea v. CitiMortgage, Inc.*, 138 So.3d 1214, 1217 (Fla. 4th DCA 2014) (citing *Cooper v. State*, 45 So.3d 490, 493 (Fla. 4th DCA 2010).

In the present case, the Bank intends to offer the Miles Bauer computer screen shot and BANA's servicing notes, in an attempt to prove not only that certain letters were sent, but that they were also rejected. But Bank cannot satisfy each layer of hearsay, and like the *GTE* case, the Bank is solely relying on entries in a computer system without any documents to support such entries. For the same reason the letter log was excluded in GTE, so too should Exs. 23, 31 and 38 be excluded.

DATED April 15, 2019.

KIM GILBERT EBRON

/s/ Karen L. Hanks
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S TRIAL BRIEF RE ADMISSIBILITY OF CERTAIN PROPOSED EXHIBITS** to the following parties:

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/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON

EXHIBIT A

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENT POOL 1, LLC, Plaintiff, v. GREEN TREE SERVICING, LLC, Defendant.	CASE NO. A14-695002-C DEPT. 7

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE

FRIDAY, APRIL 22, 2016

RECORDER'S TRANSCRIPT
BENCH TRIAL

APPEARANCES:

For the Plaintiff: KAREN HANKS
VANESSA S. GOULET
Kim Gilbert Ebron

For the Defendant: DARREN T. BRENNER
ARIEL E. STERN
Akerman Law Firm

RECORDED BY: RENEE VINCENT, COURT RECORDER

Q Okay. Is it fair to say that you signed this document then?

A Yes.

Q And it was notarized?

A Yes.

Q Do you know Amanda Maria Mendoza?

A Yes.

Q Who is she?

A I believe she's a paralegal at your firm, Akerman.

Q Okay. Let's turn to page -- actually before we move forward with these documents, let me ask you. Could you explain to us in general terms what services, if any, your firm provided to Bank of America relating to the payment of homeowner association liens in Nevada during 2012 and 2013?

A Yes. We were engaged to inquire as to the amount due on homeowners' dues for various properties that Bank of America was involved in --

Q Uh-huh.

A -- with loans, foreclosures, so forth. So we would inquire as to the amounts that were due. Bank of America would send us the funds. We would then obtain a cashier's check for the amount due, tender it to the HOA. And if it was accepted, that was it. If it was rejected, it was returned to Bank of America, in short.

Q Okay. Do you know how -- and by how -- I mean the

Bauer had here in Las Vegas?

A Yes.

Q Now, when employees leave -- all the employees that have worked for Miles Bauer's, the Las Vegas law firm, who are no longer employed by your current firm, the Miles Bergstrom, do they still have access to that ProLaw system?

A No.

Q In preparing the affidavit in this case, I know it wasn't admitted, but the affidavit you prepared and attached to those documents that were admitted as Exhibit 57, did you personally pull those documents from the ProLaw system?

MR. STERN: Objection, Your Honor. The affidavit was not admitted.

MS. HANKS: Yeah, I know, I said that. I was saying the documents that were attached to that have now been admitted as Exhibit 57, did you personally pull those documents?

MR. STERN: And the objection, Your Honor, is that there's been separate and independent foundation laid for those and they have been admitted so the question is irrelevant.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. HANKS:

Q Who pulled those documents from the ProLaw system?

A For this particular matter you're talking about?

Q Yes.

A I believe it was the Akerman firm, which had access to the ProLaw system.

Q Why does the Akerman firm have access to your firm's ProLaw system?

A Because the client requested that I give them access and I gave them access.

Q Have you or anyone at your firm provided training to anyone at Akerman to explain how the ProLaw system works and functions?

MR. STERN: Objection, Your Honor. Beyond the scope, and relevance. The documents have already been admitted.

THE COURT: Ms. Hanks?

MS. HANKS: Your Honor, because he's testifying that these documents were contained in this ProLaw system in such a way, and that this is what they mean, this is how it's stored, and now I'm finding out someone else pulled them and I have questions about this screenshot entries, and so I think it's relevant as to who's pulling it and how this document was actually saved within the system, and if the person pulling understood other places to look or how it was saved, those types of entries. It all goes to his testimony. He's making conclusions based on review of these documents and this screenshot, so I think it's important to know that he wasn't the actual person pulling it and kind of doing that, I guess,

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above entitled case to the best of my ability.

Kathy Lattimore

KATHY LATTIMORE, Transcriber

Nancy Dewitz

NANCY DEWITZ, CET**719, Transcriber

Debra Parmer

DEBRA PARMER, Transcriber

Melissa Looney

MELISSA LOONEY, CET**D-607, Transcriber

EXHIBIT B

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FIDUCIAL LLC, Plaintiff, vs. BANK OF NEW YORK MELLON Defendant.	CASE NO. A-14-698509 DEPT NO. XXVI **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

TUESDAY, JUNE 7, 2016

APPEARANCES:

For the Plaintiff: DIANA S. EBRON-CLINE, ESQ.
KAREN HANKS, ESQ.

For the Defendant: DARREN T. BRENNER, ESQ.
NATALIE L. WINSLOW, ESQ.

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think that -- it's an electronic file. So it's kind of -- I guess just a little bit more background on how when he fulfills his custodian of records obligations, how he does it. I mean --

MS. HANKS: Yes.

THE COURT: -- he's been pretty clear they're electronic files.

MS. HANKS: Yes. And that's --

THE COURT: So --

MS. HANKS: -- what I was trying to understand how -- how it works with the custodian of records --

THE COURT: Okay.

MS. HANKS: -- to see if he's actually the person who's responsible for --

THE COURT: Okay.

MS. HANKS: And so I'm sorry, gosh I wish we had a court reporter here.

BY MS. HANKS:

Q My question was did you actually go into the system and print the specific document and provide it to whoever did track the envelope?

A No.

Q Who -- did you -- do you know who drafted this affidavit?

A I believe it was drafted by an attorney at the

Ackerman firm.

Q Okay. And I think you've testified before at a previous trial that you have actually given access to Ackerman LLP to the ProLaw system that Miles Bauer works from; is that correct?

A That is correct.

Q Did you do the same in this case?

A Yes.

Q Okay. So am I correct to understand that you gave access to Ackerman LLP to access this particular file and the documents that we see attached to this affidavit?

A Yes.

Q And am I also correct to assume that Ackerman at some point drafted the affidavit, pulled these documents that we see attached, put that together so that you could review, and then sign?

A That's correct.

Q Now, when you -- before you reviewed and signed this affidavit, did you actually go take the documents, the hard copy of this affidavit and the attached documents, sit down and cross-check it against the ProLaw system?

A Yes.

Q And when did you do that?

A At the time that I was signing the affidavit.

Q Now, you see -- if you see Exhibit 5?

A Yes.

Q And it's Bates stamped BONY0472; do you see how -- is this actually a true and correct copy of how the ProLaw screen looks?

A Well, it's a little cut off on the left side.

Q Okay. How?

A Just from copying or whatever, I'm not sure.

Q But when you reviewed the affidavit with the attached, did it appear this way?

A Well, yeah, I guess so. It's -- it's -- very little of it's cut off.

Q But that's not how, when you were cross-checking the ProLaw screen would have appeared when you were doing your cross-check, correct?

A No. Not exactly, no.

Q And then if you turn to Exhibit 1, this is the May 29th, 2013, letter, there's an unsigned version here.

A Yes.

Q Do you know if when you did the cross-check, whether there was an actual -- that this actually matched what was in the ProLaw?

A We -- we keep both a signed and an unsigned version in ProLaw.

Q Okay. So --

A So it would have -- this is a copy of the unsigned

version.

Q It's the policy and practice to keep both an unsigned and signed version of the letters?

A It is on -- it was on most of the cases, yes.

Q Now, with respect to this particular letter, in May of 2013, were you working out of the 2200 Paseo Verde Parkway, Suite 250 office?

A On that particular day?

Q No, just in or around May 2013, we'll go with, that month.

A Was I located there on a full-time basis --

Q Correct.

A -- is that your question?

Q Yes.

A No.

Q Okay. Did you have any participation in drafting this particular letter?

A Not this particular letter, but the form --

Q Did you have any --

MR. BRENNER: She needs to let the witness answer the question, Your Honor.

THE COURT: Please -- yeah. That's fine. Thanks.

BY MS. HANKS:

Q Did you have any participation in review of this particular letter?

A No.

Q And is it your testimony that you did see a signed version of this letter in the ProLaw system?

A Yes. I mean, it's my recollection. I -- I've reviewed a lot of files. And -- but I'm fairly sure -- yeah, there -- there is one of this one, I'm fairly sure.

Q Do you know why you signed the affidavit with the unsigned version, that there was a signed version?

A Because it -- it wasn't necessarily significant whether or not it was a signed version or an unsigned version on these affidavits.

Q And then with respect to Exhibit 2, were you working in the -- in the Nevada office for Miles Bauer in -- in or around June 2013?

A No.

Q And would it be fair to assume, then, that when this was received by Miles Bauer, the document we see on Exhibit 2, in or around June 25th, 2013, and you [indiscernible] had reviewed this particular document?

A Yes, that would be fair to assume.

Q Okay. And if you turn to Exhibit 3, in July 2013, were you working at the Henderson office for Miles Bauer?

A No.

Q Did you draft this July 11, 2013, letter?

A No.

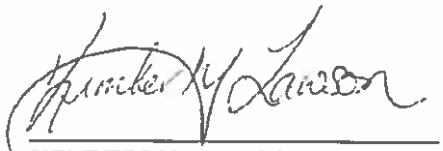
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado



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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,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

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

Case No. A-16-739867-C

Dept. No. XXXI

SFR INVESTMENTS POOL 1, LLC'S TRIAL BRIEF RE STATUTE OF LIMITATIONS

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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 ("SFR") hereby submits its trial brief pursuant to Rule 7.27 regarding the statute of limitations.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. The Bank's Claim is Time-Barred.

The Bank's "quiet title" claim against SFR stems from NRS Chapter 30 (declaratory judgment act) and NRS 40.010. In Nevada, "quiet title" is just a slang term to identify any action where one party claims an interest in real property adverse to another. Thus, the title of the Bank's claim does nothing to assist the court in determining which statute of limitations applies. In order to determine this, we must look at the nature of the grievance to determine the character of the action, rather than the labels in the pleadings. *Torrealba v. Kesmetis,* 124 Nev. 95, 178 P.3d 716, 723 (2008).

Here, when the nature of the Bank's grievance is analyzed, tender, i.e. the Association lacked authority to foreclose because the default to the super-priority portion was cured, it becomes readily apparent that a three-year statute of limitations applies under NRS 11.190(3)(a). But first, SFR wants to dispel the notion that a five-year statute of limitations applies as this has lazily been thrown around anytime the word "quiet title" is uttered. When this is asserted, banks cite NRS 11.070 or NRS 11.080. Both do not provide a statute of limitations, and do not apply to the Bank.

That being said, the Bank did not allege tender until May 8, 2018. So even if this Court applies a five-year statute of limitations (which it should not), the Bank is well past this limitations, and therefore time-barred.

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B. NRS 11.070 Does Not Provide a Five-Year Statute of Limitations for the Bank.

NRS 11.070 is not time-bar statute; instead, it is a standing statute. Regardless, it does not apply to Bank as the Bank was never seised[1] nor possessed of the subject property.

1. NRS 11.070 is a standing statute.

Under Nevada rules of statutory interpretation, the Court must first look to the statute's plain language. *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. ___, ___, 305 P.3d 898, 902 (2013). If the statute's, "language is clear and unambiguous," the Court must enforce it "as written." *Id.* (quotation omitted). The Court must "avoid[] statutory interpretation that renders language meaningless or superfluous," and "interpret a rule or statute in harmony with other rules and statutes." *Id.* (quotation omitted).

Rather than define a time-period in which a party must file suit, "founded upon title to real property," NRS 11.070 sets a condition precedent which gives a party standing to bring an action **or** defend an action, and that condition is the party must have been seized i.e. ownership in fee[2] or possessed of the real property in question, five years prior to bringing the action **or** defending the action. Both the title of the statute and the language within, namely "no cause of action…unless" make it clear that the statute is a standing statute. The fact that the statute also limits the **defense** of such an action "unless" the condition precedent exists also makes it clear that NRS 11.070 is not a time-bar statute, but rather a standing statute. The Nevada Supreme Court, in interpreting the identical predecessor to NRS 11.070, stated that the statute, "imposes a general inability to sue or defend upon any right claimed in real estate, unless the party suing or defending shall have been

[1] Seisin is defined as possession of a freehold estate in land. BLACK'S LAW DICTIONARY 1564 (10th ed. 2014). "Originally, seisin meant simply possession and the word was applicable to both land and chattels. Prior to the fourteenth century it was proper to speak of a man as being seised of a land or seised of a horse. Gradually, seisin and possession became distinct concepts. A man could be said to be in possession of chattels, or of lands wherein he had an estate for years, but he could not be said to be seised of them. Seisin came finally to mean, in relation to land, possession under claim of a freehold estate therein. The tenant for years had possession but not seisin; seisin was in the reversioner who had the fee." *Id*. (citing Cornelius J. Moynihan, *Introduction to the Law of Real Property* 98-99 (2d ed. 1988)). Further, seisin "has nothing to do with 'seizing,' with its implication of violence." *Id*. (citing Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 27-28 (6th ed. 1993)). In other words, seisin lies with the record titleholder.

[2] *South End Minding Co. v. Tinney*, 22 Nev. ___, ___, 35 P. 89, 92 (1894) ("the word 'seised' means something different from simple possession of a claim…If so, it must mean, as it would naturally import, an ownership in fee, for this is the only other kind of ownership known to the law.")

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in possession of the real estate within five years last past." *Chollar-Potosi Mining Co. v. Kennedy & Keating*, 3 Nev. 365, 369 (1867).

In this regard, NRS 11.070, can never bar a claim or a defense by a party who is currently record title holder or who had title within the preceding five years of bringing the claim or asserting the defense. This is so because such party meets the condition precedent of NRS 11.070 in that the party is seized of the property. Even if the party was not seized, so long as the party currently has possession or had possession of the property within the preceding five years of the claim or defense, that party also cannot be barred from its claim or defense. By way of example, party A becomes record title holder and takes possession of Blackacre on January 1, 2000. Then on January 2, 2000, party B records a fraudulent deed transferring title to Blackacre to himself. In that scenario, party A has possession, and party B has title. Nothing under NRS 11.070 requires that party A or party B file an action against one another five years from January 2, 2000. Instead, both party A and party B have standing under NRS 11.070 to bring a claim or maintain a defense because party A has possession and party B is seized. If this scenario stayed the same, and we fast forward to today, some 18 years later, both parties would still have **standing** under NRS 11.070 to bring a claim or maintain a defense to an action "founded upon title to real property." Neither would be barred from bringing such a claim or asserting such a defense. The statute of limitations would be determined by the actual claim asserted in the complaint.

NRS 11.070 makes no mention of an accrual of a claim "founded upon title;" instead, it only discusses the necessary condition a party must have in order to have standing to assert a claim or defense. In this regard, while NRS 11.070 may bar a claim/defense, it will not be because of any time-limitation; it will be because the party was not seized or possessed of the property i.e. the party lacks standing.

2. NRS 11.070 does not apply to the Bank.

NRS 11.070 states in relevant part

> No cause of action…founded upon the **title to real property**,…shall be effectual, unless it appears that **the person prosecuting the action…was seized or possessed of the premises in question within 5 years before the committing of the act** in respect to which said action is prosecuted…

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NRS 11.070 (emphasis added.)

In the present case, the Bank seeks a declaration that the deed of trust remains a valid lien on the property. Simply because the Bank uses the slang term "quiet title" or that it claims the deed of trust still clouds title does not morph the claim into one "founded upon title to real property." *See e.g. Bank of America, N.A. v. Country Garden Owners Association*, Case No. 2:17-cv-01850-APG-CWH, 2018 WL 4305761 (D. Nev. March 14, 2018) (finding NRS 11.070 does not apply to bank's claim); *Ocwen Loan Servicing, LLC v. SFR Investments Pool 1, LLC*, Case No. 2:17-cv-01757-JAD-VCF, 2018 WL 2292807 (D. Nev. May 18, 2018) (finding neither NRS 11.070 nor 11.080 apply to the bank's claim).

As the Nevada Supreme Court has held, while a lien is a monetary encumbrance on property which clouds title, "it exists separately from that title," and therefore an action involving the lien does not relate to title. *Hamm v. Arrowcreek Homeowners Ass'n*, 124 Nev. ___, ___, 183 P.3d 895, 902 (2008). In *Hamm*, the Court noted "a lien right alone does not give the lienholder right and title to the property." *Id.*, quoting *In re Marino*, 205 B.R. 897, 899 (Bankr.N.D.Ill.1997). Rather, "title 'which constitutes the legal right to control and dispose of property' remains with the property owner until the lien is enforced through foreclosure proceedings."' *Id.* quoting BLACK'S LAW DICTIONARY 1522 (8th ed.2004).

With this principle in mind, NRS 11.070 does not apply to the Bank's claim because the claim is not one "founded upon title to real property." The Bank, as mere lienholder, claims a lien right, and nothing more. The claim is an attempt to obtain a determination that the lien survived the sale; it is not a claim founded upon title. If that was not enough, as discussed above, NRS 11.070 is not a time-bar statute, it is a standing statute; the Bank as mere lienholder would never have standing to assert a claim or defend a claim founded upon title to real property because it was neither seized nor possessed of the property. Thus, a plain reading of NRS 11.070 shows that this statute has no application whatsoever to the Bank.

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C. NRS 11.080 Does Not Provide a Five-Year Statute of Limitations for the Bank.

1. NRS 11.080 is a standing statute.

NRS 11.080 sets the same condition precedent for actions for the "recovery of real property" or the "recovery of the possession thereof." Again, the statute does not state the action must be filed within five years; instead, the statute states that "no action for the recovery of real property, or for the recovery of the possession thereof… shall be maintained, unless…" the party bringing the action was seized or possessed of the premises five years before commencing the action. The terms "maintained" and "unless" make it clear, that NRS 11.080 is a standing statute.

By way of example, party A acquires 100 acres of real property on January 1, 2000. Party B takes possession of 10 acres of that same property on January 2, 2000. Nothing in NRS 11.080 requires party A to file an action against party B within five years of January 2, 2000. Instead, party A, so long as he maintains title to the property (i.e. seisin), can bring an action against party B even today, some 18 years past the date party B took possession. Party A will not be barred merely because he filed his action greater than five years; this is not the analysis under NRS 11.080. Instead, the analysis is did party A have title or possession of the property within five years prior to bringing the action. In this scenario, because party A persistently maintained title, it is inconsequential how many years have passed since party B took possession (in the example above 18 years ago). The question is not when the claim accrued, as NRS 11.080 makes no mention of accrual of a claim; instead, the sole focus is standing—whether party A had title or possession within five years of filing the action, not whether he filed his action within five years of party B taking possession.

While the Bank may attempt to rely on Gray Eagle,[3] which noted in dicta that NRS 11.080 is a five-year statute of limitations, still only noted this in the context of a person who was both seised and possessed of the property i.e. the NRS 116 purchaser. As such, *Gray Eagle* does not run afoul of SFR's interpretation, and does nothing to aid the Bank.

[3] *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 388 P.3d 226 (Nev. 2017).

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2. NRS 11.080 does not apply to the Bank.

NRS 11.080 states in relevant part

> No action for the **recovery** of real property, or for the **recovery** of the possession thereof . . . shall be maintained, unless it appears that the plaintiff . . . **was seized or possessed of the premises in question**, within 5 years before the commencement.

NRS 11.080 (Emphasis added.)

Again, the Bank, as a lienholder, seeks a declaration that the deed of trust remains a valid lien on the property. By way of this claim, the Bank does not seek "recovery" or "recovery of possession" of the property. *Bank of America, N.A. v. Country Garden Owners Association*, Case No. 2:17-cv-01850-APG-CWH, 2018 WL 4305761 (D. Nev. March 14, 2018) (finding NRS 11.070 does not apply to bank's claim); *Ocwen Loan Servicing, LLC v. SFR Investments Pool 1, LLC*, Case No. 2:17-cv-01757-JAD-VCF, 2018 WL 2292807 (D. Nev. May 18, 2018) (finding neither NRS 11.070 nor 11.080 apply to the bank's claim).

Even if the Bank succeeded on its claim, and SFR takes subject to the deed of trust, it would still have to foreclose on the deed of trust to get possession of the property. *Hamm*, 124 Nev. at 298, 183 P.3d at 902. Also, just like NRS 11.070, NRS 11.080 likewise requires that before a party can maintain an action to recover real property it must have been seized or possessed of the property. In the context of challenging an NRS 116 sale as a lienholder, the Bank does not have standing to assert a claim because it cannot establish it was seized or possessed of the property. As such, NRS 11.080 has no application whatsoever to the Bank.

D. The Three-Year Statute of Limitations Governs.

Now that we have sufficiently dispelled the notion of a five-year statute of limitations, at least as to the Bank, we now see why a three-year statute of limitations applies to the Bank's claim. Here, the "character of the action" is that of liability drawn from NRS 116.3116 et seq. and the Association's purported acts in conducting the foreclosure sale under these statutes. The Bank alleges the Association wrongfully foreclosed because it cured the default as to the super-priority amount. As the *SFR III* Court noted, NRS 116.3116 governs liens against units for HOA assessments and details the portion of the lien that has superpriority status." *Bank of America, N.A.*

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v. SFR Investments Pool 1, LLC, 427 P.3d 113, 116 (Nev. 2018) ("SFR III"). Any allegation that the super-priority portion was cured, is challenging the fact that a default existed thereby challenging the Association's authority to foreclose. *See Collins v. Union Fed. Sav. & Loan A''m*, 99 Nev. 284, 304, 662 p.2d 610, 623 (1983) ("An action for the tort of wrongful foreclosure will lie if the trustor or mortgagor can establish that at the time the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor's or trustor's part which would have authorized the foreclosure or exercise of the power of sale.") *See also, McKnight Family, LLP v. Adept Management Services, Inc*., 129 Nev. 610, 616, 310 p.3d 555, 559 (2013) ("A wrongful foreclosure claim challenges the authority behind the foreclosure, not the foreclosure act itself.")

This is consistent with *SFR III's* analysis. There, the Court held that the Bank's delivery of a check in the amount of nine months of assessments satisfied the super-priority portion of the lien, and therefore at the time the Association foreclosed there was no default, and thus no authority to foreclose on the super-priority part of the lien. *SFR III*, 427 P.3d at 121 (noting a trustee has no power to convey an interest in land where the obligation is not in default). This is quintessential wrongful foreclosure. In the present case, the Bank claims it paid the super-priority portion and therefore it cured the default.

Thus, the applicable statute of limitations for this wrongful foreclosure claim is three years because it is"[a]n action upon liability created by statute." *See* NRS 11.190(3)(a). A review of the Bank's claim as a whole demonstrates that the Bank is simply attacking the authority behind the Association's sale and alleged violations of NRS Chapter 116. Based thereon, the Bank's claim is subject to the three-year statute of limitations prescribed by NRS 11.190(3)(a) for liability arising from a statute.[3]

[3] *See, e.g., Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n*, No. 215CV01287RCJNJK, 2017 WL 2587926, at *3 (D. Nev. June 14, 2017) ("A wrongful foreclosure action based on an alleged failure to comply with Chapter 116 is subject to the three-year statute of limitations for claims based "upon a liability created by statute." Nev. Rev. Stat. § 11.190(3)(a); *see also Amber Hills II Homeowners Ass'n*, 2016 WL 1298108, at *5; *Park Ave. Homeowners' Ass'n*, 2016 WL 5842845, at *3."); *See also, Bank of America, N.A. v. Giavanna Homeowners Association, et al.*, Case No. 2:18-cv-288-RFB-VCF, ECF No. 49 (March 28, 2019) (finding three-year statute of limitation applied to claims challenging sale based on violations of NRS 116.)

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Here, the sale occurred on July 25, 2012. Thus, the date in which the Bank had to file its claim was July 25, 2015. Here, the Bank did not allege tender until its amended complaint on May 8, 2018. This date is past the three-year statute of limitations, and therefore time-barred.

E. The Analogous Limitations Periods for Challenges to Foreclosure Sales Do Not Exceed Three Years Under Nevada Law.

Typically, "[w]hen a statute lacks an express limitations period, courts look to analogous causes of action for which an express limitations period is available either by statute or by case law." *Perry v. Terrible Herbst, Inc.*, 132 Nev. ___, ___, 383 P.3d 257, 260 (2016) (quoting *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 518 (Tex. 1998)); citing *Bellemare v. Wachovia Mortg. Corp.*, 284 Conn. 193, 931 A.2d 916, 921 (2007) ("[W]hen a statute includes no express statute of limitations, we should not simply assume that there is no limitation period. Instead, we borrow the most suitable statute of limitations on the basis of the nature of the cause of action or of the right sued upon."). Thus, if this Court determines that there is no statute of limitations provided for NRS Chapter 30 or NRS 40.010 then this Court can look to analogous limitations periods. In Nevada, the following limitations apply to challenges to foreclosure sales:

TYPE OF LIEN	TYPE OF FORECLOSURE	STATUTE OF LIMITATIONS	STATUTE
Deed of Trust	Non-Judicial	30-90 days – for Noticing	NRS 107.080
Deed of Trust	Non-Judicial	3 years – for Other	NRS 11.190(3)(a)
Deed of Trust	Judicial	1 year	NRS 21.210
Utility	Judicial	1 year	NRS 21.210
Mechanic	Judicial	1 year	NRS 21.210
Property Tax	Non-Judicial	2 years	NRS 361.600

There is no basis to deviate from the above-analogous limitations periods, and the same limitations periods should apply to actions challenging an NRS 116 sale. Because the longest limitations period recognized is three-years, the Bank's claim is time-barred.

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F. Alternatively, the Four-Year Catch-All Limitations Applies.

As an alternative limitations period, the Court can look to NRS 11.220, which provides for a four-year limitations for actions not otherwise provided for in the Chapter. Under the four-year limitations, the Bank's claim is time-barred.

F. Relation Back Doctrine Does Not Apply.

NRCP 15(c) states that, "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." (emphasis added). However, "where the original pleading does not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the grounds upon which it rests,' the purpose of the statute of limitations has not been satisfied and it is 'not an original pleading that [can] be rehabilitated by invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012). In other words, the analysis under NRCP 15(c) is "whether the original complaint adequately notified the defendants of the basis for liability the plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada law will not allow a new claim based upon a new theory of liability asserted in an amended pleading to relate back under NRCP 15(c) after the statute of limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d 1141, 1146 (1983).

Here, the Bank did not allege tender until its amended complaint on May 8, 2018. Should this Court apply the three-year statute of limitations, relation-back will not save the Bank as the original complaint was filed on July 12, 2016 which is nearly four years after the sale.

Should this Court apply a four or five-year statute of limitations (although SFR contends there is no basis to do this, particularly as to the five-year) the May 8, 2018 amendment would not relate back to the Bank's original complaint. The original complaint, filed on July 12, 2016, never alleged tender. It made no allegations whatsoever that the super-priority portion was cured. Simply put, anyone reading the original complaint would have no idea the Bank would later claim it tendered the super-priority portion of the lien. All told, the Bank's amendment does not relate back

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to its original complaint. Because there is no relation back, the Bank's claim is time-barred.

DATED April 15, 2019.

KIM GILBERT EBRON

/s/ Karen L. Hanks
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S TRIAL BRIEF RE STATUTE OF LIMITATIONS** to the following parties:

Dana Nitz, Esq.	dnitz@wrightlegal.net
NVEfile	nvefile@wrightlegal.net
Natalie Lehman	nlehman@wrightlegal.net
J. William Ebert, Esq.	bebert@lipsonneilson.com
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/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON

20040623-0002016
Fee $72.00
06/23/2004 10:37:00 T20040043959
Req: NORTH AMERICAN TITLE COMPANY
Frances Deane
Clark County Recorder Pgs: 59

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

WHEN RECORDED RETURN TO:

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

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

ANTELOPE
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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

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.

II.

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

or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(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.

4.02 Membership Rights. Only Owners, including Declarant, shall be Members of the Association. Each Owner shall automatically be a Member of the Association without the necessity of any further action on its part, and membership in the Association shall be appurtenant to and shall run with the property interest ownership that qualifies the Owner to membership in the Association. Membership in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except with the title to the property ownership interest that qualifies the Owner thereof to membership and then only to the transferee of title to the property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void. Subject to subsection 4.03(d) and Section 5.07 hereof and as set forth in the Articles, each Member shall be entitled to one (1) vote for each Lot owned by that Member.

4.03 Control of Association.

(a) Period of Declarant Control of Association. Notwithstanding any other provision of this Declaration or of the Bylaws, and subject to subsection (b) below, there shall be a period during which Declarant shall control the Association, and Declarant or a Person designated by Declarant may appoint and remove all or some of the officers and directors of the Association. The period of Declarant control of the Association terminates no later than the earlier of:

(i) sixty (60) days after the conveyance by Declarant of seventy-five percent (75%) of the Lots that may be created within the Property to Owners other than the Declarant;

(ii) five (5) years after the Declarant has ceased to offer Lots for sale in the ordinary course of its business; or

(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 our 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

Declarant, the Association, the Board and each of its members, the Architecture Committee and each of its members, and the manager of the Property, if any, and such policies may also name some or all of the respective officers, employees, and agents of the foregoing;

(iii) Workers' compensation insurance to the extent necessary to comply with all applicable laws;

(iv) A fidelity bond in an amount determined by the Board naming the members of the Board and such other Persons as may be designated by the Board as principals and the Association as obligee; and

(v) Such other insurance, including indemnity and other bonds, as the Board shall deem necessary or desirable to carrying out the Association's functions.

The Association shall be deemed trustee of the interests of all Members in all insurance proceeds and shall, subject to the requirements of law, including NRS §§ 116.31133, 116.31135 and any successor statutes, have full power to receive, hold, and disburse such proceeds.

(g) Architecture Committee. The Board shall appoint and remove members of the Architecture Committee as provided in Article VII hereof and ensure that at all reasonable times there is available a duly constituted and appointed Architecture Committee.

(h) Enforcement. The Association shall enforce, in its own behalf and on behalf of all Owners, all of the covenants, conditions, and restrictions set forth in this Declaration under an irrevocable agency (which is hereby granted) coupled with an interest as beneficiary of said covenants, conditions, and restrictions and as assignee of Declarant. The Association shall perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of the Rules and Regulations or the Design Guidelines.

(i) Long-Term Financing. The Association may, subject to compliance with NRS § 116.3112, execute mortgages and deeds of trust, both construction and permanent, for construction of facilities, including Improvements, on property owned by or leased to the Association. Such financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether that be Declarant or the Association. The mortgage, deed of trust, or other security interest given to secure repayment of such debt may consist of a first lien or a second or other junior lien, as shall be deemed appropriate by such borrower, whether that be Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as Declarant or the Association, as the case may be, deems appropriate. The debt secured by such mortgage, deed of trust, or other security instrument may be retired from revenues generated by dues, use fees, Assessments of the Members of the Association, or otherwise or any combination thereof as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration and the Act.

(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.

(m) Conveyances. The Board shall have the power to grant and convey to any Person real property and interests therein, including fee title, leasehold estates, easements, rights of way, mortgages, and deeds of trust, out of, in, on, over, or under any Association Property for the purpose of constructing, erecting operating, maintaining, or repairing thereon, therein or thereunder:

(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.

Nothing above contained, however, shall be construed to permit use or occupancy of any land, Improvement, or other facility in a way that would violate applicable zoning or use and occupancy restrictions imposed thereon by other provisions of this Declaration or by city, county, or other applicable public agency.

(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.

(o) Association Property Services. The Board shall have the power to pay for water, sewer, garbage removal, electricity, telephone, gas, snow removal, landscaping, gardening, and all other utilities, services, and maintenance for the Association Property.

(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.

(q) Recreational Facilities. The Board shall have the power to operate and maintain any and all types of facilities owned by or leased to the Association for both active and passive recreation within the Common Area including, but not limited to: swimming pools; community clubs; picnic areas; parks and playgrounds; trails for hiking, bicycles, or other

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,

or agent of the Association has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in subsection 4.07(a), or in defense of any claim, issue, or matter therein, then to the extent that the Association has elected to provide indemnification, it shall automatically be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by it in connection therewith without the necessity of any such determination that it has met the applicable standard of conduct set forth in subsection 4.07(a).

(c) Payment in Advance. Expenses incurred in defending a civil or criminal action, suit, or proceeding may, upon action by the Board in accordance with subsection 4.07(b), be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, servant, or agent to repay such amount unless it shall ultimately be determined that it is entitled to be indemnified by the Association as authorized in this Section 4.07.

(d) Insurance. The Board shall purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee, servant, or agent of the Association against any liability asserted against it or incurred by it in any such capacity or arising out of its status as such, whether or not the Association would have the power to indemnify it against such liability hereunder or otherwise.

(e) Other Coverage. The indemnification provided by this Section 4.07 shall not be deemed exclusive of any other rights to which anyone seeking indemnification may be entitled under this Declaration, any agreement, vote of the Members, vote of disinterested directors, Nevada law, or otherwise, both as to action in its official capacity and as to action in another capacity while holding such office, and may continue as to a Person who has ceased to be a director, officer, employee, servant, or agent and may inure to the benefit of the heirs and personal representatives of such a Person.

4.08 Diseased Trees. The Association may enter upon any part of the Property at any time to inspect for, prevent, and control diseased and insect infested trees and other plant life. If any diseased or insect infested trees or other plant life are found, the Association may spray, remove diseased trees and other plant life, or take such other remedial measures as it deems expedient. The cost thereof applicable to privately owned property may be levied by the Association as a special Assessment against such privately owned property pursuant to Section 5.04 hereof.

4.09 Perimeter Walls. The Association may enter upon any part of the Property at any time to inspect for, prevent, or control damage to any Perimeter Walls and to maintain, repair, or replace, as necessary, the Perimeter Walls. Owners of Lots bounded by a Perimeter Wall shall be responsible for the cost of maintenance to Perimeter Walls as set forth in subsection 3.03(d)(vii) hereof. Notwithstanding the foregoing, an Owner causing any damage to any Perimeter 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 Perimeter Walls.

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 (1st) day of the month immediately following the first (1st) 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 (1st) 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

of all of the Members. As used herein, the term "transient commercial uses" shall mean the use of a Lot, for remuneration, as a hostel, inn, motel, resort, vacation rental, or other form of transient lodging.

6.04 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or on any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved in writing by the Board. All temporary utility outlets shall be installed and maintained in accordance with applicable provisions of the Rules and Regulations. No provision hereof shall be deemed to forbid the erection of the temporary power or telephone installations incident to the construction of approved buildings or structures.

6.05 Nuisances. No noxious, illegal, or offensive activity shall be carried out on or upon any Lot or any part of the Property, nor shall anything be done thereon that may be or may become an annoyance or nuisance, public or private, to the neighborhood, that shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots, or that shall in any way increase the rate of insurance for the Association or for the Owners.

6.06 Garbage. No rubbish, trash, garbage, or other waste shall be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be enclosed so as not to be visible from any public street or from any other Lot or the Common Area.

6.07 Outside Antennae. Subject to any regulations issued by the Federal Communications Commission and other applicable governmental authorities, there shall be no outside television or radio antennae, satellite dishes, poles, or flag poles constructed or maintained on any Lot or the Common Area for any purpose without the prior written approval of the Board.

6.08 Signs. No signs other than one (1) sign of customary and reasonable dimensions advertising a Lot for sale or rent shall be displayed on any Lot so that it is visible from any other Lot, public street, or the Common Area without prior written consent of the Board. No signs shall be displayed on the Common Area except signs approved by the Board.

6.09 Equipment and Machinery. No power equipment, hobby shops, or car maintenance (other than emergency maintenance) shall be permitted on the Property except with prior written approval of the Board. No equipment, machinery, junk, debris, building materials, or similar matter shall be placed, stored, or kept in or on any Lot, parking area, or street within or adjoining the Property.

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

this Section 6.14 upon a showing of hardship. The Board shall determine whether a hardship sufficient to warrant an exemption exists after providing the petitioning Owner with notice and an opportunity for a hearing before the Board on the matter in accordance with the Restrictions.

(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.

(i) Responsibility for Violations. Notwithstanding the execution of a lease, the Owner shall be fully responsible and liable to the Association for all violations of the Restrictions by his Lessees and, without limitation, shall be responsible for payment of any assessments, fines, charges, or costs imposed upon his Lot or incurred by his Lessees. In the event an Owner rents or leases any Lot, the Owner shall provide the Lessee with a copy of the Restrictions and a list of the members of the Board. The Association may, after notice to the Owner of the Lot and in addition to any other rights or remedies it may have at law or equity, enforce against the Lessee any remedies set forth in the Restrictions and may evict the Lessee if within a twelve (12) month period the Lessee commits three (3) or more material violations of the Restrictions, regardless of whether such violations are cured. In the event the Association engages an attorney or takes any legal action against a Lessee for any violation of the Restrictions, the Owner as well as the Lessee shall be subject to the costs and expenses set forth in subsection 10.04(f) hereof.

(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

(the "City") in their sole and absolute discretion. Due to the safety hazard which may result to vehicular and pedestrian traffic as a result of any violation of the foregoing sight visibility restriction, the Association and/or the City shall have the right to immediately enter upon any Lot, with or without the Lot Owner's permission, and remove any such violation. Additionally, no vegetation, Improvement, or other obstruction shall be planted, constructed, or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot. Each Owner and resident of a Lot shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs, and trees located on the Lot so as to unreasonably obstruct the view of other Owners or residents. If an Owner or resident fails to perform necessary trimming, pruning or thinning, the Association shall have the right, but not the obligation, to enter upon such Lot for purposes of performing such work and to charge the Owner of the Lot a special assessment for any costs incurred for performing or having such work performed. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner and hereby consents to such impairment.

6.22 Compliance with City Requirements. Any violation of the conditions, restrictions, or other requirements set forth on the Subdivision Map or otherwise imposed on the Property by the City, as the same may be amended or modified from time to time, by any Owner or occupant of the Property, or by any of their respective guests, licensees, or invitees, shall be deemed a violation of the Declaration enforceable in accordance with this Declaration to the fullest extent permitted by law.

6.23 Exterior Holiday Decorations. Lights or decorations may be erected on a Lot in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of Owners of adjacent Lots by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15 of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. All lights and decorations that are not permanent fixtures of a Lot which are part of the original construction or have been properly approved as permanent improvements by the Architecture Committee shall be removed within thirty (30) days after the date the lights and decorations are put upon display, and in no event more than thirty (30) days after the holiday has ended. The Board shall have the right, upon thirty (30) days prior written notice to designate a party to enter upon any Unit and summarily remove exterior lights or decorations displayed in violation of this provision. The Board, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence. Exterior holiday decorations including decorations on the inside of a window may be put up thirty (30) days prior to the holiday and must be removed twenty (20) days after the holiday.

6.24 Blinds and Windows. All Residences must have permanent window coverings installed within ninety (90) days after Close of Escrow on the initial purchase of each Residence.

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.

Mortgagee 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)

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.

_____
Notary

LISA ECKHARDT
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 02-76774-1
My Appt. Expires Aug. 1, 2006

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.

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 (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.

Exhibit "C"

Site Development Plan

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 thru 008
079 thru 096
107 thru 118

Recording requested by, and
when recorded return to:

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

3

4

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 7th day of July, 2004.

DECLARANT

GREYSTONE NEVADA, LLC,
a Delaware limited liability company

By: _____
Name: Tim Kent
Title: President

STATE OF NEVADA)
)
COUNTY OF CLARK)

On this 7 day of July, 2004, personally appeared before me, a notary public, Jim Kent, President of Greystone Nevada, LLC, a Nevada limited liability company, known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

Lisa Eckhardt
Notary Public

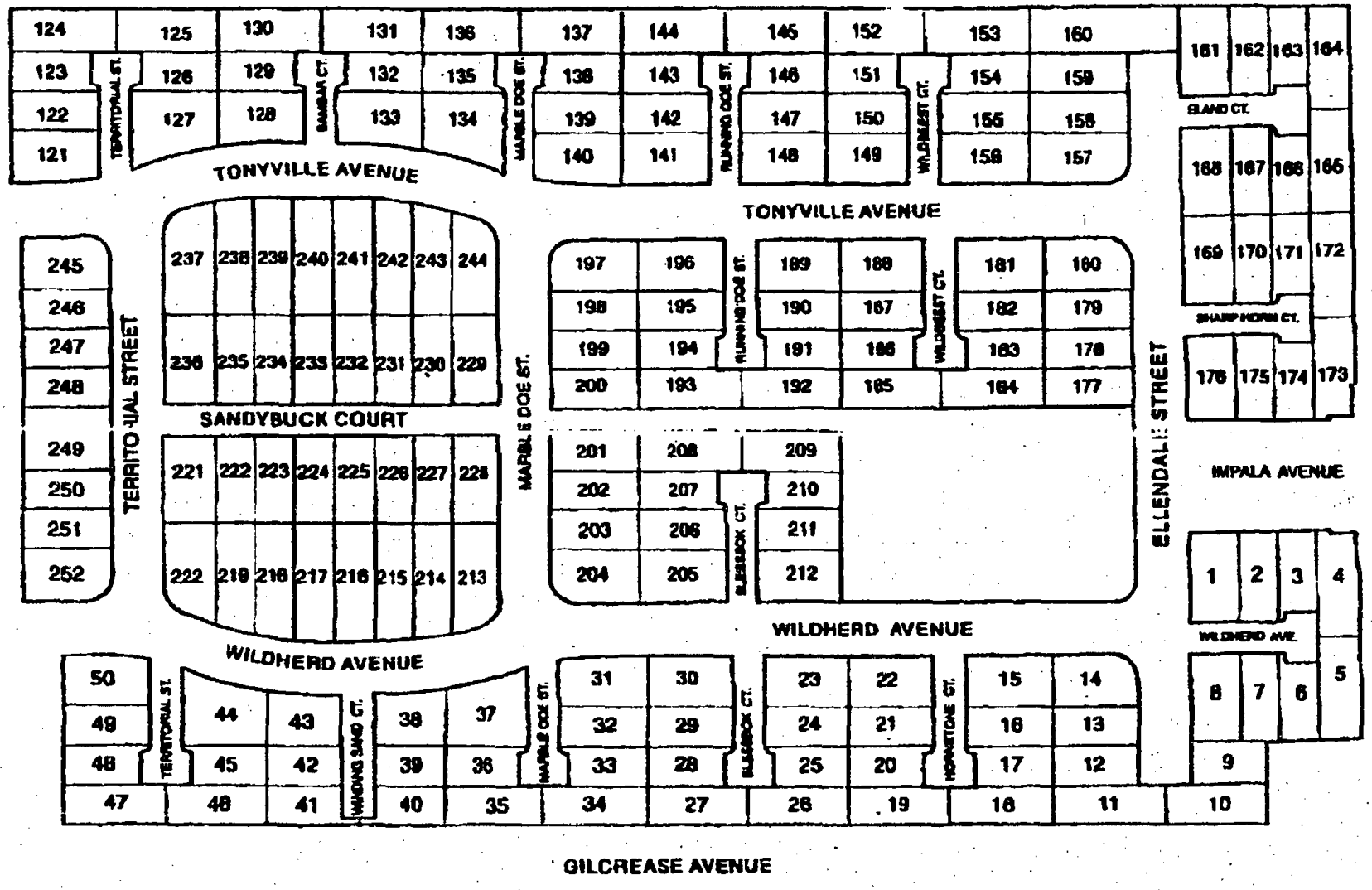
(SEAL)

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

Fee: $16.00
N/C Fee: $0.00

09/14/2006 14:22:29
T20060160395
Requestor:
NORTH AMERICAN TITLE COMPANY

Charles Harvey, Acting Clark County Recorder LEX Pgs: 3

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

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 Pacness
Title: Authorized Agent

STATE OF NEVADA

COUNTY OF CLARK

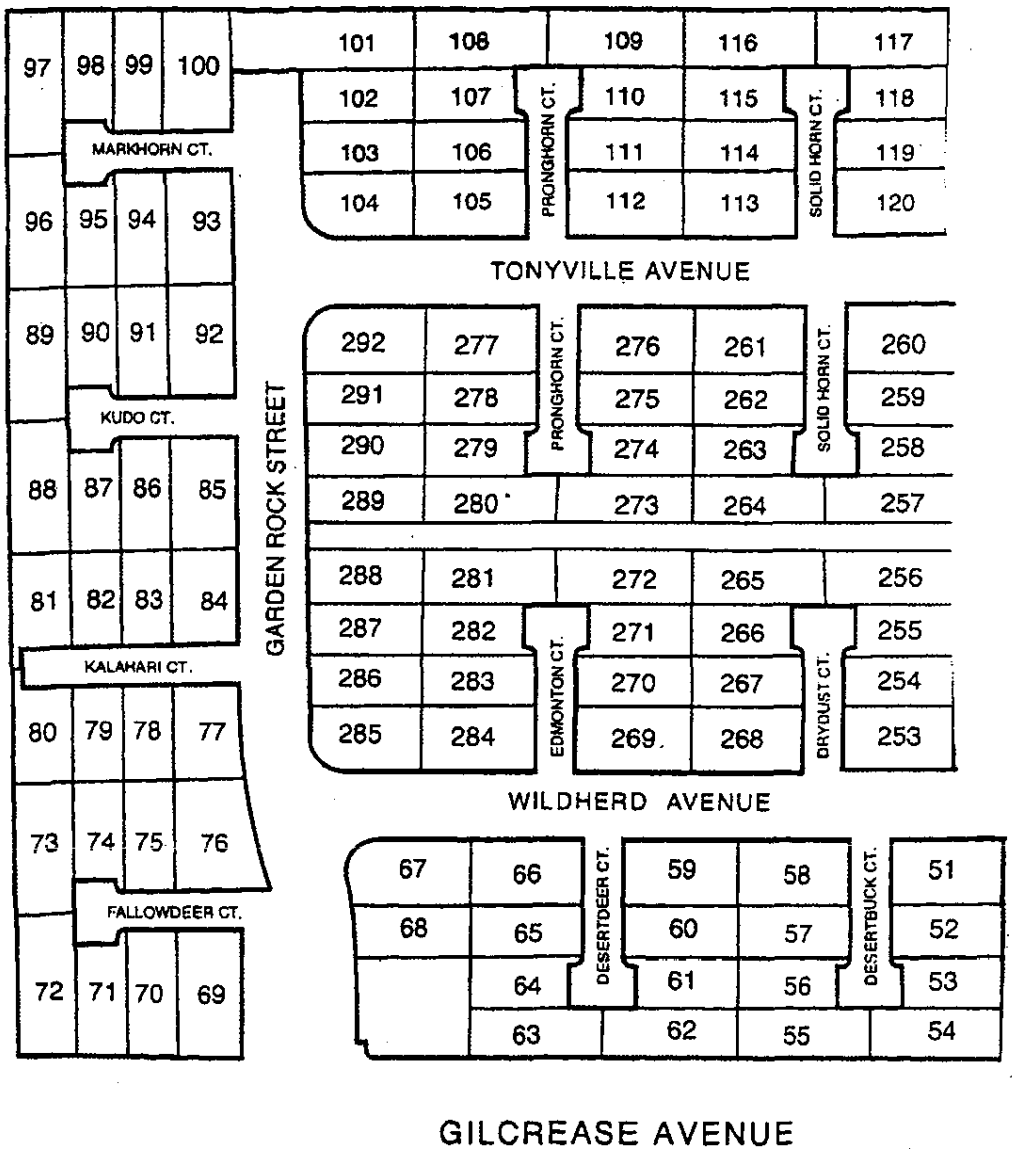
This instrument was acknowledged before me on August 31, 2006, by Jeremy Pacness, the Authorized Agent of Greystone Nevada, LLC, a Delaware limited liability company.

Lisa Eckhardt
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LISA ECKHARDT
Appt. No. 02-76774-1
My Appt. Expires Aug. 1, 2010

ANTELOPE

EXHIBIT "C"
SITE DEVELOPMENT PLAN



20050523-0004227

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

05/23/2005 14:40:47
T20050095701
Requestor:
NORTH AMERICAN TITLE COMPANY
Frances Deane ADF
Clark County Recorder Pgs: 4

APN: 125-18-112-069

ESCROW NUMBER: NV204-427584

RPTT: 1,356.60

Recording Requested by:
NORTH AMERICAN TITLE COMPANY
Please mail tax statements to:
When recorded please mail to:
Henry E Ivy
1868 Marble Dove
Las Vegas, NV 89149 33

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

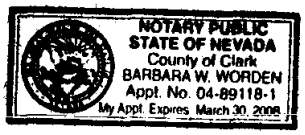
by: Tim Kent, Authorized Agent

State of Nevada
County of Clark

On May 17, 2005 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)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Greystone Nevada LLC	Print Name: Henry Ivy
Address: 3765 East Sunset Road	Address: 7600 S Durango Dr #1095
City: Las Vegas	City: LAS VEGAS
State: Nevada Zip: 89120	State: NEVADA Zip: 89139

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

Print Name: North American Title Company Escrow #: NV204-4275 JRY
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 DECLATATION OF VALUE FORM PRESENTED TO CLARK COUNTY, EFFECTIVE JUNE 1, 2004.

4227

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 occured. 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.

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. Borras, 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 Borras (Seal)

Connie L. Borras

CONNIE L. BORRAS
Commission # 1733995
Notary Public - California
Orange County
My Comm. Expires Apr 22, 2011

20050523-0004228

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 Pgs: 22

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

34
164-04975 GRY

[Space Above This Line For Recording Data]

DEED OF TRUST

Loan # [redacted]0683 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**

Loan # [redacted]0683 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]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[X] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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

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

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

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

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

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

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.

(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

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.

Initials: NEI

Loan # [redacted]0683 A1918

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** .

Initials: [signature]

Loan # [redacted]0683 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:

_____ _____ (Seal)
HENRY E IVY -Borrower

_____ _____ (Seal)
FREDDIE S IVY -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

Loan # [redacted]0683 A1918

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 5/18/05 by
HENRY E IVY, FREDDIE S IVY

C Snyder

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

C. SNYDER
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 03-24-2009
CERTIFICATE NO: 05-95965-1

Initials: [illegible]

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 # [redacted]0683 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 # [redacted]0683 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 # [redacted]0683 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

FREDDIE S IVY (Seal)
Borrower

Freddie Sue Ivy (Seal)
FREDDIE S. IVY Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

[Sign Original Only]

Loan # [redacted]**0683** **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.

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.

Initials: _____

Loan # [redacted]0683 **3150/FNMA**

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

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

FREDDIE S IVY (Seal) -Borrower

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

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

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 Pgs: 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

13
251
35

204-042756RY
Loan #[redacted]0782

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**

, ("Lender") is organized and existing under the laws of **Florida**, and has an address of **700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139**

Loan # [redacted]0782 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** [Street] , **LAS VEGAS** [City] ,
Nevada **89149** [ZIP Code] (herein "Property Address");

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

Initials: _____

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.

Initials: _____

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

Initials:

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.

Initials: [signature]

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**

[X] **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.

Initials:

Loan # [redacted]0782 D076N1NV

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

HENRY E IVY (Seal) -Borrower

FREDDIE S IVY (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Loan # [redacted]0782 D076N1NV

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 5/18/05 by
HENRY E IVY, FREDDIE S IVY

C Snyder

C. SNYDER
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 03-24-2009
CERTIFICATE NO: 05-95965-1

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

Initials: R/E

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 # [redacted]**0782** **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.

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.

Initials:

Loan # [redacted]**0782** **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

[Space Above This Line For Recording Data]

LOAN # [redacted]0782 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) MFCD9511-GRPTBALR.UFF ISSUED 09/07/00