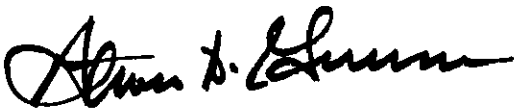


# EXHIBIT 1

Electronically Filed  
Dec 23 2019 11:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

# EXHIBIT 1

  
CLERK OF THE COURT

1 **TAC**  
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3 ADAM R. TRIPPIEDI, ESQ.  
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(702) 642-3113/ (702) 642-9766 FAX  
7  
Attorney for plaintiff

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 34 INNISBROOK,  
12 Plaintiff,

13 vs.

14 THORNBURG MORTGAGE SECURITIES TRUST  
2007-3; and RECONTRUST COMPANY, N.A. a  
15 division of BANK OF AMERICA; FRANK TIMPA  
and MADELAINE TIMPA, individually and as  
16 trustees of the TIMPA TRUST; SPANISH TRAIL  
MASTER ASSOCIATION; and RED ROCK  
17 FINANCIAL SERVICES;

18 Defendants.

19 THORNBURG MORTGAGE SECURITIES  
20 TRUST 2007-3,

21 Counter-claimant

22 vs.

23 SATICOY BAY LLC SERIES 34 INNISBROOK, a  
Nevada limited-liability company; SPANISH  
24 TRAIL MASTER ASSOCIATION, a Nevada Non-  
Profit Corporation; RED ROCK FINANCIAL  
25 SERVICES, an unknown entity; FRANK TIMPA,  
an individual; DOES I through X and ROE  
26 CORPORATIONS I through X, inclusive,

27 Counter-defendants

CASE NO.: A-14-710161-C  
DEPT NO.: XV

**EXEMPTION FROM ARBITRATION:**  
**Title to real property**

1 RED ROCK FINANCIAL SERVICES

2 Counter-claimant,

3 vs

4 THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3; COUNTRYWIDE HOME  
6 LOANS, INC.; ESTATES WEST AT SPANISH  
7 TRAIL; MORTGAGE ELECTRONIC  
8 REGISTRATION SYSTEMS, INC.; REPUBLIC  
9 SERVICES; LAS VEGAS VALLEY WATER  
DISTRICT; FRANK TIMPA and MADELINE  
TIMPA, individually and as trustees of the TIMPA  
TRUST U/T/D March 3, 1999; and DOES 1-100,  
inclusive,

10 Counter-Defendants.

11 **THIRD AMENDED COMPLAINT**

12 Plaintiff Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, the Law Offices of  
13 Michael F. Bohn, Esq. alleges as follows:

14 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,  
15 Nevada.

16 2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014, as evidenced by  
17 foreclosure deed recorded on November 10, 2014.

18 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments  
19 due from the former owners, Frank and Madelaine Timpa to defendant Spanish Trails Master Association  
20 pursuant to NRS Chapter 116.

21 4. Defendant Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed  
22 of trust which was recorded as an encumbrance to the subject property on June 12, 2006, as instrument  
23 number 20060612-0001581.

24 5. Defendants Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are  
25 the former owners of the property.

26 6. Defendant Red Rock Financial Services, LLC was the collection agent and foreclosure agent  
27  
28

1 acting on behalf of defendant Spanish Trail Master Association.

2 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,  
3 which was properly conducted with adequate notice given to all persons and entities claiming an interest  
4 in the subject property, and resulting from a delinquency in assessments due from the former owner, to  
5 the Spanish Trail Master Association, pursuant to NRS Chapter 116.

6 8. The HOA foreclosure sale complied with all requirements of law, including, but not limited  
7 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the  
8 recording, posting, and publishing of the Notice of Sale.

9 9. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff  
10 is the rightful owner of the property and that the defendants have no right, title, interest or claim to the  
11 subject property.

12 10. The plaintiff is entitled to an award of attorneys fees and costs.

13 **SECOND CLAIM FOR RELIEF**

14 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

15 12. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property  
16 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no  
17 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any  
18 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

19 13. The plaintiff is entitled to an award of attorneys fees and costs.

20 **THIRD CLAIM FOR RELIEF**

21 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

22 15. Defendants Frank and Madelaine Timpa individually and as trustee of the Timpa Trust were  
23 served with a 3 day notice to quit.

24 16. The defendants have failed to vacate the premises despite the notice that have been served  
25 upon him.

26 17. The defendants have remained in possession of said property up to and including the present  
27 time.

28

1 18. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

2 19. Plaintiff is entitled to an award of attorneys fees and costs of suit.

3 **FOURTH CLAIM FOR RELIEF**

4 20. Plaintiff repeats the allegations contained in paragraphs 1 through 19.

5 21. Defendant Thornburg Mortgage Securities Trust 2007-3 claims its predecessor-in-interest,  
6 Bank of America, N.A., tendered its calculation of the super-priority amount of the HOA lien to  
7 defendant Red Rock Financial Services, LLC (hereinafter "RRFS").

8 22. RRFS and Spanish Trail Master Association (the "HOA") had an obligation to inform the  
9 bidders at the foreclosure sale if the super priority portion of the HOA lien had been tendered prior to the  
10 foreclosure sale.

11 23. RRFS and the HOA did not make any statement advising bidders that Bank of America, N.A.  
12 tendered the super-priority portion of the lien.

13 24. Plaintiff is informed and believes and thereupon alleges that the HOA and RRFS intended  
14 that the buyers at the HOA foreclosure sale held on November 7, 2014, believe that the assessment lien  
15 being foreclosed included a super-priority component that would extinguish the first deed of trust  
16 recorded against the Property.

17 25. Plaintiff reasonably relied upon the notices and representations of the HOA and RRFS and  
18 entered the high bid of \$1,201,000.00 for the Property with the reasonable belief that the HOA's  
19 assessment lien being foreclosed by the HOA and RRFS included a superpriority portion that would  
20 extinguish the first deed of trust recorded against the Property.

21 26. Plaintiff still believes that the HOA assessment lien contained a super-priority portion, but  
22 if the Court finds otherwise, then Plaintiff will have been damaged in an amount in excess of \$10,000.00  
23 by HOA and RRFS failing to disclose that the tender was made by Bank of America at some point prior  
24 to the foreclosure sale.

25 27. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then  
26 Plaintiff's high bid for the Property should be rescinded due to the misrepresentations made by the HOA  
27 and RRFS in the foreclosure documents, and all monies paid by Plaintiff should be refunded to Plaintiff.

28. Plaintiff is entitled to an award of attorneys fees and costs.

## **FIFTH CLAIM FOR RELIEF**

29. Plaintiff repeats the allegations contained in paragraphs 1 through 28.

30. If the HOA or RRFS had disclosed in the documents recorded with the County Recorder, or at the public auction held on November 7, 2014, that the assessment lien being foreclosed did not have a super priority component, Plaintiff would not have bid and paid \$1,201,000.00 for the Property.

31. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then the HOA and RRFS will have been unjustly enriched by the amount of Plaintiff's bid that would not have been made by Plaintiff if the HOA and RRFS had disclosed that Bank of America claimed to have tendered the superpriority amount of the assessment lien, which is an amount in excess of \$10,000.00.

32. Plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property;

5. If the Court finds that the assessment lien did not include a superpriority portion, for a judgment against the HOA and RRFS rescinding Plaintiff's purchase of the Property and requiring all monies paid by Plaintiff to be refunded, or in the alternative, for damages in an amount in excess of \$10,000.00; and

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EXHIBIT 2

EXHIBIT 2



CCAN  
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Attorneys for Counter-Defendant / Counterclaimant  
Red Rock Financial Services

**EIGHTH DISTRICT COURT  
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34 INNISBROOK,  
Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3; RECONSTRUCT COMPANY,  
N.A. a division of BANK OF AMERICA;  
FRANK TIMPA and MADELAINE TIMPA,  
individually and as trustees of the TIMPA  
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,  
a Nevada Limited-liability company; SPANISH  
TRAIL MASTER ASSOCIATION, a Nevada  
Non-Profit Corporation; RED ROCK  
FINANCIAL SERVICES, LLC, an unknown

Case No.: A-14-710161-C  
Dept.: XXXI

**RED ROCK FINANCIAL  
SERVICES' ANSWER TO  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3  
COUNTERCLAIM; AND RED  
ROCK FINANCIAL SERVICES'  
COUNTERCLAIM FOR  
INTERPLEADER (NRCP 22)**

1 entity; FRANK TIMPA, an individual; DOES I  
2 through X; and ROE CORPORATIONS I  
3 through X, inclusive,

4 Counter-Defendants.

5 RED ROCK FINANCIAL SERVICES,

6 Counterclaimant,

7 vs.

8 THORNBURG MORTGAGE SECURITIES  
9 TRUST 2007-3; COUNTRYWIDE HOME  
10 LOANS, INC.; ESTATES WEST AT SPANISH  
11 TRAILS; MORTGAGE ELECTRONIC  
12 REGISTRATION SYSTEM, INC.; REPUBLIC  
13 SERVICES; LAS VEGAS VALLEY WATER  
14 DISTRICT; FRANK TIMPA and MADELAINE  
15 TIMPA, individually and as trustees of the  
16 TIMPA TRUST U/T/D March 3, 1999; and  
17 DOES 1-100, inclusive,

18 Counter-Defendants.

19 RED ROCK FINANCIAL SERVICES ("Red Rock") answers the Counterclaim filed  
20 by Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), and admits, denies, and  
21 alleges as follows:

### 22 INTRODUCTION

23 1. In response to paragraph 1 of the Counterclaim, Red Rock states this  
24 paragraph constitutes a legal conclusion to which no response is required.

25 2. Admit the allegations in paragraph 2 of the Counterclaim.

### 26 JURISDICTION AND VENUE

27 3. In response to paragraph 3 of the Counterclaim, Red Rock states this  
28 paragraph constitutes a legal conclusion to which no response is required.

///

1 **PARTIES**

2 1. In response to paragraphs 4 through 6 and 9 of the Counterclaim, Red  
3 Rock is without sufficient information to form a belief as to the truth of the allegations of  
4 these paragraphs and on that basis denies the allegations.

5 2. In response to Paragraph 7 of the Counterclaim, Red Rock admits that it is  
6 doing business in Nevada and that it foreclosed on the property that is the subject of this  
7 litigation but denies that it is a Nevada limited liability company.

8 3. In response to paragraph 8 of the Counterclaim, Red Rock states this  
9 paragraph constitutes a legal conclusion to which no response is required.

10 **GENERAL ALLEGATIONS**

11 4. In response to paragraphs 1 through 5, 33, 50, and 56 of the Counterclaim,  
12 Red Rock is without sufficient information to form a belief as to the truth of the  
13 allegations of these paragraphs and on that basis Red Rock denies the allegations.

14 5. In response to paragraphs 6 through 10, 12, 14 through 17, 19 through 22,  
15 30 through 32, 35, 36, and 51 of the Counterclaim, Red Rock states the documents  
16 referenced therein speak for themselves and no response from Red Rock is required.  
17 Insomuch as the documents do not speak for themselves, the allegations in these  
18 paragraphs constitute legal conclusions and no response is required.

19 6. In response to paragraphs 11, 13, 18, 23 through 29, 34, 37 through 46, 48,  
20 49, 53 through 55, 57 through 60, 62 through 63, and 65 through 66 of the Counterclaim,  
21 Red Rock states the allegations in these paragraphs constitutes legal conclusions to which  
22 no response is required. To the extent the paragraphs do not state legal conclusions, Red  
23 Rock denies the allegations contained therein.

24 7. In response to the allegations of paragraphs 14, 47, 52, 61 and 64 Red Rock  
25 is without sufficient information to form a belief as to the truth of the allegations of these  
26 paragraphs regarding "The Trust" and on that basis denies the allegations.  
27  
28

1 **FIRST CAUSE OF ACTION**

2 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**  
3 **versus and all Parties)**

4 8. In response to paragraph 67, Red Rock repeats and reasserts its responses  
5 to paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

6 9. In response to paragraphs 68 through 79 of the Counterclaim, Red Rock  
7 states these paragraphs set forth legal conclusions to which no response is necessary. To  
8 the extent responses are required, Red Rock is without sufficient knowledge or  
9 information to form a belief and on that basis denies the allegations in these paragraphs.

10 **SECOND CAUSE OF ACTION**

11 **(Permanent and Preliminary Injunction versus the Buyer)**

12 10. Red Rock states that this Second Cause of Action, paragraphs 80 through  
13 88, is not applicable to it, therefore, no response is required to these allegations.

14 **THIRD CAUSE OF ACTION**

15 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

16 11. In response to paragraph 89, Red Rock repeats and reasserts its responses  
17 to paragraph 1 through 88 of the Counterclaim as though fully set forth herein.

18 12. In response to paragraphs 90 through 95 of the Counterclaim, Red Rock  
19 states these paragraphs set forth legal conclusions to which no response is necessary. To  
20 the extent responses are required, Red Rock denies the allegations in these paragraphs.

21 **FOURTH CAUSE OF ACTION**

22 **(Negligence versus HOA, the HOA Trustee, and fictitious Defendants)**

23 13. In response to paragraph 96, Red Rock repeats and reasserts its responses  
24 to paragraph 1 through 96 of the Counterclaim as though fully set forth herein.

25 14. In response to paragraphs 97 through 102 of the Counterclaim, Red Rock  
26 states these paragraphs set forth legal conclusions to which no response is necessary. To  
27 the extent responses are required, Red Rock denies the allegations in these paragraphs.  
28

1 **FIFTH CAUSE OF ACTION**

2 **(Negligence Per Se versus HOA, the HOA Trustee, and fictitious Defendants)**

3 15. In response to paragraph 103, Red Rock repeats and reasserts its responses  
4 to paragraph 1 through 102 of the Counterclaim as though fully set forth herein.

5 16. In response to paragraphs 104 through 112 of the Counterclaim, Red Rock  
6 states these paragraphs set forth legal conclusions to which no response is necessary. To  
7 the extent responses are required, Red Rock denies the allegations in these paragraphs.

8 **SIXTH CAUSE OF ACTION**

9 **(Breach of Contract versus HOA and the HOA Trustee)**

10 17. In response to paragraph 113, Red Rock repeats and reasserts its responses  
11 to paragraph 1 through 112 of the Counterclaim as though fully set forth herein.

12 18. In response to paragraphs 114 through 117 of the Counterclaim, Red Rock  
13 states these paragraphs set forth legal conclusions to which no response is necessary. To  
14 the extent responses are required, Red Rock denies the allegations in these paragraphs.

15 **SEVENTH CAUSE OF ACTION**

16 **(Misrepresentation versus HOA, HOA Trustee and Fictitious Defendants)**

17 19. In response to paragraph 118, Red Rock repeats and reasserts its responses  
18 to paragraphs 1 through 117 of the Counterclaim as though fully set forth in full herein.

19 20. In response to paragraphs 119, 120, and 125 through 127 of the  
20 Counterclaim, Red Rock states these paragraphs set forth legal conclusions to which no  
21 response is necessary. To the extent responses are required, Red Rock denies the  
22 allegations in these paragraphs.

23 21. Red Rock is without knowledge or information sufficient to respond to the  
24 allegations in paragraphs 121 through 124 of the Counterclaim.

25 **EIGHTH CAUSE OF ACTION**

26 **(Unjust Enrichment versus the Buyer, HOA, HOA Trustee, and fictitious Defendants)**

27 22. In response to paragraph 128, Red Rock repeats and reasserts its responses  
28 to paragraphs 1 through 127 of the Counterclaim as though fully set forth in full herein.

1           23. In response to paragraphs 129 through 135 of the Counterclaim, Red Rock  
2 states these paragraphs set forth legal conclusions to which no response is necessary. To  
3 the extent responses are required, Red Rock denies the allegations in these paragraphs.

4                                   **NINTH CAUSE OF ACTION**

5           **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**  
6                                   **Trustee, and the fictitious Defendants)**

7           24. In response to paragraph 136, Red Rock repeats and reasserts its responses  
8 to paragraphs 1 through 135 of the Counterclaim as though fully set forth in full herein.

9           25. In response to paragraphs 137 through 142 of the Counterclaim, Red Rock  
10 states these paragraphs set forth legal conclusions to which no response is necessary. To  
11 the extent responses are required, Red Rock denies the allegations in these paragraphs

12                                   **AFFIRMATIVE DEFENSES**

13                                   **FIRST AFFIRMATIVE DEFENSE**

14           Counterclaimant Thornburg Mortgage Securities Trust 2007-3's counterclaim fails  
15 to state a claim for which relief can be granted.

16                                   **SECOND AFFIRMATIVE DEFENSE**

17           Counterclaimant Thornburg Mortgage Securities Trust 2007-3's unclean hands  
18 preclude any of the relief requested.

19                                   **THIRD AFFIRMATIVE DEFENSE**

20           Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred  
21 by the doctrines of estoppel, laches, and waiver.

22                                   **FOURTH AFFIRMATIVE DEFENSE**

23           Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred  
24 by the applicable statute of limitations.

25                                   **FIFTH AFFIRMATIVE DEFENSE**

26           Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has acquiesced to  
27 any of the conduct and usage alleged in its Counterclaim.  
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**SIXTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to mitigate its damages, if any.

**SEVENTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3’s damages, if any, are caused by its own actions or from the acts of others not parties to this action.

**EIGHTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to join an indispensable party, in that other parties are wholly or at least partly caused Counterclaimant’s harm and complete relief may not be granted in their absence.

**NINTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3’s claims are barred by the voluntary payment doctrine.

**TENTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 knowingly and voluntarily waived its rights to obtain any or all of the relief sought in its Counterclaim.

**ELEVENTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no contract with this answering counter-defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no fiduciary relationship with this answering counter-defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3’s claims are barred by the economic loss doctrine.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no special relationship with this answering counter-defendant.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 This answering counter-defendant has limited facts available at this time and thus  
3 some of the foregoing Affirmative Defenses may have been plead in accordance to NRCP  
4 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this answering  
5 counter-defendant has or may have more affirmative defenses or counterclaims that are  
6 not known at this time but may be uncovered through further discovery wherefore, this  
7 answering counter-defendant reserves the right to assert any such affirmative defenses or  
8 Counterclaims so ascertained at a later date.

9 WHEREFORE, as to the Thornburg Mortgage Securities Trust 2007-3's  
10 Counterclaim, Red Rock prays as follows:

- 11 1. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3 take  
12 nothing by way of its Counterclaim.  
13 2. That judgment be rendered in favor of Red Rock;  
14 3. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3  
15 compensate Red Rock for reasonable fees and costs incurred in defending this action; and  
16 4. For any other such relief that the Court deems just and proper.

17  
18 Dated: June 12, 2017.

**KOCH & SCOW, LLC**

19 By: /s/Steven B. Scow  
20 Steven B. Scow  
21 *Attorneys for Red Rock Financial Services*

22 **COUNTERCLAIM FOR INTERPLEADER**

23 COMES NOW Counterclaimant RED ROCK FINANCIAL SERVICES (hereinafter  
24 sometimes "Red Rock"), and pleads as follows:

25 **PARTIES**

- 26 1. Counterclaimant Red Rock Financial Services is a licensed collection  
27 company, and at all times material herein was and is doing business in Clark County,  
28

1 Nevada. Red Rock was hired by Spanish Trail Master Association (the "Master  
2 Association") as its agent to manage and collect assessments charged to homeowners  
3 within the Association.

4 2. Counter-defendant Thornburg Mortgage Securities Trust 2007-3  
5 ("Thornburg"), is an unknown business entity, which at all times material herein, was  
6 doing business in Clark County, Nevada.

7 3. Counter-defendant Frank Timpa ("Frank") is individual who, on  
8 information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa  
9 Trust U/T/D March 3, 1999 ("Timpa Trust").

10 4. Counter-defendant Madeline Timpa ("Madeline") is individual who, on  
11 information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa  
12 Trust.

13 5. Counter-defendant Countrywide Home Loans, Inc. ("Countrywide"), is an  
14 unknown business entity, which at all times, material herein, was doing business in Clark  
15 County, Nevada.

16 6. Counter-defendant Estates West at Spanish Trail ("Sub HOA") is a Nevada  
17 corporation, which at all times material herein, was doing business in Clark County,  
18 Nevada.

19 7. Counter-defendant Mortgage Electronic Registration Systems, Inc.  
20 ("MERS") is an unknown business entity, which at all times material herein, was doing  
21 business in Clark County, Nevada.

22 8. Counter-Defendant Republic Services, ("Republic") is an unknown entity,  
23 which at all times material herein, was doing business in Clark County, Nevada.

24 9. Counter-defendant Las Vegas Valley Water District ("LVVWD") is a  
25 political subdivision of the State of Nevada, which at all times material herein, was doing  
26 business in Clark County, Nevada.

10. Countrywide, MERS, Sub HOA, Republic, and LVVWD are joined to this proceeding as Counterclaim defendants pursuant to *Lund v. Eighth Jud. Dist. Ct.*, 255 P.3d 280 (2011) and NRCP 13(h).

11. Red Rock is unaware currently of the true names and capacities of those defendants sued herein as DOES 1-100 and therefore sues said counter-defendants by such fictitious names. Plaintiff will seek leave of the court to amend this Counterclaim to allege the true names and capacities of said defendants when the same have been ascertained.

12. Red Rock is informed and believes, and thereon alleges, that each of the cross-defendants sued herein, including those named as DOES, are the agents, servants, employees, predecessor entities, successor entities, parent entities, totally owned or controlled entities, or had some legal relationship of responsibility for, the other cross-defendants, and in doing the things herein alleged, acted within the course and scope and authority of such agency, employment, ownership or other relationship and with the full knowledge and consent of the other defendants, or are in some other manner legally responsible for the acts as alleged herein. Additionally, with respect to all corporate entity cross-defendants, the officers and directors of such entities ratified and affirmed all contracts of its employees, agents, directors and/or officers.

## GENERAL ALLEGATIONS

13. Red Rock is a debt collection company, which works on behalf of homeowner associations to collect debts secured by real property, including delinquent homeowner assessments. When a property owner becomes delinquent to the homeowners association, Red Rock is contracted to collect the debt. These efforts include attempts to collect the debt directly from the property owner, but when the property owner does not pay after an extended period, the process leads to a non-judicial foreclosure action pursuant to Nevada law.

14. Here, Red Rock was contracted by the Master Association to collect debts for unpaid homeowners assessments owed to the Master Association by counter-

1 defendants Frank Timpa and Madeline Timpa individually and as trustees of the Timpa  
2 Trust for the property located at 34 Innisbrook Avenue, Las Vegas, NV 89113 (“the  
3 Subject property”). Red Rock’s efforts resulted in a foreclosure sale of the Subject  
4 Property on November 7, 2014.

5 15. In connection with the foreclosure sale, the Master Association was paid the  
6 money it was owed, and Red Rock was paid its fees and costs incurred in collecting the  
7 debt as allowed by contract and Nevada law. After paying these costs, Red Rock was left  
8 with funds of \$1,168,865.05. Red Rock has no further direct interest in such funds. These  
9 funds have been deposited into counsel’s attorney-client trust account and \$5,000 has  
10 been withheld for costs, expenses, and fees to commence this interpleader action. The  
11 remainder will be deposited into Court or disbursed as ordered by this Court.

12 **CAUSE OF ACTION**

13 **(Interpleader Against All Cross-Defendants [NRCF 22])**

14 16. Red Rock repeats and realleges all previous allegations as if fully set forth  
15 herein.

16 17. Public records in Clark County, Nevada indicate that there are several liens  
17 and other debts secured by the subject property in this action. These debts exceed the  
18 amount to be deposited with the Court. Red Rock does not know the current status of  
19 such debts, nor does it have knowledge how the funds should be distributed to the  
20 various cross-defendants. Red Rock is therefore faced with potential for multiple  
21 liability.

22 18. Red Rock requests that the Court determine how such funds should be  
23 distributed.

24 19. Red Rock has incurred attorneys’ fees and costs in preparing, filing and  
25 prosecuting this action and will apply and account for those attorneys’ fees and costs  
26 through the amount withheld, and will seek any further reimbursement from the amount  
27 to be deposited with the Court per Nevada law, including NRS 116.31164(3)(c).  
28

20. Red Rock requests that, after the parties have been served or at such other appropriate time, that it be dismissed from this interpleader action, as it has no direct interest in the interpleaded funds other than payment of its costs and fees for bringing the instant action.

## PRAYER

WHEREFORE, Red Rock prays for relief as follows:

1. That the court determine how the deposited funds should be distributed and order distribution of said funds;

2. That Red Rock be reimbursed out of said deposited funds its attorneys fees and costs in bringing this interpleader action;

3. That Red Rock be dismissed from this action with prejudice following payment of the excess proceeds as directed by the Court; and

4. For such other and further relief as the court determines proper.

Dated: June 12, 2017.

KOCH & SCOW, LLC

By: /s/Steven B. Scow  
David R. Koch (Nevada Bar No. 8830)  
Steven B. Scow (Nevada Bar No. 9906)  
Robert L. English (Nevada Bar No. 3504)  
11500 S. Eastern Ave., Suite 210  
Henderson, Nevada 89052  
*Attorneys for Red Rock Financial Services*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on June 12, 2017, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER to BANK OF AMERICA'S COUNTERCLAIM and RED ROCK FINANCIAL SERVICES' FIRST AMENDED COUNTERCLAIM FOR INTERPLEADER** to be served by as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and / or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and / or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and / or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

"Bryan Naddafi, Esq." . ([bryan@olympialawpc.com](mailto:bryan@olympialawpc.com))  
"Donald H. Williams, Esq." . ([dwilliams@dhwlawlv.com](mailto:dwilliams@dhwlawlv.com))  
David R. Koch . ([dkoch@kochscow.com](mailto:dkoch@kochscow.com))  
Eric Powers . ([epowers@wrightlegal.net](mailto:epowers@wrightlegal.net))  
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Faith Harris . ([fharris@wrightlegal.net](mailto:fharris@wrightlegal.net))  
Michael F Bohn Esq . ([mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com))  
Robin Gullo . ([rgullo@dhwlawlv.com](mailto:rgullo@dhwlawlv.com))  
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Steven B. Scow . ([sscow@kochscow.com](mailto:sscow@kochscow.com))  
Michael Kelley ([mkelley@wrightlegal.net](mailto:mkelley@wrightlegal.net))  
Jason Craig ([jcraig@wrightlegal.net](mailto:jcraig@wrightlegal.net))

Executed on June 12, 2017 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh  
An Employee of Koch & Scow LLC

EXHIBIT 3

EXHIBIT 3

*Steven D. Grierson*

1 **ORDR**  
2 **LEACH JOHNSON SONG & GRUCHOW**  
3 **SEAN L. ANDERSON**  
4 Nevada Bar No. 7259  
5 **RYAN D. HASTINGS**  
6 Nevada Bar No. 12394  
7 8945 West Russell Road, Suite 330  
8 Las Vegas, Nevada 89148  
9 Telephone: (702) 538-9074  
10 Facsimile: (702) 538-9113  
11 Attorneys for Counter-Defendant  
12 Spanish Trail Master Association

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **SATICOY BAY LLS SERIES 34**  
16 **INNISBROOK,**

17 Plaintiff,

18 vs.

19 **THORNBURG MORTGAGE**  
20 **SECURITIES TRUST 2007-3;**  
21 **RECONSTRUCT COMPANY, N.A. a**  
22 **division of BANK OF AMERICA; FRANK**  
23 **TIMPA and MADELAINE TIMPA,**  
24 **individually and as trustees of the TIMPA**  
25 **TRUST,**

26 Defendants.

27 **THORNBURG MORTGAGE SECURITIES**  
28 **TRUST 2007-3,**

Counterclaimant

vs.

**SATICOY BAY LLC SERIES 34**  
**INNISBROOK, a Nevada limited-liability**  
**company; SPANISH TRAIL MASTER**  
**ASSOCIATION, a Nevada Non-Profit**  
**Corporation; RED ROCK FINANCIAL**  
**SERVICES, an unknown entity; FRANK**  
**TIMPA, an individual; DOES I through X;**  
**and ROE CORPORATIONS I through X,**  
**inclusive,**

Counter-Defendants.

Case No.: A-14-710161-C  
Dept. No.: ~~XV~~ XXVII

**ORDER GRANTING IN PART AND  
DENYING IN PART COUNTER-  
DEFENDANT SPANISH TRAIL  
MASTER ASSOCIATION'S MOTION  
TO DISMISS DEFENDANT/COUNTER-  
CLAIMANT THORNBURG  
MORTGAGE SECURITIES TRUST  
2007-3'S THIRD AMENDED  
COUNTERCLAIMS AND RED ROCK  
FINANCIAL SERVICES' JOINDER**

PLEASE NOTE  
DEPARTMENT CHANGE

**LEACH JOHNSON SONG & GRUCHOW**  
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148  
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant

3 vs.

4 THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3; COUNTRYWIDE HOME  
6 LOANS, INC.; ESTATES WEST AT  
7 SPANISH TRAILS; MORTGAGE  
8 ELECTRONIC REGISTRATION  
9 SYSTEMS, INC.; REPUBLIC SERVICES;  
10 LAS VEGAS VALLEY WATER  
11 DISTRICT; FRANK TIMPA and  
12 MADELAINE TIMPA, individually and as  
13 trustees of the TIMPA TRUS U/T/D March  
14 3, 1999; and DOES 1-100, inclusive,

15 Counter-Defendants.

16 On August 9, 2017, Counter-Defendant Spanish Trail Master Association, (the  
17 "Association"), by and through its attorneys of record, Leach Johnson Song & Gruchow, filed its  
18 Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's  
19 Third Amended Complaint ("Motion"). On August 15, 2017 Counter-Defendant Red Rock  
20 Financial Services filed its Joinder to the Association's Motion to Dismiss. On August 28, 2017,  
21 Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3  
22 Nationstar Mortgage LLC ("Bank") by and through its attorneys of record, Wright, Finlay &  
23 Zak, LLP, filed its Opposition to Spanish Trail's Motion to Dismiss Counterclaim  
24 ("Opposition"). On September 12, 2017, the Association filed its Reply in Support of Motion to  
25 Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third  
26 Amended Complaint ("Reply"). The Motion came on for hearing on September 19, 2017, the  
27 Honorable Gloria Sturman presiding. The Court, having considered all of the pleadings and  
28 papers on file, and orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's  
Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's  
Third Amended Complaint GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Bank's claims for

LEACH JOHNSON SONG & GRUCHOW  
8945 West Russell Road, Suite 330, Las Vegas, Nevada, 89148  
Telephone: (702) 538-9074 — Facsimile (702) 538-9113

1 quiet title/declaratory relief, negligence *per se*, breach of contract, and breach of covenant of  
2 good faith and fair dealing are DISMISSED without prejudice.


3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's  
4 request to dismiss the Bank's claims for negligence, wrongful foreclosure, misrepresentation and  
5 unjust enrichment is DENIED.

6  
7 IT IS SO ORDERED this 5<sup>th</sup> day of October, 2017.

8  
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11 HONORABLE GLORIA STURMAN  
12 DISTRICT COURT JUDGE

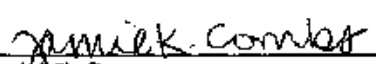
13 Submitted By:

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18 RYAN D. HASTINGS  
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22 Attorneys for Spanish Trail Master Association

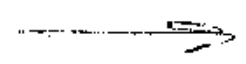
Approved As To Form And Content:

AKERMAN LLP

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25 Nevada Bar No. 8276  
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27 Nevada Bar No. 13088  
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Attorneys for Thornburg Mortgage  
Securities Trust 2007-3

Approved As To Form And Content:

KOCH & SCOW

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28 STEPHEN B. SCOW  
Nevada Bar No. 1046

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2 good faith and fair dealing are DISMISSED without prejudice.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's  
4 request to dismiss the Bank's claims for negligence, wrongful foreclosure, misrepresentation and  
5 unjust enrichment is DENIED.

6  
7 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

8  
9  
10 HONORABLE GLORIA STURMAN  
DISTRICT COURT JUDGE

11  
12 Submitted By:

13 LEACH JOHNSON SONG & GRUCHOW

Approved As To Form And Content:

14 AKERMAN LLP

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Securities Trust 2007-3

26 Approved As To Form And Content:

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**EXHIBIT 4**

**EXHIBIT 4**

**NEO**  
**LEACH JOHNSON SONG & GRUCHOW**  
SEAN L. ANDERSON  
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*Attorneys for Counter-Defendant*  
*Spanish Trail Master Association*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLS SERIES 34  
INNISBROOK,

Case No.: A-14-710161-C  
Dept. No.: XXVI

Plaintiff,

vs.

**NOTICE OF ENTRY OF  
ORDER GRANTING IN PART  
AND DENYING IN PART**

THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3;  
RECONSTRUCT TRUST COMPANY, N.A. a  
division of BANK OF AMERICA; FRANK  
TIMPA and MADELAINE TIMPA,  
individually and as trustees of the TIMPA  
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34  
INNISBROOK, a Nevada limited-liability  
company; SPANISH TRAIL MASTER  
ASSOCIATION, a Nevada Non-Profit  
Corporation; RED ROCK FINANCIAL  
SERVICES, an unknown entity; FRANK  
TIMPA, an individual; DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Counter-Defendants.

**LEACH JOHNSON SONG & GRUCHOW**

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RED ROCK FINANCIAL SERVICES,

Counterclaimant

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3; COUNTRYWIDE HOME  
LOANS, INC.; ESTATES WEST AT  
SPANISH TRAILS; MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC.; REPUBLIC SERVICES;  
LAS VEGAS VALLEY WATER  
DISTRICT; FRANK TIMPA and  
MADELAINE TIMPA, individually and as  
trustees of the TIMPA TRUS U/T/D March  
3, 1999; and DOES 1-100, inclusive,

Counter-Defendants.

Please take notice that an *Order Granting in Part and Denying in Part Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims and Red Rock Financial Service's Joinder*, was entered in the above-entitled matter and Court on October 9, 2017, a copy of which is attached hereto.

Dated this 3<sup>rd</sup> day of November, 2017.

**LEACH JOHNSON SONG & GRUCHOW**

/s/ Ryan D. Hastings

SEAN L. ANDERSON  
Nevada Bar No. 7259  
RYAN D. HASTINGS  
Nevada Bar No. 12394  
8945 West Russell Road, Suite 330  
Las Vegas, Nevada 89148  
*Attorneys for Counter-Defendant  
Spanish Trail Master Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certifies that service of the foregoing, *Notice of Entry of Order Granting in Part and Denying in Part Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims and Red Rock Financial Service's Joinder*, was made this 3<sup>rd</sup> day of November, 2017, via electronic service on all parties through the Court's CM/ECF System as follows:

**Koch & Scow LLC**

**Contact**

David R. Koch  
Staff  
Steven B. Scow

**Email**

[dkoch@kochscow.com](mailto:dkoch@kochscow.com)  
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**Law Offices of Michael F. Bohn, Esq.**

**Contact**

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Michael F Bohn Esq

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**Olympia Law PC**

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**Wright, Finlay & Zak, LLP**

**Contact**

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Sarah Greenberg Davis

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/s/ Gina M. LaCascia

An Employee of LEACH JOHNSON  
SONG & GRUCHOW

*Steven D. Grierson*

1 **ORDER**  
2 **LEACH JOHNSON SONG & GRUCHOW**  
3 **SEAN L. ANDERSON**  
4 Nevada Bar No. 7259  
5 **RYAN D. HASTINGS**  
6 Nevada Bar No. 12394  
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12 Spanish Trail Master Association

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **SATICOY BAY LLS SERIES 34**  
16 **INNISBROOK,**

17 Plaintiff,

18 vs.

19 **THORNBURG MORTGAGE**  
20 **SECURITIES TRUST 2007-3;**  
21 **RECONSTRUCT COMPANY, N.A. a**  
22 **division of BANK OF AMERICA; FRANK**  
23 **TIMPA and MADELAINE TIMPA,**  
24 **individually and as trustees of the TIMPA**  
25 **TRUST,**

26 Defendants.

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28 **TRUST 2007-3,**

Counterclaimant

vs.

**SATICOY BAY LLC SERIES 34**  
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**ASSOCIATION, a Nevada Non-Profit**  
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**SERVICES, an unknown entity; FRANK**  
**TIMPA, an individual; DOES I through X;**  
**and ROE CORPORATIONS I through X,**  
**inclusive,**

Counter-Defendants.

Case No.: A-14-710161-C  
Dept. No.: ~~XV~~ XXVII

**ORDER GRANTING IN PART AND**  
**DENYING IN PART COUNTER-**  
**DEFENDANT SPANISH TRAIL**  
**MASTER ASSOCIATION'S MOTION**  
**TO DISMISS DEFENDANT/COUNTER-**  
**CLAIMANT THORNBURG**  
**MORTGAGE SECURITIES TRUST**  
**2007-3'S THIRD AMENDED**  
**COUNTERCLAIMS AND RED ROCK**  
**FINANCIAL SERVICES' JOINDER**

PLEASE NOTE  
DEPARTMENT CHANGE

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8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148  
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant

3 vs.

4 THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3; COUNTRYWIDE HOME  
6 LOANS, INC.; ESTATES WEST AT  
7 SPANISH TRAILS; MORTGAGE  
8 ELECTRONIC REGISTRATION  
9 SYSTEMS, INC.; REPUBLIC SERVICES;  
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11 DISTRICT; FRANK TIMPA and  
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17 "Association"), by and through its attorneys of record, Leach Johnson Song & Gruchow, filed its  
18 Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's  
19 Third Amended Complaint ("Motion"). On August 15, 2017 Counter-Defendant Red Rock  
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26 Amended Complaint ("Reply"). The Motion came on for hearing on September 19, 2017, the  
27 Honorable Gloria Sturman presiding. The Court, having considered all of the pleadings and  
28 papers on file, and orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's  
Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's  
Third Amended Complaint GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Bank's claims for

LEACH JOHNSON SONG & GRUCHOW  
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Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 quiet title/declaratory relief, negligence *per se*, breach of contract, and breach of covenant of  
2 good faith and fair dealing are DISMISSED without prejudice.


3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's  
4 request to dismiss the Bank's claims for negligence, wrongful foreclosure, misrepresentation and  
5 unjust enrichment is DENIED.

6  
7 IT IS SO ORDERED this 5<sup>th</sup> day of October, 2017.

8  
9  
10   
11 HONORABLE GLORIA STURMAN  
12 DISTRICT COURT JUDGE

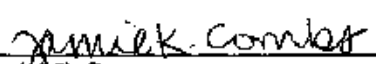
13 Submitted By:

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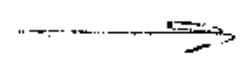
Approved As To Form And Content:

AKERMAN LLP

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Attorneys for Thornburg Mortgage  
Securities Trust 2007-3

Approved As To Form And Content:

KOCH & SCOW

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28 STEPHEN B. SCOW  
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5 unjust enrichment is DENIED.

6  
7 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

8  
9  
10 HONORABLE GLORIA STURMAN  
DISTRICT COURT JUDGE

11  
12 Submitted By:

13 LEACH JOHNSON SONG & GRUCHOW

Approved As To Form And Content:

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Securities Trust 2007-3

26 Approved As To Form And Content:

27 KOCH & SCOW

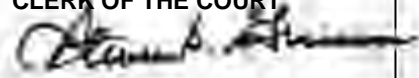
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EXHIBIT 5

EXHIBIT 5



**MRCN**

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

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*Attorneys for defendant, counterclaimant, and counter-  
defendant Thornburg Mortgage Securities Trust 2007-3*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34  
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3, *et al.*,

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR RECONSIDERATION  
OF ORDER DENYING SUMMARY  
JUDGMENT**

AND ALL RELATED ACTIONS.

Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) moves for reconsideration of the  
order denying its motion for summary judgment based on new case law.

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**AKERMAN LLP**

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE Thornburg will bring the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR RECONSIDERATION OF ORDER DENYING SUMMARY JUDGMENT** for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the **06** day of **NOVEMBER**, 2018, at the hour of **9:00** o'clock **A**.m.

DATED this 17<sup>th</sup> day of September, 2018.

**AKERMAN LLP**

/s/ Thera Cooper

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8276

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*Attorneys for defendant, counterclaimant, and counter-defendant Thornburg Mortgage Securities Trust 2007-3*

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

The court should reconsider its order denying Thornburg's motion for summary judgment based on a recent *en banc* decision demonstrating Thornburg's tender was sufficient. In *Bank of America v. SFR*, the court held "a first deed of trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust." *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC, a Nevada Limited Liability Company*, 134 Nev. Adv. Op. 72, \*2 (Nev. Sept. 13, 2018), **Ex. A**. There is no question of fact for trial. This binding precedent warrants granting summary judgment in Thornburg's favor.

**II. STATEMENT OF FACTS**

1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. **Ex. B**. The deed of trust lists Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc. (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.* Section 9 of the deed of trust provides if "there is a ... lien which may attain priority over the [deed of trust]... then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an unpaid balance of \$6,279,233.20.<sup>1</sup> *Id.*; see also **Ex. C-2**.

2. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the beneficial interest in the deed of trust to Thornburg. **Ex. D**.

3. The property is within the Spanish Trail Master Association (the **HOA**) and is subject to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**). **Ex. E**.

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<sup>1</sup> As of April 30, 2018.

4. Art. IV, Section 6, "Subordination to First Mortgages," provides:

The lien of the assessments provided for herein shall be prior to all other liens recorded subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of the assessment provided for herein, shall be subordinate to the lien of any first Mortgage given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereon.

*Id.*

5. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association property, unless such taxes or other charges are separately assessed against the Owners, in which case, the rights of Mortgages shall be governed by the provisions of their Mortgages...." *Id.*

6. Art. X Section 3, provides:

A breach of any of the covenants, conditions, restrictions or other provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any lot provided however, that any subsequent owner of the lot shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

*Id.*

7. On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA, recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). **Ex. F.** The lien indicated it was recorded "in accordance with" the CC&Rs. *Id.*

8. At the time the Lien was recorded the HOA's assessments were \$225.00 per month. **Ex. G, RRFS0004-7.**<sup>2</sup> There were no nuisance abatement charges. *Id.* The superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011. *Id.*

...

...

<sup>2</sup> The documents attached to Red Rock's Declaration Ex. G are presumed authentic pursuant to **NRS 52.155** because they bear Red Rock's "trade inscriptions" indicating "ownership, origin, or control."

1           9.       From July 9, 2013 through December 13, 2013, borrower made payments totaling  
2 \$2,350. *Id.*, at RRFS000384, 394, 400,407, 414, & 422. Red Rock accepted the payments and  
3 applied the payments to the delinquent assessments coming due December 1, 2010 through August  
4 1, 2011, the superpriority amount.<sup>3</sup> *Id.*

5           10.      On December 6, 2011, Red Rock recorded a notice of default and election to sell  
6 pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52. **Ex. H.**

7           11.      On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer,  
8 through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red  
9 Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate  
10 proof." **Ex. I-1.** Red Rock received the letter on December 27, 2011. **Ex. G**, at RRFS000578-579.

11          12.      On January 26, 2012, Red Rock responded with a ledger indicating the total amount  
12 due was \$9,255.44. *Id.*, at RRFS000569.

13          13.      On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock  
14 enclosing a \$2,025 check. **Ex. I-4 & I-5.** Red Rock received the check on February 10, 2012. *See*  
15 **Ex. G**, at RRFS000533-536. Red Rock rejected the payment without explanation. **Ex. I-4.**

16          14.      Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
17 correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust. **Ex. G**, at  
18 RRFS000540.

19          15.      Red Rock recorded a notice of foreclosure sale on September 15, 2014. **Ex. J.** The  
20 notice indicated the HOA would sell the property on October 8, 2014 and the amount then due was  
21 \$20,309.95. The notice asserted the sale would "be made without covenant or warrant, express or  
22 implied regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured  
23 liens." *Id.*

24          16.      On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
25 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000. **Ex. K.**

26          17.      At the time of the HOA's sale the property was worth \$2,000,000. **Ex. L.**

27  
28 <sup>3</sup> Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. *See Ex. G*, RRFS000019- 26. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale. *Id.*

18. Since the sale Saticoy has leased the property and obtained rental income. **Ex. M.**

### III. LEGAL STANDARD

E.D.C.R. 2.24 permits a party "seeking reconsideration of a ruling of the court ... [to] file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." NRCP 59 permits the court to amend judgment where a there has been an error of law. *See* NRCP 59(a)(7). A motion pursuant to NRCP 59 is timely where it is filed within 10 days of "service of written notice of entry of the judgment." NRCP 59(e).

### IV. LEGAL ARGUMENT

#### A. The motion is timely.

The order denying the parties' competing motions for summary judgment has not entered. The Court issued the *Bank of America* decision on September 13, 2018. Thornburg motion is timely.

#### B. *Bank of America* warrants reconsideration.

*Bank of America* confirms Thornburg is entitled to summary judgment. Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest is subject to the deed of trust.

"[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather **it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure.**" *Horizon at Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at \*6 (emphasis added); *See Bank of America*, \*4. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit.") (emphasis added).

Here, BANA's tender is evidenced in Miles Bauer's affidavit (Ex. I) and Red Rock's collection file (Ex. G). BANA, through Miles Bauer, contacted Red Rock to obtain a payoff ledger. **Ex. I-1.** Red Rock received the letter on December 27, 2011. **Ex. G**, at RRFS000578-579. On

1 January 26, 2012, Red Rock responded with a ledger indicating the total amount due was \$9,255.44.  
2 *Id.*, at RRFS000569. The superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the  
3 assessments coming due December 1, 2010 through August 1, 2011. **Ex. G, RRFS0004-7.** There  
4 were no nuisance and/or abatement charges. *Id.* On February 10, 2012, Miles Bauer sent a \$2,025  
5 check to Red Rock to pay the super-priority amount. **Ex. I-4 & I-5.** Red Rock received the check on  
6 February 10, 2012. *See Ex. H*, at RRFS000533-536. Red Rock rejected the payment without  
7 explanation. **Ex. I-4.**

8 *Bank of America* concluded BANA's check and letter – like the check and letter here – were  
9 not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the tender  
10 (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority  
11 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
12 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

13 The same is true here. BANA's tender preserved Thornburg's deed of trust. There is no  
14 question of fact for trial. Summary judgment in Thornburg's favor is warranted.

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V. CONCLUSION

Foreclosure sales are *caveat emptor*. See *Allison Steel*, 86 Nev. at 499 (in the absence of a statute,<sup>4</sup> a purchaser acquires no better title than the debtor could have conveyed at the time the lien was attached). Saticoy is a sophisticated entity and was well aware of the risks of purchasing properties at HOA foreclosure sale. The superpriority portion of the HOA's lien was extinguished before the sale through BANA's tender. Thornburg did all the law required to protect the priority of the deed of trust. There is no unfairness to Saticoy, neither the deed nor NRS 116 promise Saticoy title unencumbered by the deed of trust. The court should reconsider its order denying summary judgment and enter an order declaring Saticoy's interest, if any, is subject to the deed of trust.

DATED this 17<sup>th</sup> day of September, 2018.

AKERMAN LLP

/s/ Thera A. Cooper Esq.

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<sup>4</sup> NRS 116.3116 does not change the *caveat emptor* rule; it merely changes the order of lien priority. Most importantly, it does not give the buyer any additional rights if the superpriority amount is paid before the foreclosure sale or the association chooses to foreclose on its sub-priority lien.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 17<sup>th</sup> day of September, 2018, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR RECONSIDERATION OF ORDER DENYING SUMMARY JUDGMENT**, in the following manner:

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

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/s/ Erin Surguy

An Employee of Akerman LLP

# **EXHIBIT A**

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,  
SUCCESSOR BY MERGER TO BAC  
HOME LOANS SERVICING, LP, F/K/A  
COUNTRYWIDE HOME LOANS  
SERVICING, LP,  
Appellant,  
vs.  
SFR INVESTMENTS POOL 1, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 70501

FILED

SEP 13 2018

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF CLERK

Appeal from a district court order granting summary judgment to the buyer and denying summary judgment to the first deed of trust holder in a quiet title action following an HOA lien foreclosure sale. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

*Reversed and remanded.*

Akerman, LLP, and Darren T. Brenner, Thera A. Cooper, and Vatana Lay, Las Vegas,  
for Appellant.

Kim Gilbert Ebron and Jacqueline A. Gilbert, Howard C. Kim, Zachary Clayton, and Jason G. Martinez, Las Vegas,  
for Respondent.

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BEFORE THE COURT EN BANC.

OPINION

By the Court, PICKERING, J.:

This is a quiet title dispute between the buyer at an HOA lien foreclosure sale and the holder of the first deed of trust on the property. The

holder of the first deed of trust tendered the amount needed to satisfy the superpriority portion of the lien to the HOA before the sale but the trustee proceeded with foreclosure anyway. The question presented is whether the buyer took title subject to the first deed of trust. We hold that a first deed of trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust. We therefore reverse the district court's grant of summary judgment for SFR Investments Pool 1, LLC and remand for further proceedings consistent with this opinion.

I.

In 2012, the original owner of 3617 Diamond Spur Avenue (Property) fell behind on his payments to the Sutter Creek Homeowners Association (HOA). The HOA initiated foreclosure proceedings, recording a delinquent assessment lien and a notice of default and election to sell. After receiving notice of the default, Bank of America, the holder of the first deed of trust on the property, contacted the HOA, seeking to clarify the superpriority amount and offering to pay that amount in full. Based on the HOA's representations, Bank of America tendered payment of \$720—nine months' worth of assessment fees—to the HOA. The letter included with the tender stated that the HOA's acceptance would be an "express agreement that [Bank of America]'s financial obligations towards the HOA in regards to the [Property] have now been 'paid in full.'" The HOA rejected the payment and sold the property at foreclosure to respondent SFR Investments Pool 1, LLC.

After the foreclosure sale, litigation ensued with Bank of America and SFR both claiming title to the Property. On cross-motions for summary judgment, the district court granted summary judgment to SFR and denied summary judgment to Bank of America, from which order Bank

of America timely appealed. The case was routed to the court of appeals, which reversed and remanded. SFR then petitioned for review of the decision under NRAP 40B(a), which we granted.

## II.

Bank of America argues that its tender was valid and satisfied the superpriority portion of the HOA's lien. SFR responds that the HOA's rejection was in good faith because at the time of the tender it was unsettled as to the amount of the superpriority portion of the lien, and the tender was conditional. SFR also asserts that it is protected as a bona fide purchaser of the property.

The grant or denial of summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party." *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007).

## A.

Bank of America asserts that it tendered the correct amount to satisfy the superpriority portion of the HOA lien and that it was not required to do more. A valid tender of payment operates to discharge a lien. *Power Transmission Equip. Corp. v. Beloit Corp.*, 201 N.W.2d 13, 16 (Wis. 1972) ("Common-law and statutory liens continue in existence until they are satisfied or terminated by some manner recognized by law. A lien may be lost by . . . payment or tender of the proper amount of the debt secured

by the lien.”); see also 74 Am. Jur. 2d *Tender* § 41 (2012). Valid tender requires payment in full. Annotation, *Tender as Affected by Insufficiency of Amount Offered*, 5 A.L.R. 1226 (1920). The HOA refused to accept Bank of America’s tender, because it did not satisfy both the superpriority and subpriority portions of the lien.

NRS 116.3116 governs liens against units for HOA assessments and details the portion of the lien that has superpriority status. At the time of the tender in 2012, the statute provided that the superpriority portion of an HOA lien was prior to a first security interest on a unit

to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 [maintenance and nuisance abatement] and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

NRS 116.3116(2) (2012). A plain reading of this statute indicates that the superpriority portion of an HOA lien includes only charges for maintenance and nuisance abatement, and nine months of unpaid assessments. We explained as much in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. 742, 748, 334 P.3d 408, 412 (2014), and *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev., Adv. Op. 35, \_\_\_, 373 P.3d 66, 72 (2016).<sup>1</sup>

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<sup>1</sup>Citing *Horizons at Seven Hills*, 132 Nev., Adv. Op. 35, at n.4, 373 P.3d at 69 n.4, SFR argues for the first time in its petition for review that Bank of America’s tender was insufficient because it did not include collection costs and attorney fees. SFR waived this argument, both by failing to raise it timely in district court or on appeal and by failing to cogently distinguish the statutory and regulatory analysis in *Horizons at Seven Hills*. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3,

The record establishes that Bank of America tendered the correct amount to satisfy the superpriority portion of the lien on the property. Pursuant to the HOA's accounting, nine months' worth of assessment fees totaled \$720, and the HOA did not indicate that the property had any charges for maintenance or nuisance abatement. Bank of America sent the HOA a check for \$720 in June 2012. On the record presented, this was the full superpriority amount.

B.

The district court deemed Bank of America's tender insufficient because it was conditional. It based this finding on the letter Bank of America sent with its payment, which stated,

This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that [Bank of America]'s financial obligations towards the HOA in regards to the [property] have now been "paid in full."

SFR argues, and the district court found, that this clause imposed an impermissible condition on the tender, as it required the HOA to potentially accept less than the full amount it was due under NRS 116.3116, given that the scope of the superpriority portion of an HOA's lien was not yet clarified at the time of the tender.

In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right

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252 P.3d 668, 672 n.3 (2011) (arguments not raised on appeal are deemed waived); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (an appellate court needed not consider claims that are not cogently argued).

to insist. 74 Am. Jur. 2d *Tender* § 22 (2012). “The only legal conditions which may be attached to a valid tender are either a receipt for full payment or a surrender of the obligation.” *Heath v. L.E. Schwartz & Sons, Inc.*, 416 S.E.2d 113, 114-15 (Ga. Ct. App. 1992); *see also Stockton Theatres, Inc. v. Palermo*, 3 Cal. Rptr. 767, 768 (Ct. App. 1960) (tender of entire judgment with request for satisfaction of judgment was not conditional); *cf. Steward v. Yoder*, 408 N.E.2d 55, 57 (Ill. App. Ct. 1980) (concluding tender with request for accord and satisfaction was conditional, but not unreasonable).

Although Bank of America’s tender included a condition, it had a right to insist on the condition. Bank of America’s letter stated that acceptance of the tender would satisfy the superiority portion of the lien, preserving Bank of America’s interest in the property. Bank of America had a legal right to insist on this. SFR’s claim that this made the tender impermissibly conditional because the payment required to satisfy the superpriority portion of an HOA lien was legally unsettled at the time is unpersuasive. As discussed in Section A, a plain reading of NRS 116.3116 indicates that at the time of Bank of America’s tender, tender of the superpriority amount by the first deed of trust holder was sufficient to satisfy that portion of the lien. Thus, this issue was not undecided, and Bank of America’s tender of the superpriority portion of the lien did not carry an improper condition.

### C.

SFR claims that even if Bank of America’s tender was valid, the HOA’s good-faith rejection because of a belief that Bank of America needed to tender the entire amount of the lien, is a defense to the tender. Bank of America responds that SFR’s assertion is speculative because the HOA

never gave a reason for its rejection, and thus cannot serve as the basis for summary judgment in SFR's favor.

Bank of America first contacted the HOA for assistance in determining the property's monthly assessment fee so it could pay the superpriority portion of the lien. The HOA responded with a demand that Bank of America pay the entire HOA lien to halt the foreclosure proceedings. Bank of America then tendered nine months of the property's assessment fees, along with a statutory analysis explaining that the amount was sufficient. The HOA returned the check a few weeks later and continued with foreclosure proceedings, giving no explanation for its rejection.

SFR did not present its good-faith rejection argument to the district court. *But see Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010) (“[A] de novo standard of review does not trump the general rule that ‘[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.’”) (second alteration in original) (quoting *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)). The authorities it cites to this court for that proposition do not support it. We therefore reject SFR's claim that the HOA's asserted “good faith” in rejecting Bank of America's tender allowed the HOA to proceed with the sale, thereby extinguishing Bank of America's first deed of trust.

D.

SFR next claims that if Bank of America's tender was valid and discharged the superpriority portion of the HOA lien, Bank of America's failure to record its tender or keep the tender good renders it unenforceable against SFR.

SFR argues that Bank of America was required to record its tender under either NRS 111.315 or NRS 106.220.<sup>2</sup> Issues of statutory interpretation are questions of law reviewed de novo. *Taylor v. State, Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). If a statute is unambiguous, this court does not look beyond its plain language in interpreting it. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). "Whenever possible, a court will interpret a rule or statute in harmony with other rules or statutes." *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

NRS 111.315 states that "[e]very conveyance of real property, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved acknowledged and certified in the manner prescribed in this chapter . . . shall be recorded . . . ." NRS 111.010 defines conveyance as "every instrument in writing, except a last will and testament . . . by which any estate or interest in lands is created, alienated, assigned or surrendered." Thus, when an interest in land is created, alienated, assigned, or surrendered, the instrument documenting the transaction must be recorded.

By its plain text, NRS 111.315 does not apply to Bank of America's tender. Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land. Rather, it

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<sup>2</sup>In 2015, the Legislature amended NRS Chapter 116 to add NRS 116.31164(2), which imposes recording requirements on certain superpriority lien satisfactions. This statute is not at issue on this appeal, because the tender and foreclosure sale predated its enactment.

*preserves* a pre-existing interest, which does not require recording. See Baxter Dunaway, *Interests and Conveyances Outside Acts—Recordable Interests*, 4 L. of Distressed Real Est. § 40:8 (2018) (“[D]ocuments which do not create or transfer interests in land are often held to be nonrecordable; the records, after all, are not a public bulletin board.”). SFR’s argument that the tender was an instrument affecting real property is unpersuasive. NRS 111.315 pertains to written instruments “setting forth an agreement . . . whereby any real property may be affected . . . *in the manner prescribed in this chapter . . .*” (Emphasis added.) NRS Chapter 111 governs the creation, alienation, assignment, or surrendering of property interests, and their subsequent recording. Bank of America’s tender did not bring about any of these actions, and therefore did not affect the property as prescribed in NRS Chapter 111. Accordingly, NRS 111.315 did not require Bank of America to record its tender.

NRS 106.220 provides that “[a]ny instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority, must . . . be recorded . . . .” The statute further states that “[t]he instrument is not enforceable under this chapter or chapter 107 of NRS unless and until it is recorded.” NRS Chapter 106 does not define instrument as used in NRS 106.220, but Black’s Law Dictionary defines the term as “[a] written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate.” *Instrument*, *Black’s Law Dictionary* (10th ed. 2014). Thus, NRS 106.220 applies when a written legal document subordinates or waives the priority of a mortgage, deed of trust, lien, or interest in real property.

The changes in the lien priority caused by Bank of America's tender do not invoke NRS 106.220's recording requirements. Generally, the creation and release of a lien cause priority changes in a property's interests as a result of a written legal document. But Bank of America's tender discharged the superpriority portion of the HOA's lien by operation of law. See NRS 116.3116; 53 C.J.S. Liens § 14 (2017) ("A statutory lien is created and defined by the legislature. The character, operation and extent of a statutory lien are ascertained solely from the terms of the statute."). NRS Chapter 116's statutory scheme allows banks to tender the payment needed to satisfy the superpriority portion of the HOA lien and maintain its senior interest as the first deed of trust holder. NRS 116.3116(1)-(3); see also Unif. Common Interest Ownership Act (UCIOA) § 3-116 cmt. (amended 2008), 7 pt. 2 U.L.A. 124 (2009) ("As a practical matter, secured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit."). Thus, under the split-lien scheme, tender of the superpriority portion of an HOA lien discharges that portion of the lien by operation of law. Because the lien is not discharged by using an instrument, NRS Chapter 106 does not apply.

2.

SFR also argues that Bank of America should have taken further actions to keep its tender good, such as paying the money into court or an escrow account. Bank of America responds that NRS Chapter 116 does not require any further action beyond tender of the superpriority portion of the lien to preserve its interest in the property.

Whether a tendering party must pay the amount into court depends on the nature of the proceeding and the statutory and common law of the jurisdiction. See Annotation, *Necessity of Keeping Tender Good in*

*Equity*, 12 A.L.R. 938 (1921) (“Generally, there is no fixed rule in equity which requires a tender to be kept good in the sense in which that phrase is used at law.”); see also Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) (“The tender must be kept good in the sense that the person making the tender must continue at all times to be ready, willing, and able to make the payment.”). Where payment into court is not explicitly required, “averment of a readiness and willingness to bring the money into court, and pay the same on the order of the court, is sufficient.” Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921). And, “the necessity of keeping a tender good and of paying the money into court has no application to a tender made for the purpose of discharging a mortgage lien.” Annotation, *Unaccepted Tender as Affecting Lien of Real Estate Mortgage*, 93 A.L.R. 12 (1934) (explaining that such a tender would either immediately discharge the mortgage lien or the lien would remain unimpaired by the tender).

To satisfy the superpriority portion of an HOA lien, the tendering party is not required to keep a rejected tender good by paying the amount into court. HOA liens created under NRS Chapter 116 are statutory liens and thus enforcement of the lien is governed by statute. See *Phifer v. Gulf Oil Corp.*, 401 S.W.2d 782, 785 (Tenn. 1966) (“A lien created by statute is limited in operation and extent by the terms of the statute, and can arise and be enforced only in the event and under the facts provided for in the statute . . .”). Neither NRS 116.3116, the related statutes in NRS Chapter 116, nor the UCIOA, indicates that a party tendering a superpriority portion of an HOA lien must pay the amount into court to satisfy the lien.

To judicially impose such a rule would only obstruct the operation of the split-lien scheme. The practical effect of requiring the first deed of trust holder to pay the tender into court is that a valid tender would no longer serve to discharge the superpriority portion of the lien. Instead, the tendering party would have to bring an action showing that the tender is valid and paid into court before the lien is discharged. With such conditions, a tendering party could only achieve discharge of the superpriority portion of the lien by litigation. This process negates the purpose behind the unconventional HOA split-lien scheme: prompt and efficient payment of the HOA assessment fees on defaulted properties. UCIOA § 3-116 cmt. (amended 2008), 7 pt. 2 U.L.A. 124 (2009) (recognizing the superpriority lien “strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders”). Accordingly, after tendering the superpriority portion of an HOA lien to preserve its interest as first deed of trust holder, a party is not required to pay the amount into court, and need only be ready and willing to pay to keep the tender good.

E.

SFR claims that even if Bank of America’s tender discharged the superpriority portion of the HOA lien, SFR’s status as a bona fide purchaser (BFP) gives it title to the property free and clear of Bank of America’s interest, citing *Shadow Wood Homeowners Ass’n v. New York Community Bancorp, Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016). Bank of America responds that *Shadow Wood* is inapplicable because it concerned the bank as the owner of the property, not the deed of trust holder, and that SFR has failed to prove its BFP status.

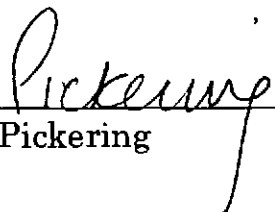
A party's status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the sale void. *See Henke v. First S. Props., Inc.*, 586 S.W.2d 617, 620 (Tex. App. 1979) (“[T]he doctrine of good faith purchaser for value without notice does not apply to a purchaser at the void foreclosure sale.”); *see also* Baxter Dunaway, *Trustee's Deed: Generally*, 2 L. of Distressed Real Est. § 17:16 (2018) (“A void deed carries no title on which a bona fide purchaser may rely . . .”). Because a trustee has no power to convey an interest in land securing a note or other obligation that is not in default, a purchaser at a foreclosure sale of that lien does not acquire title to that property interest. *See id.*; *cf. Deep v. Rose*, 364 S.E.2d 228 (Va. 1988) (when defect renders a sale wholly void, “[n]o title, legal or equitable, passes to the purchaser”).

A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default. *See* 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6th ed. 2014) (“The most common defect that renders a sale void is that the mortgagee had no right to foreclose . . .”); *see also Henke*, 586 S.W.2d at 620 (concluding the payment of past-due installments cured loan's default such that subsequent foreclosure on the property was void). It follows that after a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first deed of trust on the property.

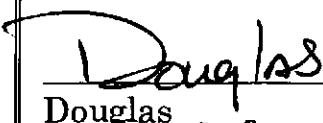
Because Bank of America's valid tender discharged the superpriority portion of the HOA's lien, the HOA's foreclosure on the entire lien resulted in a void sale as to the superpriority portion. Accordingly, the


HOA could not convey full title to the property, as Bank of America's first deed of trust remained after foreclosure. See Baxter Dunaway, *Trustee's Deed: Generally*, 2 L. of Distressed Real Est. § 17:16 (2018) ("Any mortgages, deeds of trust, or liens which are senior to the deed of trust which is being foreclosed are unaffected by the foreclosure of the junior deed of trust.") As a result, SFR purchased the property subject to Bank of America's deed of trust. See UCIOA § 3-116 cmt. 2, illus. 3 (amended 2008), 7 pt. 1B U.L.A. 209 (Supp. 2018) (explaining that when a bank pays the superpriority portion of an HOA lien, the subsequent foreclosure sale "will not extinguish Bank's mortgage lien, and the buyer at the sale will take the unit subject to Bank's mortgage lien").

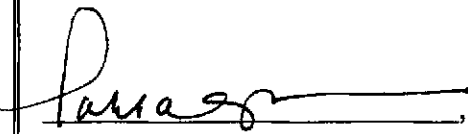
For these reasons, we reverse the district court's grant of summary judgment to SFR and remand this matter to the district court for further proceedings consistent with this opinion.

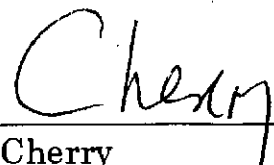
  
Pickering, J.


We concur:


  
Douglas, C.J.

  
Gibbons, J.

  
Parraguirre, J.

  
Cherry, J.

  
Hardesty, J.

  
Stiglich, J.

# **EXHIBIT B**


  
20060612-0001581

Assessor's Parcel Number:  
16328614007  
After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423  
Prepared By:  
JOHNNA HOB DY  
~~Recording Requested By:~~  
J. FOX

Fee: \$40.00  
N/C Fee: \$0.00

06/12/2006 09:05:04  
T200606120568  
Requestor:  
NEVADA TITLE COMPANY

Frances Deane 000  
Clark County Recorder Pgs: 27

COUNTRYWIDE HOME LOANS, INC.

1455 FRAZEE ROAD #102  
SAN DIEGO  
CA 92108

[Space Above This Line For Recording Data]

06-04-1186JLP  
[Escrow/Closing #]

[Doc ID #]

## DEED OF TRUST

MIN

### 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.

NEVADA Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERG

Page 1 of 16

6A(NV) (0507) CHL (11/05)(d)

VMP Mortgage Solutions, Inc.

Form 3029 1/01



DOC ID #:

(A) "Security Instrument" means this document, which is dated JUNE 02, 2006 together with all Riders to this document.

(B) "Borrower" is

FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

COUNTRYWIDE HOME LOANS, INC.

Lender is a

CORPORATION

organized and existing under the laws of NEW YORK  
4500 Park Granada MSN# SVB-314

Lender's address is

Calabasas, CA 91302-1613

(D) "Trustee" is

ReconTrust Company, N.A

225 West Hillcrest Dr., MSN JO-02

Thousand Oaks, CA 91360

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. 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.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 02, 2006

The Note states that Borrower owes Lender

THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND and 00/100

Dollars (U.S. \$ 3, 780, 000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2046

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

(H) "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.

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

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

DOC ID f: [REDACTED]

(J) "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.

(K) "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.

(L) "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.

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

(N) "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.

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

(P) "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.

(Q) "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.

(R) "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

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. 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

DOC ID #: [REDACTED]

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL, UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS, PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

The legal description was obtained from the previous deed:

Recorded on:    Libor#    Page#

which currently has the address of

34 Innisbrook Ave, Las Vegas

[Street/City]

Nevada 89113-1225 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

6A(NV) (0507) CHL (11/05)

Page 4 of 16

Form 3029 1/01

DOC ID #: [REDACTED]

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 obtain 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

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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

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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

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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 repaid 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

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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 in 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

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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.

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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.

**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) in 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.

 6A(NV) (0507) CHL (11/05)

Page 11 of 16

Form 3029 1/01

DOC ID #: [REDACTED]

**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.

**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,

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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 in 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).

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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 spillage, 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.

**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 litigation.

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. \$ 300.00.

CLARK, NV (0507) CHL (11/05)

Page 14 of 16

Form 302B 1/01

DOC ID #: [REDACTED]

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.

  
FRANK A. TIMPA

(Seal)

-Borrower

(Seal)

-Borrower

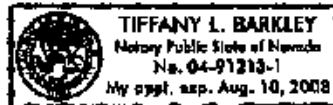
(Seal)

-Borrower

(Seal)

-Borrower

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STATE OF NEVADA  
COUNTY OF CLARKThis instrument was acknowledged before me on June 2, 2006 byFrank A. TimpaMail Tax Statements To:  
TAX DEPARTMENT SV3-24450 American Street  
Simi Valley CA, 93065Tiffany L. Barkley

Escrow No.: 06-04-1186-JLP

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL  
UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS,  
PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,  
NEVADA.

**PLANNED UNIT DEVELOPMENT RIDER**

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

PARCEL ID #:  
16328614007

Prepared By:  
JOHNNA HOODY

06-04-2186JLP  
[Escrow/Closing #]

[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this SECOND day of JUNE, 2006, 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

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
VMP-7R (0411) CHL (11/04)(d) Page 1 of 4 Initials *JA*  
VMP Mortgage Solutions, Inc. (800)521-7291 Form 3150 1/01



DOC ID #: [REDACTED]

undersigned (the "Borrower") to secure Borrower's Note to  
COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and  
located at:

34 Innisbrook Ave  
Las Vegas, NV 89113-1225  
(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  
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as  
ESTATES AT SPANISH TRAILS

(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.

Initials: 

-7R (0411)

CHL (11/04)

Page 2 of 4

Form 3150 1/01

DOC ID : [REDACTED]

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: \_\_\_\_\_

VMD -7R (0411)

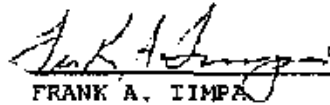
CHL (11/04)

Page 3 of 4

Form 3150 1/01

DOC ID #: [REDACTED]

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

  
FRANK A. TIMPA

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

VMD-7R (04/11)

CHL (11/04)

Page 4 of 4

Form 3150 1/01

**ADJUSTABLE RATE RIDER**

(PayOption MTA Twelve Month Average Index - Payment Caps)

06-04-1186JLP  
[Escrow/Closing #]

[Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this SECOND day of JUNE, 2006, 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 COUNTRYWIDE HOME LOANS, INC.

("Lender") of the same date and covering the property described in the Security instrument and located at:

34 Innisbrook Ave  
Las Vegas, NV 89113-1225  
(Property Address)

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

**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 changes in the interest rate and the monthly payments, as follows:

\* PayOption MTA ARM Rider  
1E310-XX (09/05)(d)

Page 1 of 6



DOC ID #: [REDACTED]

**2. INTEREST****(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 7.750 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 2.250 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of the Note is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

The interest rate I will pay may change on the 1st day of AUGUST, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

**(C) Index**

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an index. The "index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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

**(D) Calculation of Interest Rate Changes**

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 575/1000 percentage point(s) ( 3.575 %) ("Margin") 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%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

**3. PAYMENTS****(A) Time and Place of Payments**

I will make a payment every month.

\* PayOption MTA ARM Rider  
1E310-XX (09/05)

Page 2 of 6

DOC ID #: [REDACTED]

I will make my monthly payments on the FIRST day of each month beginning on August, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 01, 2046, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 11,950.17, unless adjusted under Section 3 (F).

**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the first day of AUGUST, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This 7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment.

• PayOption MTA ARM Rider  
1E310-XX (09/05)

Page 3 of 6

# **EXHIBIT C**

1 **AFFD**2 **MELANIE D. MORGAN, ESQ.**

3 Nevada Bar No. 8215

4 **TIERA A. COOPER, ESQ.**

5 Nevada Bar No. 13468

6 **AKERMAN LLP**

7 1635 Village Center Circle, Suite 200

8 Las Vegas, Nevada 89134

9 Telephone: (702) 634-5000

10 Facsimile: (702) 380-8572

11 Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)12 Email: [thera.cooper@akerman.com](mailto:thera.cooper@akerman.com)13 *Attorneys for defendant, counterclaimant, and*  
14 *counter-defendant Thornburg Mortgage Securities*  
15 *Trust 2007-3*16 **EIGHTH JUDICIAL DISTRICT COURT**17 **CLARK COUNTY, NEVADA**18 **SATICOY BAY LLC SERIES 34**  
19 **INNISBROOK,**20 **Plaintiff,**21 **vs.**22 **THORNBURG MORTGAGE SECURITIES**  
23 **TRUST 2007-3, et al.,**24 **Defendants.**25 **Case No.: A-14-710161-C**26 **Division: XXVI**27 **NATIONSTAR MORTGAGE LLC'S**  
28 **AFFIDAVIT**29 **And All Related Actions.**30  
31 I, Crystal Clopton, under penalty of perjury, declare as follows:32 1. My name is Crystal Clopton. I have personal knowledge of and am competent to  
33 testify as to the matters stated herein by virtue of my position as a Senior Assistant Secretary of  
34 Litigation Support and Resolution Analyst for Nationstar Mortgage LLC (**Nationstar**).35 2. As a Senior Assistant Secretary of Litigation Support and Resolution Analyst for  
36 Nationstar, I am familiar with Nationstar's systems that contain data regarding mortgage loans  
37 owned by Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) that Nationstar services. This  
38 declaration is based on my review of Nationstar's systems and databases containing loan

1 information.

2 3. Entries in Nationstar's systems and corresponding databases are made at or near the  
3 time of the events recorded by, or from information transmitted by, persons with knowledge.  
4 Nationstar's systems and databases are maintained and kept in the course of Nationstar's regularly  
5 conducted business activity, and it is the regular practice of Nationstar to keep and maintain  
6 information regarding loans owned by Thornburg that Nationstar services in Nationstar's databases.  
7 Nationstar's systems and databases consist of records that were kept and maintained by Nationstar in  
8 the course of its regularly conducted activities pursuant to its regular business practice of creating  
9 such records. These systems and databases are Nationstar's business records.

10 4. Nationstar's systems and corresponding databases reflect the following:

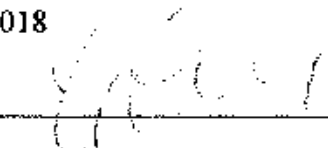
- 11 a. On or about June 2, 2006, Frank Timpa (**borrower**) purchased the property  
12 located at 34 Innisbrook Ave., Las Vegas, Nevada 89113 (**the property**) by  
13 way of a loan in the amount of \$3,780,000.00 from Countrywide Home  
14 Loans, Inc. (**Countrywide**) evidenced by a note and secured by a deed of trust  
15 listing Mortgage Electronic Registration Systems, Inc. (**MERS**) as nominee  
16 for lender and Recontrust Company, N.A. (**Recontrust**) as the trustee (**the**  
17 **deed of trust**) recorded June 12, 2006.
- 18 b. On or about June 9, 2010, Countrywide assigned all beneficial interest in the  
19 deed of trust to Thornburg.
- 20 c. Exhibit 1 is a true and correct copy of a printout from Nationstar's records of  
21 the June 12, 2006 Loan Policy of Title Insurance from Fidelity National Title  
22 Insurance Company obtained by Countrywide in connection to funding the  
23 loan.

1 ...

2 d. Exhibit 2 is a true and correct copy of a printout from Nationstar's business  
3 records regarding borrower's loan of the April 12, 2018 Payoff Statement,  
4 good through April 30, 2018.

5 I declare under the penalty of perjury that the foregoing is true and correct.

6 Executed this 23rd day of April, 2018

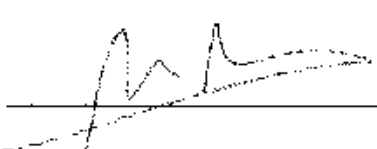
7 By 

8 Title: Senior Assistant Secretary of Litigation Support and  
9 Resolution Analyst

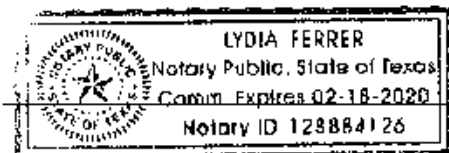
10 State of Texas

12 County of Dallas

13 On April 23, 2018, before me, Lydia Ferrer, personally appeared Crystal Clopton, who  
14 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
15 subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in  
16 his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the  
17 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
18 WITNESS my hand and official seal.

19 Signature 

(Seal)



# **EXHIBIT 1**



# Loan Policy of Title Insurance

**Fidelity National Title Insurance Company**

A Stock Company

Policy Number 1422- 208998

## LOAN POLICY OF TITLE INSURANCE

**SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:**

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
  - a. arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
  - b. arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. Any assessments for street improvements under construction or completed at Date of Policy, which now have gained or hereafter may gain priority over the lien of the insured mortgage;
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.



The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

**Fidelity National Title Insurance Company**

Countersigned: \_\_\_\_\_

*Carol Hooten*

Authorized Signature  
(Please print name below)



By: \_\_\_\_\_

ATTEST \_\_\_\_\_

*James R. Miller* President  
*John C. [Signature]* Secretary

## EXCLUSIONS FROM COVERAGE

Following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of an improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (c) Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
- (d) Defects, liens, encumbrances, adverse claims or other matters:
  - (i) created, suffered, assumed or agreed to by the insured claimant;
  - (ii) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (iii) resulting in no loss or damage to the insured claimant;
  - (iv) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
  - (v) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
- (e) Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
- (f) Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
- (g) Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is constructed for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
- (h) Any claim which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (A) to timely record the instrument of transfer; or
    - (B) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

## CONDITIONS AND STIPULATIONS

### DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A. The term "insured" also includes:
  - (i) the owner of the indebtedness secured by the insured mortgage and successor in ownership of the indebtedness except a successor who is not under the provisions of Section 12(c) of these Conditions and Stipulations giving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as relating to the estate or interest in the land;
  - (ii) any governmental agency or governmental instrumentality which insures or guarantor under an insurance contract or guaranty insuring or insuring the indebtedness secured by the insured mortgage, or any part thereof, not named as an insured herein or not;
  - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records filed in this policy or any other records which impart constructive notice of facts affecting the land.
- (d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 12(c) of the Exclusions From Coverage, "public records" shall also include nonrecorded protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### CONTINUATION OF INSURANCE

- (a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insured; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.
- (b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.
- (c) Amount of Insurance. The amount of insurance after the acquisition of the estate or interest shall in neither event exceed the least of:
  - (i) the amount of insurance stated in Schedule A;
  - (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amount advanced pursuant to the insured mortgage to assure compliance with laws or protect the lien of the insured mortgage prior to the date of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
  - (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insured; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of insurance after the acquisition of the estate or interest shall in neither event exceed the least of:

- (i) the amount of insurance stated in Schedule A;
- (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amount advanced pursuant to the insured mortgage to assure compliance with laws or protect the lien of the insured mortgage prior to the date of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of a litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to the insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**SCHEDULE A**

Order No. 06-04-1186-JLP

Premium: \$5,285.00

Amount of Insurance: \$4,347,000.00

Date of Policy: June 12, 2006 at 9:05 A.M.

**1. Name of Insured:**

"MERS" Mortgage Electronic Registration Systems, Inc. acting as nominee for lender, lender being Countrywide Home Loans, Inc., its successors and/or assigns as their interest may appear

**2. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is:**

**A FEE**

**3. The estate or interest referred to herein is at Date of Policy vested in:**

Frank A. Timpa, a married man, as his sole and separate property

**4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any are described as follows:**

Deed of Trust to secure an indebtedness of \$3,780,000.00:

Recorded: June 12, 2006 in Book 20060612 Document No. 01581 of Official Records.

Dated: June 2, 2006

Trustor: Frank A. Timpa, a married man, as his sole and separate property

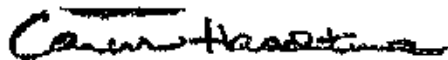
Trustee: Recontrust Company, N.A.

Beneficiary: "MERS" Mortgage Electronic Registration Systems, Inc. acting as nominee for lender, lender being Countrywide Home Loans, Inc.

**5. The land referred to in this policy is situated in the State of Nevada, County of Clark, and described as follows:**

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

By:



Carin D Haseltine

Authorized Signature

**SCHEDULE B**

**PART I**

This policy does not insure against loss of damage by reason of the following:

1. Nevada Title Company is currently holding funds sufficient to pay the first quarter of the 2006-2007 taxes when they become due and payable.
1. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.
2. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.
3. Reservations and Easements in the patent from the United States of America, recorded May 11, 1962, in Book 360 as Document No. 290586, of Official Records.

THE INTEREST OF THE U.S.A. IN AND TO ALL MINERAL RIGHTS AND RIGHTS OF WAY WERE TRANSFERRED TO CLARK COUNTY, BY INSTRUMENT RECORDED January 28, 2000 IN BOOK 20000128 AS DOCUMENT NO. 00916 OF OFFICIAL RECORDS.

4. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for perpetual avigation, recorded June 23, 1983, in Book 1759 as Document No. 1718767 of Official Records.
5. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for perpetual avigation, recorded February 8, 1984, in Book 1872 as Document No. 1831979 of Official Records.
6. Covenants, Conditions and Restrictions: In the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law as contained in the Declaration of Restrictions recorded March 7, 1984 in Book 1885 as Document No. 1844877 of Official Records.

The above document was re-recorded on December 12, 1988 in Book 881212 as Document No. 00586.

Said instrument provides that a violation thereof shall not defeat nor render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value.

The right to levy certain charges or assessments against said land which shall become a lien if not paid as set forth in the above Declaration of Restrictions, and is conferred upon **SPANISH TRAIL MASTER ASSOCIATION**, including any unpaid delinquent assessment as provided therein.

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

The above stated Covenants, Conditions and Restrictions were purportedly modified by an instrument recorded June 5, 1984 in Book 1931 as Document No. 1890307, of Official Records.

The provisions of the above stated Covenants, Conditions and Restrictions were purportedly annexed to include the herein described land by an instrument recorded August 25, 1988 in Book 880825 as Document No. 00685 of Official Records.

7. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 40 of Plats, Page 6, of Official Records.
8. Covenants, Conditions and Restrictions: In the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law as contained in the Declaration of Restrictions recorded August 17, 1988 in Book 880817 as Document No. 00703 of Official Records.

Said instrument provides that a violation thereof shall not defeat nor render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value.

The right to levy certain charges or assessments against said land which shall become a lien if not paid as set forth in the above Declaration of Restrictions, and is conferred upon **ESTATES WEST AT SPANISH TRAIL ASSOCIATION**, including any unpaid delinquent assessment as provided therein.

9. Subject to a Declaration of Homestead by **FRANK A. TIMPA, TRUSTEE AND MADELAINE TIMPA, TRUSTEE**, dated March 23, 2005 and recorded March 25, 2005 in Book 2050325 as Document No. 0003982 of Official Records.
10. Water rights, claims or title to water, whether or not shown by the public records.

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

## **SCHEDULE B**

### **PART II**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

Deed of Trust to secure an indebtedness of \$500,000.00:

Recorded: June 12, 2006 in Book 20060612 Document No. 01582 of Official Records.

Dated: June 2, 2006

Trustor: Frank A. Timpa, a married man, as his sole and separate property

Trustee: Recontrust Company, N.A.

Beneficiary: "MERS" Mortgage Electronic Registration Systems, Inc. acting as nominee for lender, lender being Countrywide Home Loans, Inc.

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS, PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**ENDORSEMENT**  
**Attached to Policy No. 1422-208998**  
**Issued by**  
**Fidelity National Title Insurance**

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The existence of any of the following:
  - (a) Covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
  - (b) Present violations on the land of any enforceable covenants, conditions, or restrictions;
  - (c) Except as shown in Schedule B, there are no encroachments of buildings, structures or improvements located on the land onto adjoining lands, or any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2. (a) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of the title to the estate or interest referred to in Schedule A if the insured shall acquire such title in satisfaction of the indebtedness secured by the insured mortgage;  
(b) Unmarketability of the title to the estate or interest referred to in Schedule A by reason of any violations on said land, occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
  - (a) Which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
  - (b) Resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.
4. Any final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.

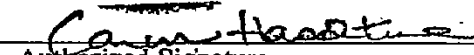
As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include the terms, covenants, conditions or restrictions contained in any lease.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions or substances, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

Dated: June 12, 2006 at 9:05 A.M.

File No.: 06-04-1186-JLP

Fidelity National Title Insurance

By:  \_\_\_\_\_

Authorized Signature  
CLTA Form 100 (Rev. 06-04-04)

ALTA - Lender

Restrictions, Encroachments & Minerals

TMST1206

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**ENDORSEMENT**  
**Attached to Policy No. 1422-208998**  
**Issued by**

**Fidelity National Title Insurance**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of the failure of (i) a **Single Family Residence** known as:

**34 Innisbrook Avenue Las Vegas NV**

To be located on the land at Date of Policy, or (ii) the map attached to this policy to correctly shown the location and dimensions of the land according to the public records.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of the Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: June 12, 2006 at 9:05 A.M.

File No.: 06-04-1186-JLP

**Fidelity National Title Insurance**

By:   
Authorized Signature

CLTA Form 116 (Rev. 6-14-96)

ALTA - Lender

Designation of Improvements, Address

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**ENDORSEMENT**

**Attached to Policy No. 1422-208998  
Issued by**

**Fidelity National Title Insurance**

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for residential purposes.

The Company insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

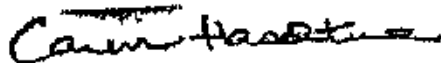
**NONE**

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of the Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: June 12, 2006 at 9:05 A.M.

File No.: 06-04-1186-JLP

**Fidelity National Title Insurance**



By: Authorized Signature

CLTA Form 110.9 (3-13-87)  
ALTA Endorsement Form 5.1 (3-27-87)  
**ENVIRONMENTAL PROTECTION LIEN**

Order Number: 06-04-1186-JLP

Policy Number: 1422-208998

**ENDORSEMENT**  
**Attached to Policy No. 1422-208998**  
**Issued by**

**Fidelity National Title Insurance**

The Company insures the Insured against loss or damage sustained by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the land, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
2. The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any insured mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: June 12, 2006 at 9:05 A.M.

File No. 06-04-1186-JLP

Fidelity National Title Insurance

By:                       
Authorized Signature

CLTA Form 115.2 (Rev. 3-27-92)  
ALTA Endorsement Form 5  
Planned Unit Development

TMST1209

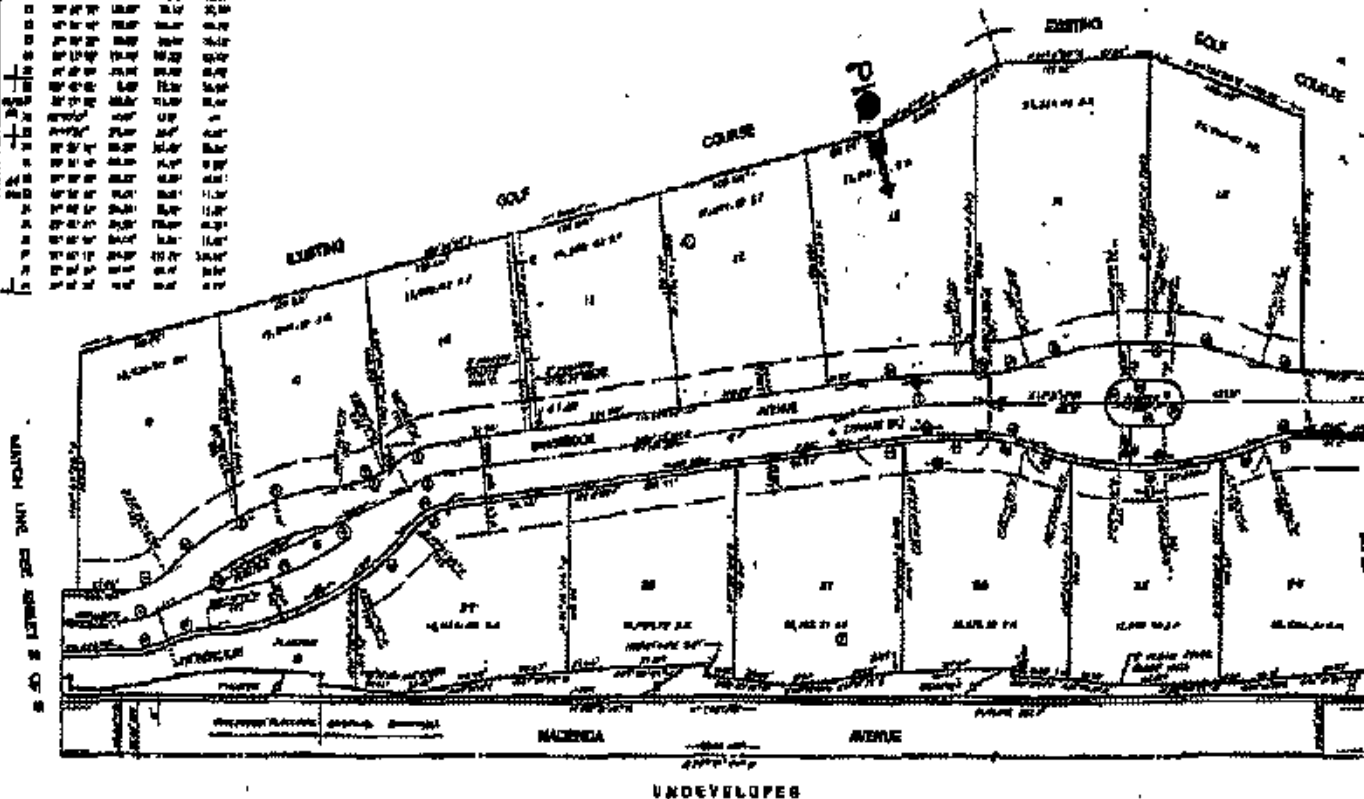
FROM PORTIONS OF THE NORTH MAPPER (KUTZ) OF SECTIONS 27 AND 28, T.21 N., R.80 E., N.M., CLARK COUNTY, NEVADA

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454

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| 二   | two [tu: twə]                 | 二   | two           |
| 三   | three [θri:]                  | 三   | three         |
| 四   | four [fɔ:]                    | 四   | four          |
| 五   | five [faɪv]                   | 五   | five          |
| 六   | six [sɪks]                    | 六   | six           |
| 七   | seven [sevən]                 | 七   | seven         |
| 八   | eight [eɪt]                   | 八   | eight         |
| 九   | nine [naɪn]                   | 九   | nine          |
| 十   | ten [ten]                     | 十   | ten           |
| 十一  | eleven [ɪ'levən]              | 十一  | eleven        |
| 十二  | twelve [twelv]                | 十二  | twelve        |
| 十三  | thirteen [θɜ:ˈti:n]           | 十三  | thirteen      |
| 十四  | fourteen [fɔ:ˈti:n]           | 十四  | fourteen      |
| 十五  | fifteen [fɪf'ti:n]            | 十五  | fifteen       |
| 十六  | sixteen [sɪk'sti:n]           | 十六  | sixteen       |
| 十七  | seventeen [sevən'ti:n]        | 十七  | seventeen     |
| 十八  | eighteen [eɪt'sti:n]          | 十八  | eighteen      |
| 十九  | nineteen [naɪn'ti:n]          | 十九  | nineteen      |
| 二十  | twenty [ˈtwenti]              | 二十  | twenty        |
| 二十一 | twenty-one [ˈtwenti'wʌn]      | 二十一 | twenty-one    |
| 二十二 | twenty-two [ˈtwenti'tu:]      | 二十二 | twenty-two    |
| 二十三 | twenty-three [ˈtwentiθri:]    | 二十三 | twenty-three  |
| 二十四 | twenty-four [ˈtwentɪfɔ:]      | 二十四 | twenty-four   |
| 二十五 | twenty-five [ˈtwentɪfaɪv]     | 二十五 | twenty-five   |
| 二十六 | twenty-six [ˈtwentɪsɪks]      | 二十六 | twenty-six    |
| 二十七 | twenty-seven [ˈtwentɪsevən]   | 二十七 | twenty-seven  |
| 二十八 | twenty-eight [ˈtwentɪeɪt]     | 二十八 | twenty-eight  |
| 二十九 | twenty-nine [ˈtwentɪnaɪn]     | 二十九 | twenty-nine   |
| 三十  | thirty [ˈθɜ:ti]               | 三十  | thirty        |
| 三十一 | thirty-one [ˈθɜ:ti'wʌn]       | 三十一 | thirty-one    |
| 三十二 | thirty-two [ˈθɜ:ti'tu:]       | 三十二 | thirty-two    |
| 三十三 | thirty-three [ˈθɜ:tiθri:]     | 三十三 | thirty-three  |
| 三十四 | thirty-four [ˈθɜ:ti'fɔ:]      | 三十四 | thirty-four   |
| 三十五 | thirty-five [ˈθɜ:ti'faɪv]     | 三十五 | thirty-five   |
| 三十六 | thirty-six [ˈθɜ:ti'sɪks]      | 三十六 | thirty-six    |
| 三十七 | thirty-seven [ˈθɜ:ti'sevən]   | 三十七 | thirty-seven  |
| 三十八 | thirty-eight [ˈθɜ:ti'eɪt]     | 三十八 | thirty-eight  |
| 三十九 | thirty-nine [ˈθɜ:ti'naɪn]     | 三十九 | thirty-nine   |
| 四十  | forty [ˈfɔ:ti]                | 四十  | forty         |
| 四十一 | forty-one [ˈfɔ:ti'wʌn]        | 四十一 | forty-one     |
| 四十二 | forty-two [ˈfɔ:ti'tu:]        | 四十二 | forty-two     |
| 四十三 | forty-three [ˈfɔ:tiθri:]      | 四十三 | forty-three   |
| 四十四 | forty-four [ˈfɔ:ti'fɔ:]       | 四十四 | forty-four    |
| 四十五 | forty-five [ˈfɔ:ti'faɪv]      | 四十五 | forty-five    |
| 四十六 | forty-six [ˈfɔ:ti'sɪks]       | 四十六 | forty-six     |
| 四十七 | forty-seven [ˈfɔ:ti'sevən]    | 四十七 | forty-seven   |
| 四十八 | forty-eight [ˈfɔ:ti'eɪt]      | 四十八 | forty-eight   |
| 四十九 | forty-nine [ˈfɔ:ti'naɪn]      | 四十九 | forty-nine    |
| 五十  | fifty [ˈfɪfti]                | 五十  | fifty         |
| 五十一 | fifty-one [ˈfɪfti'wʌn]        | 五十一 | fifty-one     |
| 五十二 | fifty-two [ˈfɪfti'tu:]        | 五十二 | fifty-two     |
| 五十三 | fifty-three [ˈfɪftiθri:]      | 五十三 | fifty-three   |
| 五十四 | fifty-four [ˈfɪfti'fɔ:]       | 五十四 | fifty-four    |
| 五十五 | fifty-five [ˈfɪfti'faɪv]      | 五十五 | fifty-five    |
| 五十六 | fifty-six [ˈfɪfti'sɪks]       | 五十六 | fifty-six     |
| 五十七 | fifty-seven [ˈfɪfti'sevən]    | 五十七 | fifty-seven   |
| 五十八 | fifty-eight [ˈfɪfti'eɪt]      | 五十八 | fifty-eight   |
| 五十九 | fifty-nine [ˈfɪfti'naɪn]      | 五十九 | fifty-nine    |
| 六十  | sixty [ˈsɪksti]               | 六十  | sixty         |
| 六十一 | sixty-one [ˈsɪksti'wʌn]       | 六十一 | sixty-one     |
| 六十二 | sixty-two [ˈsɪksti'tu:]       | 六十二 | sixty-two     |
| 六十三 | sixty-three [ˈsɪkstiθri:]     | 六十三 | sixty-three   |
| 六十四 | sixty-four [ˈsɪksti'fɔ:]      | 六十四 | sixty-four    |
| 六十五 | sixty-five [ˈsɪksti'faɪv]     | 六十五 | sixty-five    |
| 六十六 | sixty-six [ˈsɪksti'sɪks]      | 六十六 | sixty-six     |
| 六十七 | sixty-seven [ˈsɪksti'sevən]   | 六十七 | sixty-seven   |
| 六十八 | sixty-eight [ˈsɪksti'eɪt]     | 六十八 | sixty-eight   |
| 六十九 | sixty-nine [ˈsɪksti'naɪn]     | 六十九 | sixty-nine    |
| 七十  | seventy [ˈsevnti]             | 七十  | seventy       |
| 七十一 | seventy-one [ˈsevnti'wʌn]     | 七十一 | seventy-one   |
| 七十二 | seventy-two [ˈsevnti'tu:]     | 七十二 | seventy-two   |
| 七十三 | seventy-three [ˈsevntiθri:]   | 七十三 | seventy-three |
| 七十四 | seventy-four [ˈsevnti'fɔ:]    | 七十四 | seventy-four  |
| 七十五 | seventy-five [ˈsevnti'faɪv]   | 七十五 | seventy-five  |
| 七十六 | seventy-six [ˈsevnti'sɪks]    | 七十六 | seventy-six   |
| 七十七 | seventy-seven [ˈsevnti'sevən] | 七十七 | seventy-seven |
| 七十八 | seventy-eight [ˈsevnti'eɪt]   | 七十八 | seventy-eight |
| 七十九 | seventy-nine [ˈsevnti'naɪn]   | 七十九 | seventy-nine  |
| 八十  | eighty [ˈeɪti]                | 八十  | eighty        |
| 八十一 | eighty-one [ˈeɪti'wʌn]        | 八十一 | eighty-one    |
| 八十二 | eighty-two [ˈeɪti'tu:]        | 八十二 | eighty-two    |
| 八十三 | eighty-three [ˈeɪtiθri:]      | 八十三 | eighty-three  |
| 八十四 | eighty-four [ˈeɪti'fɔ:]       | 八十四 | eighty-four   |
| 八十五 | eighty-five [ˈeɪti'faɪv]      | 八十五 | eighty-five   |
| 八十六 | eighty-six [ˈeɪti'sɪks]       | 八十六 | eighty-six    |
| 八十七 | eighty-seven [ˈeɪti'sevən]    | 八十七 | eighty-seven  |
| 八十八 | eighty-eight [ˈeɪti'eɪt]      | 八十八 | eighty-eight  |
| 八十九 | eighty-nine [ˈeɪti'naɪn]      | 八十九 | eighty-nine   |
| 九十  | ninety [ˈnaɪnti]              | 九十  | ninety        |
| 九十一 | ninety-one [ˈnaɪnti'wʌn]      | 九十一 | ninety-one    |
| 九十二 | ninety-two [ˈnaɪnti'tu:]      | 九十二 | ninety-two    |
| 九十三 | ninety-three [ˈnaɪntiθri:]    | 九十三 | ninety-three  |
| 九十四 | nin                           |     |               |

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QUEST. 2 OF 25

# CONDITIONS AND STIPULATIONS - (Continued from Reverse Side of Policy Face)

Insured under this policy unless the Company shall be prejudiced by the failure then only to the extent of the prejudice.

## **DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation which any third party asserts a claim adverse to the title or interest as insured, only as to those stated causes of action alleging a defect, lien or encumbrance other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and it shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of the causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may sue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall agree to the Company the right to so prosecute or provide defense in the action proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

## **PROOF OF LOSS OR DAMAGE**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage shall be made and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, records, books, ledgers, checks, correspondence and memoranda, whether bearing date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information furnished as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

## **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

Under a claim under this policy, the Company shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.**

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the

owner of the indebtedness shall transfer, assign, and convey the indebtedness, the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for paragraphs (i) or (ii), all liability and obligations to the insured under this policy other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for paragraphs (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## **7. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage because of matters insured against by this policy and only to the extent hereinafter described.

(a) The liability of the Company under this policy shall not exceed the limit of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by insured mortgage as limited or provided under Section 3 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed title, then the liability of the Company shall continue as set forth in Section 2 of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## **8. LIMITATION OF LIABILITY**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured who voluntarily assumed by the insured in settling any claim or suit without prior written consent of the Company.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration or improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at or after Date of Policy.

## **9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate insured as provided in Section 2(a) of these Conditions and Stipulations shall reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment or satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

**CONDITIONS AND STIPULATIONS - (Continued and Concluded From Reverse Side)**

(s) Payment in full by any person at the voluntary satisfaction or release of insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

**LIABILITY NONCUMULATIVE**

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly stated that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which option is taken in Schedule B or to which the insured has agreed, assumed, or is subject, or which is hereafter executed by an insured and which is a charge on the estate or interest described or referred to in Schedule A, and the amount paid shall be deemed a payment under this policy.

**PAYMENT OF LOSS**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case a copy of loss or destruction shall be furnished to the satisfaction of the Company.  
(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be paid within 30 days thereafter.

**SUBROGATION UPON PAYMENT OR SETTLEMENT**

(a) **The Company's Right of Subrogation.**  
Whenever the Company shall have settled and paid a claim under this policy, its right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any action or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) **The Insured's Rights and Limitations.**  
Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any person or guarantor, or extend or otherwise modify the terms of payment, or use a portion of the estate or interest from the lien of the insured mortgage, or use any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured under this policy which shall exceed the amount, if any, lost to the Company because of the impairment by the insured claimant of the Company's right of subrogation.

(c) **The Company's Rights Against Non-Insured Obligors.**  
The Company's right of subrogation against non-insured obligors shall exist and

shall include, without limitation, the rights of the insured to indemnities, guarantees, other policies of insurance or bonds, notwithstanding any terms or conditions contained in these instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the state of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached hereto constitute the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except in a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or a validating officer or authorized signatory of the Company.

**15. SEVERABILITY**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Fidelity National Title Insurance Company, Claims Department, P.O. Box 45023, Jacksonville, Florida 32232-5023.



# EXHIBIT 2

Mr. Cooper, Attn: Payoff Department  
8950 Cypress Waters Blvd  
Coppell, TX 75019  
1-888-480-2432

Statement Date: April 12, 2018

Payoff Statement  
Amended

Send to: FRANK A TIMPA  
34 INNISBROOK AVE

Mortgagor(s) FRANK A TIMPA

Property Addr: 34 Innisbrook Ave  
LAS VEGAS, NV 89113

Loan Nbr: LAS VEGAS, NV 89113  
0200

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date: 1/01/08 Next Payment Due Date: 2/01/08

QUOTE DETAIL

Unpaid Principal	4,032,757.77		
Interest Due	1,801,356.06	Hazard Loss Susp*	5,810.83
(From 1/01/08 to 4/30/18 at 8.250%)			
Late Charges of	5,719.76		
Deferred Late Charges	3,709.58		
Corporate Advance	39,024.50	*items cannot be used as a credit	
Escrow Advance	395,822.09		

Prin and Interest	12,846.43
Mthly Escrow Pymt	.01

COUNTY RECORDING FEE	40.00
LEGAL FEES	803.44

Balance Due	6,279,233.20	Mortgage Payment	12,846.44
-------------	--------------	------------------	-----------

If payoff funds are submitted after 4/30/18, the applicable per diem interest of \$ 552.43 must be added for each day thereafter. Continue to make your scheduled mortgage payments. DO NOT PLACE A STOP PAYMENT ON ANY CHECK PREVIOUSLY REMITTED. If any scheduled payment is received after the Late Charge grace period as set forth in the applicable Note, a Late Charge of \$ 962.59 will be assessed.

Estimated Disbursements:	Due Date	Amount
HAZARD SFR	12/14/17	22,446.00
COUNTY TAX	8/21/18	4,818.65

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY. If using wire transfer, forward to: Wells Fargo Bank, N.A., Routing # 121000248, for credit to Mr. Cooper Payment Clearing Account # 0200. If mailing certified funds, make payable to Mr. Cooper and forward to the address listed at the top of page. Funds received after 3:00pm Central Time may be posted on the following business day. Please include the Mortgagor's Loan Number on all correspondence.

We will continue to make disbursements of all escrow items (hazard, flood, PMI/MIP, taxes, etc.) up to the date of payoff. It is the responsibility of the borrower(s) and their closing agent to obtain a refund should a double payment occur.

\*\*\*IMPORTANT NOTICE\*\*\*

We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertent clerical errors.

This payoff estimate does not waive our rights to collect any funds which become due on this account as a result of any subsequent adjustments. Additionally, Mr. Cooper will not provide reconveyance or release of the Security Instrument until the account is paid in full. Upon payment in full and within state specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. Any overpayment will be refunded to the mortgagor(s) within 30 Business Days after payment in full.

Nationstar Mortgage LLC d/b/a Mr. Cooper is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in

TMST002541

bankruptcy, this communication is not an attempt to collect a debt from you

TMST002542

personally to the extent that it is included in your bankruptcy or has been discharged, but is provided for informational purposes only.  
WP-PAYOFFST-0513

# **EXHIBIT D**

RECORDING REQUESTED BY:  
RECONTRUST COMPANY, N.A.  
AND WHEN RECORDED MAIL DOCUMENT TO:  
BAC Home Loans Servicing, LP  
400 COUNTRYWIDE WAY SV-35  
SIMI VALLEY, CA 93065

Inst #: 201006090003189

Fees: \$14.00

M/C Fee: \$0.80

06/09/2010 01:45:06 PM

Receipt #: 381952

Requestor:

CLARK RECORDING SERVICE

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

TS No. 08-0061701

TITLE ORDER#: 3765435

APN: 163-28-614-007

## CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:  
THORNBURG MORTGAGE SECURITIES TRUST 2007-3

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 06/02/2006,  
EXECUTED BY: FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE  
PROPERTY, TRUSTOR: TO RECONTRUST COMPANY, N.A., TRUSTEE AND RECORDED AS  
INSTRUMENT NO. 0001581 ON 05/12/2006, IN BOOK 20060642, OF OFFICIAL RECORDS IN THE  
COUNTY RECORDER'S OFFICE OF CLARK COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE  
MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS  
ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: June 04, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC.State of: Texas  
County of: TarrantBY: Khadija Gulley, Assistant Secretary

JUN 07 2010

On June 04, 2010 before me Elsie E. Kroussakis, personally appeared  
Khadija Gulley, know to me (or proved to me on the oath of Khadija Gulley or through  
Khadija Gulley) to be the person whose name is subscribed to the foregoing instrument and  
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.  
Witness my hand and official seal.

Elsie E. Kroussakis  
Notary Public's Signature



# **EXHIBIT E**

Recording Requested By  
and  
When Recorded Mail To:

Mr. E. J. Quirk  
Seller, Quirk & Trotter  
550 East Charleston, Suite D  
Las Vegas, Nevada 89104

**DECLARATION OF RESTRICTIONS  
FOR  
ESTATES WEST AT SPANISH TRAIL**

TABLE OF CONTENTS

	PAGE
RECITALS	1
ARTICLE I	DEFINITIONS
Section 1	ARC
Section 2	Association
Section 3	Association Property
Section 4	Sylaws
Section 5	Declarant
Section 6	Declaration
Section 7	Eligible Insurer or Guarantor
Section 8	Eligible Mortgage Holder
Section 9	Estates
Section 10	Lot
Section 11	Master Association
Section 12	Master Declaration
Section 13	Mortgage
Section 14	Mortgages
Section 15	Mortgagor
Section 16	Owner
Section 17	Phase
Section 18	Phase 1
Section 19	Planned Unit Development Properties
ARTICLE II	PROPERTY RIGHTS IN ASSOCIATION PROPERTY
Section 1	Owners' Easements of Enjoyment
Section 2	Delegation of Use
ARTICLE III	MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION
Section 1	Membership in Association
Section 2	Classes of Membership
Section 3	Duty of Association
Section 4	Non-Liability of Board
ARTICLE IV	COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION.
Section 1	creation of Liens
Section 2	Purpose of Assessments
Section 3	Uniform Rate of Assessments
Section 4	Commencement of Assessments
Section 5	Delinquent Assessments
Section 6	Subordination to First Mortgages
Section 7	Trust Account

8/10/98

-i-

		PAGE
ARTICLE V	INSURANCE	10
Section 1	Hazard Insurance - Association	10
Section 2	Liability Insurance - Association	10
Section 3	Inspection of Policies - Association	11
Section 4	Federal National Mortgage Association ("FNMA")	11
Section 5	Other Insurance; Annual Review	11
Section 6	Premiums and Proceeds	11
ARTICLE VI	CONDEMNATION	12
ARTICLE VII	MAINTENANCE AND LANDSCAPING	12
Section 1	Association Maintenance	12
Section 2	Owner Maintenance	12
Section 3	Mandatory Landscaping	12
Section 4	Right of Association to Maintain and Install	12
Section 5	Right of Entry	14
Section 6	Maintenance of Streetscapes by Owners and Association	14
ARTICLE VIII	USE PROVISIONS	14
Section 1	Residential Purposes	14
Section 2	New Buildings	14
Section 3	Trash Containers and Collection	14
Section 4	Balconies and Decks	15
Section 5	Trees	15
Section 6	No Antennas	15
Section 7	Exterior Clotheslines	15
Section 8	Vehicles, Tents and Shacks	15
Section 9	Signs	15
Section 10	No Wells	15
Section 11	Animal Restrictions	16
Section 12	No Commercial Activity	16
Section 13	Nuisances	16
Section 14	Drainage	16
Section 15	Lot Maintenance	17
Section 16	Interpretation of Restrictions	17
Section 17	Leasing of Lots	17
ARTICLE IX	RIGHTS OF MORTGAGEES	17
Section 1	Payments of Taxes or Premiums by Mortgagees	17
Section 2	Mortgagees Curing Defaults	18
Section 3	Approval of First Mortgagees	18
Section 4	Termination of Professional Management	19
Section 5	Notice to Eligible Mortgagees	19
Section 6	Documents to be Available to Mortgagees	20

8/10/88

-ii-

18 : 0 : 1 7 0 0 7 0 7

		PAGE
Section 7	Mortgage Protection Re Breach	20
Section 8	Conflicts	20
ARTICLE X	ENFORCEMENT	20
Section 1	Enforcement Entities	20
Section 2	No Waiver	20
Section 3	Mortgage P Section	21
ARTICLE XI	GENERAL PROVISIONS	21
Section 1	Severability	21
Section 2	Amendment	21
Section 3	Term of Restrictions	22
Section 4	Annexation of Lots	22
Section 5	Annexation to Association Property	23
Section 6	No Amendment	23
Section 7	Annexation by Owners	23
Section 8	Litigation	23
Section 9	Declarant Exemption	24

## SUBORDINATION AGREEMENT

8/10/88

-111-

**DECLARATION OF RESTRICTIONS**  
**Estates West at Spanish Trail**

THIS DECLARATION OF RESTRICTIONS is made as of this day of \_\_\_\_\_, 1988, by SPANISH TRAIL ASSOCIATES, a Nevada Limited partnership (hereinafter called "Declarant"), with reference to the following

**RECITALS:**

A. Declarant is the Developer of the real property located in Clark County, Nevada, more particularly described on Exhibit "A" attached hereto and incorporated herein (hereinafter called the "Planned Unit Development Properties"), and Declarant owns portions of the same.

B. Declarant intends to develop and improve certain of the Planned Unit Development Properties in Phases and offer the same for sale to the public as (i) residential lots for custom homes to be built by the Lot Owners and/or Declarant, who may also build production homes thereon, (ii) detached patio homes, and (iii) attached homes.

C. It is intended that this Declaration encumber and affect, in Phases, those portions of the Planned Unit Development Properties referred to in Recital B(i) above which are or will be covered by maps entitled "ESTATES AT SPANISH TRAIL NO. 5" and "ESTATES AT SPANISH TRAIL NO. 6"; that is the residential lots for custom homes to be built by Lot Owners and/or Declarant who may also build production homes thereon located within the westerly one-half of the Planned Unit Development Properties. Such portions of the Planned Unit Development Properties are referred to herein as the "Estates West".

D. The first Phase of development of the Estates West consists of 39 lots described as follows:

Lots 1 through 39, inclusive, and Parcel B of ESTATES AT SPANISH TRAIL NO. 5, filed with the County Recorder of Clark County, Nevada on July 27, 1988 in Book 40 of Plats, Page 6, and is hereinafter referred to as "Phase 1".

8/10/88

-1-

2. When completely developed, it is estimated that there will be approximately 3,000 residential units within the Planned Unit Development Properties and approximately 50 residential lots within Estates West. Although Declarant is not obligated to do so, Declarant intends to annex subsequent Phase(s) of the Estates West to the lien and charge of this Declaration of Restrictions and thereby cause the individual Owners of Lots therein to become members of ESTATES WEST AT SPANISH TRAIL ASSOCIATION, a Nevada nonprofit corporation.

F. Given the size and complexity of the Estates West and the Planned Unit Development Properties, the exact phasing of the Estates West and the exact uses as residential lots, custom homes and production detached homes has not yet been finally determined. In general, however, it is intended that the Estates West and the Planned Unit Development Properties be developed in a manner consistent with the Resolution of Intent to Reclassify that property approved by Clark County on December 7, 1992 (hereinafter referred to as the "Master Development"). There is, however, no guaranty nor obligation that the Estates West and the Planned Unit Development Properties will be developed in their entirety or in the manner so approved by Clark County.

G. The Master Development includes properties owned by Declarant in addition to the Planned Unit Development Properties which may be developed for mixed residential, commercial and recreational uses, including development of a privately-owned and operated golf club. Ownership of a residence within the Estates West will not mandate membership in the private golf club.

H. In connection with the development of the Estates West, Declarant has caused to be formed ESTATES WEST AT SPANISH TRAIL ASSOCIATION, a Nevada nonprofit corporation (hereinafter called the "Association"), which is the homeowners association for the overall development of the Estates West. Each Lot in Phase 1 shall have appurtenant to it a Class A membership in the Association. Upon annexation of additional Phases to this Declaration, it is planned that Owners of residences therein shall also become members of the Association. There is no guarantee that such annexation will occur.

I. The Association will be given fee ownership to certain private streets and "Estates Common Area" within the Estates West and any limited access gates pertaining to the same. The Association may also be given easements on behalf of its members and/or fee title to certain other areas which, if given, it shall maintain, manage and control. The real property to be owned by the Association upon the conveyance of the first lot in Phase 1 to an owner are described as follows:

8/10/88

-2-

Parcel is shown on ESTATES AT SPANISH TRAIL  
NO. 5, filed for record with the County  
Recorder of Clark County, Nevada, on July 22,  
1988 in Book 40, Page 6 of Plans.

All property owned in fee and other property rights (including, but not limited to, any easements) owned by the Association is hereinafter referred to as the "Association Property".

J. All Association Property shall be maintained by the Association and as set forth below be subject to the Association management and control for the benefit of its members.

K. Before selling or conveying any interest in Phase 1, Declarant desires to subject the Lots in Phase 1 in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Planned Unit Development Properties.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of the Planned Unit Development Properties, and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in Phase 1 under and pursuant to which covenants, conditions and restrictions each ownership interest in Phase 1 shall hereafter be held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of the covenants, conditions and restrictions set forth herein are for the purpose of protecting the value and desirability of and inure to the benefit of all of the Planned Unit Development Properties and shall run with and be binding upon and pass with Phase 1 and each and every ownership interest therein, together with such additional portions of the Planned Unit Development Properties which become annexed hereto, and shall inure to the benefit of and apply to and bind respective successors in interest in title or interest of Declarant.

#### ARTICLE I

##### DEFINITIONS

Section 1. "ARC" shall mean and refer to the Architectural Committee formed pursuant to the Master Declaration.

Section 2. "Association" shall mean and refer to ESTATES WEST AT SPANISH TRAIL ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns.

8/10/88

-3-

**Section 3. "Association Property"** shall mean and refer to all easements and real property (including improvements thereon and interests therein) owned by the Association.

**Section 4. "Bylaws"** shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

**Section 5. "Declarant"** shall mean and refer to SPANISH TRAIL ASSOCIATES, a Nevada limited partnership, and its successors if the rights and obligations of Declarant hereunder should be assigned to and assumed by such successors.

**Section 6. "Declaration"** shall mean and refer to this enabling Declaration of Restrictions as it may from time to time be amended.

**Section 7. "Eligible Insurer or Guarantor"** shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws.

**Section 8. "Eligible Mortgage Holder"** shall mean and refer to a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws.

**Section 9. "Estates West"** shall mean and refer to those portions of the Planned Unit Development Properties which are developed as Lots for custom homes to be built by Lot Owners and/or Declarant who may also build production homes thereon. Phase 1 of the Estates West and, when annexed, subsequent Phases thereof, shall be subject to this Declaration and to the jurisdiction of the Association.

**Section 10. "Lot"** shall mean and refer to any plot of land (other than the Association Property or any property owned by any nonprofit corporation for the common use and enjoyment of Owners within a Phase(s) of the Planned Unit Development Properties) shown upon any recorded final map of the Planned Unit Development Properties, the Owner of which is required by Declaration to be a member of the Association. Two or more Lots which might be under the same ownership shall be deemed separate Lots, regardless of whether such Lots are used for the same residence.

**Section 11. "Master Association"** shall mean and refer to SPANISH TRAIL MASTER ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns.

8/10/98

-4-

**Section 12. "Master Declaration"** shall mean and refer to that certain Master Declaration of Restrictions for Spanish Trail filed for record on March 7, 1984 with the County Recorder of Clark County, Nevada in Book 1985 of Official Records as Document No. 1844877, as amended by a First Amendment filed for record on June 5, 1984 with the County Recorder of Clark County, Nevada in Book 1931 of Official Records as Document No. 1890307, together with any additional amendments from time to time.

**Section 13. "Mortgage"** shall mean and refer to a deed of trust as well as a mortgage.

**Section 14. "Mortgagee"** shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

**Section 15. "Mortgagor"** shall mean and refer to the trustor of a deed of trust as well as a mortgagor.

**Section 16. "Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any "lot" as that term is defined and limited by Section 10 above, which is a part of the Estates West, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 17. "Phase"** shall mean and refer to those certain lots which are covered by separate Declarations of Annexation whereby the same become subject to this Declaration. "Phase" shall also refer to Phase 1.

**Section 18. "Phase 1"** shall mean and refer to that certain real property located in Clark County, Nevada, more particularly described as:

Lots 1 through 39, inclusive, and Parcel B of  
ESTATES AT SPANISH TRAIL NO. 5 filed with the  
County Recorder of Clark County, Nevada, on  
July 27, 1988 in Book 40 of Plats, Page 6.

**Section 19. "Planned Unit Development Properties"** shall mean and refer to that real property located in Clark County, Nevada, described on Exhibit "A" attached hereto and incorporated herein.

## **ARTICLE II**

### **PROPERTY RIGHTS IN ASSOCIATION PROPERTY**

**Section 1. Owners' Easements of Enjoyment.** Every Owner of a lot shall have a right and easement of ingress and egress and of enjoyment in and to the Association Property which shall be

3/10/93

-5-

agreement to and shall pass with the title to each lot, subject to the following provision:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Association Property; Declarant does not contemplate that any recreational facilities will exist within the Association Property.

(b) The right of the Association, after an opportunity for a hearing before the Board as provided in the Bylaws, to suspend the voting rights and right to use of any recreational facilities by an Owner for nonpayment of any assessment by the Association against his lot or if he is otherwise in breach of his obligations under this Declaration, or the Bylaws or the rules and regulations of the Board, all as set forth in the Bylaws. Declarant does not contemplate that the Association Property will include recreational amenities.

(c) The right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority or utility subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective except upon the vote or written consent of two-thirds (2/3) of each class of members of the Association. The granting of easements for utilities or for other purposes consistent with the intended use of the Association Property, and the granting of easements for maintenance purposes, shall be deemed not to be a dedication or transfer requiring the vote or written consent of the Association members. The Board shall have the right and duty to transfer the Association Property to a corporation, if any, to which all the Owners are members and which was established by the Board as the successor to the Association's rights and obligations hereunder and to replace the Association upon its termination.

(d) The right of the Association to adjust the boundaries between the Association Property and one or more lots and to transfer such portions to the Owners of the respective Lot(s), provided that such transfer does not impede access or utilities to any lot.

(e) The right of the Association to transfer exclusive use easements to the Owners of one or more

2/10/92

-6-

lots, provided that such easements do not impede access or utilities to any lot.

(f) The right of the Board to adopt rules and regulations regarding reasonable use of the Association Property. Such rules and regulations proscribe parking on the Association Property, including private streets, but shall not deny any owner access to his lot.

(g) The right of Declarant to use the Association Property for sales, development and related activities, together with the right of Declarant to transfer such easements to others.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Association Property and facilities to the members of his family, his tenants or contract purchasers who reside on his lot; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use recreational facilities (if any) by reason of ownership of that lot during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the Board.

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 1. Membership in Association.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot. Every Owner shall promptly, fully and faithfully comply with and abide by the Bylaws and the rules and regulations adopted from time to time by the Board and the officers of the Association.

**Section 2. Classes of Membership.** The Association shall have two (2) classes of voting membership, as set forth in the Bylaws.

**Section 3. Duty of Association.** The Association, acting through the Board, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Association Property, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in the Bylaws and the terms and conditions pursuant to which the Association owns the Association Property.

**Section 4. Non-liability of Board.** In discharging their duties and responsibilities, the Board acts on behalf of and as the representative of the Association which acts on behalf of and

0/10/88

-7-

as the representative of the Owners, and no member of the Board shall be individually or personally liable for performance or failure of performance of his duties and responsibilities unless he fails to act in good faith.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 1. Creation of Liens. The Declarant, for each Lot owned, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) regular assessments, and (ii) special assessments, such assessments to be established and collected as provided in the Bylaws. The regular and special assessments, together with interest, costs, late payment charges and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Late payment charges shall be in the amount provided for in the Bylaws.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement and maintenance of the Association Property.

Section 3. Uniform Rate of Assessments. Except as may be otherwise provided in the Bylaws, both regular and special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis or otherwise as determined by the Board.

Section 4. Commencement of Assessments. The regular assessments provided for herein shall commence as to each Lot in Phase 1 on the first day of the month following the first conveyance by Declarant of such Lot to an Owner. Regular assessments shall so commence on each Lot in each subsequent Phase on the first day of the month following the first conveyance by Declarant of any such Lot in each respective subsequent Phase. Written notice of the regular assessment shall be sent to every Owner subject thereto. The amount and due dates of the regular assessments shall be established by the Board as provided in the Bylaws. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association

3/19/88

-8-

setting forth whether the assessments on a specified Lot have been paid.

Section 5. Delinquent Assessments. Any assessment made by the Association in accordance with this Declaration shall be a debt of the Owner of a Lot at the time the assessment is made. Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate provided for in the Bylaws and a late charge may be imposed for each such late payment in the amount provided for in the Bylaws. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto or in lieu thereof, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Association Property or abandonment of his Lot.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The amount of any such delinquent assessment, plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Lot when the Association causes to be recorded with the County Recorder of Clark County, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed and the name of the record owner thereof. Such notice shall be signed by the President or Vice President, and the Secretary or Assistant Secretary of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Unless sooner satisfied and released, or the enforcement thereof initiated as hereinafter provided, such lien shall expire and be of no further force and effect two (2) years from the date of recordation of the Notice of Delinquent Assessment. The two (2) year period may be extended by the Association for not to exceed two (2) additional years by recording a written extension thereof.

Such lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the Owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Covenants Nos. 6, 7 and 8 of Nevada Revised Statutes 107.030 and 107.090 insofar as they are consistent with the provisions of Nevada Revised Statutes 278A.160 or in any other manner permitted by law. The Association shall have the

8/10/88

-9-

power to purchase the Lot at foreclosure sale and to hold, lease, mortgage and convey the same.

Sec. 1. Subordination to First Mortgage. The lien of the assessments provided for herein shall be prior to all other liens recorded subsequent to the recordation of the Notice of Delinquent Assessment, except that the lien of the assessment, provided for herein, shall be subordinate to the lien of any first Mortgage given for value, and the sale or transfer of any Lot pursuant to first Mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

Section 7. Trust Account. The Association shall immediately deposit the regular and special assessments it receives in a trust account maintained by it with a bank or recognized depository in the State of Nevada.

#### ARTICLE V

#### INSURANCE

Section 1. Hazard Insurance - Association. The Association shall keep (i) any building in the Association Property insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof (no buildings are currently planned for the Association Property), and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Association Property and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association may cause the same to be replaced, repaired or rebuilt if it occurred in the Association Property. In the event the cost of such replacement, repair or rebuilding of the Association (a) exceeds the insurance proceeds available therefor, or (b) no insurance proceeds are available therefor, the deficiency of full cost thereof shall be assessed to the Owners as a special assessment pursuant to the terms of this Declaration and the Bylaws.

Section 2. Liability Insurance - Association. The Association shall procure and keep in force public liability insurance in the name of the Association and in the name of the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Association Property in an amount not less than \$500,000.00 in indemnity against

3/10/88

-10-

the claim of one (1) person in one (1) accident or event and not less than \$1,000,000.00 against the claims of two (2) or more persons in one (1) accident or event, and not less than \$100,000.00 for damage to property.

**Section 3. Inspection of Policies - Association.** Copies of all such insurance policies obtained by the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, the Board and Owners.

**Section 4. Federal National Mortgage Association (FNMA) Requirements.** Anything contained herein to the contrary notwithstanding the Association shall maintain such bonding and insurance coverage as may be required by FNMA so long as FNMA holds a Mortgage on or owns any Lot.

**Section 5. Other Insurance; Annual Review.** The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, errors and omission insurance and blanket policies of hazard insurance for the Lots. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Association in light of inflation, practice in the area in which the Planned Unit Development Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

**Section 6. Premiums and Proceeds.** Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be an expense to be included in the annual assessments levied by the Association. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any three (3) directors of the Association may sign a loss claim, and such signatures shall be binding on the Association and the Members.

8/10/88

-11-

ARTICLE VICONDEMNATION

In the event the Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

ARTICLE VIIMAINTENANCE AND LANDSCAPING RESPONSIBILITIES

Section 1. Association Maintenance. The Association shall maintain, repair and replace the Association Property.

Section 2. Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his lot and improvements thereon, including, but not limited to, any fence which is on the lot line and the residence located on his lot. The Owner of each lot shall maintain and care for the landscaping located on his lot so that the same presents a neat and attractive appearance. No Owner shall, however, maintain or change any portion of his lot which is covered by a maintenance easement in favor of the Association or any other non-profit homeowners association without the prior written consent of the holder of such easement.

Section 3. Mandatory Landscaping. The then-current Owner of each lot shall, within (i) three (3) years after the initial conveyance by Declarant of the lot, or (ii) ninety (90) days after construction of a residence thereon, whichever shall first occur, cause all portions of his front and side yards which are in view of any private or public street to be landscaped in accordance with a landscape plan approved by the ARC pursuant to the Master Declarant. Each Owner shall at all times before and after any such installation of landscaping, cause his lot to remain free from weeds, trash and any other unsightly objects.

Section 4. Right of Association to Maintain and Install. In the event any Owner fails to maintain his lot or any improvements thereon, including, but not limited to, the residence, landscaping and fences, or fails to install landscaping as required hereby, the Association may, but shall not be obligated to, cause such maintenance and installation to be accomplished as hereinafter set forth.

8/10/88

-12-

(a) Upon the finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of the deficiency to the Owner which shall briefly describe the deficiency and set a date for a hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearings shall be held not less than fifteen (15) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it shall further set a date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(i) The Owner shall have not more than ten (10) days following the receipt thereby of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(ii) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(iii) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than

8/19/88

-13-

twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(iv) Unless the owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Saturday, excluding holidays.

(E) If the Association pays for all or any portion of such maintenance or installation, such amount shall be specially assessed to the affected Owner and his Lot.

**Section 5. Right of Entry.** The Association, after reasonable notice to the Owner, shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association.

**Section 6. Maintenance of Streetscenes by Owners and Association.** Each Owner shall maintain in a safe and attractive condition any landscaping between the boundary line of his Lot and the adjoining private street pavement, notwithstanding that such landscaping may be within the Association Property. The Association shall maintain in a safe and attractive condition the landscaping between the boundary line of any real property subject to its jurisdiction and the adjoining private street pavement.

#### **ARTICLE VIII**

##### **USE PROVISIONS**

**Section 1. Residential Purposes.** No Lot shall be used except for single family residential dwelling purposes. Anything contained herein to the contrary notwithstanding, Declarant shall have the right to use any Lot for purposes of model homes, sales offices and related parking purposes until such time as Declarant has conveyed all Lots in Phase 1 and each other Phase to purchasers thereof.

**Section 2. New Buildings.** No building of any kind shall be moved from any other place onto any of said Lots, or from one Lot to another Lot, without the prior written consent of the Board, except for temporary structures used in connection with the construction of a building or improvement on such Lot.

**Section 3. Trash Containers and Collection.** Each Owner shall place and keep all trash and garbage in covered containers of a type and style approved by the Board. In no event shall such containers be maintained so as to be visible from neighbor-

8/10/88

-14-

ing property except during the period twelve (12) hours before and six (6) hours after pickup of trash by Clark County or a trash disposal company.

**Section 4. Balconies and Decks.** No balcony or deck shall be higher above the ground than the second-floor level, except with the written approval of the Board.

**Section 5. Trees.** All trees shall be trimmed by the Owner of the lot upon which the same are located at the direction of the Board based upon a determination by the Board that such trimming is necessary to prevent the obstruction of the view of other lot Owners within the Estates West. Before planting any trees the proposed location of such trees shall be approved in writing by the Board.

**Section 6. No Antennae.** There shall be no outside television or radio antennae constructed, installed or maintained in or on any lot for any purpose whatsoever without the approval of the Board.

**Section 7. Exterior Clotheslines.** No exterior clothes drying device shall be permitted on any Lot unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Board.

**Section 8. Vehicles, Tents and Shacks.** No tent, shack, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No commercial truck, recreational vehicle, camper, trailer, boat of any kind or other single or multi-purpose engine-powered vehicle, other than a standard passenger vehicle or non-commercial pickup truck or an approved golf cart, shall be parked on any Lot except temporarily and solely for the purpose of loading or unloading unless parked within the garage.

**Section 9. Signs.** No signs other than one (1) sign not to exceed 9 inches in width nor 12 inches in length nor 108 inches in area advertising a lot for sale shall be erected or displayed upon any of said lots or upon any building or other structure thereon without the prior written permission of the Board and all signs must conform with any applicable Clark County ordinances.

**Section 10. No Wells.** No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business.

8/10/83

-15-

**Section 11. Animal Restrictions.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other conventional household pets may be kept on the lots provided that they are not kept, bred or maintained for any commercial purpose or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Lots which result in an annoyance or are obnoxious to residents in the vicinity. No animals shall be allowed within the Association Property except pursuant to rules promulgated by the Board. In any event, any Lot Owner shall be absolutely liable to each and all other Owners, their families, guests and invitees and the Association for any and all damage to property caused by any pets brought or kept upon the Lots or the Association Property by any Lot Owner or by members of his family, guests, invitees or tenants.

**Section 12. No Commercial Activity.** No commercial activity shall be permitted on any Lot.

**Section 13. Nuisances.** No noxious or offensive activity shall be carried on, in or upon any Lot or the Association Property, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Without limiting the generality of the foregoing provisions, no loud noises or noxious odors, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Planned Unit Development Properties, shall be located, used or placed on any portion of any Lot or exposed to the view of other Owners without the prior written approval of the Board. The Board shall have the right to determine in accordance with the Bylaws if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

**Section 14. Drainage.** Each Lot Owner shall permit free access by Owners of adjacent or adjoining Lots to slopes or drainageways located on his Lot when such access is necessary for the maintenance of permanent stabilization on said slopes, or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located. Each Owner shall maintain the established drainage of his Lot.

No Owner of a Lot shall in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots, and each Owner will make adequate provisions for proper drainage in the event it is necessary to do so. For the purpose hereof, "established" drainage is defined as the drainage which

8/10/86

-16-

occurred at the time the overall grading of said Lots was completed by Declarant.

**Section 14. Lot Maintenance.** Each Lot Owner will keep, maintain, water, plant and replant all slope banks and other landscaped areas located on such Owner's Lot so as to prevent erosion and to create and maintain an attractive appearance. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks or other portion of any Lot which may damage or interfere with established slope ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The Board shall be the sole judge in determining compliance with the provisions of this Section, and each individual Lot Owner shall promptly perform or conform to all directives issued by the Board for compliance with the provisions of this Section.

**Section 15. Interpretation of Restrictions.** All questions or interpretations or constructions of any of the terms or conditions contained in this Article shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected. Any approval of the Board shall not obviate any ARC approval required by the Master Declaration.

**Section 16. Leasing of Lots.** Each Owner shall have the right to lease his Lot, provided that all such leases must be in writing and shall provide that the lease is subject in all respects to the provisions of this Declaration and the Master Declaration, and that any failure of the lessee to comply with the provisions of each such document shall constitute a default under the lease. A lessee shall have no obligation to the Association to pay assessments imposed by the Association. No Owner may lease his Lot or improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

#### **ARTICLE IX**

##### **RIGHTS OF MORTGAGEES**

**Section 1. Payments of Taxes or Premiums by Mortgagees.** Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or severally, also pay over-

8/10/88

-17-

due premiums on casualty insurance policies, or secure a new casualty insurance policy, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee who requests the same to be executed by the Association.

**Section 2. Mortgagee Curing Default.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

**Section 3. Approval of First Mortgagees.** Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or this Declaration. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this subsection. The adjustment of boundaries between the Association Property and one or more lots shall also not be deemed a transfer within the meaning of this subsection, provided that such adjustment does not impede access or utilities to any lot. Any restoration or repair of the Association Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders, Insurers or Guarantors.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residential lots, the exterior maintenance of

8/10/88

-18-

residences, the maintenance of the Association Property walks or common fences and driveways, or the upkeep of lawns and plantings in the project.

(d) Fail to maintain fire and extended coverage insurance on the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any portion of the Association Property for other than the repair, replacement or reconstruction of such Association Property.

**Section 4. Termination of Professional Management.** When professional management has been previously required by any Eligible Mortgage Holder, Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder, Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association, and the approval of Eligible Holders, Insurers or Guarantors of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders, Insurers or Guarantors.

**Section 5. Notice to Eligible Mortgagees.** Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Lot number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor; notice from the Association shall pertain to the Lots only.

(b) Any delinquency in the payment of Association assessments or charges owed by an Owner subject to a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by Association.

8/10/88

-19-

(3) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

**Section 5. Documents to be Available to Mortgagees.** The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of the Declaration, Bylaws, other rules concerning the project and its books, records and financial statements. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of first Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

**Section 7. Mortgagee Protection Re Breach.** A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Lot; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Lot in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale or note holder acquiring title in lieu thereof shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

**Section 8. Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

## **ARTICLE 2**

### **ENFORCEMENT**

**Section 1. Enforcement Authority.** The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. In addition, the Master Association may enforce any provisions herein which require ARC or Master Association approvals.

**Section 2. No Waiver.** Failure by the Association, Master Association, Declarant or any Owner to enforce any provision of

8/10/88

-20-

this Declaration shall in no event be deemed a waiver of the right to sue to enforce.

**Section 1. Mortgages Protection.** A breach of any of the covenants, conditions, restrictions or other provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any lot; provided, however, that any subsequent Owner of the lot shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

## ARTICLE II

### GENERAL PROVISIONS

**Section 1. Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity, by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

**Section 2. Amendment.** Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by members of the Association Secretary certifying that Association members entitled to exercise sixty-six and two-thirds percent (66-2/3%; or more of the voting power of each class of members of the Association have approved the amendment. An amendment shall become effective upon the recording thereof with the Office of the County Recorder of Clark County, Nevada. Anything contained herein to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the lots (based upon one (1) vote for each such Mortgage). "Material amendment" shall mean, for purposes of this Section 2, any amendment to provisions of this Declaration governing any of the following subjects:

(a) The fundamental purpose for which the project was created (such as a change from residential use to a different use).

(b) Assessments, assessment liens and subordination thereof.

(c) The reserve for maintenance, repair and replacement of the Association Property.

(d) Property maintenance and repair obligations.

(e) Casualty/Liability Insurance and fidelity bonds.

8/10/86

-21-

(f) Reconstruction in the event of damage or destruction.

(g) Rights to Use The Association Property.

(h) Annexation.

(i) Voting.

(j) Boundaries of any lot.

(k) Leasing of Lots.

(l) Imposition of any right of first refusal or similar restriction on the right of an owner to sell, transfer or otherwise convey his lot.

(m) Any provision which, by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

Notwithstanding anything herein stated to the contrary, none of the following Sections hereof may be amended without Declarant's prior written consent: Section 4, Section 5 or Section 9 of this Article X.

**Section 3. Term of Restrictions.** Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2080, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2080, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2080, or at the end of any such ten (10)-year period.

**Section 4. Annexation of Lots.**

(a) Phase 1 is the first phase of a projected multi-phase staged development as set forth in the Recitals of this Declaration. Nothing contained

8/10/88

-22-

herein, however, shall require Declarant to complete the future phases of the planned overall project.

(b) If, within five (5) years of the date of the conveyance of a Lot by Declarant within Phase 1 to a retail purchaser thereof, Declarant should develop additional lands within the Estates West portion of the Planned Unit Development Properties, such additional lands or any portion thereof may be made subject to this Declaration and added to and included within the jurisdiction of the Association by action of Declarant without the assent of members of the Association. Said annexation may be accomplished by the recording of a Declaration of Annexation or by the recording of a separate Declaration of Restrictions which requires Owners of Lots therein to be members of the Association. Subsequent Phases of the Estates West may be so annexed and made subject to this Declaration and added to and included within the jurisdiction of the Association by Declarant, without the assent of members of the Association, five (5) years after close of escrow for sale of a Lot from Declarant to a retail purchaser within the last Phase to be annexed. The obligation of Lot Owners to pay dues to the Association and the right of such Owners to exercise voting rights in the Association shall not commence until the first day of the month following close of the first sale of a Lot by Declarant to that particular Owner.

**Section 5. Annexation to Association Property.** Declarant may, during the time periods for annexation of additional Phases, transfer to the Association additional Association Property and the Association shall accept title and the obligation to maintain and repair the same.

**Section 6. No Amendment.** Neither Section 4 nor Section 5 above may be amended without Declarant's prior written consent.

**Section 7. Annexation by Owners.** In addition to the provisions of Sections 4 and 5 above, additional land may be annexed to the jurisdiction of the Association and this Declaration upon the vote or written consent of two-thirds (2/3) of the voting power of each class of members of the Association.

**Section 8. Litigation.** In the event any person or entity shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

8/10/88

-23-

**Section 9. Declarant Exemption.** Declarant is undertaking the work of construction of residential dwellings and incidental improvements upon the property described in Recital 7 of this Declaration. The completion of that work, and the sale, rental and other disposal of the dwellings is essential to the establishment and welfare of the project as a residential community. In order that said work may be completed and the Lots be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Lots whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any lot such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Lots as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any Lot its business of completing said work, and of establishing a plan of disposing of the Lots by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs, flags, poles, banners, parking, advertisements and other facilities attendant to sales, leasing and other marketing activities on any of the Lots as may be necessary for the sale, lease or disposition thereof.

IN WITNESS WHEREOF, the undersigned, being Declarant and the legal owner herein, has executed this instrument the day and year first hereinabove written.

SPANISH TRAIL ASSOCIATES, a Nevada

By

JOSEPH A. BLASCO

By

JAMES BLASCO

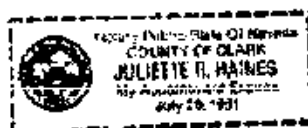
8/10/88

-24-

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

On this 17 day of August, 1988, before me, a Notary Public in and for said state, personally appeared David A. Haines and Juliette R. Haines personally known to me (or proved to me on the basis of satisfactory evidence) to be the partners of SPANISH TRAIL ASSOCIATES, the limited partnership that executed the within instrument, and acknowledged to me that such partnership executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



Juliette R. Haines  
Notary Public in and for said  
County and State.

SUBORDINATION AGREEMENT

FIRST INTERSTATE BANK OF NEVADA, N.A., being the beneficiary under that certain deed of trust dated December 17, 1986 and recorded January 26, 1987, in Book 870126 as Document No. 00363 of Official Records of Clark County, Nevada, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration Of Restrictions referred to in the Declaration of Annexation to which this Subordination Agreement is attached and to the Declaration of Annexation.

FIRST INTERSTATE BANK OF NEVADA, N.A.

By [Signature]

DEAN D. GUNN

By [Signature]

WILLIAM D. GUNN

STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

On this 16<sup>th</sup> day of August, 1988, before me, a Notary Public in and for said state, personally appeared Dean D. Gunn, personally known to me (or proved to me on the basis of satisfactory evidence) to be the President, and Kandy Gunn, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President of FIRST INTERSTATE BANK OF NEVADA, N.A., the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



NOTARY PUBLIC  
STATE OF NEVADA  
County of Clark  
JACKIE S. HOUGHIN  
My Commission Expires Oct. 22, 1991

[Signature]  
Notary Public in and for said  
County and State.

SUBORDINATION AGREEMENT

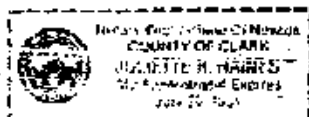
JOSEPH BLASCO, Trustee under Trust Agreement dated March 11, 1974, being the beneficiary under that certain deed of trust dated September 7, 1983 and recorded September 12, 1983 as File/Page No. 1761633, in Book 1802 of Official Records of Clark County, Nevada, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Restrictions referred to in the Declaration of Annexation to which this Subordination Agreement is attached and to the Declaration of Annexation.

*Joseph Blasco*  
JOSEPH BLASCO, Trustee under Trust  
Agreement dated March 11, 1974

STATE OF NEVADA        )  
                              ) ss.  
COUNTY OF CLARK     )

On this 17 day of August, 1988, before me, a Notary Public in and for said state, personally appeared JOSEPH BLASCO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Trustee under Trust Agreement dated March 11, 1974, the Trust that executed the within instrument, and acknowledged to me that such Trust executed the same.

WITNESS my hand and official seal.



*Juanette H. Harris*  
Notary Public in and for said  
County and State.

**EXHIBIT "A"****DESCRIPTION:**

Situate in the County of Clark, State of Nevada, described as follows:

**PARCEL I:**

The North Half (N 1/2) of Section 27, Township 21 South, Range 60 East, N.D.B.M.

EXCEPTING the North Fifty (50) feet.

FURTHER EXCEPTING THEREFROM the East sixty feet (60.00'), and the South forty feet (40.00') of the North Half (N 1/2) of Section 27, Township 21 South, Range 60 East, N.D.B.M., Nevada; together with a spandrel area in the Northeast corner thereof, being the Southwest corner of the intersection of Tropicana Boulevard and Rainbow Boulevard, bounded as follows: On the North by the South line of the North fifty feet (50.00') thereof; on the East by the West line of the East sixty feet (60.00') thereof; and on the Southwest by the arc of a curve concave Southwesterly, having a radius of fifty-four feet (54.00') and being tangent to the South line of said North fifty feet (50.00') and tangent to the West line of said East sixty feet (60.00'); also together with a spandrel area in the Southeast corner thereof, being the Northwest corner of the intersection of Hacienda Avenue and Rainbow Boulevard, bounded as follows: On the East by the West line of the East sixty feet (60.00') thereof; on the South by the North line of the South forty feet (40.00') thereof; and on the Northwest by the arc of a curve concave Northwesterly, having a radius of twenty-five feet (25.00') and being tangent to the West line of the East sixty feet (60.00') and tangent to the North line of the South forty feet (40.00').

AND FURTHER EXCEPTING THEREFROM the following described parcel:

COMMENCING at the Northeast corner of the Northwest Quarter (NW 1/4) of said Section 27;  
 THENCE 00°45'59" East, along the East line thereof, 25.00 feet to the TRUE POINT OF BEGINNING;  
 THENCE departing said East line South 89°30'31" West, 66.73 feet;  
 THENCE tangent to the last-named bearing curving to the left along a curve being concave Southerly and having a radius of 1000.00 feet through a central angle of 05°42'38" an arc length of 99.67 feet;  
 THENCE South 83°47'53" West, 151.50 feet;  
 THENCE tangent to the last-named bearing curving to the right along a curve being concave Northerly and having a radius of 1000.00 feet through a central angle of 05°42'38" an arc length of 99.67 feet;  
 THENCE North 89°30'31" East, along a line being parallel with and 50.00 feet South (measured at right angles) from the North line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section 27, a distance of 418.60 feet;  
 THENCE North 00°45'59" West, 25.00 feet to the TRUE POINT OF BEGINNING.

**PARCEL II:**

The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 21 South, Range 60 East, N.D.B.M.

EXCEPTING the North Fifty (50) feet and the West Sixty (60) feet thereof.

**PARCEL III:**

The South Half (S 1/2) of the North Half (N 1/2) of Section 28, Township 21 South, Range 60 East, N.D.B.M.

EXCEPTING THEREFROM the South Forty (40) feet together with a spandrel area in the Southeast corner thereof, being the Northeast corner of the intersection of Hacienda Avenue and Durango Drive, bounded as follows: On the West by the East line of the West fifty feet (50.00') thereof; on the South by the North line of the South forty feet (40.00') thereof; and on the Northeast by the arc of a curve concave Northeasterly, having a radius of twenty-five feet (25.00') and being tangent to the East line of the West fifty feet (50.00') and tangent to the North line of the South forty feet (40.00').

PARCEL IV:

The North Half (N 1/2) of the North Half (N 1/2) of Section 28, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the North Fifty (50) feet and the West Fifty (50) feet; together with a spandrel area in the Northwest corner thereof, being the Southeast corner of the intersection of Tropicana Boulevard and Durango Drive, bounded as follows: On the North by the South line of the North fifty feet (50.00') thereof; on the West by the East line of the West fifty feet (50.00') thereof; and on the Southeast by the arc of a curve concave Southeasterly, having a radius of fifty-four feet (54.00') and being tangent to the South line of said North fifty feet (50.00') and tangent to the East line of said West fifty feet (50.00').

CLARK COUNTY, NEVADA  
JOHN L. CLARK, COUNTY CLERK  
RECORDED AT REQUEST OF  
E. QUIRK  
88-17-88 15:31 PR1 TP  
OFFICIAL RECORDS  
BOOK 880817 PAGE 00763  
150 35.88 PPT .00

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Recording Requested By  
and  
When Recorded Return To:

Edward J. Quirk, Esq.  
SEILER, QUIRK & TRATOS  
550 East Charleston Boulevard  
Suite D  
Las Vegas, Nevada 89104

MASTER  
DECLARATION OF RESTRICTIONS  
FOR  
SPANISH TRAIL

RECORDED TO CORRECT LEGAL  
DESCRIPTION ON EXHIBIT "A"

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1844877

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE I	
Section 1	4
Section 2	4
Section 3	4
Section 4	4
Section 5	4
Section 6	4
Section 7	4
Section 8	4
Section 9	4
Section 10	5
Section 11	5
Section 12	5
Section 13	5
Section 14	5
Section 15	5
Section 16	5
ARTICLE II	
PROPERTY RIGHTS IN MASTER ASSOCIATION	
Section 1	5
Section 2	5
ARTICLE III	
MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION	
Section 1	7
Section 2	7
Section 3	7
Section 4	7
ARTICLE IV	
SECURITY SYSTEM	
Section 1	8
Section 2	8
Section 3	8
Section 4	8
Section 5	8
ARTICLE V	
COVENANT FOR TENANT ASSESSMENTS TO MASTER ASSOCIATION	
Section 1	8
Section 2	8
Section 3	9

000 : 885

1844877.

3

		PAGE
Section 4	Commencement of Assessments	9
Section 5	Delinquent Assessments	9
Section 6	Subordination to First Mortgages	10
Section 7	Trust Account	11
ARTICLE VI	ARCHITECTURAL CONTROL	11
Section 1	Architectural Committee	11
Section 2	ARC Approval	12
Section 3	Interpretation	12
Section 4	Violations	12
Section 5	Submission of Plans and Specifications	12
Section 6	Inspection	13
Section 7	No Waiver	14
Section 8	Reimbursement	14
Section 9	Liability	14
Section 10	Move On	14
Section 11	Dil. ently Prosecute Work	14
Section 12	Declarant Exemption	15
ARTICLE VII	INSURANCE	15
Section 1	Hazard Insurance - Master Association	15
Section 2	Liability Insurance - Master Association	15
Section 3	Inspection of Policies - Master Association	15
Section 4	Federal National Mortgage Association ("FNMA")	16
Section 5	Other Insurance; Annual Review	16
Section 6	Premiums and Proceeds	16
ARTICLE VIII	CONDEMNATION	16
ARTICLE IX	MAINTENANCE RESPONSIBILITIES	17
Section 1	Master Association Maintenance	17
Section 2	Owner Maintenance	17
Section 3	Right of Entry	17
ARTICLE X	RIGHTS OF MORTGAGEES	17
Section 1	Payments of Taxes or Premiums by Mortgagees	17
Section 2	Mortgagee Curing Defaults	18
Section 3	Approval of First Mortgages	18
Section 4	Termination of Professional Management	18
Section 5	Notice to Eligible Mortgagees	19
Section 6	Documents to be Available to Mortgagees	19
Section 7	Mortgagee Protection Re Breach	20
Section 8	Conflicts	20
ARTICLE XI	ENFORCEMENT	20
Section 1	Master Association	20

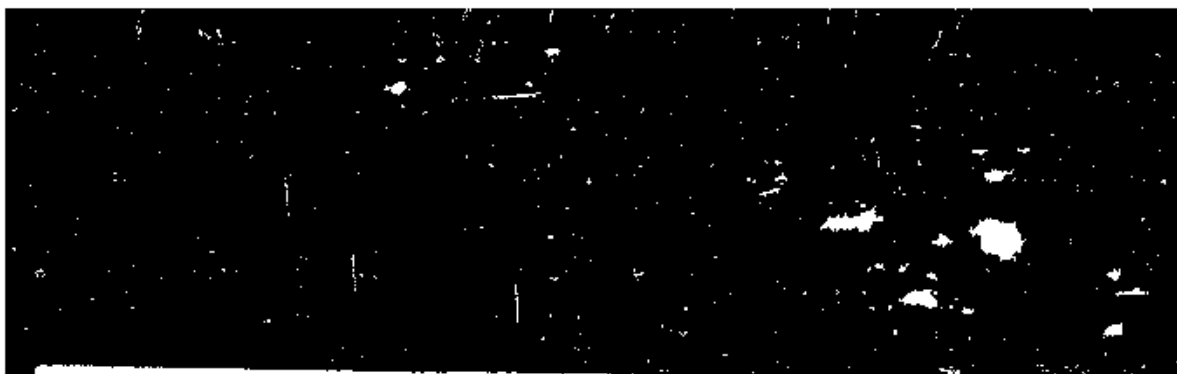


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	<u>PAGE</u>
Section 2 No Waiver	20
Section 3 Mortgage Protection	20
ARTICLE XII GENERAL PROVISIONS	20
Section 1 Severability	20
Section 2 Amendment	21
Section 3 Term of Restrictions	22
Section 4 Annexation of Lots	22
Section 5 Annexation to Master Association Property	23
Section 6 No Amendment	23
Section 7 Annexation by Owners	23
Section 8 Litigation	23
Section 9 Declarant Exemption	23



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MASTER  
DECLARATION OF RESTRICTIONS  
Spanish Trail

THIS MASTER DECLARATION OF RESTRICTIONS is made as of this 26<sup>th</sup> day of February, 1984, by SPANISH TRAIL ASSOCIATES, a Nevada limited partnership (hereinafter called "Declarant"), with reference to the following

RECITALS:

A. Declarant is the owner of the real property located in Clark County, Nevada, more particularly described on Exhibit "A" attached hereto and incorporated herein (hereinafter called the "Planned Unit Development Properties").

B. Declarant intends to develop and improve certain of the Planned Unit Development Properties in Phases and offer the same for sale to the public as (i) residential lots for custom homes to be built by the Lot Owners and/or Declarant, who may also build production homes thereon, (ii) detached patio homes, and (iii) attached homes.

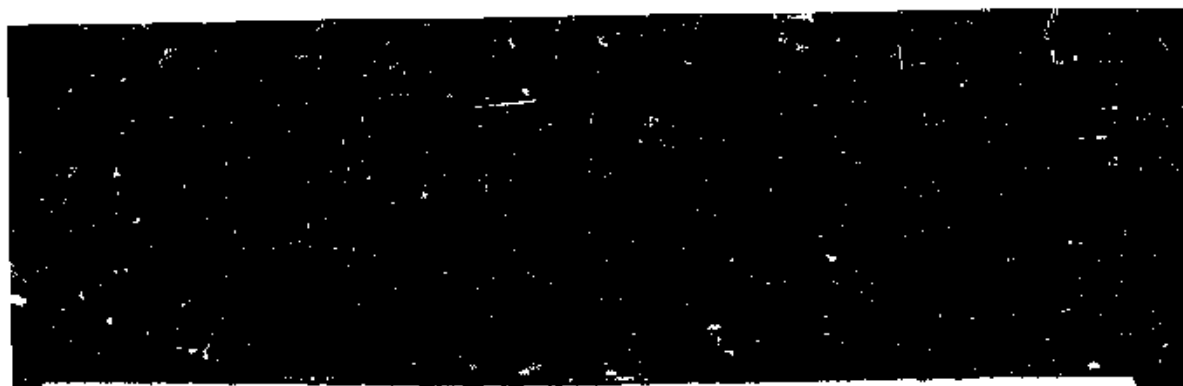
C. The first Phase of development of the Planned Unit Development Properties consists of 58 Lots described as follows:

Lots 1 through 58, inclusive, of ESTATES AT SPANISH TRAIL UNIT 1 filed with the County Recorder of Clark County, Nevada on MARCH 1, 1984 in Book 31 of Plats, Page 4

and is hereinafter referred to as "Phase I".

D. When completely developed, it is estimated that there will be approximately 3,000 residential units within the Planned Development Properties. Although Declarant is not obligated to do so, Declarant intends to annex subsequent Phases of the Planned Unit Development Properties to the lien and charge of this Master Declaration of Restrictions and thereby cause the individual Owners of residences therein to become members of SPANISH TRAIL MASTER ASSOCIATION, a Nevada nonprofit corporation.

E. Given the size and complexity of the Planned Unit Development Properties, the exact phasing of the same and the exact uses as residential lots, custom homes and production detached and attached homes has not yet been finally determined. In general, however, it is intended that the Planned Unit Development Properties be developed in a manner consistent with the Resolution of Intent to Reclassify Real Property (hereinafter referred to as the "Master Development") approved by Clark County



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on December 7, 1983. There is, however, no guaranty nor obligation that the Planned Unit Development Properties will be developed in their entirety or in the manner so approved by Clark County.

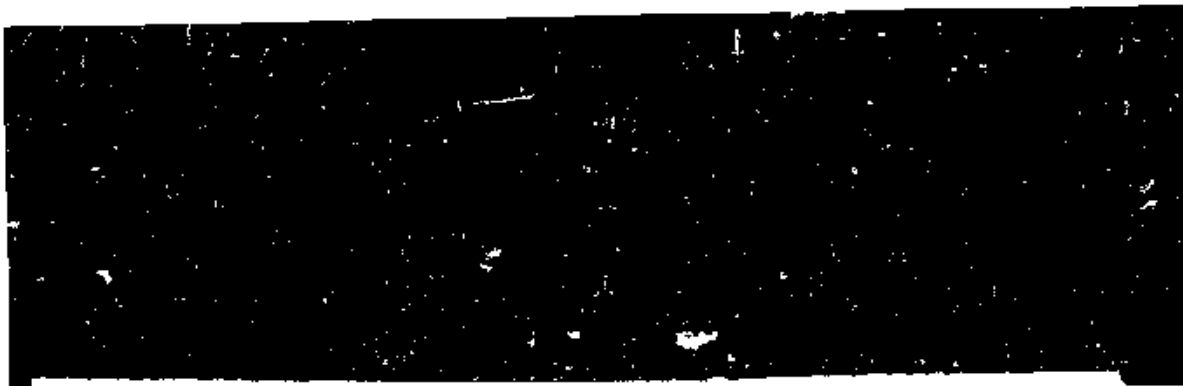
F. The Master Development includes properties owned by Declarant in addition to the Planned Unit Development Properties which may be developed for mixed residential, commercial and recreational uses, including development of a privately-owned and operated golf club. Ownership of a residence within the Planned Unit Development Properties will not mandate membership in the private golf club.

G. In connection with the development of the Planned Unit Development Properties, Declarant has caused to be formed SPANISH TRAIL MASTER ASSOCIATION, a Nevada nonprofit corporation (hereinafter called the "Master Association"), which is the homeowners association for the overall development of the Planned Unit Development Properties. Each Lot in Phase I shall have appurtenant to it a Class A membership in the Master Association. Upon annexation of additional Phases to this Master Declaration, it is planned that Owners of residences therein shall also become members of the Master Association. There is no guarantee that such annexation will occur.

H. The Master Association will be given non-exclusive access easement rights to certain private streets within the Planned Unit Development Properties, as well as landscaping easements to certain landscaped areas generally located outside the perimeter wall installed by Declarant for the Planned Unit Development Properties. Eventually, the Master Association may be given fee title to certain private streets. In addition, the Master Association will be given easements to maintain that portion of such wall which lies within Phase I. The easements to be owned by the Master Association on behalf of its members upon the conveyance of the first Lot in Phase I to an Owner are described as follows:

Easements for ingress and egress, street maintenance and repair and utility and utility repair, security and security system repair purposes over, under, upon and across Spanish Trail Lane, as shown on ESTATES AT SPANISH TRAIL UNIT 1, filed with the County Recorder of Clark County, Nevada on March 1, 1984 in Book 31 of Plate, Page 4.

Together with easements for wall, wall maintenance, landscaping and landscaping maintenance purposes over, under, upon and across the Master Common Area as shown on ESTATES AT SPANISH TRAIL UNIT 1, filed with the County Recorder of Clark



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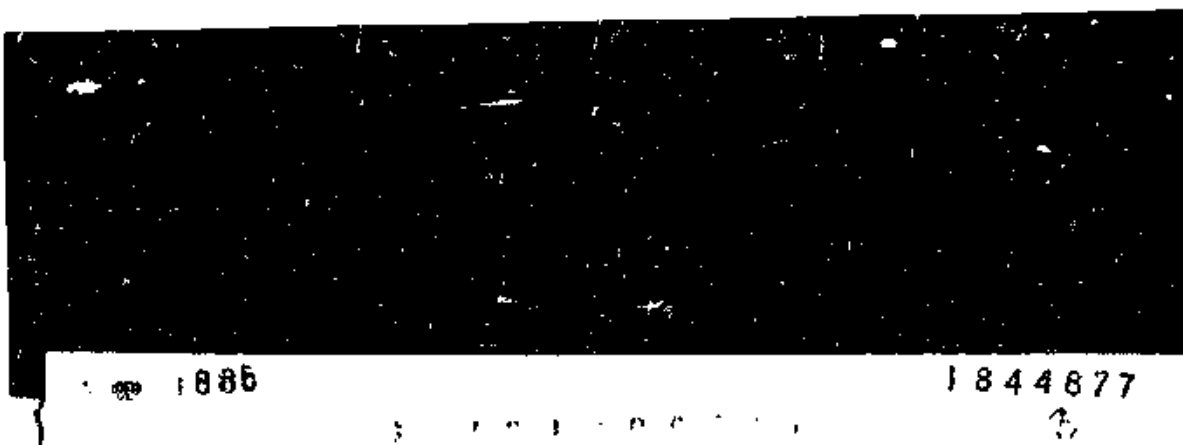
County, Nevada on MARCH 1, 1984 in Book 31  
of Plans, Page 9.

All easements and other property rights (including, but not limited to, any ownership in fee simple) owned by the Master Association is hereinafter referred to as the "Master Association Property".

I. It is further intended that the Master Association eventually become the owner in fee simple of certain real property within the Planned Unit Development Properties which Declarant is obligated to develop and improve with a tennis clubhouse and tennis court facilities, pursuant to an Agreement between the Club, Master Association and Developer effective February 15, 1984. Such Agreement obligates Declarant to build the tennis facilities in phases, with the first improvements consisting of five (5) tennis courts to be completed on or before April 15, 1985. All Master Association Property shall be maintained by the Master Association and as set forth below be subject to the Master Association management and control for the benefit of its members. As stated in Recital H, it is intended that the Master Association maintain (i) the wall which separates Lots which have become subject to this Declaration from Master Association Property and/or public streets, together with (ii) landscaping which exists between the wall and the adjacent public street. Some of the landscaped areas may be located on Master Association Property and other of the landscaped areas may be located within public rights-of-way but subject to maintenance by the Master Association, pursuant to agreement with Clark County and the Master Association and/or Declarant.

J. Before selling or conveying any interest in Phase I, Declarant desires to subject the Lots in Phase I in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Planned Unit Development Properties.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of the Planned Unit Development Properties, and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in Phase I under and pursuant to which covenants, conditions and restrictions each ownership interest in Phase I shall hereafter be held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of the covenants, conditions and restrictions set forth herein are for the purpose of protecting the value and desirability of and inure to the benefit with and be binding upon and pass with Phase I and each and every ownership interest therein, together with such additional portions of the Planned Unit Development Properties which become



annexed hereto, and shall inure to the benefit of and apply to and bind respective successors in interest in title or interest of Declarant.

#### ARTICLE I

##### DEFINITIONS

Section 1. "Board" shall mean and refer to the Board of Directors of the Master Association.

Section 2. "Bylaws" shall mean and refer to the Bylaws of the Master Association as they may from time to time be amended.

Section 3. "Declarant" shall mean and refer to SPANISH TRAIL ASSOCIATES, a Nevada limited partnership, and its successors if the rights and obligations of Declarant hereunder should be assigned to and assumed by such successors.

Section 4. "Declaration" shall mean and refer to this enabling Master Declaration of Restrictions as it may from time to time be amended.

Section 5. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Master Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws.

Section 6. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Lot who has requested notice from the Master Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws.

Section 7. "Lot" shall mean and refer to any plot of land (other than the Master Association Property or any property owned by any nonprofit corporation for the common use and enjoyment of Owners within a Phase(s) of the Planned Unit Development Properties) shown upon any recorded final map of the Planned Unit Development Properties, or any residential condominium within the Planned Unit Development Properties, the Owner of which is required by Declaration to be a member of the Master Association. Should two or more adjacent Lots be (i) in the same ownership and (ii) in use for the same single family residence, the Lots shall be deemed merged into a single Lot for purposes of this Master Declaration.

Section 8. "Master Association" shall mean and refer to SPANISH TRAIL MASTER ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns.

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Section 9. "Master Association Property" shall mean and refer to all easements and real property (including improvements thereon and interests therein) owned by the Master Association. For maintenance and assessment purposes, "Master Association Property" shall also refer to those landscaped areas within the public rights of way which may be or shall be maintained by the Master Association pursuant to agreement, permit or license granted by Clark County, Nevada.

Section 10. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

Section 11. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

Section 12. "Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor.

Section 13. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any "lot" as that term is defined and limited by Section 7 above, which is a part of the Planned Unit Development Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Phase" shall mean and refer to those certain lots which are covered by separate Declarations of Annexation whereby the same become subject to this Declaration.

Section 15. "Phase I" shall mean and refer to that certain real property located in Clark County, Nevada, more particularly described as:

Lots 1 through 58, inclusive, of ESTATES AT SPANISH TRAIL UNIT 1 filed with the County Recorder of Clark County, Nevada, on MAY 21, 1984 in Book 31 of Plats, Page 4.

Section 16. "Planned Unit Development Properties" shall mean and refer to that real property located in Clark County, Nevada, described on Exhibit "A" attached hereto and incorporated herein.

#### ARTICLE II

##### PROPERTY RIGHTS IN MASTER ASSOCIATION PROPERTY

Section 1. Owners' Easements of Enjoyment. Every Owner of a lot shall have a right and easement of ingress and egress and of enjoyment in and to the Master Association Property which shall be appurtenant to and shall pass with the title to each lot, subject to the following provisions:

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(a) The right of the Master Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Master Association Property.

(b) The right of Declarant to use the Master Association Property for sales, development and related activities, together with the right of Declarant to transfer such easements to others.

(c) The right of the Master Association, after an opportunity for a hearing before the Board as provided in the Bylaws, to suspend the voting rights and right to use of any recreational facilities by an Owner for nonpayment of any assessment by the Master Association against his lot or if he is otherwise in breach of his obligations under this Declaration, or the Bylaws or the rules and regulations of the Board, all as set forth in the Bylaws.

(d) The right of the Master Association to dedicate or transfer all or any part of the Master Association Property to any public agency, authority or utility subject to such conditions as may be agreed to by the Master Association members. No such dedication or transfer shall be effective except upon the vote or written consent of two-thirds (2/3) of each class of members of the Master Association. The granting of easements for utilities or for other purposes consistent with the intended use of the Master Association Property, and the granting of easements for maintenance purposes, shall be deemed not to be a dedication or transfer requiring the vote or written consent of the Master Association members. The Board shall have the right and duty to transfer the Master Association Property to a corporation, if any, to which all the Owners are members and which was established by the Board as the successor to the Master Association's rights and obligations hereunder and to replace the Master Association upon its termination.

(e) The right of the Board to adopt rules and regulations regarding reasonable use of the Master Association Property. Such rules and regulations shall not deny any Owner access to his lot.

(f) The obligation of the Master Association to allow non-Owners who are members of the Spanish Trail Country Club, a Nevada nonprofit corporation, to use the tennis facilities to be conveyed to the Master Association pursuant to that certain Agreement Between Club, Master Association and Developer effective February 15, 1984. Such use shall be subject to the rules and regulations of the Board, which, except for the requirement that non-Owners pay reasonable use fees, shall not discriminate between Owner and non-Owner users of the tennis facilities.

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Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Master Association Property and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use such facilities by reason of ownership of that Lot during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the Board, which rules and regulations may limit the number of guests who may use such facilities. The Board may also promulgate rules and regulations limiting the use of the Master Association Property to one co-Owner and his immediate family with respect to any Lot in co-ownership.

#### ARTICLE III

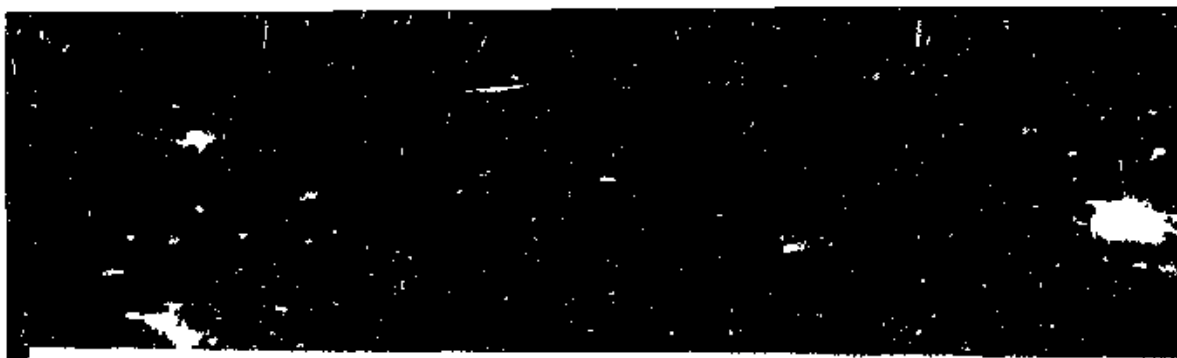
##### MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION

Section 1. Membership in Master Association. Every Owner shall be a member of the Master Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Every Owner shall promptly, fully and faithfully comply with and abide by the Bylaws and the rules and regulations adopted from time to time by the Board and the officers of the Master Association.

Section 2. Classes of Membership. The Master Association shall have two (2) classes of voting membership, as set forth in the Bylaws.

Section 3. Duty of Master Association. The Master Association, acting through the Board, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Master Association Property, together with the improvements, including a security system, trees, shrubbery, plants and grass thereon, all as more fully set forth in the Bylaws and the terms and conditions pursuant to which the Master Association owns the Master Association Property.

Section 4. Non-Liability of Board. In discharging their duties and responsibilities, the Board acts on behalf of and as the representative of the Master Association which acts on behalf of and as the representative of the Owners, and no member of the Board shall be individually or personally liable for performance or failure of performance of his duties and responsibilities unless he fails to act in good faith.



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#### ARTICLE IV

##### SECURITY SYSTEM

Section 1. Operation by Master Association. The Board shall operate and maintain a security system within the Master Association Property which may include a guard gate, security personnel and an alarm system to which the Lots may be connected.

Section 2. Master Association Easement. The Master Association is hereby granted the right and easement to enter any lot (but not the residence improved thereon unless such authority is specifically given) in answer to an alarm or when circumstances reasonably cause security personnel to believe that a present security risk justifies such entrance.

Section 3. Management of Security System. The Master Association shall manage and control the security gate and other amenities of the security system and the Board may promulgate reasonable rules and regulations regarding the usage by Owners and their guests of the security gate and the types of alarms and other equipment which may be connected to the system.

Section 4. No Degradation of System. No Owner shall do anything which shall degrade the effectiveness of the security system and each Owner shall exercise the greatest care to not lose any card key, remote control device or similar equipment which might be used with the security system.

Section 5. No Warranty of Effectiveness. Neither Declarant nor the Master Association warrants that Spanish Trail will be a full security project, nor do they warrant that the security system will prevent criminal activity.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION

Section 1. Creation of Liens. The Declarant, for each lot owned, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Master Association: (1) regular assessments, and (11) special assessments, such assessments to be established and collected as provided in the Bylaws. The regular and special assessments, together with interest, costs, late payment charges and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges and reasonable attorney's fees, shall also

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be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Late payment charges shall be in the amount provided for in the Bylaws.

Section 2. Purpose of Assessments. The assessments levied by the Master Association shall be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement, management and maintenance of the Master Association Property and the maintenance requirements pursuant to this Declaration covering the Master Association Property.

Section 3. Uniform Rate of Assessments. Except as may be otherwise provided in the Bylaws, both regular and special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis or otherwise as determined by the Board.

Section 4. Commencement of Assessments. The regular assessments provided for herein shall commence as to each Lot in Phase I on the first day of the month following the first conveyance by Declarant of any such Lot to an Owner. Regular assessments shall so commence on each Lot in each subsequent Phase on the first day of the month following the first conveyance by Declarant of any such Lot in each respective subsequent Phase. It is not intended that regular assessments commence as a result of any conveyance of a Lot to a successor Declarant. Declarant shall have the right to cause regular assessments to earlier commence by recording a written notice of commencement of regular assessments with the County Recorder of Clark County, Nevada, which describes the date of commencement and the affected lots. Written notice of the regular assessment shall be sent to every Owner subject thereto. The amount and due dates of the regular assessment shall be established by the Board as provided in the Bylaws. The Master Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Master Association setting forth whether the assessments on a specified Lot have been paid. Anything herein to the contrary notwithstanding, no regular assessments shall commence pursuant to this Section 4 prior to January 1, 1985.

Section 5. Delinquent Assessments. Any assessment made by the Master Association in accordance with this Declaration shall be a debt of the Owner of a Lot at the time the assessment is made. Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate provided for in the Bylaws and a late charge may be imposed for each such late payment in the amount provided for in the Bylaws. The Master Association may bring an action at law against the Owner



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personally obligated to pay the same, and in addition thereto or in lieu thereof, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Master Association Property or abandonment of his Lot.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The amount of or, such delinquent assessment, plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Lot when the Master Association causes to be recorded with the County Recorder of Clark County, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed and the name of the record owner thereof. Such notice shall be signed by the President or Vice President, and the Secretary or Assistant Secretary of the Master Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Master Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Unless sooner satisfied and released, or the enforcement thereof initiated as hereinafter provided, such lien shall expire and be of no further force and effect two (2) years from the date of recordation of the Notice of Delinquent Assessment. The two (2) year period may be extended by the Master Association for not to exceed two (2) additional years by recording a written extension thereof.

Such lien may be enforced by sale by the Master Association, its attorney or other person authorized to make the sale, after failure of the Owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Covenants Nos. 6, 7 and 8 of Nevada Revised Statutes 107.030 and 107.090 insofar as they are consistent with the provisions of Nevada Revised Statutes 278A.160 or in any other manner permitted by law. The Master Association shall have the power to purchase the Lot at foreclosure sale and to hold, lease, mortgage and convey the same.

Section 6. Subordination to First Mortgages. The lien of the assessments provided for herein shall be prior to all other liens recorded subsequent to the recordation of the Notice of Delinquent Assessment, except that the lien of the assessment, provided for herein, shall be subordinate to the lien of any first Mortgage given for value, and the sale or transfer of any Lot pursuant to first Mortgage foreclosure shall extinguish the

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lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

Section 7. Trust Account. The Master Association shall immediately deposit the regular and special assessments it receives in a trust account maintained by it with a bank or recognized depository in the State of Nevada.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

Section 1. Architectural Committee. There shall be an initial "Architectural Committee" (sometimes hereinafter "ARC") consisting of five (5) persons, each appointed by Declarant. Until ten (10) years following the date of conveyance by Declarant of the first Lot to a purchaser thereof, each member of the Architectural Committee shall be subject to removal at the direction of the Declarant at any time and from time to time, and all vacancies on the Architectural Committee shall be filled by appointment of the Declarant. Commencing ten (10) years following the date of conveyance by Declarant of the first Lot to a retail purchaser thereof or upon Declarant resigning its right to appoint Architectural Committee members, whichever shall first occur, the Board shall have the power to appoint all members of the Architectural Committee. Members of the Architectural Committee appointed by the Board shall be members of the Master Association. The Architectural Committee is hereby deemed to be an independent committee of the Board and shall be subject to all requirements of any Directors' and Officers' Liability Insurance obtained by the Master Association so that such members of the Architectural Committee are covered thereby; provided, however, Architectural Committee members need not be members of the Board.

Section 2. ARC Approval. No building or other structure or improvement, including, but not limited to, landscaping, shall be erected, placed or altered upon any Lot until the location and the complete plans and specifications thereof (including the color scheme of each building, fence and/or wall to be erected) have been approved in writing by the ARC. The ARC shall provide guidelines for the submission of plans and specifications which may be amended by the ARC from time to time. Such guidelines shall set forth both procedural requirements as to submittal to the ARC as well as architectural, landscaping and other applicable

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substantive specifications. A reasonable fee may be imposed on applicants for review by the ARC. Failure to comply with the requirements for ARC approval shall be deemed sufficient basis for the ARC to refuse to review the submission. In the event the ARC fails to approve or disapprove the location, plans and specifications or other request made of it within sixty (60) days after the submission thereof to it, then such approval will not be required, provided any improvement so made conforms to all other conditions and restrictions herein contained and is in harmony with similar improvements erected within the project. No alteration shall be made in the exterior color design or openings of any building or other construction unless written approval of said alteration shall have been obtained from the ARC. The grade, level or drainage characteristics of any lot shall not be altered without the prior written consent of the ARC. When the ARC issues an approval as provided for herein, a copy of the plans and specifications shall be returned to the ARC for permanent record. Anything herein to the contrary notwithstanding, approval by the ARC is not exclusive and all plans and specifications required to be approved by Clark County, whether through the building permit process or otherwise, shall be so approved prior to the commencement of any work.

Section 3. Interpretation. All question of interpretation or construction of any of the terms or conditions in this Article shall be resolved by the ARC, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 4. Violations. In the event violation of these restrictions exists, or in the event of the failure of any individual Owner to comply with a written directive or order from the ARC, then in such event, the ARC shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the lot and the cost of such performance shall be charged to the Owner of the lot in question, which cost shall be due within five (5) days after receipt of written demand therefor, and may be recovered by the ARC in an action at law against such individual Owner.

Section 5. Submission of Plans and Specifications. When plans and specifications for the construction of improvements are submitted to the ARC pursuant to these restrictions, said submission shall, at the request of the ARC, be accompanied by a maximum deposit of \$1,000.00 to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the drainage swales and structures will correctly drain surplus water to the street or other approved locations, all as shown on the plans and specifications submitted to the ARC for approval. In the event of a violation

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of this restriction, the ARC may give written notice thereof to the builder and Owner of the lot in question that if such violation is not cured or work commenced to cure the same within forty-eight (48) hours after the mailing of said notice, the ARC may correct or cause to be corrected said violation and use said deposit, or as much thereof, as may be necessary to cover the cost of such correction work. In the event that the cost of curing said violation shall exceed the amount of said deposit, said excess cost shall be paid by the Owner of the Lot in question to the ARC. Said deposit, or any part thereof remaining in the hands of the ARC at the completion of the construction work, shall be returned by the ARC to the person who made the deposit.

Section 6. Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARC.

(b) Within ninety (90) days thereafter, the ARC or its duly authorized representative, may inspect such improvement. If the ARC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such ninety (90) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board 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 Master Association upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Master Association, the Board thereof shall levy a special lien assessment against such Owner for reimbursement.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within ninety (90) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

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Section 7. No Waiver. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 8. Reimbursement. The members of the ARC shall receive no compensation for services rendered, other than reimbursement by the Master Association for expenses incurred by them in the performance of their duties hereunder.

Section 9. Liability. Neither Declarant nor the ARC, nor any member thereof, nor their duly authorized ARC representatives shall be liable to the Master Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to the willful misconduct or bad faith of the ARC. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the project generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, and finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 10. Move On. No structure of any kind shall be moved from any other place onto any Lot without the prior written permission of the ARC.

Section 11. Diligently Prosecute Work. The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be completed within a reasonable time, not to exceed twelve (12) months, in accordance with the requirements herein contained; provided, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in construction, but such temporary facilities shall be removed as soon as the construction is completed.

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Section 12. Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Lots owned by Declarant, and the provisions of this Article shall not apply to Lots owned by Declarant until such time as Declarant conveys title to the lot to a purchaser thereat. This Article shall not be amended without Declarant's written consent set forth on the amendment.

#### ARTICLE VII

##### INSURANCE

Section 1. Hazard Insurance - Master Association. The Master Association shall keep (i) any building in the Master Association Property insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Master Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Master Association. Insurance proceeds for improvements in the Master Association Property and personalty owned by the Master Association shall be payable to the Master Association. In the event of any loss, damage or destruction, the Master Association may cause the same to be replaced, repaired or rebuilt if it occurred in the Master Association Property. In the event the cost of such replacement, repair or rebuilding of the Master Association (a) exceeds the insurance proceeds available therefor, or (b) no insurance proceeds are available therefor, the deficiency of full cost thereof shall be assessed to the Owners as a special assessment pursuant to the terms of this Declaration and the Bylaws.

Section 2. Liability Insurance - Master Association. The Master Association shall procure and keep in force public liability insurance in the name of the Master Association and in the name of the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Master Association Property in an amount not less than \$500,000.00 in indemnity against the claim of one (1) person in one (1) accident or event and not less than \$1,000,000.00 against the claims of two (2) or more persons in one (1) accident or event, and not less than \$100,000.00 for damage to property.

Section 3. Inspection of Policies - Master Association. Copies of all such insurance policies obtained by the Master Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Master Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be

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cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Master Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Master Association, the Board and Owners.

Section 4. Federal National Mortgage Association ("FNMA") Requirements. Anything contained herein to the contrary notwithstanding the Master Association shall maintain such bonding and insurance coverage as may be required by FNMA so long as FNMA holds a Mortgage on or owns any Lot.

Section 5. Other Insurance; Annual Review. The Master Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, errors and omission insurance and blanket policies of hazard insurance for the Lots. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Master Association in light of inflation, practice in the area in which the Planned Unit Development Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Master Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 6. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Master Association and any other insurance deemed necessary by the Master Association shall be an expense to be included in the annual assessments levied by the Association. The Master Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any three (3) directors of the Master Association may sign a loss claim, and such signatures shall be binding on the Master Association and the Members.

#### ARTICLE VIII

#### CONDEMNATION

In the event the Master Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Master Association.

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ARTICLE IXMAINTENANCE RESPONSIBILITIES

Section 1. Master Association Maintenance. The Master Association shall maintain, repair and replace: (a) the Master Association Property and all improvements thereon, and (b) those areas containing trees and other landscaping within the public rights of way, pursuant to any agreement between Declarant or the Master Association and Clark County or any other government or governmental agency, in good repair and appearance. The areas referred to in (b) above shall be deemed "Master Association Property" with respect to the Master Association's maintenance thereof and assessment rights for such maintenance.

Section 2. Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his Lot and improvements thereon, including, but not limited to, any fence which is on the Lot line and the residence located on his Lot. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot so that the same presents a neat and attractive appearance. No Owner shall, however, maintain or change any portion of his Lot which is covered by a maintenance easement in favor of the Master Association or any other nonprofit homeowners association.

Section 3. Right of Entry. The Master Association, after reasonable notice to the Owner, shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Master Association.

ARTICLE XRIGHTS OF MORTGAGEES

Section 1. Payments of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Master Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or severally, also pay overdue premiums on existing insurance policies, or secure new casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Master Association Property, and Mortgagees making such payments shall be owed immediate reimbursement thereof from the Master Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee who requests the same to be executed by the Master Association.

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Section 2. Mortgagee Curing Defaults. A mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 3. Approval of First Mortgagees. Unless at least sixty-seven percent (67%) of the First Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Master Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Master Association Property or this Declaration. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection. Any restoration or repair of the Master Association Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders, Insurers or Guarantors.

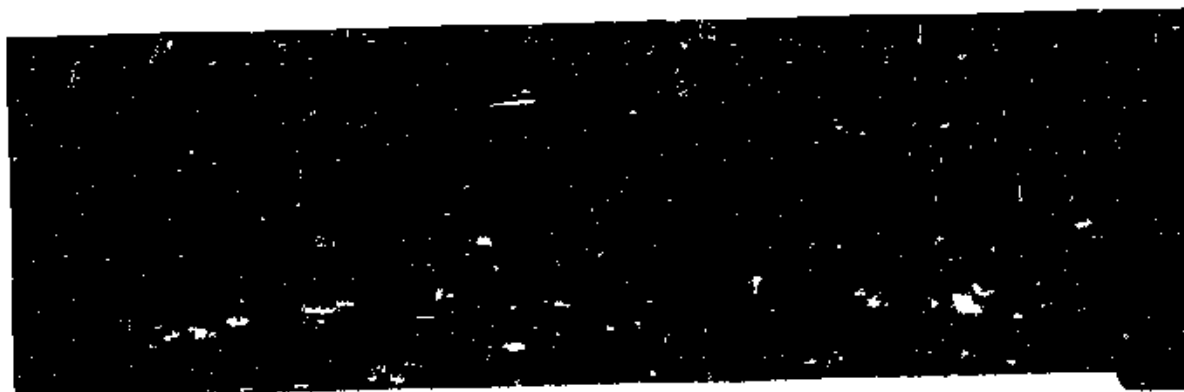
(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of the Master Association Property walks or common fences and driveways, or the upkeep of lawns and plantings in the project.

(d) Fail to maintain fire and extended coverage insurance on the Master Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any portion of the Master Association Property for other than the repair, replacement or reconstruction of such Master Association Property.

Section 4. Termination of Professional Management. When professional management has been previously required by any



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Eligible Mortgage Holder, Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder, Insurer or Guarantor at that time or later, any decision to establish self-management by the Master Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Master Association, and the approval of Eligible Holders, Insurers or Guarantors of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders, Insurers or Guarantors.

Section 5. Notice to Eligible Mortgagees. Upon written request to the Master Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Lot number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor; notice from the Master Association shall pertain to the Lots only.

(b) Any delinquency in the payment of Master Association assessments or charges owed by an Owner subject to a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Master Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

Section 6. Documents to be Available to Mortgagees. The Master Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of the Declaration, Bylaws, other rules concerning the project and its books, records and financial statements. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of first Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

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Section 7. Mortgagee Protection Re Breach. A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Lot; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Lot in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale or note holder acquiring title in lieu thereof shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

Section 8. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

#### ARTICLE XI

##### ENFORCEMENT

Section 1. Master Association. The Master Association, on behalf of the Architectural Committee and otherwise, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

Section 2. No Waiver. Failure by the Master Association, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Mortgagee Protection. A breach of any of the covenants, conditions, restrictions or other provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any Lot; provided, however, that any subsequent Owner of the Lot shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

#### ARTICLE XII

##### GENERAL PROVISIONS

Section 1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or

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equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 2. Amendment. Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by members of the Master Association entitled to exercise sixty-six and two-thirds percent (66-2/3%) or more of the voting power of the Master Association. An amendment shall become effective upon the recording thereof with the Office of the County Recorder of Clark County, Nevada. Anything contained herein to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Lots (based upon one (1) vote for each such Mortgage). "Material amendment" shall mean, for purposes of this Section 2, any amendment to provisions of this Declaration governing any of the following subjects:

- (a) The fundamental purpose for which the project was created (such as a change from residential use to a different use).
- (b) Assessments, assessment liens and subordination thereof.
- (c) The reserve for maintenance, repair and replacement of the Master Association Property.
- (d) Property maintenance and repair obligations.
- (e) Casualty, liability insurance and fidelity bonds.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Master Association Property.
- (h) Annexation.
- (i) Voting.
- (j) Boundaries of any Lot.
- (k) Leasing of Lots.
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot.
- (m) Any provision which, by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

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An Eligible Mortgage Lender who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

Notwithstanding anything herein stated to the contrary, none of the following Sections hereof may be amended without Declarant's prior written consent: Section 12 of Article VI, Section 4, Section 5 or Section 8 of Article XII.

Section 3. Term of Restrictions. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2080, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2080, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2080, or at the end of any such ten (10) year period.

Section 4. Annexation of Lots.

(a) Phase I is the first Phase of a projected multi-phase staged development as set forth in the Recitals of this Declaration. Nothing contained herein, however, shall require Declarant to complete the future Phases of the planned overall project.

(b) If, within five (5) years of the date of the conveyance of a Lot by Declarant within Phase I to a retail purchaser thereof, Declarant should develop additional lands within the Planned Unit Development Properties, such additional lands or any portion thereof may be made subject to this Declaration and added to and included within the jurisdiction of the Master Association by action of Declarant without the assent of members of the Master Association. Said annexation may be accomplished by the recording of a Declaration of Annexation or by the recording of a separate Declaration of Restrictions which requires Owners of Lots therein to be members of the Master Association. Subsequent Phases of the Planned Unit Development Properties may be so annexed and made subject to this Declaration and added to and included within the jurisdiction of the Master Association by Declarant, without the assent of members of the Master Association, five (5) years after close of escrow for sale of a Lot from Declarant to a retail purchaser within the last Phase to be annexed. The obligation of Lot Owners to pay dues to the Master Association and the right of such Owners to exercise voting rights in the Master Association shall not commence until



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the first day of the month following close of the first sale of a Lot by Declarant to that particular Owner.

Section 5. Annexation to Master Association Property. Declarant may, during the time periods for annexation of additional Phases, transfer to the Master Association additional Master Association Property and the Master Association shall accept title and the obligation to maintain and repair the same.

Section 6. No Amendment. Neither Section 4 nor Section 5 above may be amended without Declarant's prior written consent.

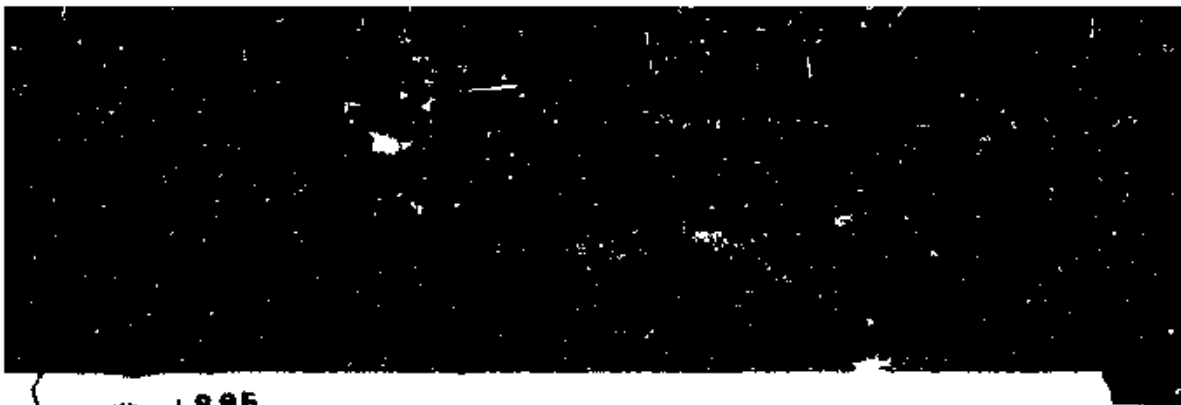
Section 7. Annexation by Owners. In addition to the provisions of Sections 4 and 5 above, additional land may be annexed to the jurisdiction of the Master Association and this Declaration upon the vote or written consent of two-thirds (2/3) of the voting power of each class of members of the Master Association.

Section 8. Litigation. In the event any person or entity shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

Section 9. Declarant Exemption. Declarant is undertaking the work of construction of residential dwellings and incidental improvements upon the property described in Recital E of this Declaration. The completion of that work, and the sale, rental and other disposal of the dwellings is essential to the establishment and welfare of the project as a residential community. In order that said work may be completed and the Lots be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Lots whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any Lot such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Lots as a residential community and disposing of the same by sale, lease or otherwise; or



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(c) Prevent Declarant from conducting on any Lot its business of completing said work, and of establishing a plan of disposing of the Lots by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs, flags, poles, banners, parking, advertisements and other facilities attendant to sales, leasing and other marketing activities on any of the Lots and the Master Association Property as may be necessary for the sale, lease or disposition thereof.

IN WITNESS WHEREOF, the undersigned, being Declarant and the legal owner herein, has executed this instrument the day and year first hereinabove written.

SPANISH TRAIL ASSOCIATES, a Nevada  
limited partnership

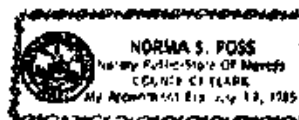
By *Joseph A. Hesse*  
Joseph A. Hesse

By *James Hesse*  
James Hesse

STATE OF NEVADA )  
COUNTY OF CLARK ) SS.

On this 25 day of February, 1984,  
Tosha A. Hesse and James Hesse  
personally appeared before me, a Notary Public in and for  
said County and State, known to me to be the persons described  
in and who executed the foregoing instrument, who acknowledged  
to me that they executed the same freely and voluntarily, and  
for the uses and purposes therein mentioned.

*Norma S. Poss*  
Notary Public in and for said  
County and State.



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EXHIBIT "A"

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## DESCRIPTION:

Situate in the County of Clark, State of Nevada, described as follows:

PARCEL 1:

The North Half (N 1/2) of Section 27, Township 21 South, Range 60 East, M.D.B.M.

EXCEPTING the North Fifty (50) feet.

FURTHER EXCEPTING THEREFROM the East sixty feet (60.00'), and the South forty feet (40.00') of the North Half (N 1/2) of Section 27, Township 21 South, Range 60 East, M.D.B.M., Nevada; together with a spandrel area in the Northeast corner thereof, being the Southwest corner of the intersection of Tropicana Boulevard and Rainbow Boulevard, bounded as follows: On the North by the South line of the North Fifty feet (50.00') thereof; on the East by the West line of the East sixty feet (60.00') thereof; and on the Southwest by the arc of a curve concave Southwesterly, having a radius of fifty-four feet (54.00') and being tangent to the South line of said North Fifty feet (50.00') and tangent to the West line of said East sixty feet (60.00'); also together with a spandrel area in the Southeast corner thereof, being the Northwest corner of the intersection of Hacienda Avenue and Rainbow Boulevard, bounded as follows: On the East by the West line of the East sixty feet (60.00') thereof; on the South by the North line of the South forty feet (40.00') thereof; and on the Northwest by the arc of a curve concave Northwesterly, having a radius of twenty-five feet (25.00') and being tangent to the West line of the East sixty feet (60.00') and tangent to the North line of the South forty feet (40.00')

AND FURTHER EXCEPTING THEREFROM the following described parcel:

COMMENCING at the Northeast corner of the Northwest Quarter (NW 1/4) of said Section 27;  
THENCE D0°45'59" East, along the East line thereof, 21.30 feet to the TRUE POINT OF BEGINNING;  
THENCE departing said East line South 89°30'31" West, 68.73 feet;  
THENCE tangent to the last-named bearing curving to the left along a curve being concave Southerly and having a radius of 1000.00 feet through a central angle of 05°42'38" an arc length of 99.67 feet;  
THENCE South 83°47'53" West, 151.50 feet;  
THENCE tangent to the last-named bearing curving to the right along a curve being concave Northerly and having a radius of 1000.00 feet through a central angle of 05°42'38" an arc length of 99.67 feet;  
THENCE North 89°30'31" East, along a line being parallel with and 50.00 feet South (measured at right angles) from the North line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section 27, a distance of 418.60 feet;  
THENCE North 00°45'59" West, 25.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 1A:

The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 21 South, Range 60 East, M.D.B.M.

EXCEPTING the North Fifty (50) feet and the West Sixty (60) feet thereof.

PARCEL 1B:

The South Half (S 1/2) of the North Half (N 1/2) of Section 28, Township 21 South, Range 60 East, M.D.B.M.



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EXCEPTING THEREFROM the South Forty (40) feet; together with a spandrel area in the Southwest corner thereof, being the Northwest corner of the intersection of Hacienda Avenue and Durango Drive, bounded as follows: On the West by the East line of the West fifty feet (50.00') thereof; on the South by the North line of the South forty feet (40.00') thereof; and on the Northwest by the arc of a curve concave Northeasterly, having a radius of twenty-five feet (25.00') And being tangent to the East line of the West fifty feet (50.00') and tangent to the North line of the South forty feet (40.00').

PARCEL IV:

The North Half (N 1/2) of the North Half (N 1/2) of Section 28, Township 21 South, Range 60 East, N.D.B. & M.

EXCEPTING THEREFROM the North Fifty (50) feet and the West Fifty (50) feet; together with a spandrel area in the Northwest corner thereof, being the Southeast corner of the intersection of Tropicana Boulevard and Durango Drive, bounded as follows: On the North by the South line of the North fifty feet (50.00') thereof; on the West by the East line of the West fifty feet (50.00') thereof; and on the Southeast by the arc of a curve concave Southeasterly, having a radius of fifty-four feet (54.00') and being tangent to the South line of said North fifty feet (50.00') and tangent to the East line of said West fifty feet (50.00').



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SUBORDINATION AGREEMENT

FIRST INTERSTATE BANK OF NEVADA, N.A., being the beneficiary under that certain deed of trust dated September 19, 1981 and recorded September 28, 1983 as Document No. 1770088, in Book 1811 of Official Records of Clark County, Nevada, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

FIRST INTERSTATE BANK OF NEVADA, N.A.

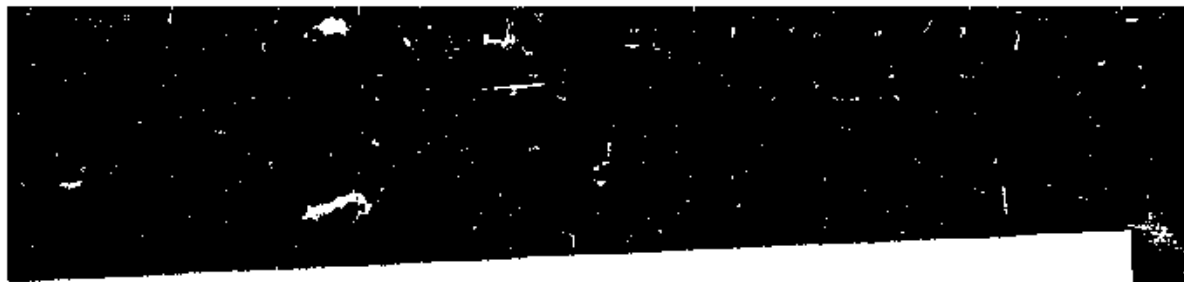
By *[Signature]*  
JACK RAFTERY CHIEF, REAL ESTATE LOAN OFFICERBy *[Signature]*  
DIANE GALLION CLOSING LOAN OFFICER

STATE OF NEVADA     )  
COUNTY OF CLARK    )   SS.

On this 6th day of March, 1984,  
JACK RAFTERY & DIANE GALLION  
personally appeared before me, a Notary Public in and for  
said County and State, known to me to be the person described  
in and who executed the foregoing instrument, who acknowledged  
to me that they executed the same freely and voluntarily and  
for the uses and purposes therein mentioned.

*[Signature]*  
Notary Public in and for said  
County and State.

*[Faint text, possibly a date or reference number]*



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SUBORDINATION AGREEMENT

JOSEPH BLASCO, Trustee under Trust Agreement dated March 11, 1974, being the beneficiary under that certain deed of trust dated September 7, 1983 and recorded September 12, 1983 as Document No. 1761633, in Book 1802 of Official Records of Clark County, Nevada, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

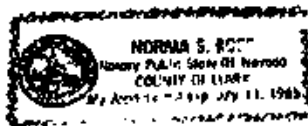
JOSEPH BLASCO, Trustee under Trust Agreement dated March 11, 1974

STATE OF NEVADA }  
COUNTY OF CLARK } SS.

On this 28th day of February, 1984.

Joseph Blasco  
personally appeared before me, a Notary Public in and for said County and State, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Signature]  
Notary Public in and for said  
County and State.

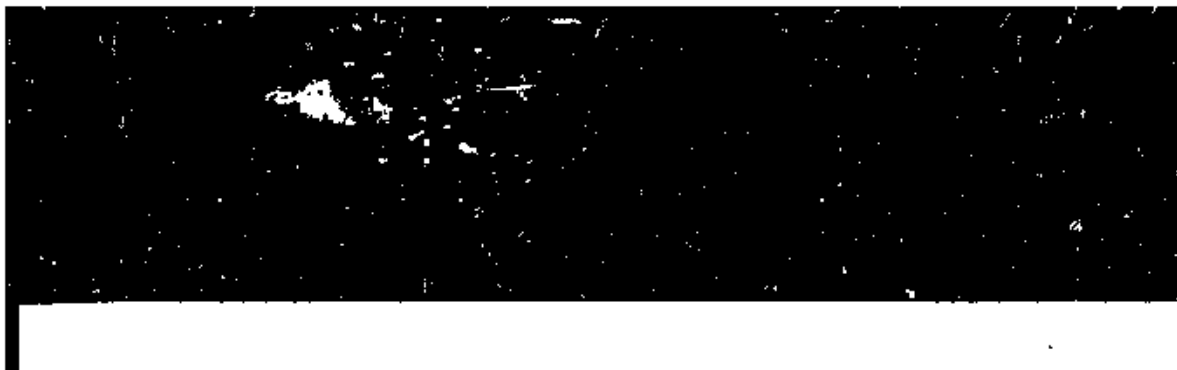


JOAN L. SMITH, RECORDER  
RECORDED AT 1:00 PM, 2/28/84  
LAWYERS TITLE OF LAS VEGAS, INC.  
MAR 7 8 42 AM '84

FILED  
CLERK OF DISTRICT COURT  
CLARK COUNTY, NEVADA  
TESTAMENT

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**RE-RECORDED**

CLARK COUNTY NEVADA  
JOAN L SWIFT RECORDER  
RECORDED AT REQUEST OF

BOOK OFFICIAL RECORDS  
118 2187

# **EXHIBIT F**

Assessor Parcel Number: 163-28-614-007  
File Number: R74507

**Accommodation**

Inst #: 201108040002324

Fees: \$14.00

N/C Fee: \$0.00

08/04/2011 09:30:58 AM

Receipt #: 868886

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: CDE Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

**LIEN FOR DELINQUENT ASSESSMENTS**

*Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.*

**NOTICE IS HEREBY GIVEN:** Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Spanish Trail Master Association, herein also called the Association, in accordance with Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:

34 Innisbrook Ave, Las Vegas, NV 89113

ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, in the County of Clark

Current Owner(s) of Record:

TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

The amount owing as of the date of preparation of this lien is \*\*\$5,543.92.

This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.

\*\* The said amount may increase or decrease as assessments, late fees, interest, fines/violations, collection fees, costs or partial payments are applied to the account.

Dated: July 28, 2011

Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA )

COUNTY OF CLARK )

On July 28, 2011, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

When Recorded Mail To: Red Rock Financial Services  
7251 Amigo Street, Suite 100  
Las Vegas, Nevada 89119  
702-932-6887



# **EXHIBIT G**

1 DAVID R. KOCH  
2 Nevada Bar No. 8830  
3 STEVEN B. SCOW  
4 Nevada Bar No. 9906  
5 KOCH & SCOW LLC  
6 11500 S. Eastern Ave., Suite 210  
7 Henderson, NV 89052  
8 dkoch@kochscow.com  
9 sscow@kochscow.com  
10 Telephone: (702) 318-5040  
11 Facsimile: (702) 318-5039

12 Attorneys for Counter-Defendant/Counterclaimant  
13 Red Rock Financial Services

14 **EIGHTH DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 SATICOY BAY LLC SERIES 34 INNISBROOK,

17 Plaintiff,

18 vs.

19 THORNBURG MORTGAGE SECURITIES  
20 TRUST 2007-3; RECONSTRUCT COMPANY,  
21 N.A. a division of BANK OF AMERICA;  
22 FRANK TIMPA and MADELAINE TIMPA,  
23 individually and as trustees of the TIMPA  
24 TRUST,

25 Defendants.

26 THORNBURG MORTGAGE SECURITIES  
27 TRUST 2007-3,

28 Counterclaimant,

vs.

29 SATICOY BAY LLC SERIES 34 INNISBROOK,  
30 a Nevada Limited-liability company; SPANISH  
31 TRAIL MASTER ASSOCIATION, a Nevada  
32 Non-Profit Corporation; RED ROCK  
33 FINANCIAL SERVICES, LLC, an unknown  
34 entity; FRANK TIMPA, an individual; DOES I  
35 through X; and ROE CORPORATIONS I  
36 through X, inclusive,

37 Counter-Defendants.

Case No.: A-14-710161-C  
Dept.: XV

**RED ROCK FINANCIAL  
SERVICES, LLC AFFIDAVIT**

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant,

3 vs.

4 THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3; COUNTRYWIDE HOME  
6 LOANS, INC.; ESTATES WEST AT SPANISH  
7 TRAILS; MORTGAGE ELECTRONIC  
8 REGISTRATION SYSTEM, INC.; REPUBLIC  
9 SERVICES; LAS VEGAS VALLEY WATER  
DISTRICT; FRANK TIMPA and MADELAINE  
TIMPA, individually and as trustees of the  
TIMPA TRUST U/T/D March 3, 1999; and  
DOES 1-100, inclusive,

10 Counter-Defendants.  
11

12 I, Julia Thompson, under penalty of perjury, declare as follows:

13 1. My name is Julia Thompson I have personal knowledge of and I am  
14 competent to testify as to the matters stated herein by virtue of my position as supervisor  
15 for Red Rock Financial Services LLC (Red Rock).

16 2. As a supervisor for Red Rock, I am familiar with Red Rock's systems that  
17 contain data regarding collection accounts and Red Rock's policies and procedures. This  
18 affidavit is based on my review of Red Rock's business records and knowledge as a Red  
19 Rock employee.

20 3. Entries in Red Rock's systems and corresponding databases are made at or  
21 near the time of the events recorded by, or from information transmitted by, persons  
22 with knowledge. Red Rock's systems and databases are maintained and kept in the  
23 course of Red Rock's regularly conducted business activity, and it is Red Rock's regular  
24 practice to keep and maintain information regarding Red Rock's collection accounts. Red  
25 Rock's systems and databases consist of records that were kept and maintained by Red  
26 Rock in the course of its regularly conducted activities pursuant to its regular business  
27 practice of creating such records. These systems and databases are Red Rock's business  
28

1 records.

2 4. Exhibit 1 are true and correct copies from Red Rock's business records  
3 regarding the file for Frank and Madelaine Timpa's account for the property located at 34  
4 Innisbrook Avenue, Las Vegas, Nevada 89113.

5 5. Further your affiant sayth not.

6 Executed this 26 day of April, 2018

7 By [Signature]

8 Title Supervisor

9  
10 State of Nevada

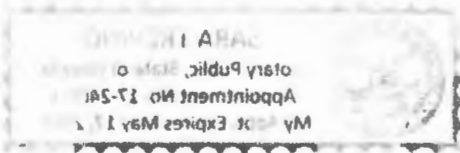
11 County of Clark

12 On 4/26/18 before me, Sara Trevino (insert name and  
13 title of the officer) personally appeared Julia Thompson who proved to  
14 me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
15 subscribed to the within instrument and acknowledged to me that he/she/they executed  
16 the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
17 on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
18 executed the instrument. WITNESS my hand and official seal.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Signature [Signature]

(Seal)





Red Rock Financial Services  
Trust Account  
4775 W. Teco Avenue, Suite 140  
Las Vegas, NV 89118  
(702) 932-6887

usbank  
Five Star Service Guaranteed  
www.usbank.com  
94-0189/1212

50438

11/10/2014

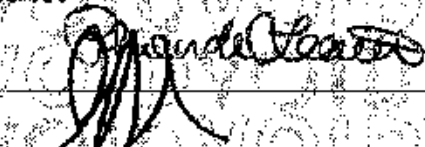
PAY TO THE  
ORDER OF

Clark County District Court

\$1,168,865.05

One Million One Hundred Sixty Eight Thousand Eight Hundred Sixty Five and 05/100 \*\*\*\*\* DOLLARS

Clark County District Court



MEMO

34 Innisbrook Avenue Excess Funds

⑈050438⑈ ⑆1121201694⑆ 153751166148⑈

Red Rock Financial Services/Trust Account

50438

Clark County District Court

Date	Type	Reference	Original Amt.	Balance Due	11/10/2014 Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

Red Rock Financial Services/Trust Account

50438

Clark County District Court

Date	Type	Reference	Original Amt.	Balance Due	11/10/2014 Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

RRFS000001

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

*9 Allocations*

<b>Payment Processed</b>	<b>\$98,113.52</b>
<b>Allocation Categories</b>	
Association	(\$8,442.00)
X Misc 1	<i>1,000 + 240,000 + 240,000 + 120,000<sup>25</sup></i> + (\$87,865.05) = <i>1168865.05</i>
RRFS	(\$1,806.47)
<b>Total Allocations</b>	<b>(\$98,113.52)</b>

**Payment Detail**

*Total \$ 1,179,113.52*

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFR	98,113.52	CC	PIF HOA SALE -
				0743701189	SPLIT WITH 74509

*\* EXCESS FUNDS  
\$1,168,865.05  
Clark County  
District Court.*

*give to CLM*

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

**Association Allocation Detail**

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

Late Fee			Total:	(\$950.00)
Date:	Description:	Code:	Amount:	
08/16/2011	Late Fee	RRLF	-25.00	
09/16/2011	Late Fee	RRLF	-25.00	
10/16/2011	Late Fee	RRLF	-25.00	
11/16/2011	Late Fee	RRLF	-25.00	
12/15/2011	Late Fee	RRLF	-25.00	
02/16/2012	Late Fee	RRLF	-25.00	
03/16/2012	Late Fee	RRLF	-25.00	
04/16/2012	Late Fee	RRLF	-25.00	
05/16/2012	Late Fee	RRLF	-25.00	
06/16/2012	Late Fee	RRLF	-25.00	
07/16/2012	Late Fee	RRLF	-25.00	
08/16/2012	Late Fee	RRLF	-25.00	
09/16/2012	Late Fee	RRLF	-25.00	
10/16/2012	Late Fee	RRLF	-25.00	
11/16/2012	Late Fee	RRLF	-25.00	
12/16/2012	Late Fee	RRLF	-25.00	
01/16/2013	Late Fee	RRLF	-25.00	
02/16/2013	Late Fee	RRLF	-25.00	
03/16/2013	Late Fee	RRLF	-25.00	
04/16/2013	Late Fee	RRLF	-25.00	
05/16/2013	Late Fee	RRLF	-25.00	
06/16/2013	Late Fee	RRLF	-25.00	
07/16/2013	Late Fee	RRLF	-25.00	
08/16/2013	Late Fee	RRLF	-25.00	
09/16/2013	Late Fee	RRLF	-25.00	
10/16/2013	Late Fee	RRLF	-25.00	
11/16/2013	Late Fee	RRLF	-25.00	
12/16/2013	Late Fee	RRLF	-25.00	
01/16/2014	Late Fee	RRLF	-25.00	
02/16/2014	Late Fee	RRLF	-25.00	
03/16/2014	Late Fee	RRLF	-25.00	
04/16/2014	Late Fee	RRLF	-25.00	
05/16/2014	Late Fee	RRLF	-25.00	
06/16/2014	Late Fee	RRLF	-25.00	
07/16/2014	Late Fee	RRLF	-25.00	
08/16/2014	Late Fee	RRLF	-25.00	

11/10/2014 10:44:16 Processed By: Reporting

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

09/16/2014	Late Fee	RRLF	-25.00
10/16/2014	Late Fee	RRLF	-25.00
<b>Assessment</b>			<b>Total: (\$7,472.00)</b>
<b>Date:</b>	<b>Description:</b>	<b>Code:</b>	<b>Amount:</b>
03/01/2012	Assessment	MAHOA	-42.00
04/01/2012	Assessment	MAHOA	-225.00
05/01/2012	Assessment	MAHOA	-225.00
06/01/2012	Assessment	MAHOA	-225.00
07/01/2012	Assessment	MAHOA	-225.00
08/01/2012	Assessment	MAHOA	-225.00
09/01/2012	Assessment	MAHOA	-225.00
10/01/2012	Assessment	MAHOA	-225.00
11/01/2012	Assessment	MAHOA	-225.00
12/01/2012	Assessment	MAHOA	-225.00
01/01/2013	Assessment	MAHOA	-235.00
02/01/2013	Assessment	MAHOA	-235.00
03/01/2013	Assessment	MAHOA	-235.00
04/01/2013	Assessment	MAHOA	-235.00
05/01/2013	Assessment	MAHOA	-235.00
06/01/2013	Assessment	MAHOA	-235.00
07/01/2013	Assessment	MAHOA	-235.00
08/01/2013	Assessment	MAHOA	-235.00
09/01/2013	Assessment	MAHOA	-235.00
10/01/2013	Assessment	MAHOA	-235.00
11/01/2013	Assessment	MAHOA	-235.00
12/01/2013	Assessment	MAHOA	-235.00
01/01/2014	Monthly Assessment	ASMA	-235.00
02/01/2014	Monthly Assessment	ASMA	-235.00
03/01/2014	Monthly Assessment	ASMA	-235.00
04/01/2014	Monthly Assessment	ASMA	-235.00
05/01/2014	Monthly Assessment	ASMA	-235.00
06/01/2014	Monthly Assessment	ASMA	-235.00
07/01/2014	Monthly Assessment	ASMA	-235.00
08/01/2014	Monthly Assessment	ASMA	-235.00
09/01/2014	Monthly Assessment	ASMA	-235.00
10/01/2014	Monthly Assessment	ASMA	-235.00
11/01/2014	Monthly Assessment	ASMA	-235.00

11/10/2014 10:44:16 Processed By: Reporting

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

<b>Other</b>			<b>Total:</b>	<b>(\$20.00)</b>
<b>Date:</b>	<b>Description:</b>	<b>Code:</b>	<b>Amount:</b>	
<b>04/30/2014</b>	<b>Association Misc. Charge</b>	<b>ASMIS</b>	<b>-20.00</b>	

**Misc 1 Allocation Detail**

<b>Misc 1</b>			<b>Total:</b>	<b>(\$87,865.05)</b>
<b>Date:</b>	<b>Description:</b>	<b>Code:</b>	<b>Amount:</b>	
<b>11/10/2014</b>	<b>Misc. Charge</b>	<b>3PRTY</b>	<b>-87,865.05</b>	

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

### RRFS Allocation Detail

RRFS		Total:	(\$1,806.47)
Date:	Description:	Code:	Amount:
07/28/2011	Lien for Delinquent Assessment	LJEN	-146.84
11/29/2011	NOD Mailing Costs	MAIL3	-19.60
11/29/2011	NOD Release	RLNOD	-30.00
11/29/2011	NOD Release Recording Costs	RSNOD	-17.00
01/26/2012	Payoff Demand	PYOFF	-150.00
02/17/2012	Intent to NOS	INNOS	-90.00
05/04/2012	Payment Plan	PPLAN	-30.00
06/25/2012	Payment Plan	PPLAN	-30.00
08/06/2012	Payment Breach Letter	RRPBL	-25.00
02/08/2013	Payment Plan	PPLAN	-30.00
03/27/2014	Payment Breach Letter	RRPBL	-25.00
05/08/2014	Intent to Conduct Foreclosure	RRICF	-25.00
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
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09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	Notice of Sale	NOS	-275.00
09/11/2014	NOS Recording Costs	RONOS	-23.00
09/11/2014	Publishing and Posting Costs	PUBLISHING	-496.67
11/07/2014	Conduct Foreclosure Sale	RRCF	-125.00
11/07/2014	Prepare and Record Trustee Deed	RRRTD	-125.00

11/10/2014 10:44:16 Processed By: Reporting

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$120,000.00</b>
<b>Allocation Categories</b>	
Misc 1	(\$120,000.00)
<b>Total Allocations</b>	<b>(\$120,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC 0743701214	PIF HOA SALE

**Misc 1 Allocation Detail**

<b>Misc 1</b>		<b>Total:</b>	<b>(\$120,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
 Association: Spanish Trail Master Association  
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
 Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$120,000.00</b>
Allocation Categories	
Misc 1	(\$120,000.00)
<b>Total Allocations</b>	<b>(\$120,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC 0743701186	PIF HOA SALE

**Misc 1 Allocation Detail**

<b>Misc 1</b>	<b>Total:</b>	<b>(\$120,000.00)</b>	
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
 Association: Spanish Trail Master Association  
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
 Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$120,000.00</b>
Allocation Categories	
Misc 1	(\$120,000.00)
<b>Total Allocations</b>	<b>(\$120,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC	PIF HOA SALE
				0743701187	

**Misc 1 Allocation Detail**

<b>Misc 1</b>		<b>Total:</b>	<b>(\$120,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$120,000.00</b>
Allocation Categories	
Misc 1	(\$120,000.00)
<b>Total Allocations</b>	<b>(\$120,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC 0743701188	PIF HOA SALE

**Misc 1 Allocation Detail**

<b>Misc 1</b>		<b>Total:</b>	<b>(\$120,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$120,000.00</b>
Allocation Categories	
Misc 1	(\$120,000.00)
<b>Total Allocations</b>	<b>(\$120,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Partial Payment	PPRR	120,000.00	CC 0743701190	PIF HOA SALE

**Misc 1 Allocation Detail**

<b>Misc 1</b>		<b>Total:</b>	<b>(\$120,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innsbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$240,000.00</b>
Allocation Categories	
Misc 1	(\$240,000.00)
<b>Total Allocations</b>	<b>(\$240,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	240,000.00	CC 0743701208	PIF HOA SALE

**Misc 1 Allocation Detail**

<b>Misc 1</b>		Total:	<b>(\$240,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-240,000.00

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 10, 2014**

### Account Information

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

### Payment Summary

<b>Payment Processed</b>	<b>\$240,000.00</b>
Allocation Categories	
Misc 1	(\$240,000.00)
<b>Total Allocations</b>	<b>(\$240,000.00)</b>

### Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	240,000.00	CC	PIF HOA SALE
				0743701207	

### Misc 1 Allocation Detail

<b>Misc 1</b>		<b>Total:</b>	<b>(\$240,000.00)</b>
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-240,000.00

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

**Account Information**

Company: Spanish Trail Master Association  
 Association: Spanish Trail Master Association  
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
 Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

**Payment Summary**

<b>Payment Processed</b>	<b>\$1,000.00</b>
Allocation Categories	
Misc 1	(\$1,000.00)
<b>Total Allocations</b>	<b>(\$1,000.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	1,000.00	CC 0743701449	PIF HOA SALE

**Misc 1 Allocation Detail**

Misc 1		Total:	(\$1,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-1,000.00

Red Rock Financial Services  
Trust Account  
4775 W. Taco Avenue, Suite 140  
Las Vegas, NV 89118  
(702) 932-6887

usbank  
Five Star Service Guaranteed  
www.usbank.com  
94-0169/1212

50438

11/10/2014

PAY TO THE  
ORDER OF

Clark County District Court

\$1,168,865.05

One Million One Hundred Sixty-Eight Thousand Eight Hundred Sixty-Five and 05/100 \*\*\*\*\* DOLLARS

Clark County District Court

MEMO

34 Innisbrook Avenue Excess Funds

⑈050438⑈ ⑆121201694⑆ 153751166148⑈

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

TO  
Christie  
M.

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

RRFS000016



**Red Rock Financial Services**  
**Accounting Ledger**  
 Information as of: November 13, 2014

**Account Number:** 74507  
**Association:** Spanish Trail Master Association  
**Property Address:** 34 Innisbrook Ave, Las Vegas, NV 89113  
**Ledger Balance:** \$0.00  
**Homeowner(s):** TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
7/1/2010	Assessment	\$225.00	\$225.00		
8/1/2010	Assessment	\$225.00	\$450.00		
8/16/2010	Late Fee	\$25.00	\$475.00		
9/1/2010	Assessment	\$225.00	\$700.00		
9/15/2010	Assessment	\$825.00	\$1,525.00		Rsrv Assessment
9/16/2010	Late Fee	\$25.00	\$1,550.00		
10/1/2010	Assessment	\$225.00	\$1,775.00		
10/16/2010	Late Fee	\$25.00	\$1,800.00		
11/1/2010	Assessment	\$225.00	\$2,025.00		
11/16/2010	Late Fee	\$25.00	\$2,050.00		
12/1/2010	Assessment	\$225.00	\$2,275.00		
12/2/2010	Association Misc. Charge	\$200.00	\$2,475.00		Admin Fee/ Spanish Trail Master Association
12/16/2010	Late Fee	\$25.00	\$2,500.00		
12/21/2010	Mailing Costs	\$9.00	\$2,509.00		Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)/
12/21/2010	Intent to Lien Letter	\$125.00	\$2,634.00		
12/21/2010	Mailing Costs	\$9.00	\$2,643.00		Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)/
1/1/2011	Assessment	\$225.00	\$2,868.00		
1/16/2011	Late Fee	\$25.00	\$2,893.00		
2/1/2011	Assessment	\$225.00	\$3,118.00		
2/16/2011	Late Fee	\$25.00	\$3,143.00		
3/1/2011	Assessment	\$225.00	\$3,368.00		Assesment
3/1/2011	Assessment	\$825.00	\$4,193.00		Rsrv Assessment
3/16/2011	Late Fee	\$25.00	\$4,218.00		



**Red Rock Financial Services**  
**Accounting Ledger**  
 Information as of: November 13, 2014

**Account Number:** 74507  
**Association:** Spanish Trail Master Association  
**Property Address:** 34 Innisbrook Ave, Las Vegas, NV 89113  
**Ledger Balance:** \$0.00  
**Homeowner(s):** TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
3/17/2011	Red Rock Fee Adjustment	(\$348.96)	\$3,869.04		
3/17/2011	Mailing Costs	\$7.98	\$3,877.02		Timpa Trust w/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)
3/17/2011	Lien for Delinquent Assessment	\$275.00	\$4,152.02		
3/17/2011	Lien Release	\$30.00	\$4,182.02		
3/17/2011	Lien Recording Costs	\$28.00	\$4,210.02		
3/17/2011	Mailing Costs	\$7.98	\$4,218.00		
4/1/2011	Assessment	\$225.00	\$4,443.00		Timpa Trust w/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)
4/16/2011	Late Fee	\$25.00	\$4,468.00		
5/1/2011	Assessment	\$225.00	\$4,693.00		
5/16/2011	Late Fee	\$25.00	\$4,718.00		
6/1/2011	Assessment	\$225.00	\$4,943.00		
6/16/2011	Late Fee	\$25.00	\$4,968.00		
7/1/2011	Assessment	\$225.00	\$5,193.00		
7/16/2011	Late Fee	\$25.00	\$5,218.00		
7/28/2011	Mailing Costs	\$8.98	\$5,226.98		
7/28/2011	Lien for Delinquent Assessment	\$275.00	\$5,501.98		
7/28/2011	Lien Release	\$30.00	\$5,531.98		
7/28/2011	Lien Recording Costs	\$28.00	\$5,559.98		
7/28/2011	Mailing Costs	\$8.98	\$5,568.92		
8/1/2011	Assessment	\$225.00	\$5,793.92		
8/16/2011	Late Fee	\$25.00	\$5,818.92		
9/1/2011	Assessment	\$225.00	\$6,043.92		
9/15/2011	Assessment	\$825.00	\$6,868.92		



**Red Rock Financial Services**  
**Accounting Ledger**  
 Information as of: November 13, 2014

**Account Number:** 74507  
**Association:** Spanish Trail Master Association  
**Property Address:** 34 Innisbrook Ave, Las Vegas, NV 89113  
**Ledger Balance:** \$0.00  
**Homeowner(s):** TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
9/16/2011	Late Fee	\$25.00	\$6,893.92		
10/1/2011	Assessment	\$225.00	\$7,118.92		
10/16/2011	Late Fee	\$25.00	\$7,143.92		
10/27/2011	Intent to NOD	\$90.00	\$7,233.92		
10/27/2011	Intent to NOD	\$90.00	\$7,323.92		
11/1/2011	Assessment	\$225.00	\$7,548.92		
11/16/2011	Late Fee	\$25.00	\$7,573.92		
11/28/2011	Adjustment	(\$90.00)	\$7,483.92		
11/29/2011	NOD Mailing Costs	\$17.92	\$7,501.84		
11/29/2011	Notice of Default	\$375.00	\$7,876.84		
11/29/2011	NOD Mailing Costs	\$89.60	\$7,966.44		
11/29/2011	NOD Release	\$30.00	\$7,996.44		
11/29/2011	Trustee Sale Guarantee	\$350.00	\$8,346.44		
11/29/2011	NOD Recording Costs	\$17.00	\$8,363.44		
11/29/2011	NOD Release Recording Costs	\$17.00	\$8,380.44		
12/1/2011	Assessment	\$225.00	\$8,605.44		
12/15/2011	Late Fee	\$25.00	\$8,630.44		
1/1/2012	Assessment	\$225.00	\$8,855.44		
1/26/2012	Payoff Demand	\$150.00	\$9,005.44		Miles Legal
2/1/2012	Assessment	\$225.00	\$9,230.44		
2/3/2012	Red Rock Partial Payment	(\$250.00)	\$8,980.44	MO 280104375	Partial Payment
2/16/2012	Late Fee	\$25.00	\$9,005.44		
2/17/2012	Intent to NOS	\$90.00	\$9,095.44		
3/1/2012	Assessment	\$225.00	\$9,320.44		
3/16/2012	Late Fee	\$25.00	\$9,345.44		
3/20/2012	Red Rock Partial Payment	(\$250.00)	\$9,095.44	CC 280104866	Partial payment
4/1/2012	Assessment	\$225.00	\$9,320.44		
4/16/2012	Late Fee	\$25.00	\$9,345.44		



Red Rock Financial Services  
Accounting Ledger  
Information as of: November 13, 2014

**Account Number:** 74507  
**Association:** Spanish Trail Master Association  
**Property Address:** 34 Innisbrook Ave, Las Vegas, NV 89113  
**Ledger Balance:** \$0.00  
**Homeowner(s):** TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
4/25/2012	Red Rock Partial Payment	(\$250.00)	\$9,095.44	CC 290109104	Partial payment
5/1/2012	Assessment	\$225.00	\$9,320.44		
5/4/2012	Payment Plan	\$30.00	\$9,350.44		
5/16/2012	Late Fee	\$25.00	\$9,375.44		
6/1/2012	Assessment	\$225.00	\$9,600.44		
6/16/2012	Late Fee	\$25.00	\$9,625.44		
6/25/2012	Payment Plan	\$30.00	\$9,655.44		
7/1/2012	Assessment	\$225.00	\$9,880.44		
7/16/2012	Late Fee	\$25.00	\$9,905.44		
8/1/2012	Assessment	\$225.00	\$10,130.44		
8/6/2012	Payment Breach Letter	\$25.00	\$10,155.44		
8/16/2012	Late Fee	\$25.00	\$10,180.44		
9/1/2012	Assessment	\$225.00	\$10,405.44		
9/16/2012	Late Fee	\$25.00	\$10,430.44		
10/1/2012	Assessment	\$225.00	\$10,655.44		
10/16/2012	Late Fee	\$25.00	\$10,680.44		
10/22/2012	Red Rock Partial Payment	(\$500.00)	\$10,180.44	MO 300040335	Partial payment
11/1/2012	Assessment	\$225.00	\$10,405.44		
11/16/2012	Late Fee	\$25.00	\$10,430.44		
12/1/2012	Assessment	\$225.00	\$10,655.44		
12/16/2012	Late Fee	\$25.00	\$10,680.44		
1/1/2013	Assessment	\$235.00	\$10,915.44		
1/16/2013	Late Fee	\$25.00	\$10,940.44		
2/1/2013	Assessment	\$235.00	\$11,175.44		
2/8/2013	Payment Plan	\$30.00	\$11,205.44		
2/13/2013	Red Rock Partial Payment	(\$500.00)	\$10,705.44	CC 290117061	Partial Payment
2/13/2013	Red Rock Partial Payment	(\$500.00)	\$10,205.44	CC 290117060	Partial Payment
2/16/2013	Late Fee	\$25.00	\$10,230.44		

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **December 13, 2013**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

**Payment Summary**

<b>Payment Processed</b>	<b>\$500.00</b>
Allocation Categories	
Association	(\$446.84)
RRFS	(\$53.16)
<b>Total Allocations</b>	<b>(\$500.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
12/13/2013	Red Rock Partial Payment	PPRR	500.00	CC 290133793	Partial payment

**Association Allocation Detail**

<b>Assessment</b>	<b>Total:</b>	<b>(\$421.84)</b>	
Date:	Description:	Code:	Amount:
06/01/2011	Assessment	MAHOA	-196.84
08/01/2011	Assessment	MAHOA	-225.00

<b>Late Fee</b>	<b>Total:</b>	<b>(\$25.00)</b>	
Date:	Description:	Code:	Amount:
06/16/2011	Late Fee	RRLF	-25.00

**RRFS Allocation Detail**

<b>RRFS</b>	<b>Total:</b>	<b>(\$53.16)</b>	
Date:	Description:	Code:	Amount:
07/28/2011	Lien for Delinquent Assessment	LIEN	-53.16

12/13/2013 12:27:17 Processed By: Reporting

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **November 08, 2013**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

**Payment Summary**

<b>Payment Processed</b>	<b>\$250.00</b>
Allocation Categories	
Association	(\$250.00)
<b>Total Allocations</b>	<b>(\$250.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
11/08/2013	Red Rock Partial Payment	PPRR	250.00	CC 290129959	Partial Payment

**Association Allocation Detail**

<b>Assessment</b>			<b>Total:</b>	<b>(\$225.00)</b>
Date:	Description:	Code:	Amount:	
07/01/2011	Assessment	MAHOA	-225.00	
<hr/>				
<b>Late Fee</b>			<b>Total:</b>	<b>(\$25.00)</b>
Date:	Description:	Code:	Amount:	
07/16/2011	Late Fee	RRLF	-25.00	

11/8/2013 3:31:40 PM Processed By: Reporting

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **October 21, 2013**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

**Payment Summary**

<b>Payment Processed</b>	<b>\$250.00</b>
Allocation Categories	
Association	(\$232.08)
RRFS	(\$17.92)
<b>Total Allocations</b>	<b>(\$250.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
10/21/2013	Red Rock Partial Payment	PPRR	250.00	CC 290129665	Partial payment

**Association Allocation Detail**

<b>Late Fee</b>	<b>Total:</b>	<b>(\$75.00)</b>	
Date:	Description:	Code:	Amount:
03/16/2011	Late Fee	RRLF	-25.00
04/16/2011	Late Fee	RRLF	-25.00
05/16/2011	Late Fee	RRLF	-25.00
<b>Assessment</b>	<b>Total:</b>	<b>(\$157.08)</b>	
Date:	Description:	Code:	Amount:
05/01/2011	Assessment	MAHOA	-128.92
06/01/2011	Assessment	MAHOA	-28.16

**RRFS Allocation Detail**

<b>RRFS</b>	<b>Total:</b>	<b>(\$17.92)</b>	
Date:	Description:	Code:	Amount:
11/29/2011	NOD Mailing Costs	MAIL3	-17.92

10/21/2013 10:01:10 Processed By: Reporting

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **September 20, 2013**

### Account Information

Company: Spanish Trail Master Association  
 Association: Spanish Trail Master Association  
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
 Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

### Payment Summary

<b>Payment Processed</b>	<b>\$500.00</b>
Allocation Categories	
Association	(\$430.00)
RRFS	(\$70.00)
<b>Total Allocations</b>	<b>(\$500.00)</b>

### Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
09/20/2013	Red Rock Partial Payment	PPRR	500.00	CC 290129483	Partial Payment

### Association Allocation Detail

<b>Other</b>	<b>Total:</b>	<b>(\$200.00)</b>
Date:	Description:	Code:
12/02/2010	Association Misc. Charge	ASMIS
		Amount:
		-200.00

<b>Assessment</b>	<b>Total:</b>	<b>(\$230.00)</b>
Date:	Description:	Code:
04/01/2011	Assessment	MAHOA
		Amount:
		-133.92
05/01/2011	Assessment	MAHOA
		Amount:
		-96.08

### RRFS Allocation Detail

<b>RRFS</b>	<b>Total:</b>	<b>(\$70.00)</b>
Date:	Description:	Code:
11/29/2011	NOD Mailing Costs	MAIL3
		Amount:
		-70.00

9/20/2013 2:03:52 PM Processed By: Reporting

**PAYMENT ALLOCATION REPORT**

RRFS Account: **74507**  
Mgmt Account:  
Information as of: **August 13, 2013**

**Account Information**

Company: Spanish Trail Master Association  
Association: Spanish Trail Master Association  
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

**Payment Summary**

<b>Payment Processed</b>	<b>\$500.00</b>
Allocation Categories	
Association	(\$475.00)
RRFS	(\$25.00)
<b>Total Allocations</b>	<b>(\$500.00)</b>

**Payment Detail**

Date:	Description:	Code:	Amount:	Check:	Memo:
08/13/2013	Red Rock Partial Payment	PPRR	500.00	CC 290129318	Partial Payment

**Association Allocation Detail**

<b>Assessment</b>		Total:
Date:	Description:	Amount:
03/01/2011	Assessment	-475.00

**RRFS Allocation Detail**

<b>RRFS</b>		Total:
Date:	Description:	Amount:
07/28/2011	Lien for Delinquent Assessment	-25.00

## PAYMENT ALLOCATION REPORT

RRFS Account: **74507**  
 Mgmt Account:  
 Information as of: **July 09, 2013**

### Account Information

Company: Spanish Trail Master Association  
 Association: Spanish Trail Master Association  
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113  
 Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

### Payment Summary

<b>Payment Processed</b>	<b>\$500.00</b>
<b>Allocation Categories</b>	
Association	(\$450.00)
RRFS	(\$50.00)
<b>Total Allocations</b>	<b>(\$500.00)</b>

### Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
07/09/2013	Red Rock Partial Payment	PPRR	500.00	CC 290125492	Partial payment

### Association Allocation Detail

Date:	Description:	Code:	Amount:
11/16/2010	Late Fee	RRLF	-25.00
12/16/2010	Late Fee	RRLF	-25.00
01/16/2011	Late Fee	RRLF	-25.00
02/16/2011	Late Fee	RRLF	-25.00
<b>Assessment</b>			<b>(\$350.00)</b>
Date:	Description:	Code:	Amount:
03/01/2011	Assessment	MAHOA	-350.00

### RRFS Allocation Detail

Date:	Description:	Code:	Amount:
07/28/2011	Lien for Delinquent Assessment	LIEN	-50.00

7/9/2013 12:27:55 PM Processed By: Reporting



Red Rock Financial Services

Numbers of Pages 5

January 26, 2012

Miles, Bauer, Bergstrom & Winters LLP

Attn: Alexander Bhame

Via Email: [abhame@mileslegal.com](mailto:abhame@mileslegal.com)

Re: 34 Innisbrook Ave, Las Vegas, NV 89113  
Spanish Trail Master Association / R74507

***Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.***

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

The current balance is \$9,255.44 (Please collect additional \$200.00 transfer fee for new owner payable to: Spanish Trail Master Association). This demand and its balance due will expire on 2/10/12. You MUST request an update as this balance will only be valid through the date above. Payment received after the expiration date will not be accepted if the balance has changed. Failure to remit the balance by the expiration date may result in the continuation of the collection process at an additional cost. Check(s) should be made payable to Red Rock Financial Services and mailed to the address below.

**Spanish Trail Master Association and/or the Management Company's transfer fees as well as other fees and costs may not be included. You must contact Spanish Trail Master Association directly for those additional amounts at 702-367-8747.**

If you have any questions, please contact our office at 702-932-6887.

Regards,

Red Rock Financial Services

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

[www.rvfs.com](http://www.rvfs.com)

■ Phone: 702-932-6887 Toll Free: 888-315-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time automatic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check, an additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a bill against your account.) Please contact the accounts receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

**RRFS000569**

74507

DOUGLAS E. MILES \*  
Also Admitted in California and  
Illinois

RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. MCLENNAN\*  
MARK T. DOMEYER\*

Also Admitted in District of  
Columbia & Virginia  
TAMIS CROSBY\*  
L. BRYANT JACQUEZ\*  
GINA M. CORENA  
WAYNE A. RASH\*  
ROCK K. JUNG  
VY T. PHAM\*  
KRISTA J. NIELSON  
HADI R. SEYED-ALI\*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN

Admitted in California  
BRIAN H. TRAN\*  
ANNA A. GHAJAR\*  
CORT B. JONES\*  
STEVEN E. STERN

Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona and  
California

CATHERINE K. MASON\*  
CHRISTINE A. CHUNG\*  
HANH T. NGUYEN\*  
THOMAS B. SONG\*  
S. SHELLY RAISZADEH\*  
SHANNON C. WILLIAMS\*  
ABTIN SHAKOURI\*  
LAWRENCE R. BOVIN\*



**MILES, BAUER, BERGSTROM & WINTERS, LLP**  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141



December 23, 2011

Estates West at Spanish Trail Association  
Red Rock Financial Services  
7251 Amigo Street, Suite 100  
Las Vegas, NV 89119

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 34 Innisbrook Avenue, Las Vegas, NV 89113*  
*MBBW File No. 11-H2280*

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

RRFS000578

74507 2/14 intr nos M  
H

**MILES, BAUER,  
BERGSTROM & WINTERS, LLP**

**ATTORNEYS AT LAW**

2200 Paseo Verde Parkway, Suite 250  
Henderson, Nevada 89052



8911934375 0006



RRFS000579



Red Rock Financial Services

December 14, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

SPANISH TRAIL MASTER ASSOCIATION  
7495 W. MISSION HILLS DR.  
LAS VEGAS, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113  
Spanish Trail Master Association / R74507

Dear SPANISH TRAIL MASTER ASSOCIATION:

***Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.***

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at [www.rrfs.com](http://www.rrfs.com). Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

[www.rrfs.com](http://www.rrfs.com)

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

**RRFS000580**

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NELSON  
JOBY C. GARABEDIAN  
THOMAS M. MORGAN  
Admitted in California  
STEVEN K. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

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Fax: (702) 369-4955

CALIFORNIA OFFICE  
1231 E. Dyer Road, Suite 100  
Sunnyvale, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD A. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENNAN  
MARIE T. DOMEYER  
Also Admitted in the District  
of

Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JACQUEZ  
WAYNE A. RASH  
SY T. PHAM  
HADI R. SEYED-AALI  
BRIAN L. TRAN  
ANNA A. GHAFARI  
COREY B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHENG  
HANG T. NGUYEN  
S. SHIELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAROURI  
LAWRENCE R. BOVIN

February 9, 2012

RED ROCK FINANCIAL SERVICES  
7251 Amigo Street, Suite 100  
Las Vegas, NV 89119

Re: *Property Address:* 34 Innisbrook Avenue  
ACCT NO.: R74507  
LOAN #: 138344335  
MBBW File No. 12-H0207



Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$9,255.44. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...  
*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

RRFS000533

2. A lien under this section is prior to all other liens and encumbrances on a unit except:  
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

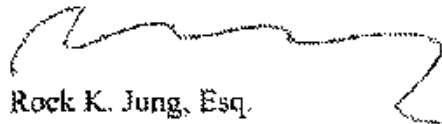
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$2,025.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$2,025.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 34 Innisbrook Avenue have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.

RRFS000534

Miles, Bauer, Bergstrom &amp; Winters, LLP Trust Acct

12-H0207

Initials: SRN

Payee: RED ROCK FINANCIAL SERVICES

Check #: 13298

Date: 2/6/2012

Amount: 2,025.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/3/2012	R74507	To Cure HOA Deficiency	2,025.00			

Miles, Bauer, Bergstrom & Winters, LLP  
Trust Account  
1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9100

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-66/1220  
1020

12-H0207

Loan # 138344335

13298

Date: 2/6/2012

Amount \$\*\*\*\* 2,025.00

Pay \$\*\*\*\*\*Two Thousand, Twenty-Five & No/100 Dollars  
to the order of

RED ROCK FINANCIAL SERVICES

Check Void After 90 Days




⑈13298⑈ ⑆122400724⑆ 501006876973⑈ RRFS000535

 **ENDORSE HERE**

**DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE**  
**RESERVED FOR FINANCIAL INSTITUTION USE \***

**RRFS000536**

 **The security features listed below, as well as those not listed, exceed industry guidelines.**

<b>Security Features:</b>	<b>Results of document alteration:</b>
Chemically Sensitive Paper	• Stains or spots may appear with chemical alteration
Erasable Protection	• White mark appears when erased
Security Screen	• Absence of "Original Document" verbiage on back of check
Authentic Watermark	• Authentic watermark not visible when held to light

© Padlock design is a certification mark of the Check Payment Systems Association

**\* FEDERAL RESERVE BOARD OF GOVERNORS REG. CC**

RR-12



Red Rock Financial Services

February 17, 2012

THORNBURG MORTGAGE SECURITIES TRUST 2007-3  
Attn: Mortgage Division  
C/O BAC HOME LOANS SERVICING, LP  
400 COUNTRYWIDE WAY SV-35  
MIN 1001337-001462185-1  
SIMI VALLEY, CA 93065  
R74507

Re: 34 Innisbrook Ave, Las Vegas, NV 89113  
Spanish Trail Master Association / R74507

To Whom It May Concern:

***Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.***

Red Rock Financial Services is sending this notice as a courtesy. The above referenced homeowner is currently delinquent in paying their Homeowners Association assessments. Nevada Revised Statutes allow Homeowners Associations to engage in the non-judicial foreclosure process for nonpayment of Homeowner Association assessments.

On behalf of the above mentioned Association, Red Rock Financial Services has recorded the Lien for Delinquent Assessments on 08/04/2011 and the Notice of Default and Election to Sell Pursuant to the Lien For Delinquent Assessments on 12/06/2011. According to Nevada Revised Statutes, the Notice of Default and Election to Sell must be recorded on the property for 90 days and notification must be sent to all parties listed on the Trustee Sale Guarantee via certified mail before the Association can exercise its rights to enforce the Notice of Default and Election to Sell.

Currently, Red Rock Financial Services is approximately 60 days into the mandatory 90-day waiting period. Please consider this your final notice before the Association exercises its right to continue with the non-judicial foreclosure process by recording the Notice of Sale. The Notice of Sale will be sent via first class and certified mail to those listed on the Trustee Sale Guarantee and other parties who have a vested interest in the property.

The Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder. This Lien may affect your position. To reinstate the above account, you must contact Red Rock Financial Services to obtain "up to date" payoff figures. Payment must be made payable to Red Rock Financial Services.

At this time, it is possible that we have been unable to reach the borrower. Your office may have been provided a more current mailing address. Please contact the borrower at any known addresses and have them contact our office immediately, as the above property is in default and may be subject to a foreclosure sale.

Thank you for your assistance in this matter. Additional information regarding this account can be obtained at [www.rrfs.com](http://www.rrfs.com). Please contact the office of Red Rock Financial Services at 702-932-6887 with any questions.

Regards,  
Red Rock Financial Services

Red Rock Financial Services ☒ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

[www.rrfs.com](http://www.rrfs.com)

☒ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

**RRFS000540**



RED ROCK FINANCIAL SERVICES

April 7, 2010

Miles, Bauer, Bergstrom & Winters, LLP  
Attn: Rock K. Jung, Esq.,  
2200 Paseo Verde Parkway, Suite 250  
Henderson, Nevada 89052

Dear Rock K. Jung, Esq.,

**Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.**

Red Rock Financial Services is in receipt of numerous correspondences regarding your interpretation of NRS 116.3116 and NRS 3116.3102. Our response to your correspondence is as follows:

When our office records a Notice of Default on behalf of the Homeowners Association, we are required by NRS 116.31162 to send a copy of the Notice of Default to all who have a vested interest in the property. As your client reflected as having a vested interest for all properties listed on Exhibit A, a copy of the Notice of Default was provided. Those that have a vested interest in the property are not required but may pay the debt that is attached to that specific Notice of Default.

In the correspondence you state that our lien is "Junior" to your client's, which we agree. However, we do not agree with your interpretation and implementation of NRS 116.3102 under the current situation.

The industry standard interpretation of NRS 116.3102 and our interpretation are as follows: The First Mortgage is "Senior" to the Homeowners Association. Therefore, when the First Mortgage forecloses, according to NRS 116.3102, the First Mortgage is responsible to pay six months of past due assessments from the time the First Mortgage foreclosed. Therefore, NRS 116.3102 only applies when someone who is "Senior" to the Homeowners Association forecloses on the property in question. Please note that as of October 1, 2009, it is a nine month super-priority lien amount.

Anyone who has a vested interest may pay the debt at any time prior to the Homeowners Association proceeding with the non-judicial foreclosure process however the debt must be paid in full. NRS 116.3102 does not apply in this situation.

If your client wishes pay, your client must submit Payoff Request in writing for each property to our office. If your client does not wish pay, please be aware that our office will continue to notify them of any further collection action we may take on the properties listed on Exhibit A as required by law.

We feel we have expressed our position in this matter clearly on numerous occasions; as such we will no longer be addressing these notices. If you feel you have any further information you wish to provide, please feel free to respond to this letter via first class mail or our website [www.rrfs.com](http://www.rrfs.com).

Sincerely,

Kimberlee Sibley  
Red Rock Financial Services

KJS/jmt

# **EXHIBIT H**

Assessor Parcel Number: 163-28-614-007  
 File Number: R74507  
 Property Address: 34 Innisbrook Ave  
 Las Vegas, NV 89113  
 Title Order Number: 35481

Inst #: 201112060001106  
 Fees: \$17.00  
 N/C Fee: \$0.00  
 12/06/2011 09:17:00 AM  
 Receipt #: 998591  
 Requestor:  
 NORTH AMERICAN TITLE COMPAN  
 Recorded By: SOL Pgs: 1  
 DEBBIE CONWAY  
 CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE  
 LIEN FOR DELINQUENT ASSESSMENTS**

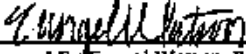
**◆ IMPORTANT NOTICE ◆**

*Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.*

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN  
 THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE  
 AMOUNT IS IN DISPUTE!**

**NOTICE IS HEREBY GIVEN:** Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association, under the Lien for Delinquent Assessments, recorded on 08/04/2011, in Book Number 20110804, as Instrument Number 0002324, reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record on said lien, land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 03/07/1984, in Book Number 1885, as Instrument Number 1844877, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 29, 2011, the amount owed is \$ 8,312.52. This amount will continue to increase until paid in full.

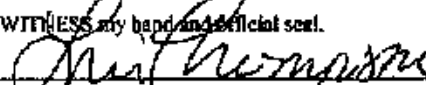
  
 Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Spanish Trail Master Association

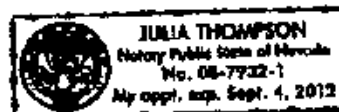
Dated: November 29, 2011

STATE OF NEVADA )  
 COUNTY OF CLARK )

On November 29, 2011, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
 When Recorded: Red Rock Financial Services  
 Mail To: 7251 Arlino Street, Suite 100  
 Las Vegas, Nevada 89119  
 702-932-6887



# **EXHIBIT I**

---

**MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT**

---

State of California    }  
                                  } ss.  
Orange County         }

**Affiant, Doug Miles, being first duly sworn, deposes and says:**

1.     I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP formerly known as Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

4.     The information in this affidavit is taken from Miles Bauer's business records, including records maintained in ProLaw. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to foreclosing homeowners associations (HOA) to satisfy super-priority liens. Spanish Trail Master Association was the foreclosing HOA associated with the following loan:

Loan Number: [REDACTED]

Borrower(s): Frank A. Timpa

Property Address: 34 Innisbrook Avenue, Las Vegas, NV

6. Attached hereto as Exhibit 1 is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Based on Miles Bauer's business records, attached as Exhibit 2 is a copy of a December 29, 2011 facsimile transmission from Alexander Bharne, an employee at Miles Bauer,

to Red Rock Financial Services requesting a payoff statement for Spanish Trail Master Association.

8. Based on Miles Bauer's business records, attached as Exhibit 3 is a copy of a letter dated January 26, 2012 from Red Rock Financial Services enclosing a Statement of Account for Spanish Trail Master Association received by Miles Bauer in response to the letter identified in paragraph 7 above.

9. Based on Miles Bauer's business records, attached as Exhibit 4 is a copy of a February 9, 2012 letter from Rock K. Jung, an attorney with Miles Bauer, to Red Rock Financial Services enclosing a check made out to Red Rock Financial Services in the amount of \$2,025.00.

10. Based on Miles Bauer's business records, the February 9, 2012 letter and check for \$2,025.00 was delivered to Spanish Trail Master Association, care of Red Rock Financial Services, on February 10, 2012. A copy of a screenshot containing the relevant case management note confirming the check was sent on February 10, 2012 is attached as Exhibit 1.

11. Based on Miles Bauer's business records, attached as Exhibit 5 is a document titled Las Vegas Cost Account further confirming the \$2,025.00 check was delivered to Red Rock Financial Services. The Las Vegas Cost Account document is a Miles Bauer business record reflecting payments made to its delivery courier, Legal Wings, whenever an HOA check was delivered. This A/P Payment Detail Report reflects Miles Bauer made a payment to Legal Wings in connection with the delivery of the \$2,025.00 check to Red Rock Financial Services for Miles Bauer File No. 12-H0207, the file number associated with this loan.

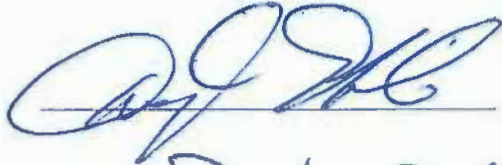
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12. Based on Miles Bauer's business records, Red Rock Financial Services rejected the \$2,025.00 check. See Exhibit 1 (screenshot containing the relevant case management note confirming the check was rejected).

FURTHER DECLARANT SAYETH NOT.

Date: 4/3/18

  
Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 3rd day of APRIL, 2018,

by DOUGLAS E. MILES, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Carol M. Grissom (Seal)  
(Signature of Notary Public)



# **EXHIBIT 1**

TABLE 1. SUMMARY OF DATA FOR THE 1990-1991 SEASON	
STATION	DATE
1. STATION 1	1990-1991
2. STATION 2	1990-1991
3. STATION 3	1990-1991
4. STATION 4	1990-1991
5. STATION 5	1990-1991
6. STATION 6	1990-1991
7. STATION 7	1990-1991
8. STATION 8	1990-1991
9. STATION 9	1990-1991
10. STATION 10	1990-1991
11. STATION 11	1990-1991
12. STATION 12	1990-1991
13. STATION 13	1990-1991
14. STATION 14	1990-1991
15. STATION 15	1990-1991
16. STATION 16	1990-1991
17. STATION 17	1990-1991
18. STATION 18	1990-1991
19. STATION 19	1990-1991
20. STATION 20	1990-1991
21. STATION 21	1990-1991
22. STATION 22	1990-1991
23. STATION 23	1990-1991
24. STATION 24	1990-1991
25. STATION 25	1990-1991
26. STATION 26	1990-1991
27. STATION 27	1990-1991
28. STATION 28	1990-1991
29. STATION 29	1990-1991
30. STATION 30	1990-1991
31. STATION 31	1990-1991
32. STATION 32	1990-1991
33. STATION 33	1990-1991
34. STATION 34	1990-1991
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36. STATION 36	1990-1991
37. STATION 37	1990-1991
38. STATION 38	1990-1991
39. STATION 39	1990-1991
40. STATION 40	1990-1991
41. STATION 41	1990-1991
42. STATION 42	1990-1991
43. STATION 43	1990-1991
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62. STATION 62	1990-1991
63. STATION 63	1990-1991
64. STATION 64	1990-1991
65. STATION 65	1990-1991
66. STATION 66	1990-1991
67. STATION 67	1990-1991
68. STATION 68	1990-1991
69. STATION 69	1990-1991
70. STATION 70	1990-1991
71. STATION 71	1990-1991
72. STATION 72	1990-1991
73. STATION 73	1990-1991
74. STATION 74	1990-1991
75. STATION 75	1990-1991
76. STATION 76	1990-1991
77. STATION 77	1990-1991
78. STATION 78	1990-1991
79. STATION 79	1990-1991
80. STATION 80	1990-1991
81. STATION 81	1990-1991
82. STATION 82	1990-1991
83. STATION 83	1990-1991
84. STATION 84	1990-1991
85. STATION 85	1990-1991
86. STATION 86	1990-1991
87. STATION 87	1990-1991
88. STATION 88	1990-1991
89. STATION 89	1990-1991
90. STATION 90	1990-1991
91. STATION 91	1990-1991
92. STATION 92	1990-1991
93. STATION 93	1990-1991
94. STATION 94	1990-1991
95. STATION 95	1990-1991
96. STATION 96	1990-1991
97. STATION 97	1990-1991
98. STATION 98	1990-1991
99. STATION 99	1990-1991
100. STATION 100	1990-1991

# **EXHIBIT 2**



**MILES, BAUER, BERGSTROM & WINTERS, LLP**  
ATTORNEYS AT LAW SINCE 1983

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

74509

74507

**FACSIMILE TRANSMISSION**

DATE: 12/29/11  
TO: Red Rock Financial Services Payoff Department  
RE: HOA Delinquent Accounts, Payoff Requests  
FAX NUMBER: 702-341-7733  
FROM: Alexander Bhame  
Civil Litigation Department  
702-942-0443 phone  
abhame@mileslegal.com

**NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER: 1**

Hello,  
Our firm represents Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP with regard to the following real properties:

[REDACTED]  
34 Inishbrook Ave.  
[REDACTED]

Our client is the Henholder on the deeds of trust encumbering the properties and has been made aware that an HOA default may exist. Would you please send me the HOA arrears as they currently exist? Thank you!

**CONFIDENTIALITY NOTE**

The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify the sender by telephone immediately at (702) 421-9100 and arrangements will be made for the return of this material. Thank You.

RRFS000577

TMST002523

# **EXHIBIT 3**

Jason Cernak

---

From: Jason Cernak  
Sent: Thursday, January 26, 2012 4:27 PM  
To: 'Alexander Bhamu'  
Cc: Tammy Esposito  
Subject: 34 innisbrook ave  
Attachments: 74507\_20120126160429.pdf; image001.png; image002.png; image003.jpg; oledata.mso

Good afternoon,

I've attached the payoff demand you requested for the above mentioned property.

Thank you,

Jason Cernak  
Mail Clerk  
Red Rock Financial Services

o. 702.932.6887 | f. 702.341.7733 | [www.RRFS.com](http://www.RRFS.com)



Click to follow Red Rock on LinkedIn!



A FirstService Residential Management Company

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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Numbers of Pages 5

Re: 34 Innisbrook Ave, Las Vegas, NV 89113  
Spanish Trail Master Association / R74507

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

**Spanish Trail Master Association and/or the Management Company's transfer fees as well as other fees and costs may not be included. You must contact Spanish Trail Master Association directly for these additional amounts at 702-367-8747.**

Regards,

**Real Rock Financial Services**

725 J. Amilo-Schmitt, S. S. S. 100, Las Vegas, NV 89139

[www.arts.gov](http://www.arts.gov)

☎ Phone: 202.937.5827 Toll Free: 1.800.315-0460 Fax: 202.341.7333

[illegible]

~~RRFS000949~~

TMST002526

**Red Rock Financial Services**  
**Account Detail**  
**Spanish Trail Master Association**  
Information as of: January 26, 2012

Page 1

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL  
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADRLAINE TIMPA,  
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /  
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

**Detailed Summary**

Date	Description	Amount	Balance Check#
07/01/2010	Assessment	\$225.00	\$225.00
08/01/2010	Assessment	\$225.00	\$450.00
08/16/2010	Late Fee	\$25.00	\$475.00
09/01/2010	Assessment	\$225.00	\$700.00
09/15/2010	Assessment	\$825.00	\$1,525.00
09/16/2010	Late Fee	\$25.00	\$1,550.00
10/01/2010	Assessment	\$225.00	\$1,775.00
10/16/2010	Late Fee	\$25.00	\$1,800.00
11/01/2010	Assessment	\$225.00	\$2,025.00
11/16/2010	Late Fee	\$25.00	\$2,050.00
12/01/2010	Assessment	\$225.00	\$2,275.00
12/02/2010	Association Misc. Charge	\$200.00	\$2,475.00
12/16/2010	Late Fee	\$25.00	\$2,500.00
12/21/2010	Intent Mailing Costs	\$9.00	\$2,509.00
12/21/2010	Intent to Lien Letter	\$125.00	\$2,634.00
12/21/2010	Intent Mailing Costs	\$9.00	\$2,643.00
01/01/2011	Assessment	\$225.00	\$2,868.00
01/16/2011	Late Fee	\$25.00	\$2,893.00
02/01/2011	Assessment	\$225.00	\$3,118.00
02/16/2011	Late Fee	\$25.00	\$3,143.00
03/01/2011	Assessment	\$225.00	\$3,368.00
03/01/2011	Assessment	\$825.00	\$4,193.00
03/16/2011	Late Fee	\$25.00	\$4,218.00

2251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-6687 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

PRRFB00571

TMST002527

**Red Rock Financial Services**  
**Account Detail**  
**Spanish Trail Master Association**  
Information as of: January 26, 2012

Page 2

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL  
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,  
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /  
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

**Detailed Summary**

Date	Description	Amount	Balance	Check#
03/17/2011	Red Rock Fee Adjustment	-\$348.96	\$3,869.04	
03/17/2011	Lien Mailing Costs	\$7.98	\$3,877.02	
03/17/2011	Lien for Delinquent Assessment	\$275.00	\$4,152.02	
03/17/2011	Lien Release	\$30.00	\$4,182.02	
03/17/2011	Lien Recording Costs	\$28.00	\$4,210.02	
03/17/2011	Lien Mailing Costs	\$7.98	\$4,218.00	
04/01/2011	Assessment	\$225.00	\$4,443.00	
04/16/2011	Late Fee	\$25.00	\$4,468.00	
05/01/2011	Assessment	\$225.00	\$4,693.00	
05/16/2011	Late Fee	\$25.00	\$4,718.00	
06/01/2011	Assessment	\$225.00	\$4,943.00	
06/16/2011	Late Fee	\$25.00	\$4,968.00	
07/01/2011	Assessment	\$225.00	\$5,193.00	
07/16/2011	Late Fee	\$25.00	\$5,218.00	
07/28/2011	Lien Mailing Costs	\$8.96	\$5,226.96	
07/28/2011	Lien for Delinquent Assessment	\$275.00	\$5,501.96	
07/28/2011	Lien Release	\$30.00	\$5,531.96	
07/28/2011	Lien Recording Costs	\$28.00	\$5,559.96	
07/28/2011	Lien Mailing Costs	\$8.96	\$5,568.92	
08/01/2011	Assessment	\$225.00	\$5,793.92	
08/16/2011	Late Fee	\$25.00	\$5,818.92	
09/01/2011	Assessment	\$225.00	\$6,043.92	

7251 Arroyo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-8887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 10/26/11  
**RRFS000572**

TMST002528

**Red Rock Financial Services**  
**Account Detail**  
**Spanish Trail Master Association**  
Information as of: January 26, 2012

Page 3

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innsbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL  
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,  
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /  
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

**Detailed Summary**

Date	Description	Amount	Balance	Check#
09/15/2011	Assessment	\$825.00	\$6,868.92	
09/16/2011	Late Fee	\$25.00	\$6,893.92	
10/01/2011	Assessment	\$225.00	\$7,118.92	
10/16/2011	Late Fee	\$25.00	\$7,143.92	
10/27/2011	Intent to NOD	\$90.00	\$7,233.92	
10/27/2011	Intent to NOD	\$90.00	\$7,323.92	
11/01/2011	Assessment	\$225.00	\$7,548.92	
11/16/2011	Late Fee	\$25.00	\$7,573.92	
11/28/2011	Adjustment	-\$90.00	\$7,483.92	
11/29/2011	NOD Mailing Costs	\$17.92	\$7,501.84	
11/29/2011	Notice of Default	\$375.00	\$7,876.84	
11/29/2011	NOD Mailing Costs	\$89.60	\$7,966.44	
11/29/2011	NOD Release	\$30.00	\$7,996.44	
11/29/2011	Trustee Sale Guarantee	\$350.00	\$8,346.44	
11/29/2011	NOD Recording Costs	\$17.00	\$8,363.44	
11/29/2011	NOD Release Recording Costs	\$17.00	\$8,380.44	
12/01/2011	Assessment	\$225.00	\$8,605.44	
12/15/2011	Late Fee	\$25.00	\$8,630.44	
01/01/2012	Assessment	\$225.00	\$8,855.44	
01/15/2012	Late Fee	\$25.00	\$8,880.44	
01/26/2012	Payoff Demand	\$150.00	\$9,030.44	
02/01/2012	Assessment	\$225.00	\$9,255.44	

2281 Aringo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-8867 Fax: (702) 344-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 02/01/2012  
RRFS000573

TMST002529

# Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Frank Timpa  
34 Innsbrook Avenue  
Las Vegas, NV 89113

Property Address: 34 Innsbrook Avenue  
Account #: 18432

Code	Date	Amount	Balance	Check#	Memo
PP	12/31/2007	-210.00	-210.00	0017	0017 CREDIT BAL
A1	1/2/2008	225.00	10.00		APPLY CHARGES
PP	1/11/2008	-225.00	-210.00	10155	10155 000111
A1	2/1/2008	225.00	10.00		APPLY CHARGES
PP	2/14/2008	-225.00	-210.00	10188	10188 000214
A1	3/1/2008	225.00	10.00		APPLY CHARGES
PP	3/12/2008	-225.00	-210.00	10214	10214 000312
A1	4/1/2008	225.00	10.00		APPLY CHARGES
PP	4/15/2008	-225.00	-210.00	10245	10245 000415
A1	5/1/2008	225.00	10.00		APPLY CHARGES
PP	5/27/2008	-225.00	-210.00	10275	10275 000527
PP	5/30/2008	210.00	0.00		EXPENSE ADJ
A1	6/1/2008	225.00	220.00		APPLY CHARGES
PP	6/3/2008	-225.00	0.00	10300	10300 000603
A1	7/1/2008	225.00	220.00		APPLY CHARGES
PP	7/12/2008	-220.00	0.00	10329	10329 000712
A1	8/1/2008	225.00	220.00		APPLY CHARGES
PP	8/14/2008	-220.00	0.00	10385	10385 000814
A1	9/1/2008	220.00	220.00		APPLY CHARGES
PP	9/12/2008	-220.00	0.00	10390	10390 000912
A1	10/1/2008	220.00	220.00		APPLY CHARGES
PP	10/15/2008	-220.00	0.00	10417	10417 001015
A1	11/1/2008	220.00	220.00		APPLY CHARGES
A1	12/1/2008	220.00	440.00		APPLY CHARGES
A1	1/1/2009	225.00	665.00		APPLY CHARGES
A1	2/1/2009	225.00	890.00		APPLY CHARGES
01	2/19/2009	25.00	915.00		APPLY LATE FEE
A1	3/1/2009	225.00	1,140.00		APPLY CHARGES
01	3/18/2009	25.00	1,165.00		APPLY LATE FEE
A1	4/1/2009	225.00	1,390.00		APPLY CHARGES
01	4/18/2009	25.00	1,415.00		APPLY LATE FEE
A1	5/1/2009	225.00	1,640.00		APPLY CHARGES
01	6/1/2009	25.00	1,665.00		APPLY LATE FEE
A1	6/1/2009	225.00	1,890.00		APPLY CHARGES

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-387-8747

Make check payable to: Spanish Trail Master Association

1/25/2012

Page 1 of 3

RRFS000574

TMST002530

**Spanish Trail Master Association**  
**7495 Mission Hills Drive**  
**Las Vegas, NV 89113**

Code	Date	Amount	Balance	Check#	Memo
01	6/18/2009	25.00	1,915.00		APPLY LATE FEE
A1	7/1/2009	225.00	2,140.00		APPLY CHARGES
01	7/16/2009	25.00	2,165.00		APPLY LATE FEE
A1	8/1/2009	225.00	2,390.00		APPLY CHARGES
01	8/16/2009	25.00	2,415.00		APPLY LATE FEE
A1	9/1/2009	225.00	2,640.00		APPLY CHARGES
01	9/16/2009	25.00	2,665.00		APPLY LATE FEE
A1	10/1/2009	225.00	2,890.00		APPLY CHARGES
01	10/16/2009	25.00	2,915.00		APPLY LATE FEE
A1	11/1/2009	225.00	3,140.00		APPLY CHARGES
01	11/16/2009	25.00	3,165.00		APPLY LATE FEE
A1	12/1/2009	225.00	3,390.00		APPLY CHARGES
A1	1/1/2010	225.00	3,615.00		APPLY CHARGES
A1	2/1/2010	225.00	3,840.00		APPLY CHARGES
01	2/16/2010	25.00	3,865.00		APPLY LATE FEE
A1	3/1/2010	225.00	4,090.00		APPLY CHARGES
C1	3/16/2010	625.00	4,715.00		APPLY CHARGES
01	3/16/2010	25.00	4,940.00		APPLY LATE FEE
01	3/30/2010	25.00	4,965.00		APPLY LATE FEE
A1	4/1/2010	225.00	5,190.00		APPLY CHARGES
A1	5/1/2010	225.00	5,415.00		APPLY CHARGES
01	5/16/2010	25.00	5,440.00		APPLY LATE FEE
PP	6/2/2010	-1,075.00	4,365.00	174251	174251 100607
PP	6/21/2010	-225.00	4,140.00		EXPENSE ADJ
A1	6/1/2010	225.00	4,365.00		APPLY CHARGES
PP	6/1/2010	-4,365.00	0.00	175519	175519 100822
A1	7/1/2010	225.00	225.00		APPLY CHARGES
A1	8/1/2010	225.00	450.00		APPLY CHARGES
01	8/16/2010	25.00	475.00		APPLY LATE FEE
A1	9/1/2010	225.00	700.00		APPLY CHARGES
C1	9/16/2010	625.00	1,325.00		APPLY CHARGES
01	9/16/2010	25.00	1,550.00		APPLY LATE FEE
A1	10/1/2010	225.00	1,775.00		APPLY CHARGES
01	10/16/2010	25.00	1,800.00		APPLY LATE FEE
A1	11/1/2010	225.00	2,025.00		APPLY CHARGES
01	11/16/2010	25.00	2,050.00		APPLY LATE FEE
A1	12/1/2010	225.00	2,275.00		APPLY CHARGES
01	12/16/2010	25.00	2,300.00		APPLY LATE FEE
A1	1/1/2011	225.00	2,525.00		APPLY CHARGES
01	1/16/2011	25.00	2,550.00		APPLY LATE FEE
A1	2/1/2011	225.00	2,775.00		APPLY CHARGES
01	2/16/2011	25.00	2,800.00		APPLY LATE FEE
A1	3/1/2011	225.00	3,025.00		APPLY CHARGES

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-387-8747  
 Make check payable to: Spanish Trail Master Association

1/29/2012

Page 2 of 3

**RRFS000575**

TMST002531

**Spanish Trail Master Association**  
**7495 Mission Hills Drive**  
**Las Vegas, NV 89113**

Code	Date	Amount	Balance	Check#	Memo
C1	3/1/2011	825.00	7,850.00		0
01	3/18/2011	25.00	7,875.00		APPLY LATE FEE
A1	4/1/2011	225.00	4,100.00		APPLY CHARGES
01	4/18/2011	10.00	4,125.00		APPLY LATE FEE
A1	5/1/2011	225.00	4,350.00		APPLY CHARGES
01	5/18/2011	10.00	4,375.00		APPLY LATE FEE
A1	6/1/2011	225.00	4,600.00		APPLY CHARGES
01	6/18/2011	10.00	4,625.00		APPLY LATE FEE
A1	7/1/2011	225.00	4,850.00		APPLY CHARGES
01	7/18/2011	10.00	4,875.00		APPLY LATE FEE
A1	8/1/2011	225.00	5,100.00		APPLY CHARGES
01	8/18/2011	10.00	5,125.00		APPLY LATE FEE
A1	9/1/2011	225.00	5,350.00		APPLY CHARGES
C1	9/18/2011	825.00	6,175.00		APPLY CHARGES
01	9/18/2011	10.00	6,200.00		APPLY LATE FEE
A1	10/1/2011	225.00	6,425.00		APPLY CHARGES
01	10/18/2011	10.00	6,450.00		APPLY LATE FEE
A1	11/1/2011	225.00	6,675.00		APPLY CHARGES
01	11/18/2011	10.00	6,700.00		APPLY LATE FEE
A1	12/1/2011	225.00	6,925.00		APPLY CHARGES
01-Late Fees	12/15/2011	10.00	6,950.00		30 Day Notice
A1-Assessment	1/1/2012	225.00	7,175.00		Assessment 2012
Current	30 - 60 Days	60 - 90 Days	>90 Days	Balance:	7,175.00
225.00	250.00	250.00	6,450.00		

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-387-8747  
 Make check payable to: Spanish Trail Master Association

1/24/2012

Page 3 of 3

**RRFS000576**

TMST002532

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Name (as shown on your income tax return)  
**RMI Management, LLC**

Business name (disregarded entity name, if different from above)  
**Red Rock Financial Services**

Check appropriate box for federal tax classification:  
☐ Individual sole proprietor ☐ C Corporation ☐ S Corporation ☒ Partnership ☐ Trust/estate  
☐ Limited liability company. Enter the tax classification (C-C corporation, S-S corporation, P-partnership) ☐ Sole proprietor  
☐ Other (see instructions) ☐ Sample payee

Address (number, street, and apt. or suite no.)  
**7251 Amigo Street, Suite 100**

City, state, and ZIP code  
**Las Vegas, NV 89119**

Use second number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Backup security number

--	--	--	--	--	--	--	--	--	--

Employer identification number

--	--	--	--	--	--	--	--	--	--

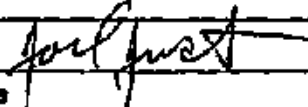
Notes: If this account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must check one item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here  Date **1/26/12**

## General instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your distributable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partner's share of effectively connected income.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien.
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partner's share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

# **EXHIBIT 4**

DOUGLAS E. SMITH  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. COHEN  
ROCK K. JUNG  
KRISTA J. NELSON  
JOEY C. SAMARSON  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTYCK  
Also Admitted in Arizona &  
California



**MILES, BAUER, BERGSTROM & WINTERS, LLP**  
ATTORNEYS AT LAW SINCE 1983

2200 Paseo Verde Pkwy., Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

**CALIFORNIA OFFICE**  
1231 E. Iyer Road, Suite 100  
Santa Ana, CA 92703  
Phone: (714) 431-9999  
Fax: (714) 431-9141

RICHLAND J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEVIN E. McLENNAN  
MARK T. DOMYER  
Also Admitted to the District

of  
Colorado & Virginia  
TAMI B. CROSSIN  
L. BRYANT JACQUE  
WAYNE A. RASH  
VY T. PHAM  
HADI N. SEYED-ALI  
BRIANIL TRAN  
APHA A. GHANAYAN  
CORI D. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. JIELLY RAISEDAEN  
SILAMON C. WILLIAMS  
ABYEN SHAKOURI  
LAWRENCE R. BOVIN

February 9, 2012

**RED ROCK FINANCIAL SERVICES**  
7251 Amigo Street, Suite 100  
Las Vegas, NV 89119

Re: *Property Address:* 34 Innisbrook Avenue  
*ACCT NO.:* R74507  
*LOAN #:* [REDACTED]  
*MBRW File No.* 12-H0207

Dear Sir/Madam:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$9,255.44. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:  
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (3), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$2,025.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$2,025.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 34 Innisbrook Avenue have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

**Payor: RED ROCK FINANCIAL SERVICES**

Check #: 13290

**12-H0207**

Initials: **SRN**

**Date:** 2/6/2012      **Amount:** 2,025.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/3/2012	R74507	To Cure HOA Deficiency	2,025.00			

**Milas, Bauer, Bergstrom & Winters, LLP**  
Trust Account  
1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9100

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
702-486-1220  
12-H0287  
Loan # [REDACTED]

13298

Date: 2/6/2012

**Amount \$\*\*\* 2,025.00**

Pay ~~\$~~Two Thousand, Twenty-Five & No/100 Dollars

**10 With Order of**

**RED ROCK FINANCIAL SERVICES**

### Check Mold After 90 Days

1. [REDACTED] [REDACTED] [REDACTED]

# **Exhibit 5**





3592836

Route #: 907

Attention: ALEX B.  
MILES, BAUER, BERGSTROM, WINTERS, LLP  
2200 PASEO VERDE PKWY. \* STE.#250  
HENDERSON NV 89074

Thursday February 16, 2012

**INVOICE**

3695960.358293

Work Order #: 01280345

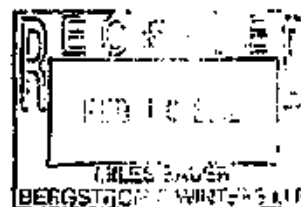
Attorney File #: 021012 RR

Description: DELIVERY

Date	Description	Amount
02/10/12	Miscellaneous Job: RUNNER	
02/10/12	TODAY	13.00
02/10/12	AREA "D"	29.00

DELIVER TODAY To:  
RED ROCK FINANCIAL SVCS., 7251 AMIGO St., Ste. #100  
RETURN SIGNED ACKNOWLEDGMENT w/in NORMAL COURSE

**TOTAL:** 42.00

**RECEIVED**

FEB 24 2012

M.B.B.W.  
ACCOUNTING DEPARTMENT

1118 FREMONT STREET, Las Vegas, NV 89101  
Telephone: (702) 384-0305, FAX: (702) 384-8638, Tex ID: 890223382

*DM 2/22*  
*Entered*  
*2/17/12*  
*XS*

TMST002540

# **EXHIBIT J**

Assessor Parcel Number: 163-28-614-007  
File Number: R74507  
Property Address: 34 Innisbrook Ave  
Las Vegas NV 89113

Inst #: 20140915-0001527  
Fees: \$18.00  
N/C Fee: \$0.00  
09/15/2014 01:50:20 PM  
Receipt #: 2152614  
Requestor:  
RED ROCK FINANCIAL SERVICES  
Recorded By: JACKSM Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF FORECLOSURE SALE  
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**

*Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.*

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.**

Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 08/04/2011 in Book Number 20110804 as Instrument Number 0002324 reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 12/06/2011 in Book Number 20111206 as Instrument Number 0001106 of the Official Records in the Office of the Recorder.


**NOTICE IS HEREBY GIVEN:** That on 10/08/2014, at 10:00 a.m. at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 34 Innisbrook Ave, Las Vegas, NV 89113 and land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state

Assessor Parcel Number: 163-28-614-007  
File Number: R74507  
Property Address: 34 Inaistbrook Ave  
Las Vegas NV 89113

or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of \$20,309.95 as of 9/15/2014, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

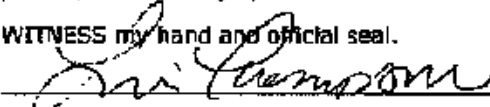
Dated: September 11, 2014

  
Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

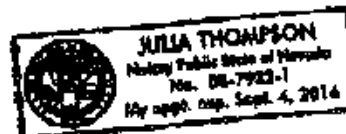
STATE OF NEVADA                    )  
COUNTY OF CLARK                )

On September 11, 2014, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Reinstatement Information: (702) 483-2996 or Sale Information: (714) 573-7777

When Recorded Mail To:  
Red Rock Financial Services  
4775 W. Teco Avenue, Suite 140  
Las Vegas, Nevada 89118  
(702) 483-2996 or (702) 932-6887



# **EXHIBIT K**

Mail Tax statement to:  
Saticoy Bay LLC, Series 34 Innisbrook  
900 S. Las Vegas Blvd., #810  
Las Vegas, NV 89101

APN # 163-38-614-007

Inst #: 20141110-0002475  
Fees: \$18.00 NC Fee: \$25.00  
RPTT: \$8125.10 Ex: #  
11/10/2014 11:49:45 AM  
Receipt #: 2215809  
Requestor:  
RESOURCES GROUP  
Recorded By: DXI Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### FORECLOSURE DEED

The undersigned declares: *\$6125.10*

Red Rock Financial Services, herein called agent for (Spanish Trail Master Association), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 08/04/2011 as instrument number 0002324 Book 20110804, in Clark County. The previous owner as reflected on said lien is TIMPA TRUST U/I/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN). Red Rock Financial Services as agent for Spanish Trail Master Association does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC, Series 34 Innisbrook (herein called grantee), pursuant to NRS 116.3116 through NRS 116.31168, all its right, title and interest in and to that certain property legally described as: ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 which is commonly known as 34 Innisbrook Ave Las Vegas, NV 89113.

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Spanish Trail Master Association governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/06/2011 as instrument number 0001106 Book 20111206 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Spanish Trail Master Association at public auction on 11/07/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale became the purchaser of said property and paid therefore to said agent the amount bid \$1,261,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

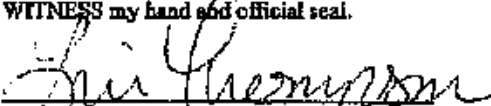
Dated: November 10, 2014

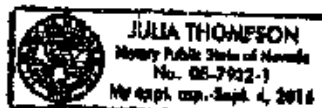
  
By: Christie Marling, employee of Red Rock Financial Services, agent for Spanish Trail Master Association

STATE OF NEVADA )  
COUNTY OF CLARK )

On November 10, 2014, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
When Recorded Mail To: Satisfy Bay LLC, Series 34 Innisbrook  
900 S. Las Vegas Blvd., #810  
Las Vegas, NV 89101



Sept 4 2016

# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number (s)

a) 03-28-614-007

b)

c)

d)

## 2. Type of Property:

a) ☐

Vacant Land

b) ☒

Single Fam Res.

c) ☐

Condo/Townhse

d) ☐

2-4 Plex

e) ☐

Apt. Bldg.

f) ☐

Comm/Indl

g) ☐

Agricultural

h) ☐

Mobile Home

i) ☐

Other

## FOR RECORDERS OPTIONAL USE ONLY

Notes:

## 3. Total Value/Sales Price of Property:

\$ 1,201,000.00

Deed in Lieu of Foreclosure Only (value of property)

\$

Transfer Tax Value:

\$ 1,201,000.00

Real Property Transfer Tax Due:

\$ 6125.10

## 4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 376.090, 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 376.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Capacity AGENT

Signature

Capacity

## SELLER (GRANTOR) INFORMATION

## BUYER (GRANTEE) INFORMATION

(REQUIRED)

(REQUIRED)

Print Name:

Red Rock Financial Services

Print Name:

Sollco Bay LLC, Series 34 limited

Address:

4775 West Teco Ave #140

Address:

600 S. Las Vegas Blvd., #110

City:

Las Vegas

City:

Las Vegas

State:

NV

Zip:

89118

State:

NV

Zip:

89101

## COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name:

Kumar Jyoti LLC

Escrow #

Address:

900 S. Las Vegas Blvd. #110

City:

NV

State:

NV

Zip:

89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

# **EXHIBIT L**

**DECLARATION OF R. SCOTT DUGAN, SRA**

I, R. Scott Dugan, under penalty of perjury, hereby declare as follows:

1. I am licensed Certified General Appraiser in the State of Nevada.

2. I am over 18 years of age, of sound mind, and capable of making this declaration.

3. The statements in this declaration are true and correct and made on the basis of my personal knowledge.

4. I have been retained as an expert to testify in the matter of *Saticoy Bay LLC Series 34 Innisbrook, Plaintiff(s) vs. Thornburg Mortgage Securities Trust 2007-3, Defendant(s)* filed in the Eighth Judicial District Court, District of Clark County, Nevada, Case No. A-14-710161-C.

5. I am a licensed Nevada Appraiser and Senior Managing Director of R. Scott Dugan Appraisal Company, Inc.

6. I have conducted a retroactive appraisal analysis of the property located at 34 Innisbrook Ave, Las Vegas, NV 89113. The conclusions I reached are fully expressed in the Summary Appraisal Report, a true and correct copy of which is attached hereto as Exhibit 1.

7. All opinions, analysis, and conclusions expressed in my report fully comply with the Uniform Standard of Professional Appraisal Practice promulgated by the Appraisal Standards Board and of the Appraisal Foundation and the reporting requirements of the Appraisal Institute.

8. That I declare the opinions, analysis and conclusions are expressed in my report, attached hereto as Exhibit 1, are true and correct.

9. That I incorporate into this Declaration my report in its entirety.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 19<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
R. Scott Dugan

# **EXHIBIT 1**

## APPRAISAL OF REAL PROPERTY



### LOCATED AT

34 Innisbrook Avenue  
Las Vegas, NV 89113  
Estates at Spanish Trail #5 Plat Book 40 Page 6 Lot 13 Block 1

### FOR

Wright Finlay & Zak  
7785 W Sahara Avenue, Ste 200  
Las Vegas, NV 89117

### AS OF

November 07, 2014

### BY

R. Scott Dugan, SRA  
R. Scott Dugan Appraisal Company, Inc.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, NV 89147  
702-876-2000  
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, NV 89147  
702-876-2000

February 08, 2017

Wright Finlay & Zak  
7785 W Sahara Avenue, Ste 200  
Las Vegas, NV 89117

Re: Property: 34 Innisbrook Avenue  
Las Vegas, NV 89113  
Borrower: N/A  
File No.: 34 Innisbrook

Opinion of Value: \$ 2,000,000  
Effective Date: November 07, 2014

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in good condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA  
R. Scott Dugan Appraisal Company, Inc.  
License or Certification #: A.0000166-CG  
State: NV Expires: 05/31/2017  
appraisals@rsdugan.com

Client	Wright Finlay & Zak	File No.	34 Innisbrook
Property Address	34 Innisbrook Avenue		
City	Las Vegas	County	Clark
		State	NV
		Zip Code	89113
Owner	Timpa Trust/Frank A & Madelaine Timpa		

TABLE OF CONTENTS

Cover Page ..... 1

Letter of Transmittal ..... 2

GP Residential ..... 3

Additional Comparables 4-6 ..... 6

Explanatory Comments ..... 7

General Area Overview ..... 8

Key Housing Indicators - Market Conditions ..... 9

Case Shiller - Market Conditions ..... 10

Redfin - Las Vegas Market Overview - Market Conditions ..... 11

Assessor's Page - Page 1 ..... 12

Assessor's Page - Page 2 ..... 13

Location Map ..... 14

Plat Map ..... 15

Building Sketch ..... 16

Subject Photos ..... 17

Comparable Photos 1-3 ..... 18

Comparable Photos 4-6 ..... 19

Clarification of Scope of Work ..... 20

GP Residential Certifications Addendum ..... 23

RESIDENTIAL APPRAISAL REPORT

File No.: 34 Innisbrook

SUBJECT	Property Address: 34 Innisbrook Avenue		City: Las Vegas		State: NV		Zip Code: 89113																																																																
	County: Clark		Legal Description: Estates at Spanish Trail #5 Plat Book 40 Page 6 Lot 13 Block 1																																																																				
	Assessor's Parcel #: 163-28-614-007																																																																						
	Tax Year: 2014		R.E. Taxes: \$ N/A		Special Assessments: \$ 0		Borrower (if applicable): N/A																																																																
	Current Owner of Record: Timpa Trust/Frank A & Madelaine Timpa		Occupant: <input checked="" type="checkbox"/> Owner		<input type="checkbox"/> Tenant		<input type="checkbox"/> Vacant		<input type="checkbox"/> Manufactured Housing																																																														
ASSIGNMENT	Project Type: <input checked="" type="checkbox"/> PUD		<input type="checkbox"/> Condominium		<input type="checkbox"/> Cooperative		<input type="checkbox"/> Other (describe)		HOA: \$ 375		<input type="checkbox"/> per year		<input checked="" type="checkbox"/> per month																																																										
	Market Area Name: Spanish Trail - Southwest Las Vegas				Map Reference: 62-F3				Census Tract: 29.57																																																														
	The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)																																																																						
	This report reflects the following value (if not Current, see comments): <input type="checkbox"/> Current (the Inspection Date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective																																																																						
	Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)																																																																						
MARKET AREA DESCRIPTION	Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)																																																																						
	Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.																																																																						
	Intended User(s) (by name or type): Wright Finlay & Zak and/or legal professionals associated with this case.																																																																						
	Client: Wright Finlay & Zak				Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117																																																																		
	Appraiser: R. Scott Dugan, SRA				Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147																																																																		
SITE DESCRIPTION	Location: <input type="checkbox"/> Urban		<input checked="" type="checkbox"/> Suburban		<input type="checkbox"/> Rural		Predominant Occupancy		One-Unit Housing		Present Land Use		Change in Land Use																																																										
	Built up: <input checked="" type="checkbox"/> Over 75%		<input type="checkbox"/> 25-75%		<input type="checkbox"/> Under 25%																																																																		
	Growth rate: <input type="checkbox"/> Rapid		<input type="checkbox"/> Stable		<input checked="" type="checkbox"/> Slow		<input checked="" type="checkbox"/> Owner		PRICE		AGE		One-Unit 70 %																																																										
	Property values: <input type="checkbox"/> Increasing		<input checked="" type="checkbox"/> Stable		<input type="checkbox"/> Declining		<input type="checkbox"/> Tenant		\$(000)		(yrs)		2-4 Unit 0 %																																																										
	Demand/supply: <input type="checkbox"/> Shortage		<input checked="" type="checkbox"/> In Balance		<input type="checkbox"/> Over Supply		<input checked="" type="checkbox"/> Vacant (0-5%)		200		Low 15		Multi-Unit 0 %																																																										
	Marketing time: <input type="checkbox"/> Under 3 Mos.		<input checked="" type="checkbox"/> 3-6 Mos.		<input type="checkbox"/> Over 6 Mos.		<input checked="" type="checkbox"/> Vacant (>5%)		3,000		High 30		Comm'l 0 %																																																										
									450		Pred 22		Golf 30 %																																																										
	Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Tropicana Avenue- N, Rainbow Boulevard- E, Hacienda Avenue- S, and Durango Drive- west. The subject project of the Estates is within the MPC of Spanish Trails, which consists of custom homes. It is surrounded by a 27-hole championship golf course with common area facilities, fitness center, tennis courts, pools, perimeter fencing and 24 hour man-gated entrances. There are a variety of residential tract housing with supporting services in the immediate area. 3 miles S is shopping at the Arroyo Market Square, with office/major medical facilities located within just blocks to 4 +/- miles consisting of Spring Valley, Southern Hills and St. Rose Dominican Hospitals. 5 to 8 +/- miles E/NE are the Resort Corridor and CBD of Downtown Las Vegas (key employment centers) with good freeway and major street access. Current market conditions indicate increasing prices.																																																																						
	DESCRIPTION OF THE IMPROVEMENTS	Dimensions: 99 x 155 x 145 x 196						Site Area: .50 Acre (21,780 Sq Ft)																																																															
		Zoning Classification: R-1						Description: Single-Family Residential (5 Units Per Acre)																																																															
Zoning Compliance: <input checked="" type="checkbox"/> Legal						<input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning																																																																	
Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown						Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																	
Ground Rent (if applicable) \$ N/A/																																																																							
Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain)						The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.																																																																	
Actual Use as of Effective Date: Single Family Residential						Use as appraised in this report: Single Family Residential																																																																	
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.																																																																							
<table><tr><td>Utilities</td><td>Public</td><td>Other</td><td>Provider/Description</td><td>Off-site Improvements</td><td>Type</td><td>Public</td><td>Private</td><td>Topography</td><td>Built Up Pad</td></tr><tr><td>Electricity</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>NV Energy</td><td>Street</td><td>Asphalt</td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td>Size</td><td>Typical for Area</td></tr><tr><td>Gas</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>SW Gas</td><td>Curb/Gutter</td><td>Concrete</td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td>Shape</td><td>Rectangular</td></tr><tr><td>Water</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>LLVWD</td><td>Sidewalk</td><td>Concrete</td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td>Drainage</td><td>Appears Adequate</td></tr><tr><td>Sanitary Sewer</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Clark County</td><td>Street Lights</td><td>Electric</td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td>View</td><td>Golf View</td></tr><tr><td>Storm Sewer</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Clark County</td><td>Alley</td><td>None</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td></td><td></td></tr></table>												Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private	Topography	Built Up Pad	Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy	Street	Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Size	Typical for Area	Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas	Curb/Gutter	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shape	Rectangular	Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD	Sidewalk	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drainage	Appears Adequate	Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Street Lights	Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	View	Golf View	Storm Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Alley	None	<input type="checkbox"/>	<input type="checkbox"/>		
Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private	Topography	Built Up Pad																																																														
Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy	Street	Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Size	Typical for Area																																																														
Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas	Curb/Gutter	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shape	Rectangular																																																														
Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD	Sidewalk	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drainage	Appears Adequate																																																														
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Street Lights	Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	View	Golf View																																																														
Storm Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Alley	None	<input type="checkbox"/>	<input type="checkbox"/>																																																																
Other site elements: <input checked="" type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)																																																																							
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C2535F FEMA Map Date 11/16/2011																																																																							
Site Comments: Typical utility easements and setbacks for the area, adjacent to the Spanish Trail golf course. The site is located on the north side of the street and is protected from errant golf shots by its location. Owners of golf course lots aware of the potential dangers associated with frontage along the course and errant golf shots. Some buyers may be adverse to golf frontage lots, while others pay premiums for golf and open space frontage, not adverse.																																																																							
	General Description			Exterior Description			Foundation			Basement <input checked="" type="checkbox"/> None			Heating Yes																																																										
	# of Units One <input type="checkbox"/> Acc.Unit			Foundation Concrete			Slab Concrete			Area Sq. Ft. _____			Type FWA																																																										
	# of Stories Two			Exterior Walls Stucco			Crawl Space None			% Finished _____			Fuel Gas																																																										
	Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> _____			Roof Surface Tile			Basement None			Ceiling _____																																																													
	Design (Style) Mediterranean/2-Stry			Gutters & Dwnspts. None			Sump Pump <input type="checkbox"/> None			Walls _____			Cooling Yes																																																										
	<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.			Window Type Insulated			Dampness <input type="checkbox"/> None			Floor _____			Central Yes																																																										
	Actual Age (Yrs.) 17			Storm/Screens None			Settlement None			Outside Entry _____			Other None																																																										
	Effective Age (Yrs.) 17						Infestation None																																																																
	Interior Description			Appliances			Attic <input type="checkbox"/> None			Amenities			Car Storage <input type="checkbox"/> None																																																										
	Floors Exterior Only			Refrigerator <input checked="" type="checkbox"/>			Stairs <input type="checkbox"/>			Fireplace(s) # 4			Woodstove(s) # _____																																																										
Walls Exterior Only			Range/Oven <input checked="" type="checkbox"/>			Drop Stair <input type="checkbox"/>			Patio Yes			Garage # of cars ( 6 Tot.)																																																											
Trim/Finish Exterior Only			Disposal <input checked="" type="checkbox"/>			Scuttle <input checked="" type="checkbox"/>			Deck Yes			Attach. _____																																																											
Bath Floor Exterior Only			Dishwasher <input checked="" type="checkbox"/>			Doorway <input type="checkbox"/>			Porch Yes			Detach. _____																																																											
Bath Wainscot Exterior Only			Fan/Hood <input checked="" type="checkbox"/>			Floor <input type="checkbox"/>			Fence Yes			Blt.-In 4																																																											
Doors Exterior Only			Microwave <input checked="" type="checkbox"/>			Heated <input type="checkbox"/>			Pool Yes			Carport _____																																																											
			Washer/Dryer <input type="checkbox"/>			Finished <input type="checkbox"/>			Spa Yes			Driveway 2																																																											
												Surface Pavers																																																											
Finished area above grade contains: 11 Rooms 6 Bedrooms 7 Bath(s) 11,314 Square Feet of Gross Living Area Above Grade																																																																							
Additional features: The property is assumed to have standard features and amenities for this submarket. The gross living area is based on a full inspection performed by the appraiser in 2001.																																																																							
Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in good condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum good 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the addendum - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.																																																																							

# RESIDENTIAL APPRAISAL REPORT

File No.: 34 Innisbrook

My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.												
Data Source(s): GLVAR MLS & Clark County Public Records												
1st Prior Subject Sale/Transfer			Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.									
Date:												
Price:												
Source(s):												
2nd Prior Subject Sale/Transfer												
Date:												
Price:												
Source(s):												
<b>SALES COMPARISON APPROACH TO VALUE (If developed)</b> <input type="checkbox"/> The Sales Comparison Approach was not developed for this appraisal.												
FEATURE		SUBJECT		COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Address		34 Innisbrook Avenue Las Vegas, NV 89113		32 Gulf Stream Court Las Vegas, NV 89113			54 Innisbrook Avenue Las Vegas, NV 89113			35 Princeville Lane Las Vegas, NV 89113		
Proximity to Subject				1.03 miles E			0.24 miles E			1.21 miles E		
Sale Price		\$		\$ 1,850,000			\$ 1,725,000			\$ 1,400,000		
Sale Price/GLA		\$/sq.ft.		\$ 199.33 /sq.ft.			\$ 215.06 /sq.ft.			\$ 205.31 /sq.ft.		
Data Source(s)		MLS-Pub Records		MLS-Files-Public Records/ DOM 150			MLS-Files-Public Records/ DOM 84			MLS-Files-Public Records/ DOM 180		
Verification Source(s)		Public Records		201408270:4285			201401080:2859			201401170:2450		
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION			DESCRIPTION			DESCRIPTION		
Sales or Financing				Short Sale			Traditional			Traditional		
Concessions				CASH \$0			CONV \$0			CONV \$0		
Date of Sale/Time				08/27/2014			01/08/2014			01/17/2014		
Rights Appraised		Fee Simple		Fee Simple			Fee Simple			Fee Simple		
Location		Spanish Trail		Spanish Trail			Spanish Trail			Spanish Trail		
Site		21,780 SF/Interior		22,216 SF/CDS			23,522 SF/CDS			15,246 SF/Interior		
View		Golf View		Golf View			Golf/Lake View			Golf View		
Design (Style)		Mediterranean/2-Stry		Mediterranean/2-Stry			Mediterranean/2-Stry			Mediterranean/2-Stry		
Quality of Construction		Stucco		Stucco			Stucco			Stucco		
Age		17		12			21			24		
Condition		Good		Good			Good			Good		
Above Grade		Total Bdrms Baths		Total Bdrms Baths			Total Bdrms Baths			Total Bdrms Baths		
Room Count		11 6 7		11 4 5			8 4 4.5			9 4 5		
Gross Living Area		11,314 sq.ft.		9,281 sq.ft.			8,021 sq.ft.			6,819 sq.ft.		
Basement & Finished		None		None			None			None		
Rooms Below Grade		None		None			None			None		
Functional Utility		Good		Good			Good			Good		
Heating/Cooling		Central		Central			Central			Central		
Energy Efficient Items		Standard		Standard			Standard			Standard		
Garage/Carport		4 Garage 1254'		3 Garage 799'			4 Garage 1041'			3 Garage 827'		
Porch/Patio/Deck		L/S,C/Pat/Deck		L/S,C/Pat/Deck			L/S,C/Pat/Deck			L/S,C/Pat/Deck		
Pool Package		Pool Package		Pool Package			Pool Package			Pool Package		
Casita/Guesthouse		None		None			None			None		
Contract Date		None		03/17/2014			11/13/2013			12/16/2013		
Net Adjustment (Total)				<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 226,300			<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 340,300			<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 535,500		
Adjusted Sale Price of Comparables				\$ 2,076,300			\$ 2,065,300			\$ 1,935,500		
Summary of Sales Comparison Approach The comparables in this report range in gross living area (GLA) from 5,648 to 9,281 square feet, with all properties located in the the master plan of Spanish Trail.												
The comparables required adjustments (rounded) for variations in the following: lot size at \$10 per square foot; GLA at \$100 per square foot; basement area at \$100 per square foot; and difference in garage facilities at \$50 per square foot. Cross comparison of the data did not support adjustments for minor variations lot size, age, bedroom/bathroom count, etc. While these variations were noted, in most cases a consistent value difference between the sales could not be isolated.												
Minor value features, i.e., fireplaces, etc., may not have been noted in the grid. If present, such features in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion.												
In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$2,000,000. The package price per square foot of \$177 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from about \$191 to \$270. The subject's package price is below the unadjusted sale price divided by gross living area of the comparables due to the subject's excessive gross living area. The adjusted range of comparable pricing brackets and supports the value conclusion. The subject's central tendency is \$2,000,000 (rounded) and is considered reasonable in support of the final conclusion of value.												
Indicated Value by Sales Comparison Approach \$ 2,000,000												



ADDITIONAL COMPARABLE SALES

File No.: 34 Innisbrook

SALES COMPARISON APPROACH

FEATURE		SUBJECT		COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6			
Address		34 Innisbrook Avenue Las Vegas, NV 89113		41 Princeville Lane Las Vegas, NV 89113			32 Innisbrook Avenue Las Vegas, NV 89113						
Proximity to Subject				1.27 miles E			0.02 miles SW						
Sale Price		\$		\$ 1,525,000			\$ 1,425,000			\$			
Sale Price/GLA		\$ /sq.ft.		\$ 270.01 /sq.ft.			\$ 190.76 /sq.ft.			\$ /sq.ft.			
Data Source(s)		MLS-Pub Records		MLS-Files-Public Records/ DOM 139			MLS-Files-Public Records/ DOM 160						
Verification Source(s)		Public Records		201403250:2134			201308090:1741						
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+ (-) \$ Adjust.	DESCRIPTION		+ (-) \$ Adjust.	DESCRIPTION		+ (-) \$ Adjust.	
Sales or Financing Concessions				Traditional CASH \$0			Traditional CONV \$0						
Date of Sale/Time				03/25/2014			08/09/2013						
Rights Appraised		Fee Simple		Fee Simple			Fee Simple						
Location		Spanish Trail		Spanish Trail			Spanish Trail						
Site		21,780 SF/Interior		13,504 SF/Interior		+83,000	18,295 SF/Interior		+35,000				
View		Golf View		Golf View			Golf View						
Design (Style)		Mediterranean/2-Stry		Mediterranean/2-Stry			Mediterranean/2-Stry						
Quality of Construction		Stucco		Stucco			Stucco						
Age		17		15			24						
Condition		Good		Good			Good						
Above Grade Room Count		Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths
		11	6	7	14	4	5	9	5	6.5			
Gross Living Area		11,314 sq.ft.		5,648 sq.ft.		+566,600	7,470 sq.ft.		+384,400	sq.ft.			
Basement & Finished Rooms Below Grade		None None		1299 Sq Ft Basement		-130,000	None None						
Functional Utility		Good		Good			Good						
Heating/Cooling		Central		Central			Central						
Energy Efficient Items		Standard		Standard			Standard						
Garage/Carport		4 Garage 1254'		4 Garage 1239'			3 Garage 924'		+16,500				
Porch/Patio/Deck		L/S,C/Pat/Deck		L/S,C/Pat/Deck			L/S,C/Pat/Deck						
Pool Package		Pool Package		Pool Package			Pool Package						
Casita/Guesthouse		None		None			None						
Contract Date		None		02/12/2014			08/10/2013						
Net Adjustment (Total)				<input checked="" type="checkbox"/> + <input type="checkbox"/> -		\$ 519,600	<input checked="" type="checkbox"/> + <input type="checkbox"/> -		\$ 435,900	<input type="checkbox"/> + <input type="checkbox"/> -		\$	
Adjusted Sale Price of Comparables						\$ 2,044,600			\$ 1,860,900			\$	
Summary of Sales Comparison Approach      In review of available data, the appraiser was able to determine that there were no concessions, special financing or other considerations, unless noted in the grid.													
The subject as well as the comparables utilized in this report were appraised or inspected by R. Scott Dugan. Therefore, the gross living area(s) used in this report was determined through physical measurements made by myself and could differ from those indicated by public records. Further, the bedroom and/or bath counts indicated herein may differ from those reported in public records.													
Please be advised that R. Scott Dugan is a resident in the Spanish Trail complex and lives in the "Links" development. This in no way influenced my opinion of this property or its estimated market value. There are approximately 1,234 homes in this project that were built between 1984 and 1995. As of the date of this report, R. Scott Dugan has appraised at least 900 out of the 1,234 homes over the past 30 plus years in this project. Therefore, I do believe I have the competency and experience to derive an opinion of value for the subject property.													
</													

Explanatory Comments

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

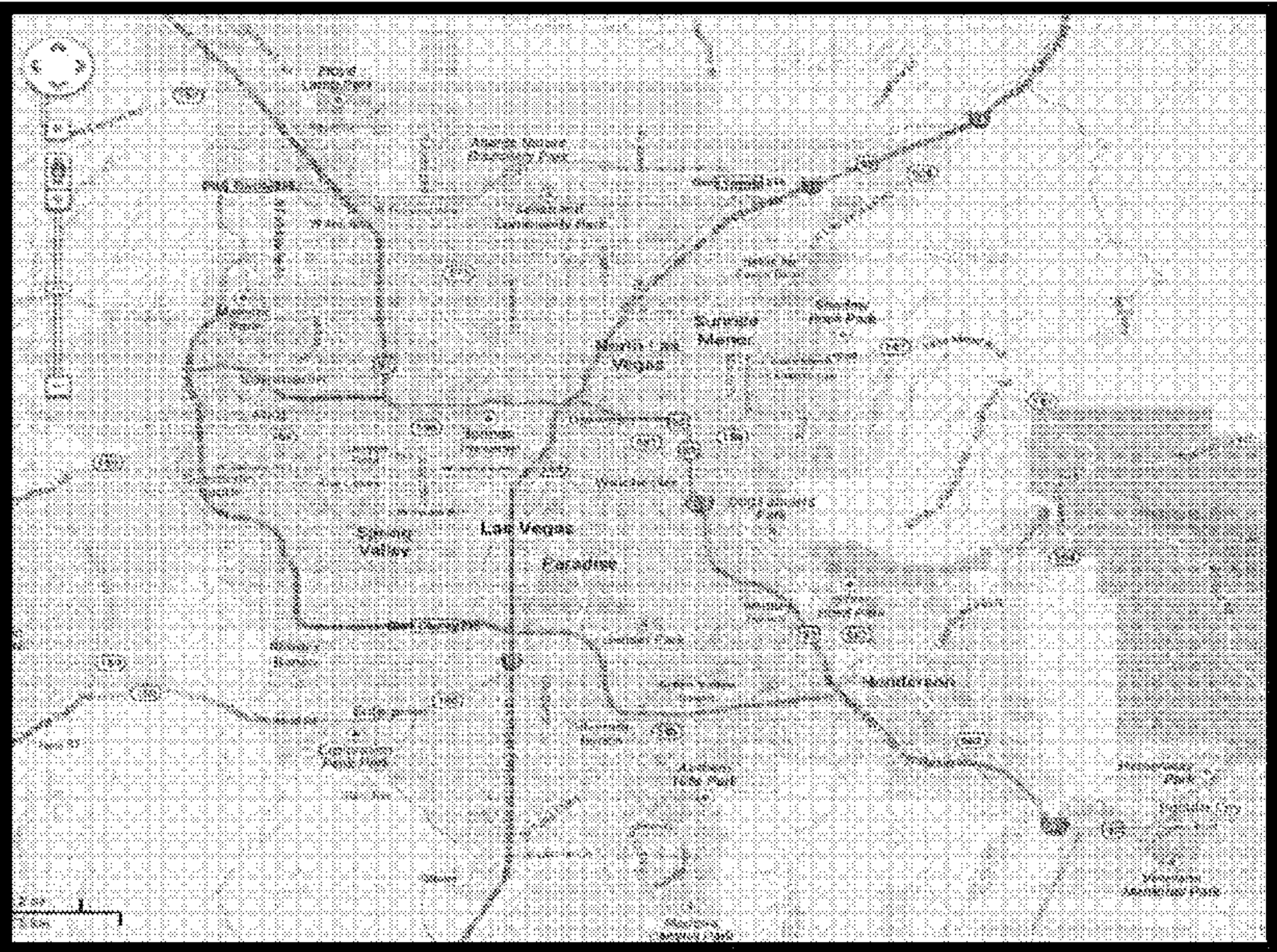
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

**Retrospective Value:** is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, November 7, 2014, the effective date of this report. The physical exterior inspection of the subject property was performed on February 5, 2017.

General Area Overview

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



**General Area Description:** The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

**Key Factors influencing Housing Market Trends in the area:** People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak						
Property Address	34 Innisbrook Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89113
Owner	Timpa Trust/Frank A & Madelaine Timpa						

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

Las Vegas Valley Market Overview - 3rd Quarter 2014							
HBR & Other Sources 3rd Annual Activity	2008	2009	2010	2011	2012	2013	2014 3-1710
Employment Seasonally Adjusted - (1,000's)	902.4	866.0	857.5	863.8	879.6	891.5	917.6 (P)
Median Sale Price - Resales (HBR)	\$162,999	\$123,000	\$119,000	\$110,000	\$139,900	\$167,500	\$189,950
Interest Rate % 30 Yr - (Oct 30)	6.03	5.01	4.75	3.88	3.94	4.48	3.98
PI with 80% LTV - No MI (@ 200K)	\$962	\$860	\$835	\$753	\$758	\$809	\$762
PI with 95% LTV - No MI (@ 200K)	\$1,143	\$1,021	\$991	\$894	\$901	\$960	\$905
3 BR Metro Avg Apt Rent (3rd Quarter)	\$1,105	\$1,014	\$977	\$964	\$934	\$952	\$945
Metro Median Rent (All product types)	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,100	\$1,150
Listings Total Year	61,038	57,016	56,643	55,174	40,271	39,819	32,136
Listings W/O Offer	Unavailable	8,405	12,417	8,831	3,688	7,063	8,196
Sales Volume	24,924	38,127	34,434	38,153	36,609	32,756	22,318
Sales Volume - New (HBR - All product types)	9,017	4,924	4,786	1,220	5,544	7,303	4,338
List to Sale Ratio	41%	67%	61%	69%	91%	82%	69%
Median List Price (Available Units)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$186,500	\$219,900
Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500	\$202,500
Median Sale Price - New (HBR)	\$244,090	\$216,000	\$216,225	\$212,000	\$210,525	\$296,577	\$296,890
Average DOM	68	61	64	72	69	52	64
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	127.23	August 136.65
HBR - Home Builder's Research, GLVAR - Greater Las Vegas Assoc. Realtors, (P) Pending							

**Economics & Statistics:** The economic indicators and statistics presented in this section and following pages are gathered from various public reporting agencies and data sources, and deemed to be consistent in their development methodology. From time to time, different methods may be employed to report various economic indicators. These indicators are presented to provide the reader with a broad overview of the general economy and factors affecting real estate and investment decisions.

**Recent Trends:** There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

- 2010:** The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points, significantly below economic value (affordability) and often 35%+/- or more below value. Physical condition ranged from average to poor.
- 2011:** There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.
- 2012:** Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.
- 2013:** Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market.
- 2014:** In 2013, the market continued to correct and prices rose by 20% to 30% year over year. By year-end 2013 (and heading into 2014), the market slowed as prices reached short-term peaks and inventory adjusted to demand. YTD 2014, the market continues to sort itself out as prices adjust to demand and affordability. Lower interest rates have improved affordability and we are seeing rent levels, sale prices and the Case Shiller Index improving.

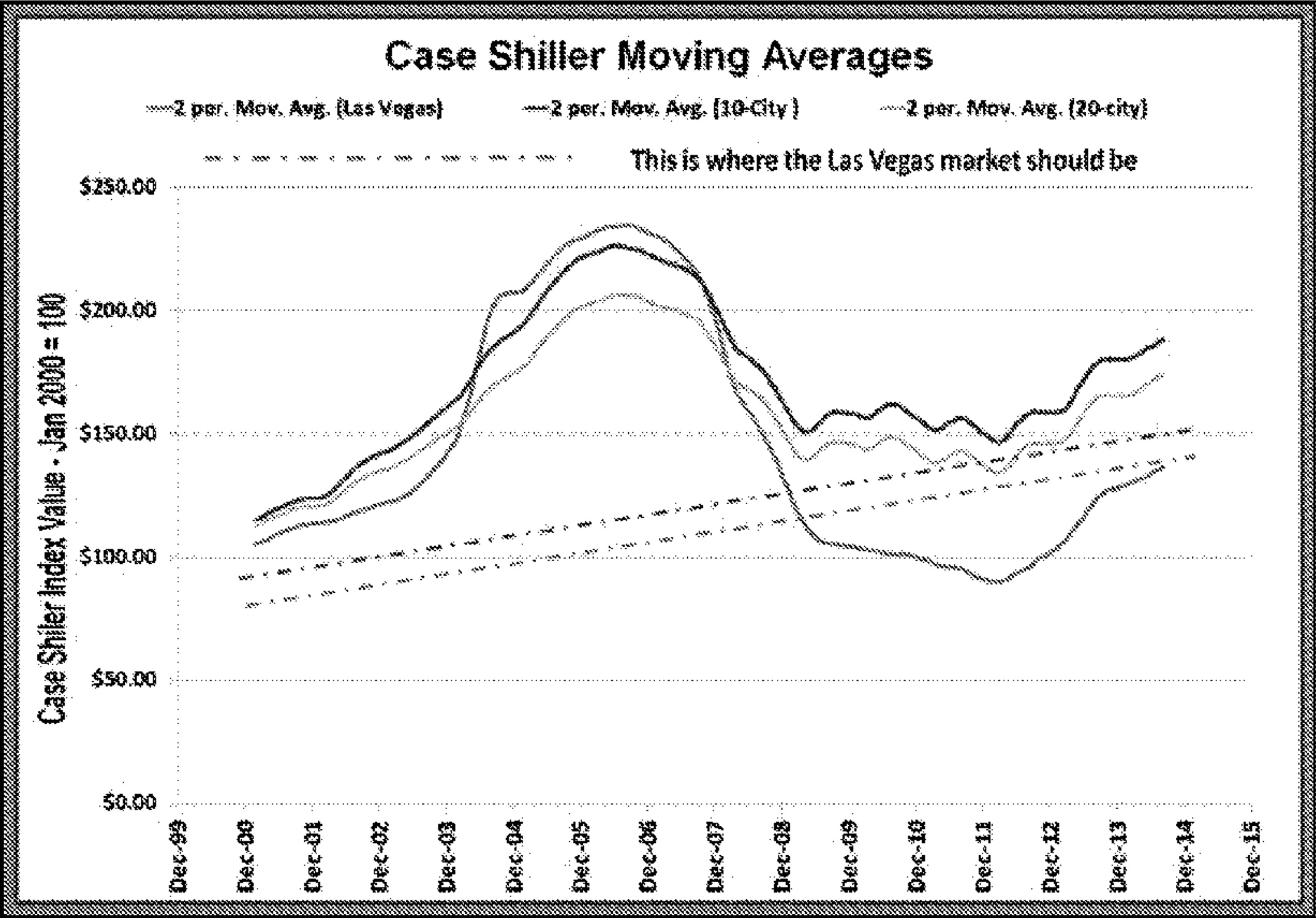
**Observations and Conclusions:** Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Employment is improving, but lagging behind other areas and the national market. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.

Case Shiller - Market Conditions

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

The Case Shiller Index - compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas still is below the 10 and 20 City averages, however, the gap has closed significantly since late 2011. What we are seeing (current market conditions), is the market sorting itself out and slowly correcting to norms. The two trend lines (red for the composites and blue for Las Vegas) illustrate the normal relationship between Las Vegas and the 10 and 20 City Composites.

The gap between the current Las Vegas market average and the blue Las Vegas trend line show the over-correction (based on buyer affordability) and the market's or recognition of over-correction during 2012 (based upon median income and housing affordability). This is what investors recognized and why investors made significant purchases in the Las Vegas market in 2009 - 2012.

Investors realized what the rest of the market did not, housing in Las Vegas "economically under-valued." The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could by an "unoccupiable REO" for \$100,000, invest an additional \$25,000 in to it for repairs and sell it for \$150,000, all within 90 days and make a \$25,000 profit. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return. This is why the majority of sales in many markets have been "all cash."

With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

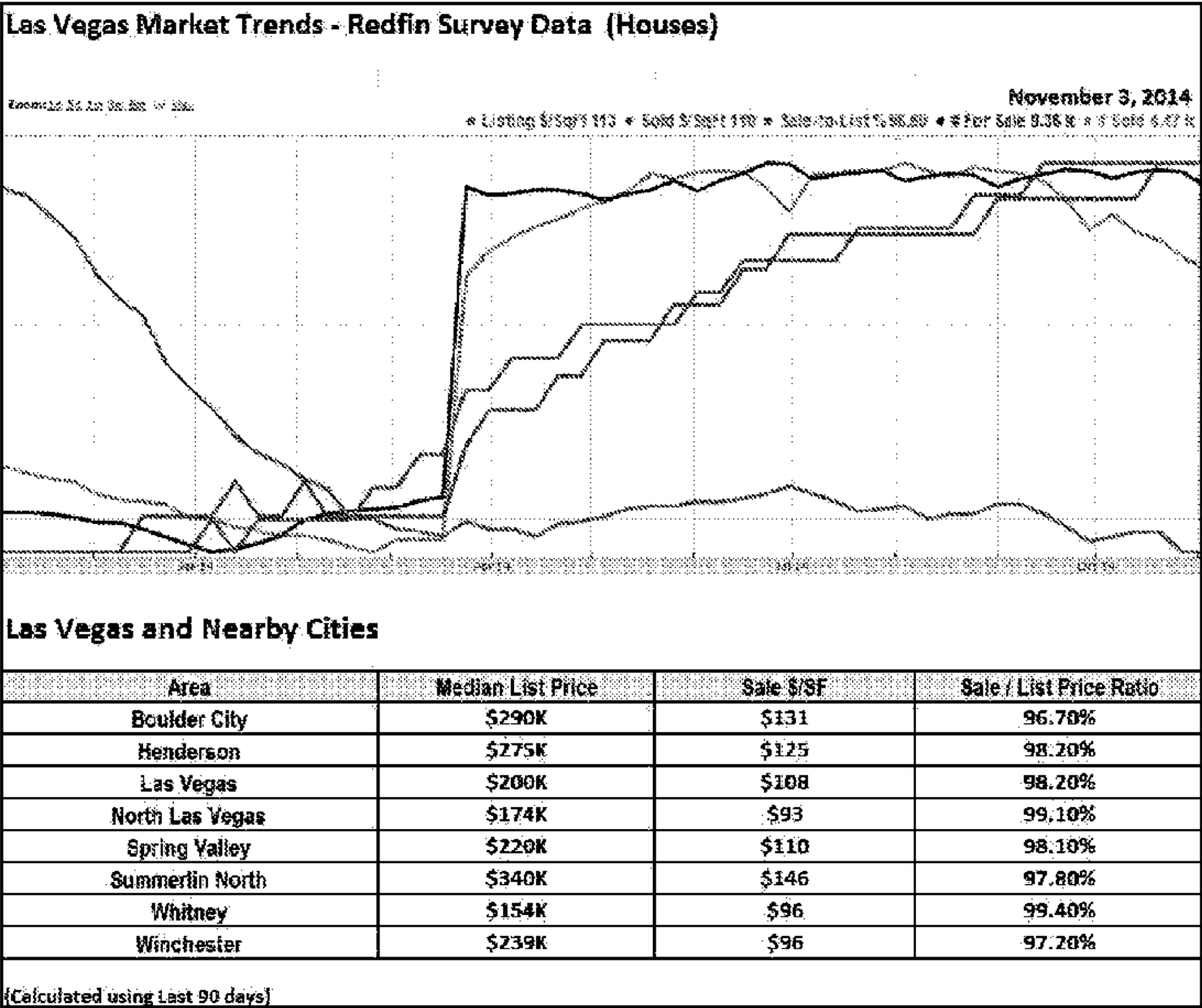
Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2014, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

Redfin - Las Vegas Market Overview - Market Conditions

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.





**Measuring and Reporting Market Conditions:** The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand for underpriced units exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply (shadow inventory) is not on the market and 5) Some housing is not selling due to obsolescence. Essentially, we have inventory available that is not "market acceptable" as it is outdated in design, features, location and price points and the market simply isn't interested, reflected in the number of listings without an offer.

This combination of factors acting in the market is creating a housing shortage (for some market segment) driving prices upwards and closing the gap between where we should have been and where we have been over the past few years. This is evident in the Case-Shiller Index. The market is not in balance and therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria and the value opinion. Similarly, some market segments (locations, products, etc.) suffer from obsolescence and are effectively, unsalable inventory. This inventory gives the illusion of "inventory available" that really isn't acceptable to the market.

Anyone relying upon the value opinion must consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. Investors are active in this market area and affect market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

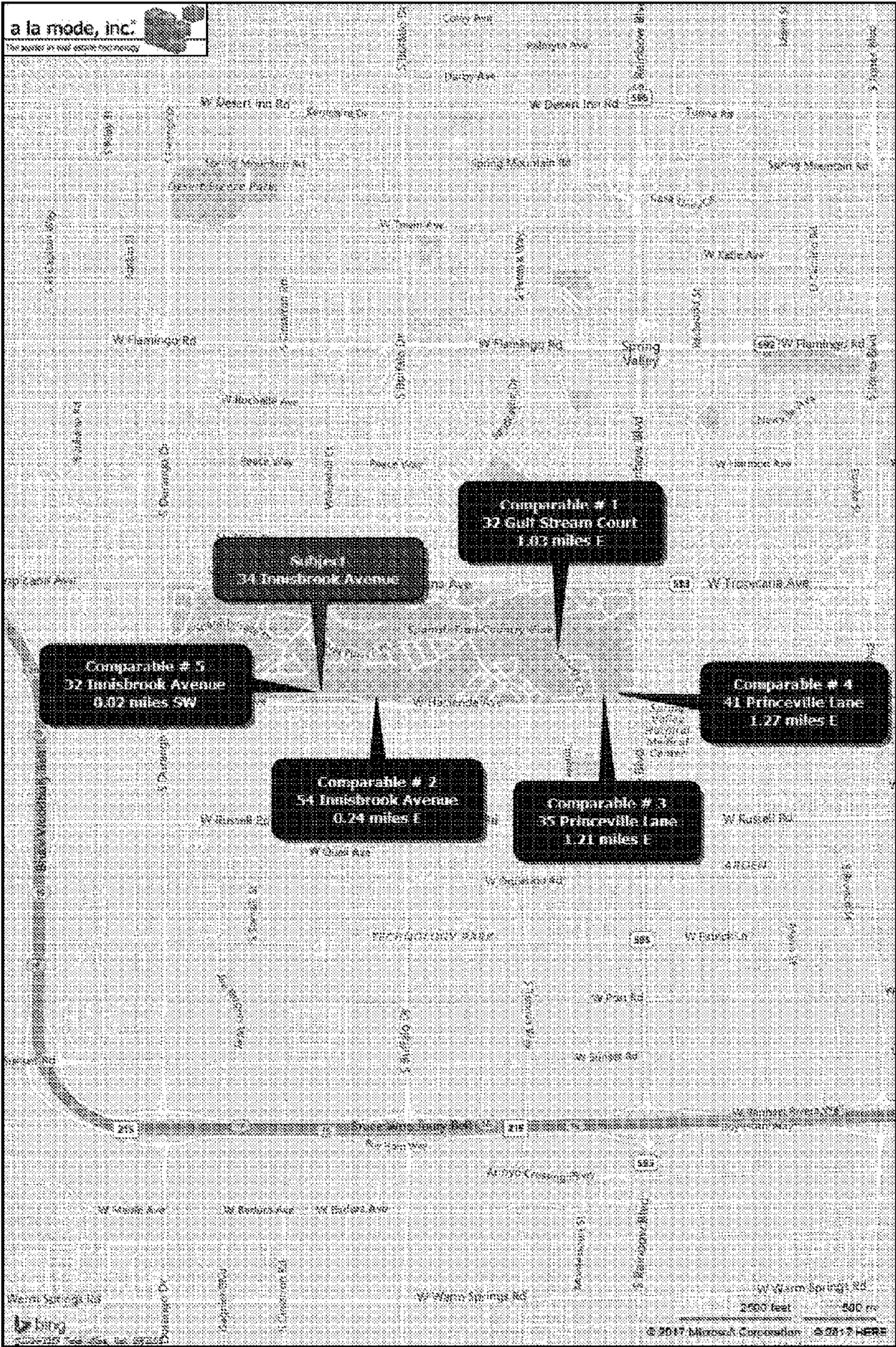
During a correction, sales may not reflect the "collective market" (as required by the definition of "market value"). Over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

OWNER(S)/MAIL TO				SITUS				163-28-614-007				Printed: 10/27/2017											
SATECITY BAY LLC SERIES 34 INVERBROOK 800 S LAS VEGAS BLVD #810 LAS VEGAS NV, 89101 NV				34 INVERBROOK AVE SPRING VALLEY PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1313 BT Southwest PRIMARY USE: 20 HO Single Family Residential								Page: 1 of 2											
												2017/18											
												LAND ACRES: 0.50 LAND SQUARE FEET: 21,790				SUMMARY OF TAXABLE VALUES				WORKING			
LEGAL DESCRIPTION: ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 8 LOT 13 BLOCK 1				FISCAL YEAR: 2013-14				2013-14				2014-15		2015-16		2016-17		2017-18					
				VALU TYPE: RECONCILE				BLDM				BLDM				BLDM		BLDM					
				LAND				\$185,000				\$185,000				\$230,000				\$235,000			
				BLADIVISION DISCOUNT																			
				NET LAND				\$185,000				\$185,000				\$230,000				\$235,000			
				IMPROVEMENTS				\$1,441,743				\$2,127,732				\$1,855,227				\$2,008,911			
				SUPPLEMENTAL																			
				COMMON ELEMENT				\$1,054				\$1,076				\$1,071				\$1,057			
				TOTAL IMPROVEMENT				\$1,442,777				\$2,128,808				\$1,856,298				\$2,007,978			
				SECURED PERSONAL PROP								\$108,070				\$91,926				107,788			
				PARCEL TOTAL				\$1,626,743				\$2,312,730				\$2,045,227				\$2,241,911			
				EXEMPTION TOTAL																			
SALES HISTORY																							
TYPE		SALE DATE		SALE PRICE		DEED BOOK		PAGE		GRANTOR					GRANTEE								
T		11/10/2014		\$ 1,201,000.00		2014-110		00002475		TIMPA FRANK					TIMCOY BAY LLC SERIES 34 INVERBROOK								
R		2/17/1985		\$ 320,000.00		19850217		00000093		ADAMS ROBERT A & SANDY FAMILY TR					TIMPA FRANK & MADELAINE								
LAND APPRAISAL																							
#	CODE	LAND CATEGORY	ZONING	UNIT TYPE	FF	DEPTH	UNITS	UNIT PRICE	TOTAL ADJ	ADJ UNIT PRICE	ADJ VALUE	OVERD VALUE	NOTES										
1	AR01	Residential	OSR-1	LT			1.00	\$185,000	17	1,000	\$185,000	\$245,000											
CODE		ADJUSTMENT		TYPE		ADJ%		ADJ VALUE		ADJ NOTE		CODE		ADJUSTMENT		TYPE		ADJ%		ADJ VALUE		ADJ NOTE	
AR01		Lump Sum - Golf				1.00		\$30,000.00															
LAND - GOLF COURSE/AG/OPEN SPACE																							
CLASSIFIED AG/GOLF COURSE										MARKET AG/GOLF COURSE													
#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE	#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE						
CODE		ADJUSTMENT		TYPE		ADJ%		ADJ VALUE		ADJ NOTE		CODE		ADJUSTMENT		TYPE		ADJ%		ADJ VALUE		ADJ NOTE	
IMPROVEMENTS																							
PROJECT NAME:		BUILDING COUNTY										SECTION COUNT		PERMITS									
TYPE	BLOG	BUILDING TYPE	CLD	RNR	AYB	EVB	STY	HGT	UNITS	BSMT	MEZZ	SPRK	ACMP	SOFT	3/50FT	RCNLD	TYPE	DESCRIPTION	COUNT	STATUS			
RES	3-1	Two Story	65		1987	1997		12.0					100%	11,354	180.84	2,184,470							
ACCOUNT FLAGS																							
CAT		TYPE																		VAL			
CONV		Capacity																		1			
CONV		Pool Count																		1			
PAR		Market Area																		CSAA			

OWNER(S)/MAIL TO					SITUS					163-28-614-007					Pthread: 10/27/2017			
SATCITY BAY LLC SERIES 34 INNSBROOK 800 S LAS VEGAS BLVD #810 LAS VEGAS NV, 89101 NV					34 INNSBROOK AVE SPRING VALLEY										Page: 2 of 2			
					PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1315 ST Southwest PROPERTY USE: 20 HO Single Family Residential BUILDINGS: 1 of 1										2017/18			
<b>BUILDING CHARACTERISTICS</b> TYPE: RES 02 Two Story QUALITY: B5 Excellent Plus AGE: 1997 EYE: 1997 % COMP: 100% % DEPR: 30.0					<b>BUILDING 1 OF 1 SECTION 1 OF 1</b> SUBAREAS										<b>BUILDING VALUE SUMMARY</b>			
<b>BASIC BUILDING FEATURES</b> CAT TYPE AREA % SF ADJ SPL Concrete Slab 6,230 54.54% -42,356 EW Frame-Stucco 100.00% -45,418 RC Concrete Tile 100.00% HT Forced Air 100.00% AC Central Cooling 100.00% 34,979					GL1 Resid Level 1 1997 1997 6,238 6,238 206.81 1,050,081 GL2 Resid Level 2 1997 1997 5,116 5,116 206.81 1,058,040 PSA Patio Clay Roof w/Steps 1997 1997 298 65.74 19,691 PSA Patio Clay Roof w/Steps 1997 1997 1,254 77.23 36,846 BCLW Balcony Clay Wood Fir 1997 1997 786 88.72 59,794 PSA Patio Clay Roof w/Steps 1997 1997 325 68.05 15,538 GAT Att Garage - Tile Roof 1997 1997 870 56.70 37,989 GAT Att Garage - Tile Roof 1997 1997 856 56.93 37,340										BASIC BUILDING 2,348,121 SQ FT ADJUSTMENTS 129,008 LUMP SUM ADJUSTMENTS 199,440 BASEMENT PORCHES 196,192 GARAGES/CARPORTS 75,329 BUILDING RCH 2,938,087 DEPRECIATION 861,426 POOL/SPA/DECK 55,203 OTHER EXTRA FEATURES 52,806 TOTAL RCHLD 2,164,479 IMPROVEMENT FACTOR MULTIPLE ADJUSTMENT OVERRIDE RCH VALUE CONDO COST SQ FT NTM RCH COMMON AREA 1,052 BLDG INC AREAS HEATED AREA 11,354 HEATED AREA WITH BSMT 11,354 ADJ RATE			
<b>ROOMS/BATHROOMS</b> CAT TYPE UNITS FAC UNIT ADJ RM1 Bedrooms 5.00 1.00 RM2 Family/Conl/Other 3.00 1.00 RM3 First Dining Room 1.00 1.00 RM4 Total Rooms 11.00 1.00 RM5 Full Baths 7.00 1.00 RM6 Half Baths 2.00 1.00 FOX Pansh Fxd 39.00 1.00 87,738					<b>GARAGES/CARPORTS PORCHES/PATIO/POOL/SPA/OTHER</b> CAT DESCRIPTION UNITS UNIT ADJ CAT DESCRIPTION UNITS UNIT ADJ POB Pkcs/Slpnd 786 3,964 PUCH CnclUnH 786 -9,471										<b>BUILDING NOTES</b>			
<b>BUILT-IN/FIREPLACES</b> CAT TYPE UNITS FAC UNIT ADJ AP1 Built In 1 1.00 11,520 AP2 Built In Refrigerator/Extra/Each 1 1.00 9,000 AP3 B Microwave 1 1.00 1,200 FPH Fireplace (H-Rack) 4 1.00 45,000					<b>EXTRA FEATURES</b> CODE DESCRIPTION GRD QTY UNITS UNIT PRICE FAC ADJ UNIT AGE EYE RCH DEPR% RCHLD NOTES RPL1 Pool Side Appx 843 Squares Fd 3 1 1.00 \$41,385.87 1.00 44,840.11 1997 1997 44,840 30.0 35,388 RPH1 Pool Heater Each 1 1.00 \$3,832.96 1.00 3,832.96 1997 1997 3,833 30.0 2,893 RPS1 Pool Spa/Attached Each 1 1.00 \$11,848.61 1.00 11,848.61 1997 1997 11,849 30.0 8,154 RPLD1 Pool Deck - Kool Deck 1 2,000.00 \$9.27 1.00 9.27 1997 1997 16,640 30.0 12,976 RFR1 Fence Large - 1/2 Acrs Custom 1 1.00 \$25,304.12 1.00 25,304.12 1997 1997 25,304 30.0 17,713 SPR2 Sprinkler Average 1 1.00 \$2,481.42 1.00 2,481.42 1997 1997 2,481 30.0 1,744 RPY9 Paving - Tile 1 1,400.00 \$10.64 1.00 14,906 1997 1997 14,906 30.0 10,427 RY12 Bar-B-Que/Firepit/Each 1 1.00 \$1,817.03 1.00 1,817.03 1997 1997 1,817 30.0 1,132 RYD1 Fountains/Each 1 2.00 \$6,168.87 2.50 15,421.86 1997 1997 30,843 30.0 21,590													
<b>ADDITIONAL BUILDING FEATURES</b> CAT TYPE UNITS FAC UNIT ADJ WH Wall Height (RES) 12 1.00 X30 Hardware Sec 1 1.00 7,728 X45 Intercom 1 1.00 1,869 X50 Residential Elevator/Each 1 1.00 22,279 X55 Vac Cleaner Sys 1 1.00 2,910																		

Location Map

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



Plat Map

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



File No. 11-2502-1

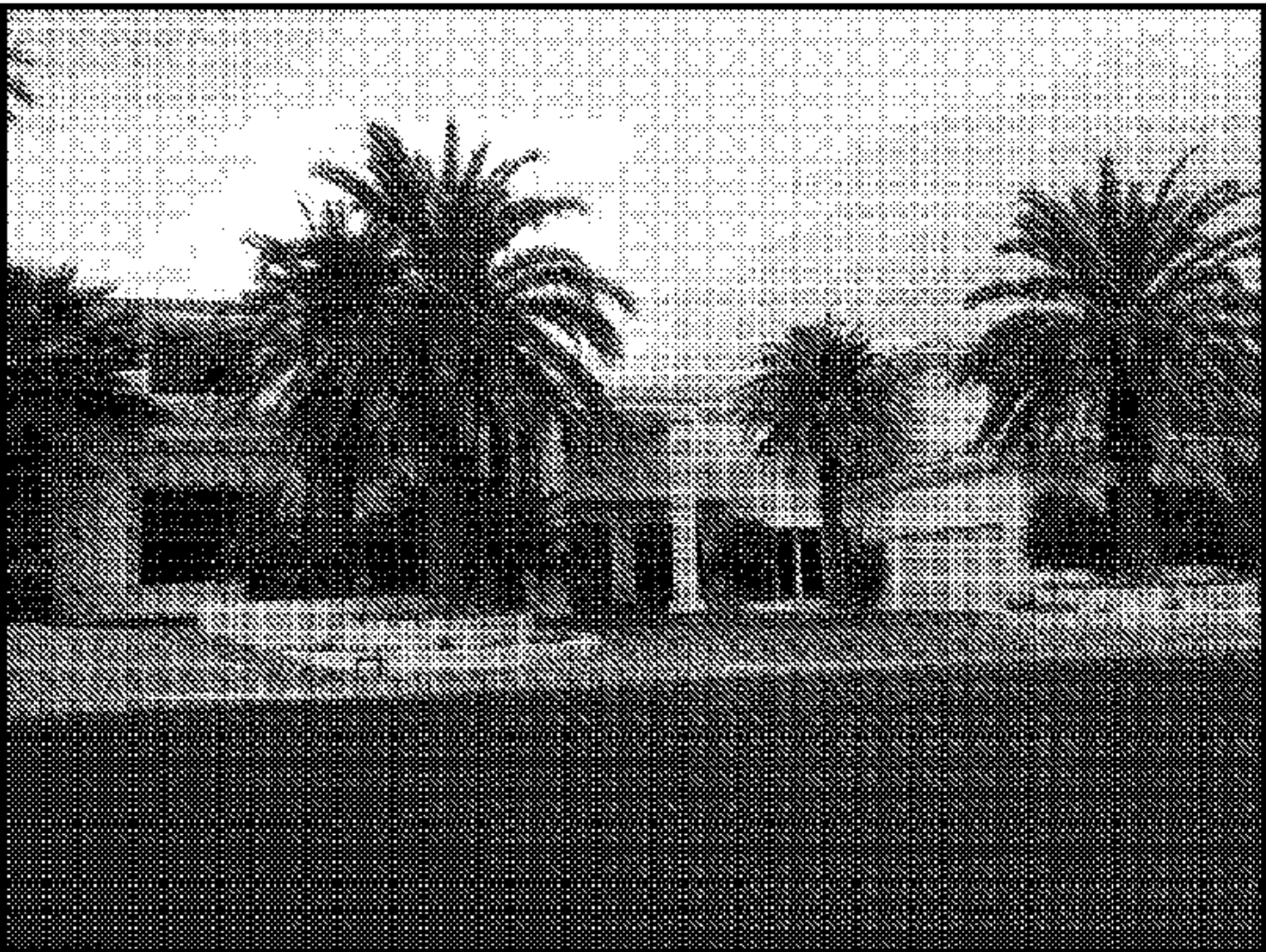
**CHRYSLER**

LIVING AREA BREAKDOWN			
	Breakdown		Schedule
<b>First Floor</b>			
0.5 x	5.0 x	5.0	18.00
0.5 x	10.0 x	10.0	50.00
	15.0 x	24.0	702.56
	10.0 x	25.0	180.00
	5.0 x	18.0	90.00
	14.0 x	41.0	574.12
0.5 x	2.0 x	2.0	2.00
0.5 x	11.0 x	11.0	44.00
	3.0 x	31.0	32.00
0.5 x	11.0 x	11.0	64.00
	9.0 x	32.0	328.00
	15.0 x	26.0	504.12
	3.0 x	17.0	54.00
	9.0 x	27.0	247.56
	10.0 x	109.0	2591.07
0.5 x	9.0 x	12.0	54.00
0.5 x	4.0 x	4.0	9.25
	0.0 x	43.0	0.00
	4.0 x	11.0	44.00
	10.0 x	45.0	450.00
0.5 x	9.0 x	8.1	0.00
0.5 x	4.0 x	4.0	7.52
33 remaining calculations			5041.51
<b>57 Areas Total (rounded)</b>			<b>11314</b>

\_\_\_\_\_

Subject Photo Page

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



Subject Front

34 Innisbrook Avenue	
Sales Price	
Gross Living Area	11,314
Total Rooms	11
Total Bedrooms	6
Total Bathrooms	7
Location	Spanish Trail
View	Golf View
Site	21,780 SF/Interior
Quality	Stucco
Age	17



Subject Street

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				



Comparable 1

32 Gulf Stream Court	
Prox. to Subject	1.03 miles E
Sales Price	1,850,000
Gross Living Area	9,281
Total Rooms	11
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	22,216 SF/CDS
Quality	Stucco
Age	12



Comparable 2

54 Innisbrook Avenue	
Prox. to Subject	0.24 miles E
Sales Price	1,725,000
Gross Living Area	8,021
Total Rooms	8
Total Bedrooms	4
Total Bathrooms	4.5
Location	Spanish Trail
View	Golf/Lake View
Site	23,522 SF/CDS
Quality	Stucco
Age	21



Comparable 3

35 Princeville Lane	
Prox. to Subject	1.21 miles E
Sales Price	1,400,000
Gross Living Area	6,819
Total Rooms	9
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	15,246 SF/Interior
Quality	Stucco
Age	24

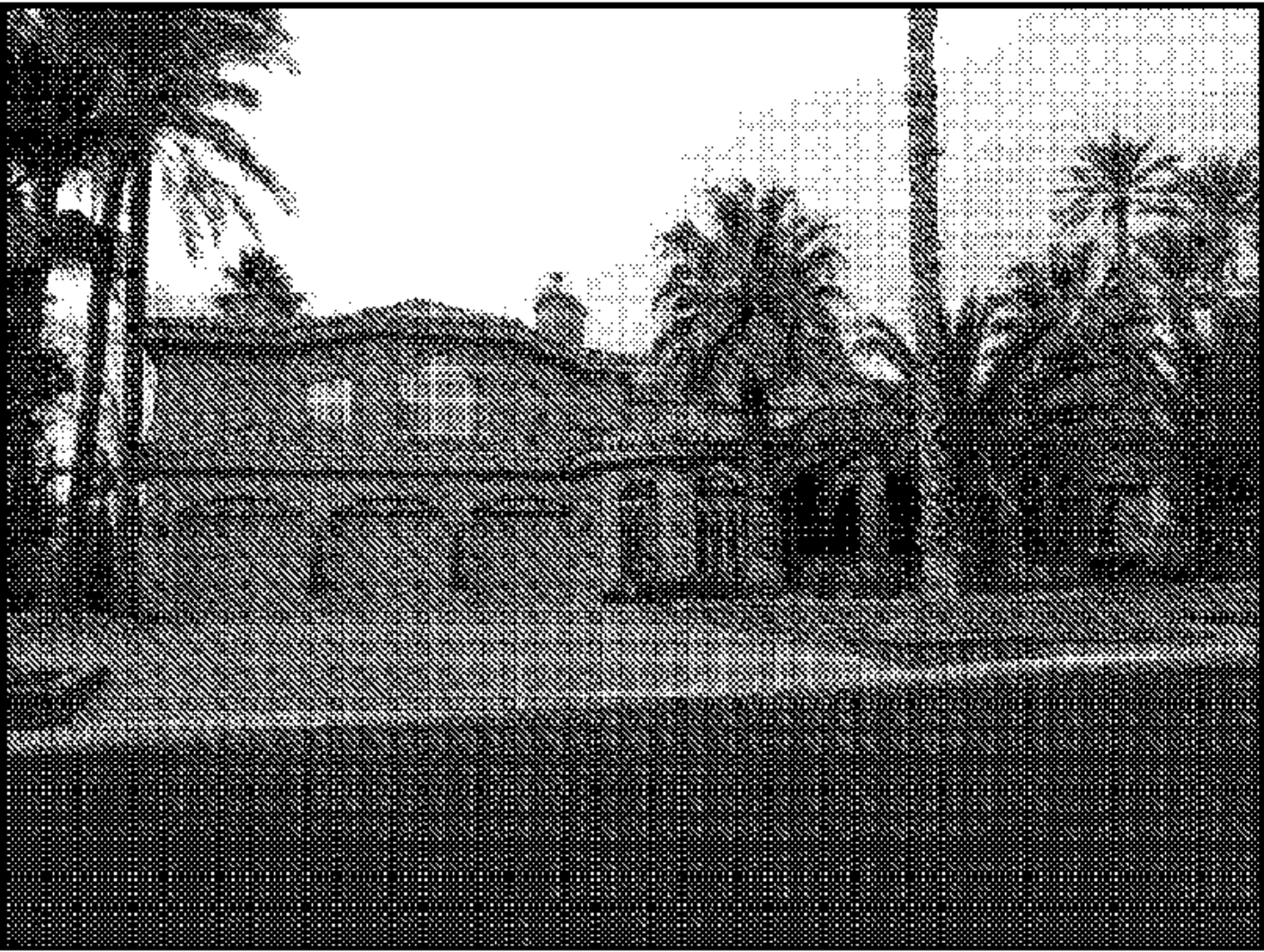
Comparable Photo Page

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



Comparable 4

41 Princeville Lane	
Prox. to Subject	1.27 miles E
Sales Price	1,525,000
Gross Living Area	5,648
Total Rooms	14
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	13,504 SF/Interior
Quality	Stucco
Age	15



Comparable 5

32 Innisbrook Avenue	
Prox. to Subject	0.02 miles SW
Sales Price	1,425,000
Gross Living Area	7,470
Total Rooms	9
Total Bedrooms	5
Total Bathrooms	6.5
Location	Spanish Trail
View	Golf View
Site	18,295 SF/Interior
Quality	Stucco
Age	24

Comparable 6

Prox. to Subject	
Sales Price	
Gross Living Area	
Total Rooms	
Total Bedrooms	
Total Bathrooms	
Location	
View	
Site	
Quality	
Age	

Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			

CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

**Limitations of the Assignment:** The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an “imperfect market” and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume “knowledgeable buyers and sellers” or “no special motivations,” when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a “benchmark” in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user’s requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

**SCOPE OF WORK (SOW):** Is “the type and extent of research and analysis in an assignment.” This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this “clarification of scope of work” (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

**Complete Visual Inspection Includes:** A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

**Complete Visual Inspection Does/Did NOT Include:** Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

**No Interior Inspection:** Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the “non-inspection” and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

**Inspect The Neighborhood:** Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. “Neighborhood” boundaries are not exact and are defined by the influence of physical, social, economic

Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

**Repairs or Deterioration:** **Deficiency** and **livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

**Construction Defects:** Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes “informed buyer” and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer’s knowledge of prior or current defect related issues (if any).

**Satisfactory Completion:** The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

**Cost Approach:** Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the “replacement cost estimate.” If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for “valuation purposes.” Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of “market value” used within this report is not consistent with the definition of “insurable value.”

**Income Approach:** Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

**Gross Living Area (GLA):** The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the “as measured” GLA by the appraiser and the “as reported” GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be “market recognized” and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

**Extent of Data Research-Comparable Data:** The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

**Public and Private Data:** The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

**Adverse Factors:** Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV      Zip Code    89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

**Easements:** Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

**Valuation Methodology:** The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

**The Value Opinion:** The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

**Specific Reporting Guidelines:** Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

**Use of Electronic Appraisal Delivery Services:** If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 34 Innisbrook

Property Address:	34 Innisbrook Avenue	City:	Las Vegas	State:	NV	Zip Code:	89113
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147				

**STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):**

**Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.**

**INTENDED USE/USER:**

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.


**SCOPE OF WORK:**

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 34 Innisbrook

Property Address:	34 Innisbrook Avenue	City:	Las Vegas	State:	NV	Zip Code:	89113
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147				
<b>APPRAISER'S CERTIFICATION</b>							
<p><b>I certify that, to the best of my knowledge and belief:</b></p> <p>— The statements of fact contained in this report are true and correct.</p> <p>— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.</p> <p>— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.</p> <p>— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.</p> <p>— My engagement in this assignment was not contingent upon developing or reporting predetermined results.</p> <p>— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.</p> <p>— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.</p> <p>— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.</p> <p>— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.</p> <p>— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.</p>							
<b>Additional Certifications:</b>							
<p><u>Supplemental Certification:</u> In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.</p> <p><u>Supplemental Certification:</u> The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.</p>							
<b>Definition of Market Value: (X) Market Value ( ) Other Value</b>							
<b>Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D</b>							
<p>As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:</p> <ol style="list-style-type: none"><li>1. Buyer and seller are typically motivated;</li><li>2. Both parties are well informed or well advised, and acting in what they consider their best interest;</li><li>3. A reasonable time is allowed for exposure in the open market;</li><li>4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and</li><li>5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.</li></ol> <p>*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.</p>							
SIGNATURES	Client Contact: Wright Finlay & Zak				Client Name: Wright Finlay & Zak		
	E-Mail: fharris@wrightlegal.net				Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
	<b>APPRAISER</b>				<b>SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)</b>		
							
	Appraiser Name: R. Scott Dugan, SRA				Supervisory or Co-Appraiser Name: _____		
	Company: R. Scott Dugan Appraisal Company, Inc.				Company: _____		
	Phone: 702-876-2000 Fax: 702-253-1888				Phone: _____ Fax: _____		
	E-Mail: appraisals@rsdugan.com				E-Mail: _____		
	Date Report Signed: February 08, 2017				Date Report Signed: _____		
	License or Certification #: A.0000166-CG State: NV				License or Certification #: _____ State: _____		
Designation: SRA				Designation: _____			
Expiration Date of License or Certification: 05/31/2017				Expiration Date of License or Certification: _____			
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None				Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None			
Date of Inspection: February 05, 2017				Date of Inspection: _____			

## **EXHIBIT B**

## **EXHIBIT B**

## **EXHIBIT B**

## Appraiser Resume (Qualifications) - Page 1

## R. Scott Dugan, SRA

**GENERAL APPRAISAL EXPERIENCE:**

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

**SPECIALIZED VALUATION EXPERIENCE:**

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

**TYPES OF PROPERTIES:**

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

**LICENSING:**

Licensed in the State of Nevada, Certified General Appraiser-License #A.0000166-CG

**PROFESSIONAL DESIGNATION:**

SRA Member - Appraisal Institute - 1989 to Present

**EDUCATION:**

Bachelor of Science in Business Administration - Finance, University of Nevada  
High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

**REALTOR ASSOCIATIONS:**

Appraiser Member - National Association of Realtors - 1992 to Present

Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

**MEMBERSHIPS:**

Employee Relocation Council, Appraiser Member - 1990 to 2013

Member of the Clark County Board of Equalization - 1994 to Present (Current Vice Chair)

Relocation Appraisers & Consultants Member - 1995 to Present

**REFERENCES:**

**Cheryl Moss, SVP - Chief Appraiser**  
Bank of Nevada  
2700 W. Sahara Avenue  
Las Vegas, NV 89102  
702-252-6366

**Terry Jones, VP**  
First Security Bank  
10501 W. Gowan Road, Ste. 170  
Las Vegas, NV 89129  
702-853-0950

**Dan Schwartz, VP**  
City National Bank  
555 S. Flower St, 10<sup>th</sup> Floor  
Los Angeles, CA 90071  
213-673-9283

**Timothy R. Morse - MAI, SRPA**  
Timothy R. Morse & Associates  
801 S. Rancho Drive, Ste. B-1  
Las Vegas, NV 89106  
702-386-0068 X21

**Glenn Anderson, MAI, SRPA**  
Glenn Anderson  
1601 S. Rainbow Boulevard, Ste. 230  
Las Vegas, NV 89146  
702-307-0888

**Sandy Boatwright, Branch Manager**  
1 Mortgage  
2855 St. Rose Parkway, Ste. 110  
Henderson, NV 89052  
702-575-6413

**Jim Goodrich, MAI, SRA, CCIM**  
Goodrich Realty Consulting, LLC  
2570 Eldorado Pkwy, Ste. 110  
McKinney, TX 75070  
972-529-2828

**Rick Plette, Owner**  
Premier Mortgage Lending Group  
8689 W. Sahara Ave, Ste. 100  
Las Vegas, NV 89117  
702-485-6600

## Appraiser Resume (Qualifications) - Page 2

## OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

## CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- A.I. Las Vegas Market Symposium 2014 - November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines - June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases - June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work - May 2014
- 2014 National USPAP Update Course - January 2014
- Las Vegas Market Symposium 2013 - November 2013
- Do's and Don't's of Litigation Support - October 2013
- Appraising the Appraisal: Appraisal Review-Residential - April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation - February 2013
- Complex Litigation Appraisal Case Studies - January 2013
- Seller Concessions in Market Value Appraisals - November 2012
- National USPAP Update Course - May 2012
- Valuation of Basements - March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines - December 2011
- Las Vegas Market Symposium 2011 - October 2011
- The Uniform Appraisal Dataset from FNMA and FIMAC - July 2011
- Tools, Techniques & Opportunities for Residential Appraising - November 2010
- Business Practice and Ethics - September 2010
- Appraisal Curriculum Overview Residential - September 2010
- Nevada Commission of Appraisers Hearing - June 2010
- Inspecting the Residential Green or High Performance House - January 2010
- ENERGY STAR and the Appraisal Process - January 2010
- 2009 National USPAP Update Course - January 2010
- A.I. Committee CE Credit - Chapter Level - December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar - March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure - October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering - March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR - October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's In Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005
- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers - September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002
- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999
- FHA and the Appraisal Process - July 1999

## Appraiser Resume (Qualifications) - Page 3

- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals - December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop - July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options - July/August 1994
- Appraisal Review - Residential properties - July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process - July 1993
- Current Standards of Professional Appraisal Practice Issues - July 1993
- Americans With Disabilities Act (ADA) - July 1993
- The New Uniform Residential Appraisal Report - September 1993
- Intern Appraiser and the Law - February 1993
- Appraisal Reporting of Complex Residential Properties - December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones - July 1992
- Employee or Independent Contractor - The Impact of an IRS Audit on an Appraiser - July 1992
- Landfills and Their Effect Upon Value - August 1991
- Subdivision Analysis - August 1991
- Real Estate Law for Real Estate Appraisers - August 1991
- Technical Inspection of Real Estate - August 1991
- Relocation Appraisal Seminar - August 1991
- Practical Approach: The New Small Residential Income Property Guidelines - July 1990
- Extraction of Market Data on Residential Properties - August 1990
- Residential Appraisal Report from the User's Perspective - August 1990
- Legislative Update Panel - August 1990
- Relocation Appraising in the 90's PHH Home Equity - September 1990
- Nevada Real Estate Appraisal Statute - October 1990
- Professional Practice and Real Estate Appraisal Law - October 1990
- Exam Preparation Seminar for Appraiser - General Certification - October 1990

## ERC NATIONAL RELOCATION CONFERENCE:

- ERC - RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

## PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- "Force of Excellence" - November 1995
- Western Appraiser Regional Seminar "Leaders in Change" - September 19

## CLIENTS: Banks and Mortgage Companies:

- |  |   |
|--|---|
| • AAA Mortgage                         | • D.L. Evans Bank                       |
| • Allegiance Relocation Services       | • Deutsche Bank                         |
| • AMC Links                            | • ENG Lending                           |
| • Appraisal Logistics                  | • Evergreen Home Loans                  |
| • Appraisals2U                         | • Sirva Relocation                      |
| • Axia Home Loans                      | • Federal National Mortgage Association |
| • Bank of Las Vegas                    | • First Republic Bank                   |
| • Bank of Nevada                       | • First Security Bank of Nevada         |
| • Bank of New York                     | • Guarantee Bank                        |
| • Boulder Dam Credit Union             | • Guaranteed Rate                       |
| • Broad Street Nationwide Valuations   | • Home Base Mortgage                    |
| • Capital One Bank                     | • HomeBridge Financial Services, Inc.   |
| • Castle & Cook Mortgage               | • Imortgage                             |
| • Chase Bank                           | • Irwin Union Bank and Trust Company    |
| • Citibank                             | • J.P. Morgan                           |
| • Citicorp Mortgage, Inc.              | • Knecta Federal Credit Union           |
| • City National Bank                   | • Leader One Financial                  |
| • Clark County Public Guardians Office | • Lender X                              |
| • Coester Appraisal Management Co.     | • Meadows Bank                          |

## Appraiser Resume (Qualifications) - Page 4

- Mellon Bank
- Mutual of Omaha Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Paramount Residential Mortgage Group
- Premier Mortgage Lending Group
- Prudential Relocation
- Real Valuation Services
- Red Rock Mortgage
- Reichert Workforce Mobility
- Rel's Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Royal Business Bank
- RPM Mortgage
- Settlement One
- SIRVA Relocation
- Solidifi
- Solution Star
- South Pacific Financial
- Stars Valuations Services
- The Home Lending Group
- Trimavin Appraisal Management Co.
- United States Appraisals
- US Bank
- Valuation Partners
- Veteran's Administration
- Washington Federal Savings
- Wells Fargo Bank

## Attorneys / Others:

- Abrams, Jennifer
- Akerman, LLP
- Alverson, Taylor, Mortenson-Judd Balmer
- Americana Nevada Company
- Anderson, McPharlin & Connors
- Barney, Anthony
- Barranco & Kircher
- Black & Lobello
- Bourassa Law Group
- Boyce & Gianni
- Bradley Arant Boult Cummings
- Bremer Whyte Brown & O'Meara
- Brooks Hubley
- Cooper Castle
- Delaney, Schuetz & McGaha
- Dickerson Law Group
- Drizin, Lee A
- Ecker Law Group
- Fennemore Craig
- Fine, Fran (Broker)
- Gerrard Cox Larsen
- Goodrich, Jim (Valuation Consulting)
- Gordon Silver
- Hansen, Randon
- Holland & Hart LLP
- Hoskin, Hughes and Pifer
- Jensen, Rob (Broker)
- Jolley Urga Wirth Woodbury & Standish
- Kainen Law Group
- Kelleher & Kelleher
- Kerr, Preston Sterling
- Kolesar & Leatham
- Koeller, Nebeker, Carlson & Halvek
- Leavitt, Andrew
- Lee & Russell
- Lee, Hernandez, Kelsey, & Brooks
- Love, Tom (Broker)
- Mazur Brooks
- Menninger, Carol
- Miller & Wright Rawlings, Olsen, Cannon, Gormley & Desruisseaux
- Mullin Hoard Brown
- Shapiro, Florence (Broker)
- Shea & Carlyon
- Wilson Elser Moskowitz Edleman & Diker
- Wolfe & Wyman
- Wright Finlay & Zak
- Woodbury & Standish

(Rev. February 19, 2015)

# **EXHIBIT C**

# **EXHIBIT C**

# **EXHIBIT C**

R. Scott Dugan, SRA  
State Certification Number: A.0000166-CG

ATTORNEY WORKLOAD REPORT						
	Subject Address	Name	Purpose	Attorney or Client	Court Date	Case No.
1	Lots 1, 3, 4 & 5 Ghost Dance	Town & Country vs Goddard	Court Testimony	Holland & Hart LLP	12/20/2010	
2	2966/2970 San Lorenzo	Bank of Nevada	Deposition/Crt Testimony	Lionel, Sawyer & Collins	1/6/2011	120-201-0059
3	5025 Kell Lane	OneCap Mortgage	District Court Appearance	Reade & Associates	1/25/2011	
4	2966/2970 San Lorenzo	Bank of Nevada	Federal Court Testimony	Lionel, Sawyer & Collins	1/28/2011	120-201-0059
5	940 N Sloan Lane #105	Bank of Nevada	Court Testimony/Settled	Mazur & Associates	3/3/2011	
6	Platinum	Platinum Condo Dev	Litigation/Deposition	Foley & Lardner LLP	7/4/2011	209CV00671PMPGWF
7	4945 Ghost Dance Circle	Goddard	Federal Court Testimony	Town & Country Bank	9/8/2011	2:09CV00686RLHLRL
8	2132 Country Cove	Bank of Nevada vs King	District Court Testimony	Genard & Cox	10/6/2011	A627640
9	14480 Roundabout Circle	Shavitz vs Jacobs Construction	District Court Deposition	Schofield Miller Law Firm	12/5/2011	A-09-592088-D
10	39 Quail Hollow Drive	Limpscomb vs Smith	Depo/Court Testimony	Silvermanm Decaria & Kattelman	1/8/2012	D-11-444324-D
11	645 Sari Drive	M&I vs. Long	Court Testimony	Cooper Castle Law Firm	1/13/2012	A-11-65-203-C
12	7811 Dana Point Court	BoftNV vs Troncosco	Court Testimony	Mazur & Brooks	9/24/2012	A647414
13	2139 Wilbanks Circle	BoftNV vs Deevers	Court Testimony	Mazur & Brooks	10/4/2012	A-12-655231-C
14	22 Sawgrass Court	Provident vs Levy	Deposition	Cooper Castle Law Firm	10/5/2012	A-09-801666-C
15	23 Mallard Creek Trail	Goldstein/Irsfeld	Deposition	The Bourassa Law Group	11/30/2012	A617125
16	8031 Springbuck Court	BoftNV vs Townsend	Deficiency Hearing	Michael Marcellette	4/2/2013	A-12-671738-C
17	49 Hawk Ridge Drive	BoftNV vs Barry	Deficiency Hearing	Michael Marcellette	5/7/2013	A-12655559-C
18	1500 Windhaven	FDIC	Deposition	Kolesar & Leatham	7/23/2013	8408-2
19	32 Via Vasari	Deutsche Bank	Litigation	Blut Law Group	Current	A-11-651083-C
20	8623 Fire Mountain	Bank of Nevada	Deficiency Hearing	Mazur & Brooks	7/31/2013	A-11-642953-C
21	1157 Via Casa Palmero	FDIC vs Rekis	Deposition	Kolesar & Leatham	8/29/2013	2:12-cv-02061-GMN
22	61 Agate Ave #303	Giuliano vs Giuliano	Court Testimony	Zashin & Rich	10/9/2013	DR12343002
23	FDIC Reviews	FDIC vs Core Logic	Deposition	Mullin Hoard Brown	12/10/2013	8:11-cv-00704-DOC-AN
24	53 Hawk Ridge Drive	D&J Family Trst vs Palm Canyon	Deposition	Bourassa Law Group	12/17/2013	A646373
25	FDIC Reviews	FDIC vs LSI Appraisal LLC	Deposition	K&L Gates LLP	1/6/2014	SACV11-706 DOC(Anx)
26	8 Rue Mediterra Drive	RBM Constuction vs Rosenaur	Deposition	Bremer, Whyte, Brown & O'meara	1/15/2014	09-A595366
27	2621 Dandelion Street	Puckett vs Bank of Nevada	Court Testimony	Michael Marcellette	2/13/2014	A-13-677331-C
28	3180 Darby Gardens Court	Everflow	Court Testimony	Lionel, Sawyer & Collins	3/4/2014	A-11-652597-B
29	4381 W Flamingo Rd #39301	Royal Business Bank vs Lin	Court Testimony	Compton Law	3/26/2014	A-14-694431
30	7229 Mira Vista Street	Anthony Savino	Court Testimony	McDonald Law Offices	6/12/2014	A-13-674390-C
31	1147 Evening Canyon Ave	Ana Thompson	Court Testimony	Brooks Hubley LLP	9/26/2014	A-13-17461
32	4381 W Flamingo Rd #18321	Palms Place vs Lue Garlick	Deficiency Hearing	Brownstein Hyatt Farber Schreck	11/4/2014	A-14-697506-B
33	6583 Mermaid Cr.	McGee vs. Citi Mortgage	Deposition	Wolfe & Wyman	11/24/2014	2:12-CV-02025JCMPAL

## **EXHIBIT D**

## **EXHIBIT D**

## **EXHIBIT D**

**R Scott Dugan, SRA  
R Scott Dugan Appraisal Company, Inc.  
Fee Schedule  
(As of November 15, 2014)**

Assignments are for bid on a case-by-case basis. Standard fees for additional work (if needed) are listed below:

Expert Witness Work and Testimony:

- Deposition, Court Testimony, Trial Preparation - \$400/Hour
- Supplemental Work and Research - \$400/Hour
- Consulting Meetings, Case Discussions, etc. - \$200/Hour

There is a three-hour minimum for deposition and court testimony. If either is canceled within 24 hours of a scheduled appearance, the client will be billed for 50% of the minimum, in addition to any time for preparation.

The above fees are exclusive of the costs associated with both the development of the valuation report or consulting study, and that of supporting materials that may be required for trial.

# **EXHIBIT E**

# **EXHIBIT E**

# **EXHIBIT E**



02/08/2017

**ATTN: Faith**

**Wright Finlay & Zak**  
**7785 W Sahara Avenue, Ste 200**  
**Las Vegas, NV 89117**

Borrower : **Timpa**  
Reference/Case # : **B7**

**FOR THE PROPERTY LOCATED AT:**

**34 Innisbrook Avenue  
Las Vegas, NV 89113**

**GPAR Exterior (L)**

**750.00**

Invoice Total  
Deposit  
Deposit

**750.00**

Amount Due

**\$ 750.00**

**Terms: Due and Payable Upon Receipt - Now accepting Visa, MC & Amex**

Please Make Check Payable To:

**R. SCOTT DUGAN APPRAISAL CO., INC.**  
**8930 W. TROPICANA AVENUE, SUITE 1**  
**LAS VEGAS, NV 89147-8129**

Fed. I.D. #: 88-0222300

**REFERENCING THE FILE NUMBER, BORROWER OR CASE NUMBER NOTED ABOVE  
WILL HELP US TO PROPERLY CREDIT YOUR ACCOUNT**

TMST1082

# **EXHIBIT M**

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

7 DISTRICT COURT  
8 CLARK COUNTY NEVADA

9 SATICOY BAY LLC SERIES 34 INNISBROOK,  
10 Plaintiff,

CASE NO.: A71016  
DEPT NO.: XV

11 vs.

12 THORNBURG MORTGAGE SECURITIES TRUST  
13 2007-3; and RECONTRUST COMPANY, N.A. a  
14 division of BANK OF AMERICA; FRANK TIMPA and  
MADELAINE TIMPA, individually and as trustees of  
the TIMPA TRUST,  
15 Defendants.

16 And all related matters.  
17

18 **PLAINTIFF’S RESPONSES TO DEFENDANT, THORNBURG MORTGAGE**  
19 **SECURITIES TRUST 2007-3’S FIRST SET OF REQUESTS FOR ADMISSIONS**

20 Plaintiff, Saticoy Bay LLC Series 34 Innisbrook, by and through their attorney, Michael F. Bohn,  
21 Esq., hereby responds to the defendant’s requests for admissions as follows:

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

23 Admit that YOU attended the HOA foreclosure auction for the Property on or around August 8,  
24 2013.

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

26 Deny. Date of auction was November 7, 2014.

27 ...  
28

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

2 Admit that YOU were not the highest bidder on the Property at the HOA Foreclosure Sale.

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

4 Deny

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

6 Admit that prior to purchasing the Property, YOU researched the fair market value of the Property.

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

8 Admit.

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

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

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

13 Admit.

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

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

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

18 Admit.

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

20 Admit that prior to purchasing its interest in the Property, YOU were aware that Thornburg's deed  
21 of trust had been recorded against the property.

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

23 Admit.

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

25 Admit that prior to you purchasing your interest in the Property, THORNBURG held a beneficial  
26 interest in the Deed of Trust.

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

2 Admit.

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

4 Admit that you subsequently acquired Your interest in the Property from the HOA via a  
5 Foreclosure Deed.

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

7 Admit.

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

9 Admit the Property sold for less than the fair market value at the time of the foreclosure.  
10

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

12 Deny.

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

14 Admit that Property sold for less than the assessed value of the property according to the Clark  
15 County Assessor's records at the time of the foreclosure.

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

17 Admit.

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

19 Admit that YOU believed the fair market value of the Property was greater than the amount You  
20 paid for the property at the HOA foreclosure.

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

22 Deny.

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

24 Admit that the amount that YOU paid for the Property was based, in part, on the fact that you  
25 obtained title without warranty, express or implied, regarding title, possession or encumbrances.  
26

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

28 Deny.

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

2 Admit that YOU have obtained income from the rental or lease of the Property.

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

4 Admit.

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

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

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

8 Admit that the property has been leased.

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

10 Admit that you have purchased other properties at HOA foreclosure sales or from a Homeowner's  
11 Association at an HOA foreclosure sale prior to November 7, 2014.

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

13 Admit.

14 **REQUESTS FOR ADMISSION NO. 16:**

15 Admit that you entered into an agreement (written or oral) with the HOA to acquire YOUR  
16 interest in the Property.

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

18 Deny.

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

20 Admit that prior to purchasing the Property, YOU were aware that the amounts included in the  
21 HOA lien notices included amounts subordinate to THORNBURG's lien.

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

23 Objection, ambiguous.

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

25 Admit that YOU were aware that litigation would likely ensue upon purchasing the Property.

26 ...

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

2 Admit.

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

4 Admit YOU have entered into a lease agreement concerning the use of the Property.

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

6 Admit that the property has been leased.

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

8 Admit YOU have received income through leasing YOUR interest in the Property.

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

10 Admit.

11 **REQUEST FOR ADMISSION NO. 21:**

12 Admit YOU have no evidence that THORNBURG had actual notice prior to the HOA Sale that  
13 the HOA was asserting a lien against the Property for unpaid HOA assessments, dues and/or fines.

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

15 Deny.

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

17 Admit YOU have no evidence that THORNBURG had actual notice, prior to the HOA Sale, that  
18 the HOA recorded a Notice of Delinquent Assessment (Lien) against the Property.

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

20 Deny.

21 **REQUEST FOR ADMISSION NO. 23:**

22 Admit YOU have no evidence that THORNBURG was notified, prior to the HOA Sale, that the  
23 HOA recorded a Notice of Default and Election to Sell Under Homeowners Association Lien against the  
24 Property.

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

26 Deny.

1 **REQUEST FOR ADMISSION NO. 24:**

2 Admit YOU have no evidence that THORNBURG had actual notice, prior to the HOA Sale, that  
3 the HOA recorded a Notice of Foreclosure Sale against the Property.

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

5 Deny.

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

7 Admit that the HOA Sale was not commercially reasonable as to the manner of the sale.

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

9 Objection. Commercial reasonableness is not required in a foreclosure sale conducted pursuant  
10 to NRS Chapter 116. Without waiving this objection the plaintiff denies this request. The auction and  
11 sale was conducted pursuant to Chapter NRS 116, and as a matter of law was commercially reasonable.  
12 Plaintiff therefore denies.

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

14 Admit that the HOA Sale was not commercially reasonable as to the method of the sale.

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

16 See response to request no. 26.

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

18 Admit that you were the only prospective purchaser to bid on the Property.

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

20 Deny.

21 **REQUEST FOR ADMISSION NO. 28:**

22 Admit that Thornburg's predecessor in interest attempted to make a payment in an amount equal  
23 to 9 months of assessments to the HOA prior to the HOA foreclosure sale.

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

25 Objection, ambiguous as to time.

26 ...

1 **REQUEST FOR ADMISSION NO. 28:(sic)**

2 Admit that Thornburg's predecessor in interests' attempted payment equal to 9 months of  
3 assessments constitutes the super-priority amount for the Property.

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

5 See response to prior request.

6 Dated this 7th day of April, 2017.

7  
8 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

9  
10 By: /s/ /Michael F. Bohn, Esq./  
Michael F. Bohn, Esq.  
11 376 E. Warm Springs Rd., Ste. 140  
12 Las Vegas, NV 89119  
Attorney for plaintiff

13

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW  
3 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 7th day of April, 2017, an electronic copy  
4 of the PLAINTIFF'S RESPONSES TO DEFENDANT, THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3'S FIRST SET OF REQUESTS FOR ADMISSIONS was served on opposing counsel via  
6 the Court's electronic service system to the following:  
7

8  
9 Edgar C. Smith, Esq.  
Eric S. Powers, Esq.  
10 WRIGHT, FINLAY & ZAK, LLP  
7785 W. Sahara Ave., Ste. 200  
11 Las Vegas, NV 89117  
Attorneys for defendant  
12 Thornburg Mortgage Securities Trust 2007-3

David R. Koch, Esq.  
Steven B. Scow, Esq.  
Daniel H. Stewart, Esq.  
KOCH & SCOW LLC  
11500 S. Eastern Ave., Suite 210  
Henderson, NV 89052  
Attorneys for counterdefendant/counterclaimant  
Red Rock Financial Services

13  
14 Donald H. Williams, Esq.  
Drew Starbuck, Esq.  
15 WILLIAMS & ASSOCIATES  
612 South Tenth Street  
16 Las Vegas, NV 89101  
Attorney for counterdefendant,  
17 Republic Services, Inc.

Bryan Naddafi, Esq.  
OLYMPIC LAW P.C.  
292 Francisco St.  
Henderson, NV 89014  
Attorney for defendants,  
Frank and Madeline Timpa

18  
19  
20 /s/ /Maggie Lopez/  
An Employee of the LAW OFFICES OF  
21 MICHAEL F. BOHN, ESQ., LTD.  
22  
23  
24  
25  
26  
27  
28

EXHIBIT 6

EXHIBIT 6



1 **ORD**  
2 MELANIE D. MORGAN, ESQ.  
3 Nevada Bar No. 8215  
4 THERA A. COOPER, ESQ.  
5 Nevada Bar No. 13468  
6 **AKERMAN LLP**  
7 1635 Village Center Circle, Suite 200  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 634-5000  
10 Facsimile: (702) 380-8572  
11 Email: melanie.morgan@akerman.com  
12 Email: thera.cooper@akerman.com

13 *Attorneys for defendant, counterclaimant, and counter-*  
14 *defendant Thornburg Mortgage Securities Trust 2007-3*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 34  
18 INNISBROOK,

19 Plaintiff,

20 vs.

21 THORNBURG MORTGAGE SECURITIES  
22 TRUST 2007-3, *et al.*,

23 Defendants.

Case No.: A-14-710161-C

Division: XXVI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

24 **AND ALL RELATED ACTIONS**

25 The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s  
26 motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion  
27 into a motion for summary judgment and makes the following findings of fact, conclusion of law  
28 and order **GRANTING** summary judgment in Thornburg's favor.<sup>1</sup>

<sup>1</sup> The Court denied the parties' competing motions for summary judgment by oral order on July 3, 2018. The Court denying the motions for summary judgment had not been entered when Thornburg moved to reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72, \*2 (Nev. Sept. 13, 2018).

1     **I. FINDINGS OF FACT**

2           1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the  
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists  
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.  
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6           2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority  
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to  
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider  
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then  
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an  
11 unpaid balance of \$6,279,233.20.

12           3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
13 beneficial interest in the deed of trust to Thornburg.

14           4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject  
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16           5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17  
18           The lien of the assessments provided for herein shall be prior to all other liens recorded  
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of  
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage  
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure  
22 shall extinguish the lien of such assessments as to payments which became due prior to such  
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments  
24 thereafter becoming due or from the lien thereon.

25           6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other  
26 charges which are in default and which may or have become a charge against the Association  
27 property, unless such taxes or other charges are separately assessed against the Owners, in which  
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...

7. Art. X Section 3, provides:

A breach of any of the covenants, conditions, restrictions or other provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any lot provided however, that any subsequent owner of the lot shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

8. On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA, recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien indicated it was recorded "in accordance with" the CC&Rs.

9. At the time the Lien was recorded, the HOA's assessments were \$225.00 per month. There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

10. From July 9, 2013 through December 13, 2013, borrower made payments totaling \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments coming due December 1, 2010 through August 1, 201.<sup>2</sup>

11. On December 6, 2011, Red Rock recorded a notice of default and election to sell pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

12. On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer, through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the letter on December 27, 2011.

13. On January 26, 2012, Red Rock responded with a ledger indicating the total amount due was \$9,255.44.

14. On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the payment without explanation at the time of the rejection.

<sup>2</sup> Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.

1           15. Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the  
3 deed of trust.

4           16. Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the  
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The  
6 notice asserted the sale would "be made without covenant or warrant, express or implied  
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8           17. On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10          18. At the time of the HOA's sale the property was worth \$2,000,000.

11          19. Since the sale Saticoy has leased the property and obtained rental income.

## 12       II. CONCLUSIONS OF LAW

13          1. "Summary judgment is appropriate...when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
16 of law," *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*  
20 *Zentih Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously  
23 applicable before *Wood*. *Id.* at 1031, 1037.

24          2. Parties must prove their claims and affirmative defenses by a preponderance of the  
25 evidence. See Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence'  
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from  
27 which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*,  
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means

1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater  
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.  
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the  
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*  
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.  
9 Adv. Op. 72, \*2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.  
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the  
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the  
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for  
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common  
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*  
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL  
17 1704199 at \*6; *See Bank of America*, \*4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of  
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of  
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured  
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than  
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red  
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding  
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter — like the check and letter here  
27 — were not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the  
28 tender (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
2 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a  
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,  
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an  
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it  
7 cannot extinguish the first deed of trust." *Id.*

### 8 JUDGMENT

9 The Court having made its Findings of Fact and Conclusions of Law:

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

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and  
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens  
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record  
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

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

3 DATED November 30 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

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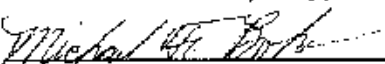
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
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DISTRICT COURT JUDGE

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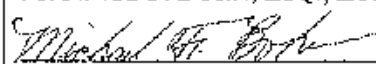
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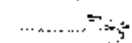
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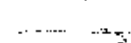
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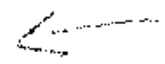
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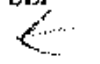
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3 DATED \_\_\_\_\_, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

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12 Approved as to form and content:

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14 /s/

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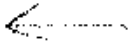
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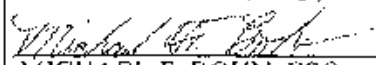
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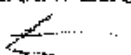
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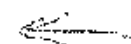
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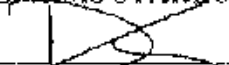
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EXHIBIT 7

EXHIBIT 7



**NEFF**

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*Attorneys for defendant, counterclaimant, and counter-  
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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34  
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3, *et al.*,

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING THORNBURG  
MORTGAGE SECURITIES TRUST  
2007-3'S MOTION FOR SUMMARY  
JUDGMENT**

AND ALL RELATED ACTIONS

///

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AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**  
3 **ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S**  
4 **MOTION FOR SUMMARY JUDGMENT** has been entered by this Court on the 3<sup>rd</sup> day of  
5 December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as  
6 **Exhibit A.**

7  
8 DATED: DECEMBER 5, 2018  
9

10 **AKERMAN LLP**

11 /s/ Thera A. Cooper

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18  
19 *Attorneys for Thornburg Mortgage Securities*  
20 *Trust 2007-3*  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 5<sup>th</sup> day of December, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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*/s/ Christine Weiss*

An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



1 **ORD**  
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16 **EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 SATICOY BAY LLC SERIES 34  
19 INNISBROOK,

20 Plaintiff,

21 vs.

22 THORNBURG MORTGAGE SECURITIES  
23 TRUST 2007-3, *et al.*,

24 Defendants.

Case No.: A-14-710161-C

Division: XXVI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

25 **AND ALL RELATED ACTIONS**

26  
27 The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s  
28 motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion  
into a motion for summary judgment and makes the following findings of fact, conclusion of law  
and order **GRANTING** summary judgment in Thornburg's favor.<sup>1</sup>

<sup>1</sup> The Court denied the parties' competing motions for summary judgment by oral order on July 3,  
2018. The Court denying the motions for summary judgment had not been entered when Thornburg moved to  
reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv.  
Op. 72, \*2 (Nev. Sept. 13, 2018).

1     **I. FINDINGS OF FACT**

2           1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the  
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists  
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.  
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6           2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority  
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to  
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider  
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then  
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an  
11 unpaid balance of \$6,279,233.20.

12           3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
13 beneficial interest in the deed of trust to Thornburg.

14           4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject  
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16           5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17  
18           The lien of the assessments provided for herein shall be prior to all other liens recorded  
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of  
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage  
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure  
22 shall extinguish the lien of such assessments as to payments which became due prior to such  
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments  
24 thereafter becoming due or from the lien thereon.

25           6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other  
26 charges which are in default and which may or have become a charge against the Association  
27 property, unless such taxes or other charges are separately assessed against the Owners, in which  
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...

7. Art. X Section 3, provides:

A breach of any of the covenants, conditions, restrictions or other provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any lot provided however, that any subsequent owner of the lot shall be bound by the provisions of this Declaration, whether such Owner's title was acquired by foreclosure or by a trustee's sale or otherwise.

8. On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA, recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien indicated it was recorded "in accordance with" the CC&Rs.

9. At the time the Lien was recorded, the HOA's assessments were \$225.00 per month. There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

10. From July 9, 2013 through December 13, 2013, borrower made payments totaling \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments coming due December 1, 2010 through August 1, 201.<sup>2</sup>

11. On December 6, 2011, Red Rock recorded a notice of default and election to sell pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

12. On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer, through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the letter on December 27, 2011.

13. On January 26, 2012, Red Rock responded with a ledger indicating the total amount due was \$9,255.44.

14. On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the payment without explanation at the time of the rejection.

<sup>2</sup> Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.

1           15. Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the  
3 deed of trust.

4           16. Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the  
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The  
6 notice asserted the sale would "be made without covenant or warrant, express or implied  
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8           17. On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10          18. At the time of the HOA's sale the property was worth \$2,000,000.

11          19. Since the sale Saticoy has leased the property and obtained rental income.

## 12       II. CONCLUSIONS OF LAW

13          1. "Summary judgment is appropriate...when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
16 of law," *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*  
20 *Zentih Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously  
23 applicable before *Wood*. *Id.* at 1031, 1037.

24          2. Parties must prove their claims and affirmative defenses by a preponderance of the  
25 evidence. See Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence'  
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from  
27 which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*,  
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means

1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater  
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.  
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the  
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*  
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.  
9 Adv. Op. 72, \*2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.  
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the  
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the  
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for  
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common  
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*  
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL  
17 1704199 at \*6; *See Bank of America*, \*4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of  
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of  
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured  
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than  
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red  
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding  
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter – like the check and letter here  
27 – were not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the  
28 tender (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
2 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a  
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,  
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an  
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it  
7 cannot extinguish the first deed of trust." *Id.*

### 8 JUDGMENT

9 The Court having made its Findings of Fact and Conclusions of Law:

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

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and  
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens  
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record  
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

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

3 DATED November 30 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

7   
8 **MELANIE D. MORGAN, ESQ.**

Nevada Bar No. 8215

9 **THERA A. COOPER, ESQ.**

Nevada Bar No. 13468

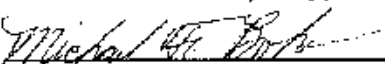
10 1635 Village Center Circle, Suite 200

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11 *Attorneys for Thornburg Mortgage Securities Trust 2007-3*

12 Reviewed by::

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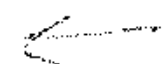
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
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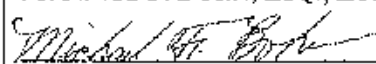
6 **AKERMAN LLP**

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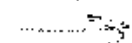
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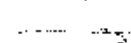
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**IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Thornburg shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

DATED \_\_\_\_\_, 2018.

Respectfully submitted by:

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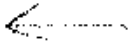
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3 DATED \_\_\_\_\_, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

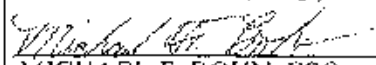
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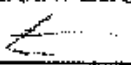
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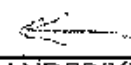
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25 *Innisbrook*

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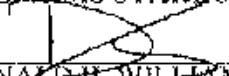
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32 *Attorneys for Republic Services, Inc.*

EXHIBIT 8

EXHIBIT 8



1 ANS  
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3 Nevada Bar No. 13039  
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5 9480 S. Eastern Ave., Suite 257  
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8 Email: travisakin8@gmail.com  
9 *Attorneys for Madelaine Timpa, individually*  
10 *and as trustee of the Timpa Trust*

11  
12 **EIGHTH JUDICIAL DISTRICT COURT**  
13  
14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 34  
16 INNISBROOK,

17 Plaintiff,

18 vs.

19 TIORNBURG MORTGAGE SECURITIES  
20 TRUST 2007-3, et al.,

21 Defendants.

Case No. A-14-710161-C

Division: XXVI

**MADELAINE TIMPA AND TIMPA  
TRUST'S VERIFIED ANSWER TO RED  
ROCK FINANCIAL SERVICES'  
COUNTERCLAIM FOR INTERPLEADER  
AND MADELAINE TIMPA'S CLAIM TO  
SURPLUS FUNDS**

22 AND ALL RELATED ACTIONS

23 **1. VERIFIED ANSWER OF MADELAINE TIMPA AND TIMPA TRUST TO RED**  
24 **ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER**

25 Madelaine Timpa, individually and as trustee of the Timpa Trust (collectively, "Answering  
26 Defendant")<sup>1</sup> answers the Counterclaim for Interpleader filed by counter-

27 <sup>1</sup>Madelaine Timpa's husband Frank Timpa -- both individually and as trustee of the Timpa Trust  
28 -- was also named as a defendant and counter-defendant in this action. Frank Timpa is deceased.

1 defendant/counterclaimant Red Rock Financial Services, LLC ("Red Rock"), and admits, denies,  
2 and alleges as follows:

- 3
- 4 1. In response to paragraphs 11, 12, and 16, Answering Defendant does not have sufficient  
5 knowledge or information upon which to base a belief as to the truth of the allegations  
6 contained therein and therefore Answering Defendant denies each and every allegation  
7 contained therein.
- 8 2. In response to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, and 20, Answering  
9 Defendant ADMITS each and every allegation contained therein.
- 10 3. In response to paragraph 17, Answering Defendant DENIES each and every allegation  
11 contained therein.
- 12 4. Answering Defendant denies each and every allegation not specifically admitted, denied,  
13 or otherwise qualified herein.
- 14

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

- 17 1. Under Nevada Revised Statute §40.462(2(d), Madelaine Timpa is entitled to receive the  
18 excess proceeds remaining after the foreclosure sale of the real property located at 34  
19 Innisbrook Avenue, Las Vegas, NV 89113.

20 **SECOND AFFIRMATIVE DEFENSE**

- 21
- 22 2. Under Nevada Revised Statute §40.462, Saucy Bay LLC Series 34 Innisbrook is not  
23 entitled to receive the excess proceeds remaining after the foreclosure sale of the real  
24 property located at 34 Innisbrook Avenue, Las Vegas, NV 89113.

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**THIRD AFFIRMATIVE DEFENSE**

3. Other than Madelaine Timpa, Timpa Trust, Republic Services Inc., and Thornburg Mortgage Securities Trust 2007-3, no other parties have filed an answer to Red Rock's Counterclaim for Interpleader.

**FOURTH AFFIRMATIVE DEFENSE**

4. Other than Madelaine Timpa, no other parties have filed a claim to the excess proceeds remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue, Las Vegas, NV 89113.

**FIFTH AFFIRMATIVE DEFENSE**

5. All other parties, including but not limited to Saticoy Bay LLC Series 34 Innisbrook, have knowingly and voluntarily waived their rights to receive the excess proceeds remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue, Las Vegas, NV 89113.

**SIXTH AFFIRMATIVE DEFENSE**

6. Madelaine Timpa, Timpa Trust, and Frank Timpa were never served with Red Rock's Counterclaim for Interpleader.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Madelaine Timpa, Timpa Trust, and Frank Timpa were never defaulted for having failed to file an answer to Red Rock's Counterclaim for Interpleader.

**EIGHTH AFFIRMATIVE DEFENSE**

8. This Answering Defendant has limited facts available at this time and thus some of the foregoing Affirmative Defenses may have been plead in accordance with NRCP 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this Answering Defendant

1 has or may have more affirmative defenses or counterclaims that are not known at this  
2 time or may be uncovered through further discovery wherefore this Answering  
3 Defendant reserves the right to assert any such affirmative defenses or counterclaims so  
4 ascertained at a later date.  
5

6 WHEREFORE, as to Red Rock's Counterclaim for Interpleader, Answering Defendant  
7 prays as follows:

- 8 1. That the Court distribute the excess proceeds to Madelaine Timpa;
- 9 2. That Red Rock be reimbursed out of said deposited fund its attorney's fees and  
10 costs in bringing this interpleader action;
- 11 3. That Red Rock be dismissed from this action with prejudice following the payment  
12 of the excess proceeds as directed by the Court;
- 13 4. For such other and further relief as the Court determines proper.  
14

15 Dated this 31<sup>st</sup> day of January, 2019.

16 Respectfully submitted,

17 /s/ Travis Akin  
18

19 TRAVIS AKIN, ESQ.  
20 Nevada Bar No. 13059  
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22 9480 S. Eastern Ave., Suite 257  
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26 Attorneys for Madelaine Timpa, individually  
27 and as trustee of the Timpa Trust  
28

1  
2 **II. VERIFIED CLAIM OF MADELAINE TIMPA TO SURPLUS FUNDS**

- 3 1. Madelaine Timpa is making a claim to the excess proceeds remaining after the  
4 foreclosure sale of the real property located at 34 Innisbrook Avenue, Las Vegas,  
5 NV 89113 (hereinafter "Subject Property").  
6  
7 2. On or about November 7, 2014, the Subject Property was sold via a foreclosure  
8 sale.  
9  
10 3. After all claims and expenses were deducted, sale of the Subject Property resulted  
11 in excess proceeds in the amount of \$1,168,865.05 (hereinafter "Surplus Funds").  
12  
13 4. The priority order of the distribution of excess sales proceeds following a non-  
judicial foreclosure trustee's sale is governed by Nevada Revised Statute §40.462,  
which reads in pertinent part:

14 2. The proceeds of a foreclosure sale must be distributed in the  
15 following order of priority:

16 (a) Payment of the reasonable expenses of taking possession,  
17 maintaining, protecting and leasing the property, the costs and fees  
18 of the foreclosure sale, including reasonable trustee's fees,  
19 applicable taxes and the cost of title insurance and, to the extent  
provided in the legally enforceable terms of the mortgage or lien,  
any advances, reasonable attorney's fees and other legal expenses  
incurred by the foreclosing creditor and the person conducting the  
foreclosure sale.

20 (b) Satisfaction of the obligation being enforced by the  
foreclosure sale.

21 (c) Satisfaction of obligations secured by any junior mortgages  
22 or liens on the property, in their order of priority.

23 (d) **Payment of the balance of the proceeds, if any, to the  
debtor or the debtor's successor in interest. (Emphasis added.)**

24 If there are conflicting claims to any portion of the proceeds, the  
25 person conducting the foreclosure sale is not required to distribute  
26 that portion of the proceeds until the validity of the conflicting  
27 claims is determined through interpleader or otherwise to the  
person's satisfaction.

28 (Nevada Revised Statute §40.462)

5. Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are the  
formers owners of the Subject Property.
6. Frank Timpa is deceased. At the time of his death, Frank Timpa was married to  
Madelaine Timpa.
7. Madelaine Timpa is Frank Timpa's successor-in-interest.
8. Saticoy Bay LLC Series 34 Innisbrook ("Saticoy") obtained title to the Subject  
Property by the foreclosure sale conducted on November 7, 2014. Under Nevada  
Revised Statute §40.462, Saticoy is not entitled to receive the Surplus Funds.
9. Under Nevada Revised Statute §40.462(2)(c), Republic Services is entitled to  
receive the Surplus Funds to satisfy its lien.
10. Under Nevada Revised Statute §40.462(2)(d), Madelaine Timpa is entitled to  
receive the Surplus Funds.
11. Madelaine Timpa is the only party entitled to receive the Surplus Funds.
12. As of this date, no other party has filed a claim to the Surplus Funds with this  
Court.
13. Based on the foregoing, Madelaine Timpa respectfully requests that this Court  
disburse the Surplus Funds to Republic Services in the amount necessary to satisfy

///

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///

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///

///

1 its lien and the balance to Madelaine Timpa.

2 Dated this 31<sup>st</sup> day of January, 2019

3 Respectfully submitted,

4 /s/ Travis Akin

5 TRAVIS AKIN, ESQ.  
6 Nevada Bar No. 13059  
7 **THE LAW OFFICE OF TRAVIS AKIN**  
8 9480 S. Eastern Ave., Suite 257  
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11 Email: travisakin8@gmail.com  
12 *Attorneys for Madelaine Timpa, individually*  
13 *and as trustee of the Timpa Trust*

14 **VERIFICATION OF MADELAINE TIMPA**

15 The undersigned declares, under penalty of perjury under the laws of the State of Nevada:

- 16 1. That I have read the foregoing VERIFIED ANSWER TO COUNTERCLAIM FOR  
17 INTERPLEADER AND CLAIM TO SURPLUS FUNDS and that the same is true of my  
18 own knowledge, except for matters stated therein on information and belief, and as for  
19 those matters, I believe them to be true.

20 Dated this 31st day of January, 2019

21   
22 MADELAINE TIMPA  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on January 31, 2019, a true and correct copy of the above and foregoing MADELAINE TIMPA AND TIMPA TRUST'S VERIFIED ANSWER TO RED ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER AND MADELAINE TIMPA'S CLAIM TO SURPLUS FUNDS was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

\_\_\_\_\_ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Henderson Nevada;

\_\_\_\_\_ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions.

\_\_\_\_\_ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Henderson, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a)

  X   **BY E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addresses (s) having consented to electronic service, I via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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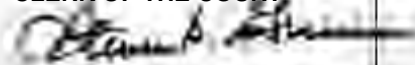
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EXHIBIT 9

EXHIBIT 9



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

\*\*\*\*\*

SATICOY BAY LLC SERIES 34  
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3 *et al.*,

Defendants.

**Case No.: A-14-710161-C**  
**Dept.: XXVI**

**Hearing Requested**

AND ALL RELATED ACTIONS

**PLAINTIFF'S MOTION FOR RECONSIDERATION UNDER NRCP 59(e) AND 60(b) OF**  
**(I) THE COURT'S SUMMARY JUDGMENT ORDER OF DECEMBER 3, 2018 AND (II)**  
**THE COURT'S ORDER CONCERNING THE DISTRIBUTION OF EXCESS PROCEEDS**

COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 34 INNISBROOK ("*Plaintiff*" or "*Saticoy*"), by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents the *Plaintiff's Motion for Reconsideration Under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds* (the "*MRCN*"). This MRCN is made and based upon the attached

Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument that this Honorable Court may entertain at the time of hearing of this matter.

Dated this 24th day of September, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD

By: /s/ Roger Croteau

ROGER P. CROTEAU, ESQ.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **INTRODUCTION**

The Court's order of December 3, 2018 granting summary judgment (the "*Summary Judgment Order*") to Thornburgh Mortgage Securities Trust 2007-3 (the "*Bank*") should be vacated by this Court. The same holds true for the Court's order of September 11, 2019 governing the distribution of excess sale proceeds at issue here (the "*Excess Proceeds Order*"), directing that almost \$1.2 million in excess sale proceeds (the "*Excess Proceeds*") be paid to the Timpa Trust (the "*Trust*"). NRC's 59(e) and 60(b) authorize the Court to grant such relief to Plaintiff, and the Court should do so.

Throughout its adjudication of the Bank's efforts to impair Plaintiff's title to that certain real property located at 34 Innisbrook Avenue, Las Vegas, Nevada 89113 (the "*Property*"), the Court sat as a court of equity. *See, e.g., Shadow Wood Homeowners Assoc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1112 (Nev. 2016) ("The long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support such action...lead us to the conclusion that the Legislature, through NRS 116.3116's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals.") (emphasis added) ("*Shadow*

1 Wood’). To date, the exercise of that jurisdiction has culminated in the Court’s entry of the  
2 Summary Judgment Order and the Excess Proceeds Order. These two results, however, should be  
3 reversed and the MRCN should be granted because neither the Summary Judgment Order nor the  
4 Excess Proceeds Order can be reconciled with governing principles of either law or equity. First  
5 the law, as equity is generally said to follow the law.  
6

7 The Court clearly erred under the law in entering the Excess Proceeds Order. The Trust’s  
8 statutory arguments in its motion practice related to the issue of the Excess Proceeds only purported  
9 to pay fidelity to the governing and, indeed, dispositive statutory text at issue here. Indeed, given  
10 the confidence reposed by the Trust in what it characterizes in its motion practice on the issue of  
11 Excess Proceeds as the plain, clear, and unambiguous meaning of NRS 116.31164(7)(b) (codified  
12 at NRS 116.31164(3)(c) under the governing version of the statute in place at the time of the  
13 foreclosure sale of the property), one would have expected the actual text of that statute to have  
14 been featured repeatedly and prominently throughout the Trust’s motion practice with respect to the  
15 Excess Proceeds. But it was not. Perhaps this was an oversight on the Trust’s part. No matter.  
16 Plaintiff now places the statutory text of both NRS 116.31164(3)(c) and NRS 116.31164(7)(b) front  
17 and center:  
18

- 19 • 116.31164(3)(c)(4): Satisfaction in the order of priority of any subordinate claim of record
- 20 • 116.31164(7)(b)(4): Satisfaction in the order of priority of any subordinate claim of record<sup>1</sup>

21 By command of the Nevada Legislature, the determination of the priority of subordinate  
22 claims by a reviewing court for purposes of distributing the proceeds of the NRS 116 foreclosure  
23 sale must be made by reference to the claim priorities set forth in the publicly recorded documents.  
24

25 A critical fact overlooked by the Trust is that, under governing Nevada law, a bank’s purported  
26

---

27 <sup>1</sup> For present purposes, these two statutes are virtually the same in all material respects, so Plaintiff shall simply refer to  
28 them using the current version of the statute solely in the interests of simplifying the discussion.

1 tender of the super-priority component of an association's statutory lien under NRS 116.3116(2)  
2 does not have to be recorded to have the legally operative effect of discharging the super-priority  
3 component of an association's statutory lien—nor was such a tender recorded in this case. Thus,  
4 by reference to the priority of subordinate claims as determined by the publicly recorded  
5 documents with respect to the Property, the HOA's lien remains in the first position as a matter of  
6 public record, and the deed of trust on the Property remained a subordinate claim of record with  
7 respect to the Property. Thus, the Excess Proceeds should have been awarded to the Bank as a pay  
8 down of the First Deed of Trust as Plaintiff previously advocated before this Court. The MRCN  
9 should, therefore, be granted, the Excess Proceeds Order should be vacated, and the Court should  
10 award the Excess Proceeds to the Bank in this case.  
11

12 The Trust's arguments do not fare any better under equitable principles of Nevada law.  
13 Here, the Court sat as a court of equity and impaired Plaintiff's title to the Property based on the  
14 Bank's purported tender of the super-priority component of the HOA's super-priority lien prior to  
15 the NRS 116 foreclosure sale of the Property by the HOA to Plaintiff. For its part, the Trust would  
16 apparently have this Court believe that its exercise of equitable jurisdiction ceases with that result.  
17 It does not. Plaintiff respectfully submits that what equity starts, equity must finish, as well.  
18 Plaintiff now calls upon the Court to do just that: complete the adjudication of this matter as a court  
19 of equity, including its determination regarding the appropriate disposition of the Excess Proceeds.  
20 NRS 116.1108 supplements the entirety of NRS 116 with equitable principles of Nevada law,  
21 including the distribution statute set forth in NRS 116.3116(4)(7)(b).  
22

23 The Court's application of equitable principles here is urgently needed as the Court's  
24 Excess Proceeds Order achieves two results that are abhorrent to, and shock the conscience of, a  
25 court of equity. First, the Excess Proceeds Order visits forfeiture upon Plaintiff because its  
26 payment of sale consideration does not result in any corresponding reduction in debt owed against  
27  
28

1 the Property. Second and relatedly, the Excess Proceeds Order bestows an unwarranted and,  
2 indeed, unconscionable windfall upon the Trust. The Trust never stood to receive any money—let  
3 alone the Excess Proceeds—from the Property. By mere happenstance of the tender at issue here,  
4 the Trust now seeks to benefit from an unconscionable windfall at Plaintiff’s expense. This Court  
5 sitting as a court of equity cannot and should not allow this to happen. Fortunately, there are  
6 established principles of equity in Nevada that the Court should employ here to avoid such an  
7 unconscionable result: namely, the law of equitable subrogation. Under established principles of  
8 equitable subrogation, the Excess Proceeds should be awarded to the Plaintiff to avoid windfall  
9 upon the Trust.  
10

11       Unfortunately, the inequitable results flowing from the Court’s Excess Proceeds Order do  
12 not stop there; indeed, they adversely affect the Bank’s interests, as well. The Excess Proceeds  
13 Order effectively works a kind of *de facto* forfeiture with respect to the Bank by leaving the Bank  
14 without a meaningful remedy. The Bank’s position with respect to the Excess Proceeds Order is  
15 complicated by public policy considerations raised by the specter of Nevada’s one-action rule. The  
16 Court’s order states in error with respect to the one-action rule and its purported—albeit  
17 incorrect—application to the Bank that, “Thornburgh has not attempted to interfere with the deposit  
18 of the HOA Excess Proceeds in recognition of Nevada’s one-action rule and its relation to the  
19 pursuit of a deficiency judgment. Accordingly, Thornburgh has waived its claim to receive the  
20 Excess Proceeds. *See Excess Proceeds Order* at pgs. 3-4 of 8, ¶15. If the Bank pursues the Excess  
21 Proceeds, it runs the risk of running afoul of the one-action rule. On the other hand, if the Bank  
22 does nothing, then it runs the risk of having the Excess Proceeds distributed pursuant to the Excess  
23 Proceeds Order distributed to the Trust and, subsequently, to the beneficiaries of the Trust. The  
24 near-certain dissipation of the Excess Proceeds will leave the Bank without any meaningful  
25 recourse as neither the Trust nor its beneficiaries are counterparties with respect to the Bank’s  
26  
27  
28

1 asserted indebtedness with respect to the Property, and the original borrowers are deceased. The  
2 reservation of the Bank's rights in the Excess Proceeds Order to pursue those proceeds at a later  
3 date to satisfy any foreclosure deficiency is of little solace as the Excess Proceeds—like the snows  
4 of yesteryear—will, in all likelihood, disappear from the face of the Earth.

5  
6 If the Court is not inclined to award the Excess Proceeds to the Bank, as previously argued  
7 by the Plaintiff, then the Court should apply principles of equitable subrogation and award the  
8 Excess Proceeds to Plaintiff. Nevada law on equitable subrogation is designed for just such a  
9 circumstance as is presented here: namely, preventing a purported junior-interest holder in the  
10 Property from receiving an unwarranted windfall at the expense of the Plaintiff. When Plaintiff  
11 tendered the sale consideration for the Property, it did so with the legitimate expectation set in  
12 place by the publicly recorded documents that the Excess Proceeds would be distributed in  
13 accordance with identified subordinate claims against the Property that were of record. Plaintiff  
14 did not, however, tender the sale consideration that resulted in the Excess Proceeds in order to  
15 bestow a windfall upon the Trust and be saddled with the Property encumbered by the first deed of  
16 trust that as of September 12, 2019, totaled \$6,643,306.90 [See Exhibit A] without any  
17 corresponding reduction in the outstanding indebtedness claimed by the Bank that should otherwise  
18 be reduced through the application of the Excess Proceeds, with Property only be worth  
19 approximately \$2,700,000.00. Additionally, the Trust is not a party to the Note and Deed of Trust,  
20 and the borrowers are now deceased. This is unjust. But this unconscionable result should be  
21 avoided through the application of principles of equitable subrogation. The Court's Excess  
22 Proceeds Order should be vacated on this basis, as well.

23  
24  
25 Finally, Plaintiff maintains that the Supreme Court of Nevada's decision in *Bank of*  
26 *America v. Thomas Jessup, LLC*, 435 P.3d 1217, 1221 n.5 (Nev. 2019), represents an intervening  
27 change in law within the meaning of NRCP 60(b) that permits Plaintiff to seek to have the sale of  
28

1 the Property set aside or rescinded in light of the Court’s determination that the Bank’s purported  
2 tender and alleged deed of trust continue to encumber the Property. *See id.* (“As the Bank’s deed  
3 of trust was not extinguished, we need not address the viability of the Bank’s claims against ACS  
4 and Foxfield. Similarly, we need not address the Bank’s remaining arguments in support of its  
5 deed of trust remaining intact; as neither the Bank nor the Purchaser have expressed whether they  
6 would prefer to have the sale set aside or have the Purchaser take title to the property subject to  
7 the first deed of trust.”) (emphasis added). Here, Plaintiff would prefer to have the sale of the  
8 Property rescinded/set aside, rather than take the Property subject to the deed of trust and having to  
9 endure the unconscionable windfall resulting from the Excess Proceeds being awarded to the Trust.  
10 Plaintiff will move separately under NRCP 15(c)(2) to include a claim seeking to set aside/rescind  
11 the sale in light of the intervening change in law brought about by *Jessup*, in addition to the fact  
12 that requests to rescind/set aside the sale were made by the Bank as far back as April of 2015.  
13 Therefore, no party to these proceedings can claim to have been prejudiced by any such  
14 amendment. The MRCN should be granted, and the Summary Judgment Order and the Excess  
15 Proceeds Order should be vacated on this basis, as well.

## 18 **STATEMENT OF RELEVANT FACTS<sup>2</sup>**

19  
20 1. On April 10, 2015, the Bank filed an answer and counterclaims (the “*Answer*”) in this case,  
21 including a claim seeking to set aside the foreclosure sale of the Property to Plaintiff. *See Answer*,  
22 pgs. 17-18 of 28.

23 2. Based upon the most recent correspondence received from the Bank and upon information  
24 and belief, the outstanding indebtedness claimed in the aggregate by the Bank with respect to the  
25 Property is in excess of \$6,643,306.90 million as of September 12, 2019.

## 26 **LEGAL ARGUMENT**

27  
28 <sup>2</sup> As the Court has already been apprised of most of the relevant facts here through prior motion practice, both with respect to the Summary Judgment Order and Excess Proceeds Order, Plaintiff’s statement of relevant facts is necessarily brief. Again, the relevant factual allegations of the Satcoy Opposition are incorporated by reference.

1 **A. STATEMENT OF THE LAW**

2 Plaintiff's requested relief in the MRCN is supported by NRCP 59(a)(1)(G) and 59(e). The  
3 MRCN is further predicated on NRCP 60(b)(6) based on the intervening change in law brought  
4 about by the Supreme Court of Nevada's decision in *Jessup*.

5 When there is a reasonable probability that the court may have reached an erroneous  
6 conclusion, reconsideration and rehearing of a motion is proper and may include re-argument.  
7 *Geller v. McCowan*, 64 Nev. 106, 178 P.2d 380 (1947). When a motion has been denied and  
8 further hearing is sought, the proper procedure is to ask leave to renew the motion or to receive a  
9 rehearing. *Murphy v. Murphy*, 64 Nev. 440, 183 P.2d 632 (1947). Rule 59(e) provides an  
10 opportunity, within a limited time, to seek correction at the trial court level of an erroneous order or  
11 judgment, thereby initially avoiding the time and expense of an appeal. *Chiara v. Belaustegui*, 86  
12 Nev. 856, 859, 477 P.2d 857 (1970). Rule 59(e) provides the remedy that, where the issues have  
13 been litigated and resolved, a motion may be made to alter or amend a judgment. The primary  
14 purpose of a petition for rehearing is to inform the court that it has overlooked an important  
15 argument or fact or misread or misunderstood a statute, case, or fact in the record. *See In re Ross*,  
16 99 Nev. 657, 668 P.2d 1089 (1983). In a concise and non-argumentative manner, such a petition  
17 should direct attention to some controlling matter which the court has overlooked or  
18 misapprehended. *Id.* It is with the utmost respect for this Court that Plaintiff respectfully submits  
19 that the Court appears to have overlooked important arguments and/or misunderstood the law  
20 and/or the facts in the record. Relief under NRCP 59 and/or 60(b) is therefore warranted here.

21 **B. THE COURT CLEARLY ERRED UNDER NEVADA LAW BY AWARDING THE**  
22 **EXCESS PROCEEDS TO THE TRUST.**

23 In its Excess Proceeds Order, the Court's conclusions of law expressly state that the Court  
24 was applying the distribution scheme set forth in NRS 116.31164 "strictly." *See Excess Proceeds*  
25 *Order*, pg. 5 of 8, ¶ 6. In addition, the Court's conclusions of law state with respect to NRS  
26 116.31164, "the way the statute reads is the way the statute reads." *See id.* at ¶ 5. For its part, the  
27 Trust's reply in support of its motion for summary judgment with respect to the disposition of the  
28

1 Excess Proceeds (the “*Trust Reply*”) made multiple references to the unambiguous, plain, and/or  
2 clear nature of NRS 116.31164(7)(b). *See, e.g., Trust Reply* at pg. 2 of 9, lines 25-26 (describing  
3 the distribution statute as clear and unambiguous); pg. 4 of 9; line 24 (“NRS 116.3116(7)(b) is a  
4 clear and unambiguous statute.”) (emphasis added); pg. 6 of 9, lines 21-24 (mistakenly assigning  
5 error to Plaintiff in connection with NRS 116’s statute governing the distribution of sale proceeds  
6 and so forth and admitting, once again, that NRS 116.31164(7)(b) is unambiguous); pg. 7 of 9, line  
7 16 (referencing plain and unambiguous nature of the NRS 116.31164(7)(b); pg. 8 of 9, lines 11-12  
8 (noting the plain language of the statute).

10         Governing principles of statutory construction require this Court to give effect to all parts of  
11 this statutory enactment, including, importantly, the language setting forth the mandatory  
12 requirement that the determination of subordinate claims with respect to the publicly recorded  
13 documents recorded in the County recorder’s office—i.e. the subordinate claims must be of record.  
14 *See Pawlik v. Shyang-Fenn Dang*, 412 P.3d 68, 76 (Nev. 2018) (“The only reasonable  
15 interpretation of the statute is the one that gives full effect to the plain language of ALL of the  
16 provisions of a statute...”) (emphasis added). Now, recall the teaching of the Supreme Court of  
17 Nevada that tenders do not have to be recorded in order to have the legally operative effect of  
18 discharging the super-priority component of an association’s statutory lien under NRS 116.3116(2).  
19 *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 119-120 (Nev. 2018) (“*Diamond*  
20 *Spur*”). And, the Bank’s alleged tender at issue here was not recorded.

23         Now, the Court has no doubt noticed the insurmountable problem with the Trust’s  
24 arguments with respect to the disposition of the Excess Proceeds under a plain meaning/strict  
25 construction of the distribution statute. Paying fidelity to the statutory text set forth in NRS  
26 116.31164(7)(b)(4) requires the Court to give effect to the critical statutory language requiring  
27 subordinate claims to be “of record.” Since the Bank’s alleged tender at issue here was not “of  
28

1 record,” the statutory scheme incorporates—as Plaintiff argued in its opposition to the Trust’s  
2 motion for summary judgment (the “*Saticoy Opposition*”)<sup>3</sup>—the subordinate claims that were of  
3 record at the time of the Property’s foreclosure by the Spanish Trail Master Association (the  
4 “*HOA*”). Simply put, given that (i) the Bank’s alleged tender did not have to be recorded—and, in  
5 fact, was not recorded—and (ii) what the Trust admits repeatedly in the Trust Reply is the plain,  
6 clear, and unambiguous command that the distribution scheme under NRS 116.3116(7)(b)(4) must  
7 be determined by reference to subordinate claims that are “of record,” the Plaintiff’s position in the  
8 *Saticoy Opposition* was and is emphatically correct. The Bank’s claim “of record” was  
9 subordinate to the claims of the HOA at the time of filing of the Notice of Delinquent Assessment  
10 and at the HOA’s NRS 116 foreclosure sale of the Property, and the Bank’s alleged tender and its  
11 subsequent adjudication by this Court does not change the priority of subordinate claims under  
12 NRS 116.3116(7)(b)(4) as they existed on the date of the HOA’s foreclosure sale of the Property.  
13 The emphatic command of the Nevada Legislature is, in the words of the Trust, plain, clear, and  
14 unambiguous: the Excess Proceeds were required to be distributed to the Bank to pay down the  
15 debt secured by the deed of trust, and not to the Trust. For its part, the Trust pretends to pay  
16 fidelity to the statutory text set forth in NRS 116.3116(7)(b)(4), but it never contends with the  
17 express and mandatory requirement that subordinate claims must be determined by reference to  
18 such claims that are “of record.”  
19

20  
21  
22 And, the question of which date—the notice of delinquent assessment lien was filed by the  
23 HOA, the date of the HOA’s foreclosure sale of the Property, or the date of the Court’s entry of the  
24 Summary Judgment Order—is of no help to the Trust, either. If the Court selects either the date of  
25 the HOA’s filing of its notice of delinquent assessment lien or the foreclosure date, then the Bank’s  
26 claims “of record” were subordinate to those of the HOA. *See, e.g., SFR Invs. Pool 1, LLC v. U.S.*  
27

28 <sup>3</sup> The *Saticoy Opposition* filed by Plaintiff on July 26, 2019 is expressly incorporated herein by this reference.

1 *Bank., N.A.*, 334 P.3d 408, 409 (authoritatively construing NRS 116.3116(2) and stating, “We must  
2 decide whether this [NRS 116.3116(2)] is a true priority lien such that its foreclosure extinguishes a  
3 first deed of trust on the property and, if so, whether it can be foreclosed non-judicially. We  
4 answer both questions in the affirmative and reverse.”). If the Court selects, in the alternative, the  
5 date of either the entry of the Summary Judgment or the Excess Proceeds Orders, then Plaintiff, not  
6 the Trust, was the owner of Property on each of those respective dates and, under the very analysis  
7 advanced here by the Trust, would be the entity entitled to receive the Excess Proceeds pursuant to  
8 NRS 116.31164(7)(b)(4). The issue of timing, therefore, places the Trust on the horns of a  
9 dilemma traversing life’s difficult acre—east of the rock, and west of the hard place.

11       Clearly, the Trust is seeking to have it both ways. This is not a result that should be  
12 countenanced by any court, let alone a court sitting in equity. On the one hand, the Trust wants to  
13 have its position fixed as the former owner of the Property on the date of the HOA’s foreclosure of  
14 the Property for purposes of the distribution statute; on the other hand, the Trust wants to use the  
15 Court’s Summary Judgment Order on the Bank’s alleged tender to change the priority of  
16 distribution scheme that was “of record” on the date of the HOA’s foreclosure of the Property to  
17 essentially elevate the Bank impermissibly out of the distribution position that is actually “of  
18 record” on that date in order to clear the path for the Trust to receive an impermissible windfall and  
19 visit an impermissible forfeiture upon Plaintiff. In a recurring theme, this Court as a court of equity  
20 should not countenance a state of affairs that gives the Trust a windfall and visits a forfeiture upon  
21 Plaintiff in express derogation of the requirement that subordinate claims under NRS  
22 116.31164(7)(b)(4) must be of record. The Trust’s whiplash-inducing display of equivocation on  
23 this critical statutory language, and its head-spinning lines of argument on the issue of timing as a  
24 factor, demonstrates just how utterly meritless and irreconcilable the Trust’s position is with  
25 respect to—to, once again, borrow the Trust’s own description of NRS 116.31164(7)(b)(4)—the  
26  
27  
28

1 plain, clear, and unambiguous requirement that subordinate claims must be of record. Under  
2 governing Nevada law, therefore, the Excess Proceeds should have been paid to the Bank, not the  
3 Trust. The MRCN should be granted on this basis alone. Unfortunately for the Trust, its  
4 arguments in support of the Court's Excess Proceeds Order do not fare any better under equitable  
5 principles of Nevada law.

6  
7 **C. ALTERNATIVELY, THE EXCESS PROCEEDS SHOULD BE AWARDED TO PLAINTIFF UNDER NRS 116.1108 AND PRINCIPLES OF EQUITABLE SUBROGATION**

8  
9 Nevada law recognizes as a maxim the proposition that equity abhors a forfeiture. *See, e.g.,*  
10 *International Indus., Inc. v. United Mortg. Co.*, 606 P.2d 163, 167 (Nev. 1980). Similarly, the  
11 Supreme Court of Nevada has recognized the fundamentally irreconcilable nature of a litigant's  
12 receipt of a windfall with the concept of equity. *See, e.g., Home Savings Assoc. v. Bigelow*, 779  
13 P.2d 85, 86 (Nev. 1989) ("Further, rather than doing equity, in our view, the dismissal of the third-  
14 party complaint grants Bigelow a windfall." ) (emphasis added). As Plaintiff noted at the outset of  
15 the MRCN, this Court sat as a court of equity under Nevada law in entertaining the Bank's  
16 arguments that Plaintiff's Property continued to be encumbered by a deed of trust notwithstanding  
17 the HOA's NRS 116 foreclosure sale. Stated plainly, Plaintiff respectfully submits that what equity  
18 starts, equity must finish. It is simply inconsistent with traditional notions of fair play and  
19 substantial justice to impair Plaintiff's title to the Property in equity only to then pull a complete  
20 180-degree turn and rely—albeit in legal error discussed and established both immediately above  
21 and below—upon what the Court viewed in the Excess Proceeds Order as a strict application of the  
22 distribution scheme set forth in NRS 116.31164(7)(b)(4) to visit a forfeiture on Plaintiff and a  
23 windfall upon the Trust. Equity simply cannot tolerate this result, and neither should this Court.

24  
25  
26 The Court's continued exercise of its equity jurisdiction, and the related ability to apply  
27 equitable principles to avoid such unjust results as those visited upon Plaintiff by both the  
28 Summary Judgment and Excess Proceeds Orders, has been authorized expressly by the Nevada

1 Legislature in NRS 116.1108. The Court’s application of the distribution scheme set forth in the  
2 Excess Proceeds Order also fails to take into consideration this statute. Specifically, NRS 116.1108  
3 supplements the provisions of NRS 116 with, among other general bodies of established Nevada  
4 law, Nevada’s law on equity. *See, e.g., Shadow Wood*, 366 P.3d at 1112 (authoritatively construing  
5 NRS 116.1108 as a legislative mandate to apply both principles of law and equity to NRS 116  
6 cases). The operation of equitable principles does not stop at the doorstep of NRS 116 distribution  
7 scheme set forth in NRS 116.31164(7)(b)(4), and the Trust’s motion practice to this point did not  
8 give this Court sufficient reason—let alone legally valid justification—to refuse to avoid the  
9 windfall to the Trust and the forfeiture visited upon Plaintiff, even if such a result was compelled  
10 by the law—which, of course, the Plaintiff has already established is clearly not the case.  
11

12  
13 In addition to the legal arguments above that direct the Excess Proceeds be distributed to the  
14 Bank as the holder of a subordinate claim of record to the HOA’s Lien consistent with Plaintiff’s  
15 position in the Saticoy Opposition, the Court can also apply principles of established principles of  
16 equity in connection with its continued exercise of its jurisdiction in equity to avoid the  
17 windfall/forfeiture scenario contemplated by the Excess Proceeds Order—at least to the extent the  
18 MRCN is not granted or the Excess Proceeds Order is not reversed on appeal. For instance,  
19 Plaintiff calls upon the Court as a court of equity and pursuant to NRS 116.1108 to apply  
20 established and on-point principles of equitable subrogation vigorously to avoid both the unjust  
21 forfeiture visited upon Plaintiff through the Excess Proceeds Order and the unconscionable  
22 windfall that will inure to the unjust benefit of the Trust.

23 “Nevada recognizes the doctrine of equitable subrogation as formulated in section 7.6 of the  
24 Restatement (Third) of Property: Mortgages (1997).” *Recontrust Co., N.A. v. Zhang*, 317 P.3d 814,  
25 817 (Nev. 2014); *see also Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 245 P.3d 535, 539 (Nev.  
26 2010). The doctrine of equitable subrogation “is a remedy to avoid receiving an unearned  
27 windfall at the expense of another. If there were no subrogation, a junior lien holder would be  
28 promoted in priority, giving that creditor/lien holder an unwarranted and unjust windfall. Neither

1 negligence nor constructive notice is relevant as to whether the junior lienholder will be unjustly  
2 enriched.” *Houston v. Bank of America, N.A.*, 78 P.3d 71, 74 (Nev. 2003) (emphasis added)  
3 (citations omitted). The two elements of an equitable subrogation claim are (i) that the payor  
4 reasonably expected to receive a security interest in the real estate with the priority of the mortgage  
5 being discharged and (ii) that the subrogation does not materially prejudice the interests of  
6 intervening holders in the real estate. *See, e.g., Zhang*, 317 P.3d at 817. The analysis of these  
7 element proceeds out of order as the second element is by far and away the easier of the two  
8 elements to establish.

9 Here, the Trust cannot credibly claim that it will be prejudiced by the Court equitably  
10 subrogating the Plaintiff to the position of the remaining portion of the HOA’s statutory lien in  
11 light of the Bank’s elevation—albeit incorrect—out of the distribution statute’s priority scheme.  
12 The Trust never stood to receive anything from the sale of the Property—let alone realization of  
13 any sale consideration on the order of magnitude of the Excess Proceeds. This is precisely the  
14 exact type of windfall the doctrine of equitable subrogation is designed to prevent and should be  
15 applied to this analogous context here to avoid an impermissible and unjust windfall from being  
16 given to the Trust.

17 Plaintiff also satisfies the first portion of the test, as well, on the discrete facts presented by  
18 this analogous context. When Plaintiff tendered the sale consideration for the Property that  
19 ultimately resulted in the Excess Proceeds, Plaintiff legitimate expectations were twofold. First and  
20 obviously, Plaintiff expected to receive the Property free and clear from any interest claimed by the  
21 Bank. To date, that expectation has not been satisfied by virtue of the Court’s entry of the  
22 Summary Judgment Order. As second legitimate expectation that Plaintiff reasonably had is that,  
23 in the event that the HOA’s sale of the Property were to be set aside for any reason, that the sale  
24 consideration paid by the Plaintiff would be impressed with a constructive trust in favor of Plaintiff  
25 to prevent the HOA, or anyone else, for that matter from being unjustly enriched at Plaintiff’s  
26 expense. This legitimate expectation on the part of the Plaintiff, therefore, has the analogous effect  
27 of the Plaintiff expecting to, in effect, be in a secured position vis-à-vis the Property—at least to the  
28 extent of the sale consideration paid which would include the Excess Proceeds. Here, Plaintiff only

1 seeks to be equitably subrogated to the extent of the Excess Proceeds, and the Court should apply  
2 this doctrine vigorously to the analogous facts presented here in order to serve the purpose for  
3 which the doctrine was conceived in the first place: to prevent the unjust enrichment of an alleged  
4 junior interest holder in the Property, like the Trust. The MRCN should be granted on this basis, as  
5 well.

6 **D. ALTERNATIVELY, THE SALE SHOULD BE SET ASIDE UNDER *JESSUP***

7 Plaintiff maintains that the Supreme Court of Nevada's decision in *Jessup*, 435 P.3d at 1221  
8 n.5, represents an intervening change in law within the meaning of NRCP 60(b) that permits  
9 Plaintiff to seek to have the sale of the Property set aside or rescinded in light of the Court's  
10 determination that the Bank's purported tender and alleged deed of trust continue to encumber the  
11 Property. *See id.* ("As the Bank's deed of trust was not extinguished, we need not address the  
12 viability of the Bank's claims against ACS and Foxfield. Similarly, we need not address the  
13 Bank's remaining arguments in support of its deed of trust remaining intact; as neither the Bank  
14 nor the Purchaser have expressed whether they would prefer to have the sale set aside or have the  
15 Purchaser take title to the property subject to the first deed of trust.") (emphasis added). Here,  
16 Plaintiff would prefer and in fact hereby request to have the sale of the Property rescinded/set aside,  
17 rather than take the Property subject to the deed of trust and having to endure the unconscionable  
18 windfall resulting from the Excess Proceeds being awarded to the Trust. Plaintiff will move  
19 separately under NRCP 15(c)(2) to include a claim seeking to set aside/rescind the sale in light of  
20 the intervening change in law brought about by *Jessup*, in addition to the fact that requests to  
21 rescind/set aside the sale were made by the Bank as far back as April of 2015. Therefore, no party  
22 to these proceedings can claim to have been prejudiced by any such amendment. The MRCN  
23 should be granted, and the Summary Judgment Order and the Excess Proceeds Order should be  
24 vacated on this basis, as well.

25 **CONCLUSION**

26 Based upon the foregoing, this Court should grant the MRCN as good cause for such relief  
27 exists, and, as necessary, vacate either the Excess Proceeds Order, the Summary Judgment Order,  
28 or both.

1 Dated this 24th day of September, 2019.

2 ROGER P. CROTEAU & ASSOCIATES, LTD

3 By: /s/ Roger Croteau

4 ROGER P. CROTEAU, ESQ.

5 Nevada Bar No.: 4958

6 2810 W. Charleston Blvd., Ste. 75

7 Las Vegas, Nevada 89102

8 *Attorney for Plaintiff*

9 *Saticoy Bay LLC Series 34 Innisbrook*

10

11

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of  
3 ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 24th day of September, 2019, I  
4 caused a true and correct copy of the foregoing document to be served on all parties as follows:

5 X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile e-file and serve  
6 system.

7 Thornburg Mortgage Securities Trust 2007-3 - Defendant

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9 Melanie Morgan [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
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11 Spanish Trail Master Association - Counter Defendant

12 Sean L. Anderson [sanderson@leachjohnson.com](mailto:sanderson@leachjohnson.com)  
13 Robin Callaway [rcallaway@lkglawfirm.com](mailto:rcallaway@lkglawfirm.com)  
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\_\_\_\_ VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with  
postage thereon fully prepaid, addressed as indicated on service list below in the United  
States mail at Las Vegas, Nevada.

\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated  
on the service list below.

\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this  
date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Jennifer Lee

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

EXHIBIT A

EXHIBIT A

Statement Date: September 12, 2019

Nationstar Mortgage LLC d/b/a Mr. Cooper is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you

personally to the extent that it is included in your bankruptcy or has been discharged, but is provided for informational purposes only.  
WP-PAYOFFST-0513

Statement Date: September 12, 2019

Nationstar Mortgage LLC d/b/a Mr. Cooper is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you

personally to the extent that it is included in your bankruptcy or has been discharged, but is provided for informational purposes only.  
WP-PAYOFFST-0513

**EXHIBIT 10**

**EXHIBIT 10**



1 **ORDG**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No.: 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD  
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10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorneys for Plaintiff*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 \*\*\*\*\*  
16 SATICOY BAY LLC SERIES 34  
17 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES  
21 TRUST 2007-3 et al.,

22 Defendants.

Case No.: A-14-710161-C  
Dept.: XXVI

23 **AND ALL RELATED ACTIONS**

24  
25 **ORDER**

26 A hearing having been held on October 29, 2019, on Saticoy Bay LLC Series 34  
27 Innisbrook's ("*Plaintiff*") Motion for Reconsideration under NRCP 59(e) and 60(b) of (I) the  
28 Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the

1 Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRCP  
2 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set  
3 Aside/Rescind, Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiffs  
4 Motion to Amend Complaint pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's  
5 Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale. Appearances  
6 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust U/T/D March 3,  
7 1999's (hereafter "*Timpa Trust*"), Donna Wittig on behalf of Thornburg Mortgage Securities Trust  
8 2007-3 (hereafter "*Thornburg*"), Roger Croteau on behalf of Saticoy Bay LLC, Series 34  
9 Innisbrook, and Brody Wight on behalf of Red Rock Financial Services LLC (hereafter "*Red*  
10 *Rock*"). There having been no appearance by Spanish Trail Master Association (hereafter "*Spanish*  
11 *Trail*"). The Court, having considered the moving papers, and the representations of counsel  
12 present at the hearing, and good cause appearing:


13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to  
14 Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision  
15 in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale is DENIED as the  
16 Court does not see the request as an appropriate approach, that there is a separate final order and  
17 the case is final and as a result the request is procedurally untimely.

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for  
19 Entry is DENIED.

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for  
21 Reconsideration under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of  
22 December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds is  
23 GRANTED IN PART to amend the Findings of Fact in the December 8, 2019 Summary Judgment  
24 Order to now state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's  
25 March 2019 decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* had not yet been  
26 published and any such references regarding the unwinding of the foreclosure sale were not  
27 discussed or considered in the Summary Judgment Order of this case and to the extent that the  
28 determination in *Jessup* have any bearing to this case, it was not considered by the Court.

1           **IT IS SO ORDERED.**

2   DATED this 18<sup>th</sup> day of November, 2019

  
DISTRICT COURT JUDGE

3  
4  
5   Respectfully submitted by:

Reviewed by:

6   **ROGER P. CROTEAU & ASSOCIATES, LTD.**

AKERMAN LLP

7   /s/ Roger Croteau

/s/ Melanie Morgan

8   **ROGER P. CROTEAU, ESQ.**

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Las Vegas, NV 89134

10   **Attorney for Plaintiff**

**Attorneys for Thornburg Mortgage  
Securities Trust 2007-3**

11   Reviewed by:

12   **AVALON LEGAL GROUP LLC**

**LEACH KERN GRUCHOW ANDERSON  
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14   BRYAN NADDAFI, ESQ.

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17   **THE LAW OFFICE OF TRAVIS AKIN**

**Attorneys for Spanish Trail Master  
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19   TRAVIS AKIN, ESQ.

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20   8275 S. Eastern Ave.

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21   **Attorney for Todd Timpa and Stuart Timpa,**

22   **Successor Co-Trustees to the Timpa Trust**

23  
24  
25   A710161 - Order From Oct. 29, 2019 Hearing

EXHIBIT 11

EXHIBIT 11

1 **NEO**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
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11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 *Saticoy Bay LLC Series 34 Innisbrook*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 \*\*\*

11 SATICOY BAY LLC SERIES 34 )  
12 INNISBROOK, )

13 Plaintiff, )

14 vs. )

15 THORNBURG MORTGAGE SECURITIES )  
16 TRUST 2007-3 *et al.*, )

17 Defendants. )

18 AND ALL RELATED ACTIONS )  
19

Case No.: A-14-710161-C  
Dept.: XXVI

**NOTICE OF ENTRY OF ORDER**

20  
21 PLEASE TAKE NOTICE that an **ORDER** has been entered on the 18<sup>th</sup> day of November,  
22 2019, in the above captioned matter, a copy of which is attached hereto.

23 DATED this 18<sup>th</sup> day of November, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

24  
25 /s/ *Roger P. Croteau*

26 ROGER P. CROTEAU, ESQ.

27 Nevada Bar No. 4958

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Las Vegas, Nevada 89102

*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 18<sup>th</sup> day of November, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efilex e-file and serve system.

Thornburg Mortgage Securities Trust 2007-3 - Defendant

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Jared Sechrist	<a href="mailto:jared.sechrist@akerman.com">jared.sechrist@akerman.com</a>

Spanish Trail Master Association - Counter Defendant

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\_\_\_\_ VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Jennifer Lee

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.



1 **ORDG**  
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4 TIMOTHY E. RHODA, ESQ.  
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11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorneys for Plaintiff*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 \*\*\*\*\*  
16 SATICOY BAY LLC SERIES 34  
17 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES  
21 TRUST 2007-3 et al.,

22 Defendants.

Case No.: A-14-710161-C  
Dept.: XXV]

23 **AND ALL RELATED ACTIONS**

24  
25 **ORDER**

26 A hearing having been held on October 29, 2019, on Saticoy Bay LLC Series 34  
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28 Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the

1 Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRC  
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4 Motion to Amend Complaint pursuant to NRC 15(b)(2) and 60(b), the Supreme Court of Nevada's  
5 Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale. Appearances  
6 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust U/T/D March 3,  
7 1999's (hereafter "*Timpa Trust*"). Donna Wittig on behalf of Thornburg Mortgage Securities Trust  
8 2007-3 (hereafter "*Thornburg*"), Roger Croteau on behalf of Saticoy Bay LLC, Series 34  
9 Innisbrook, and Brody Wight on behalf of Red Rock Financial Services LLC (hereafter "*Red*  
10 *Rock*"). There having been no appearance by Spanish Trail Master Association (hereafter "*Spanish*  
11 *Trail*"). The Court, having considered the moving papers, and the representations of counsel  
12 present at the hearing, and good cause appearing:


13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to  
14 Amend Complaint Pursuant to NRC 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision  
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19 Entry is DENIED.

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for  
21 Reconsideration under NRC 59(e) and 60(b) of (I) the Court's Summary Judgment Order of  
22 December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds is  
23 GRANTED IN PART to amend the Findings of Fact in the December 8, 2019 Summary Judgment  
24 Order to now state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's  
25 March 2019 decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* had not yet been  
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27 discussed or considered in the Summary Judgment Order of this case and to the extent that the  
28 determination in *Jessup* have any bearing to this case, it was not considered by the Court.

1           **IT IS SO ORDERED.**

2   DATED this 18<sup>th</sup> day of November, 2019

  
DISTRICT COURT JUDGE

3  
4  
5   Respectfully submitted by:

Reviewed by:

6   **ROGER P. CROTEAU & ASSOCIATES, LTD.**

AKERMAN LLP

7   /s/ Roger Croteau

/s/ Melanie Morgan

8   **ROGER P. CROTEAU, ESQ.**

**MELANIE D. MORGAN, ESQ.**

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12   **Attorney for Plaintiff**

**Attorneys for Thornburg Mortgage  
Securities Trust 2007-3**

13   Reviewed by:

14   **AVALON LEGAL GROUP LLC**

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24   **Attorney for Todd Timpa and Stuart Timpa,**

25   **Successor Co-Trustees to the Timpa Trust**

26  
27  
28   A710161 - Order From Oct. 29, 2019 Hearing