

**IN THE SUPREME COURT OF NEVADA**

SATICOY BAY, LLC 34  
INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3; FRANK  
TIMPA; MADELAINE TIMPA;  
TIMPA TRUST; RED ROCK  
FINANCIAL SERVICES, LLC;  
SPANISH TRAIL MASTER  
ASSOCIATION; REPUBLIC  
SERVICES; AND LAS VEGAS  
VALLEY WATER DISTRICT,

Respondents.

Supreme Court Case No. 80111

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**JOINT APPENDIX VOLUME 4**

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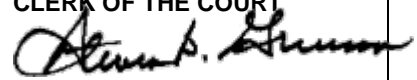
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14 *counter-defendant Thornburg Mortgage Securities*  
15 *Trust 2007-3*

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.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

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Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) moves for summary judgment.

1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE**, Thornburg will bring its **MOTION FOR SUMMARY**  
3 **JUDGMENT** for hearing before the Eighth Judicial District Court, located at the Regional Justice  
4 Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the \_\_\_\_ day of June 5 2018, at  
5 the hour of 9:30 am  
6 the hour of \_\_\_\_:\_\_\_\_ o'clock \_\_\_\_m.

7 Dated: May 4, 2018.

8 **AKERMAN LLP**

9 /s/ Thera A. Cooper

10 MELANIE D. MORGAN, ESQ.

11 Nevada Bar No. 8215

12 THERA A. COOPER, ESQ.

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14 1635 Village Center Circle, Suite 200

15 Las Vegas, Nevada 89134

16 *Attorneys for Defendant/Counterclaimant/  
17 Counter-Defendant Thornburg Mortgage  
18 Securities Trust 2007-3*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Introduction**

Saticoy Bay LLC Series 34 Innisbrook (**Plaintiff**) seeks a windfall. Plaintiff asserts it obtained title to the property free and clear of the deed of trust- even though the deed and the statute enabling the HOA's sale are silent on the interest the sale conveyed. Plaintiff is wrong. And, Thornburg's deed of trust survived the sale for several reasons.

**First**, the superpriority lien was extinguished prior to the sale.

**Second**, whether Plaintiff is a bona fide purchaser or had actual notice of the Homeowner's or BANA's payments is irrelevant. And, Plaintiff may not rely on the deed recitals. Neither Plaintiff's knowledge nor the deed recitals can revive the extinguished superpriority lien.

**Third**, the HOA is estopped from enforcing the superpriority lien. The HOA promised to protect the deed of trust and Thornburg, through its predecessor, relied on that promise.

**Finally**, equity cannot overcome the legal effect of the extinguished superpriority lien. But, to the extent the court reaches equity, equity favors Thornburg.

**II. Statement of Facts**

1. On June 2, 2006, borrower executed a deed of trust securing a \$3,780,000 loan to purchase the property located at 34 Innisbrook Ave, Las Vegas, Nevada. **Ex. A.** 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. *Id.* The deed of trust was recorded on June 6, 2006. 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. B.**

...

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

1           2.       On June 12, 2006, Fidelity National Title Insurance Company (**Fidelity**) issued a  
2 policy withholding coverage for losses arising from "any charges or assessments against said land  
3 which shall become a lien if not paid as set forth in [the CC&Rs]..., including any unpaid delinquent  
4 assessments." **Ex. B**, title policy, Schedule B, Part 1(8).

5           3.       On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
6 beneficial interest in the deed of trust to Thornburg. **Ex. C**.

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

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

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

18 *Id.*

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

23          7.       Art. X Section 3, provides:

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

*Id.*

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

4           9.       At the time the Lien was recorded the HOA's assessments were \$225.00 per month.  
5 **Ex. F.**<sup>2</sup> And, the superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the  
6 assessments coming due December 1, 2010 through August 1, 2011. *Id.*

7           10.      From July 9, 2013 through December 13, 2013, borrower made payments totaling  
8 \$2,350. *Id.*, at RRFS000384, 394, 400,407, 414, & 422. Red Rock accepted the payments and  
9 applied the payments to the delinquent assessments coming due December 1, 2010 through August  
10 1, 2011, the superpriority amount.<sup>3</sup> *Id.*

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

13          12.      On December 23, 2011 BAC Home Loan Servicing (**BANA**), then the loan servicer,  
14 through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red  
15 Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate  
16 proof." **Ex. H- 1**. Red Rock received the letter on December 27, 2011. **Ex. F**, at RRFS000578-579.

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

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

22          15.      Then on February 12, 2012, after rejecting BANA's payment Red Rock sent  
23 correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust. **Ex. F**, at  
24 RRFS000540.

25 \_\_\_\_\_  
26 <sup>2</sup> The documents attached to Red Rock's Declaration Ex. G are presumed authentic pursuant to **NRS**  
27 **52.155** because they bear Red Rock's "trade inscriptions" indicating "ownership, origin, or control."

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

1           16.     Red Rock recorded a notice of foreclosure sale on September 15, 2014. **Ex. I.** The  
2 notice indicate the HOA would sale the property on October 8, 2014 and the amount then due was  
3 \$20,309.95. The notice asserted the sale would "be made without covenant or warrant, express or  
4 implied regarding... title or possession, encumbrance, obligations to satisfy any secured or  
5 unsecured liens." *Id.*

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

8           18.     At the time of the HOA's sale the property was worth \$2,000,000. **Ex. K.**

9           19.     Since the sale Plaintiff has leased the property and obtained rental income. **Ex. L.**

10 **III.   REQUEST FOR JUDICIAL NOTICE**

11           Thornburg requests the court take judicial notice of Exhibits A, C-E, G, I and J pursuant to  
12 NRS §47.130. These include publicly recorded documents concerning the property's title history.  
13 *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986); see also *Harlow v. MTC Fin.*  
14 *Inc.*, 865 F. Supp. 2d 1095, 1097 (D. Nev. 2012) ("When ruling on a motion for summary judgment,  
15 the Court may take judicial notice of matters of public record, including recorded documents").

16 **IV.   LEGAL STANDARD**

17           "Summary judgment is appropriate ... when the pleadings, depositions, answers to  
18 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
19 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
20 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
21 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
22 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
23 to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v.*  
24 *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
25 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
26 courts follow the federal summary judgment standard, not the "slightest doubt' standard previously  
27 applicable before *Wood*. *Id.* at 1031, 1037.

28 ...

1 **V. ARGUMENT**

2 **A. The Superpriority Lien was Extinguished Before the Sale.**

3 **1. Borrower's payments extinguished the superpriority lien.**

4 *SFR Investments* made it clear that an HOA's lien is split into two parts: (1) a superpriority  
5 piece and (2) a subpriority piece. 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) ("NRS 116.3116(2)  
6 thus splits an HOA lien into two pieces, a super-priority piece and a sub-priority piece."). Here, the  
7 superpriority piece was extinguished as a result of borrower's payments.

8 In *Saticoy Bay LLC Series 5141 Golden Hill v. JP Morgan Chase Bank National Association*,  
9 Case No. 7146 (December 22, 2017)(Rehearing denied Feb. 26, 2018) (Unpublished), the Nevada  
10 supreme court confirmed a homeowner can pay the superpriority amount of an HOA's lien. That  
11 portion of the lien is limited to "the assessments for common expenses... which would have become  
12 due in the absence of acceleration *during the 9 months immediately preceding institution of an*  
13 *action to enforce the lien.*" See *Saticoy Golden Hill*, (citing *Saticoy Bay LLC Series 2021 Grey Eagle*  
14 *Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226, 231 (2017) (emphasis in  
15 original). Mailing the notice of delinquent assessment lien constitutes institution of an action to  
16 enforce the lien. *Saticoy Grey Eagle*, at 231. Only delinquent assessments occurring within the 9  
17 months before the recording of the notice of delinquent assessment lien are entitled to superpriority  
18 status. See *Golden Hill*, at 1.

19 In *Ikon Holdings*, the Court clarified the issue of whether "whether a superpriority lien for  
20 common expense assessments pursuant to NRS 116.3116(2)2 includes collection fees and  
21 foreclosure costs incurred by a homeowners' association (HOA)." *Horizons at Seven Hills v. Ikon*  
22 *Holdings*, at 72. The court held the superpriority amount "does not include an amount for collection  
23 fees and foreclosure costs incurred; rather it is *limited to an amount equal to the common expense*  
24 *assessments due during the nine months before foreclosure.*" *Id.* at \*6 (emphasis added).

25 Here, Red Rock recorded the Lien in August 2011. **Ex. E.** The superpriority portion of the  
26 HOA's lien was limited to only those assessments coming due in "the 9 months immediately  
27 preceding" the Lien, or December 1, 2010 through August 1, 2011. At the time the Lien was  
28 recorded, the HOA's assessments were \$225.00 per month. **Ex. F.** And, the superpriority amount of



1 the HOA's lien was \$2,025.00. *Id.* From July 9, 2013 through December 13, 2013, borrower made  
2 payments totaling \$2,350. *Id.*, at RRF000384, 394, 400,407, 414, & 422. Red Rock accepted the  
3 payments, and applied the payments to the delinquent assessments coming due December 1, 2010  
4 through August 1, 2011. *Id.* Because the payments were applied to the superpriority portion of the  
5 lien, that piece of the lien was extinguished. And, Plaintiff's interest in the property is subject to the  
6 deed of trust. *See Golden Hill.*

7           **2.       BANA's tender extinguished the superpriority lien.**

8           Alternatively, BANA's check for the superpriority amount constituted valid tender and  
9 extinguished the superpriority amount of the lien. *SFR Investments* instructs tender of the  
10 superpriority lien will "avert loss of [the lender's] security." *SFR Invs. Pool 1 v. U.S. Bank*, 130 Nev.  
11 Adv. Op. 75, 334 P.3d 408, 414 (2014). Additional sources confirm superpriority tender preserves a  
12 first deed of trust. Uniform Common Interest Ownership Act (**UCIOA**) comments, adopted at NRS  
13 Chapter 116, state: "[a]s a practical matter, secured lenders will most likely pay the [nine] months  
14 assessments demanded by the association rather than having the association foreclose on the unit."  
15 UCIOA § 3116 cmt. 1 (1982) (cited with approval in *SFR Investments*, 334 P.3d at 414.); *see also*  
16 13–01 Op. Dep't of Bus. & Indus., Real Estate Div. 18 (2012) (hereinafter **NRED Letter**) (it is  
17 "likely that the holder of the first security interest will pay the super priority lien amount to avoid  
18 foreclosure by [an HOA]"). BANA did all the law required to protect the deed of trust. Prior to the  
19 sale, BANA sent a check to Red Rock for the superpriority amount. **Ex. H-4 & 5.** That Red Rock  
20 rejected the payment does not change the result.

21           The Uniform Commercial Code treats refusal to accept tender as resulting in discharge:

22           If tender of payment of an obligation to pay an instrument is made to a person entitled to  
23 enforce the instrument and the tender is refused, there is discharge, to the extent of the  
24 amount of the tender, of the obligation of an endorser or accommodation party having a right  
25 of recourse with respect to the obligation to which the tender relates.

26 NRS 104.3603. U.C.C. Art. 3 further confirms that in *both* the common law and statutory contexts,  
27 tender discharges the lien for which payment is tendered regardless of whether the lien holder rejects  
28 tender. *See also* 15 Williston, A Treatise on the Law of Contracts, §1819 (3d ed. 1972).

1 The *SFR Investments* and the official comments to UCIOA § 3-116 confirm mortgagees can  
2 preserve their interest by tendering the superpriority portion of the lien. *SFR Investments*, 334 P.3d  
3 at 413. Once BANA presented the check to the HOA, it discharged its tender obligations and  
4 extinguished the superpriority lien.

5 **B. Plaintiff's Purported Bona Fide Purchaser Status is Irrelevant.**

6 **1. Equity cannot revive the extinguished superpriority lien.**

7 Plaintiff will likely rely on the Nevada supreme court decision in *Shadow Wood* for the  
8 proposition that a trial court must always consider the plaintiff's potential bona fide purchaser status.  
9 *See Shadow Wood Homeowners Ass'n v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev.  
10 2016). That portion of *Shadow Wood* is inapposite. In *Shadow Wood*, the bank foreclosed on its  
11 deed of trust before the HOA's sale and failed to pay the superpriority lien that survived the bank's  
12 foreclosure and the HOA dues that accrued while the bank was owner of the property. *Id.*, at 1107.  
13 *Shadow Wood* was rendered in the context of the bank's attempt to set aside the association's sale in  
14 its entirety, on equitable grounds. And, in that context the Nevada supreme court instructed courts to  
15 consider the rights of a potential bona fide purchaser for value.

16 Here, the HOA's superpriority lien was extinguished as a result of borrower's payments or  
17 BANA's tender. **Exs. G & J.** Plaintiff's putative bona fide purchaser status cannot "revive the  
18 already satisfied superpriority component of the HOA's lien." *See Saticoy Golden Hill*, n. 1  
19 (discussing the inapplicability of plaintiff's putative bona fide purchaser status where the  
20 superpriority lien was extinguished prior to the sale by the homeowner's payment.).

21 **2. Plaintiff may not rely on the deed recitals.**

22 Plaintiff may assert minimal recitations in the foreclosure deed are "'conclusive proof" proper  
23 notice was provided and proper procedure was followed and it is entitled to quiet title solely on that  
24 basis. *Shadow Wood* soundly rejected that argument. *See also RLP-Ampus Place, LLC*, Supreme  
25 Court Case No. 71883, Slip Op. at 3 (Dec. 22, 2017) (unpublished).

26 *Shadow Wood* held the "conclusive" deed recitals found in HOA foreclosure deeds do not bar  
27 mortgagees or homeowners from challenging the validity of an HOA foreclosure sale. *Shadow*  
28 *Wood*, 132 Nev. Adv. Op. 5, at 21. The deed recitals outlined in NRS 116.3116 only concern

1 "default, notice, and publication of the" notice of sale, and do not provide any presumption regarding  
2 other aspects of the foreclosure, such as the commercial reasonableness of the sale. *Id.* at 10. The  
3 court noted the recitals are not conclusive to even the matters recited, such as whether the  
4 homeowner was in default. *Id.* at 11 ("[W]hile it is possible to read a conclusive recital statute like  
5 NRS 116.31166 as conclusively establishing a default justifying a foreclosure when, in fact, no  
6 default occurred, such a reading would be breathtakingly broad and is probably legislatively  
7 unintended."). *Shadow Wood* rejected the HOA-sale purchaser's argument that the conclusive  
8 recitals alone defeated the action to set aside the foreclosure sale. *Id.* at 15.

9 Thornburg asserts Plaintiff took title subject to the deed of trust, because the superpriority  
10 portion of the lien was extinguished and the HOA is estopped from enforcing the superpriority lien.  
11 The conclusive recitals are irrelevant to these arguments.

### 12 **C. HOA is Estopped from Enforcing a Superpriority Lien**

13 To the extent the court finds neither borrower's payments nor was BANA's tender sufficient  
14 to protect the deed of trust, the HOA is estopped from enforcing a superpriority lien. The CC&Rs  
15 and Red Rock's correspondence promised to protect the deed of trust. And, Thornburg relied on  
16 those promises to its detriment.

17 "To establish promissory estoppel four elements must exist: (1) the party to be estopped must  
18 be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act  
19 that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the  
20 estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the  
21 conduct of the party to be estopped." *Pink v. Busch*, 100 Nev. 684, 691 P.2d 456, 459-60 (1984).

#### 22 **1. CC&Rs are an enforceable promise**

23 The CC&Rs were recorded in 1984, long before the enactment of NRS 116.1104 in 1991.  
24 **Ex. D.** "Statutes are presumably intended to operate prospectively, and words should not have a  
25 retrospective operation unless they are so clear, strong, and imperative that no other meaning can be  
26 annexed to them or the Legislature's intention." *Viriden v. Smith*, 210 P. 129, 130 (Nev. 1922). The  
27 non-waiver provision of NRS 116.1104 does not apply to these CC&Rs. The *SFR Investments'*  
28 court contemplated this outcome:

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*Coral Lakes Community Ass'n v. Busey Bank, N.A.*, 30 So.3d 579 (Fla. Dist. Ct. App. 2010), on which U.S. Bank relies, does not suggest a different result. The CC&Rs that contained the subordination clause in *Coral Lakes* were in place before the statute that limited the ability to subrogate association liens took effect. *Id.* at 581–84 & 582 n. 3. The court refused to enforce the statute because disturbing the prior, contractual relationship "would implicate constitutional concerns about impairment of vested contractual rights." *Id.* at 584. Here, however, the Southern Highlands CC&Rs were recorded after the Legislature adopted and enacted Chapter 116, so no similar concerns about impairment of any party's vested contractual rights arise."

*SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419, ft. nt. 7 (2014) holding modified by *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo Bank, N.A.*, 388 P.3d 970 (Nev. 2017).

Nevada's supreme court defines CC&Rs in both contractual and real property terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160–61 (Nev. 2007) (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a benefit of rights to the property owner). Other states such as California have defined CC&Rs as both an equitable servitude<sup>4</sup> and as a source of contract rights.<sup>5</sup> However CC&Rs are classified, HOAs must conform their conduct to their CC&Rs:

[A]n association must exercise its property rights and its right of management over the affairs of a development in a manner consistent with the covenants, conditions, and restrictions of the declaration. That a declaration operates to bind an association is both logical and sound, for the success of a development would be gravely undermined if the association were allowed to disregard the intent, expectations, and wishes of those whose collective interests the association represents.

*Pinnacle Museum Tower Ass'n*, 282 P.3d at 1227.

Red Rock reinforced that promise when it sent correspondence to Thornburg, AFTER rejecting its servicer's superpriority check, echoing the CC&Rs representation that the HOA's lien was junior to the deed of trust. **Ex. F**, at RRFS000540. Through the CC&Rs and Red Rock's

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<sup>4</sup> See *Nahrstedt v. Lakeside Village Condominium Association, Inc.*, 8 Cal.4th 361, 368 (Cal. 1994).

<sup>5</sup> *Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 282 P.3d 1217 (Cal. 2012).

1 representations, the HOA lulled Thornburg into believing the deed of trust was protected. Neither  
2 Red Rock nor the HOA advised Thornburg their representations were not true.

3 **2. Thornburg relied on the HOA's promise**

4  
5 Plaintiff may look to the unpublished opinion in *US Bank v. Nevada New Builds*, Case No.  
6 69421, Slip Op \_ (Nov. 2017) to support the proposition that NRS 116.1104 applies to the CC&Rs in  
7 this case, however *US Bank* is distinguishable. First, as an unpublished opinion it is not binding on  
8 this court. Second, in that case there was no evidence of any “vested contractual right” that would be  
9 disturbed by applying NRS 116.1104’s antiwaiver provision. *Id.*, at 3. Third parties may rely upon  
10 promises made for their intended benefit where their reliance is foreseeable. *Lipshie v. Tracy Inv.*  
11 *Co.*, 93 Nev. 370, 379, 566 P.2d 819, 825 (1977).

12 There is evidence Thornburg relied on the HOA representations and applying NRS 116.1104  
13 disturbs Thornburg's vested contractual rights. In exchange for mortgagees providing home loans to  
14 buyers, the HOA, through the CC&Rs, promised to protect the mortgagees' deeds of trust by  
15 subordinating its relatively small lien. Thornburg is a third-party beneficiary of the HOA's CC&Rs.  
16 Restatement (First) of Property § 528 (1944). And as a third party beneficiary may enforce them. *See*  
17 Restatement (First) of Property §541 (1944) ("The persons initially entitled to enforce the obligation  
18 of a promise respecting the use of land are the promisee and such third persons as are also  
19 beneficiaries of the promise.").

20 The Lender relied on the HOA’s promise when it originated the loan. And, Lender obtained  
21 title insurance excluding losses resulting from a breach in the CC&Rs based on the HOA's  
22 representations. *See Ex. B*, Exhibit 1. Unlike the Southern Highlands CC&Rs in *SFR Investments*,  
23 the HOA's duty to protect the deed of trust is enforceable because the evidence shows Thornburg  
24 relied on the HOA's promises to protect the deed of trust.

25 **D. Equity Favors Thornburg.**

26 Equity cannot alter the legal effect of borrower's payments or BANA's superpriority tender.  
27 And, equitable balancing and Plaintiff's status as a bona fide purchaser are irrelevant. However, to  
28 the extent the court finds equitable balancing is required, equity favors Thornburg.

1           **1.       *The bona fide purchaser analysis is only one factor.***

2           Failure of "conclusive deed recitals" argument means Plaintiff failed to meet its burden of  
3 proving that it is a bona fide purchaser. Plaintiff has no evidence to show it qualifies as a bona fide  
4 purchaser. To qualify as a bona fide purchaser, a purchaser must show that it purchased the property  
5 "(i) for value; and (ii) without notice of a competing or superior interest in the same property." *Berge*  
6 *v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979) (emphasis added). As recently astutely  
7 noted by Justice Stiglich "argument is not evidence." *Nationstar v. SFR Investments Pool 1, LLC*,  
8 133 Nev. Ad. Op. 34 (2017) (concurring).

9           *i.       Plaintiff is not a Bona Fide Purchaser*

10           While the Nevada supreme court stated the potential harm to a bona fide purchaser must be  
11 taken into account by a court determining whether to set aside an HOA foreclosure sale, those  
12 arguments have no application where, as here, the purchaser is not a bona fide purchaser for value.  
13 *Shadow Wood*, 132 Nev. Adv. Op. 5, at 21 ("It is an age-old principle that in formulating equitable  
14 relief a court must consider the **effects of the relief on innocent third-parties.**") (emphasis added);  
15 *Id.* ("Equitable relief should not be granted where it would work **a gross injustice on innocent third**  
16 **parties.**") (emphasis added). Here, Plaintiff is not entitled to the protection of the recording act  
17 because it had actual or constructive knowledge of the senior deed of trust, and therefore BANA's  
18 payment, when it purchased the Property.<sup>6</sup>

19           The recording statutes only protect bona fide purchasers for value. *Berge v. Fredericks*, 95  
20 Nev. 183, 186, 591 P.2d 246, 248 (1979). "The bona fide purchaser doctrine protects a subsequent  
21 purchaser's title against competing legal or equitable claims of which the purchaser had no notice at  
22 the time of conveyance." *25 Corp., Inc. v. Eisenman Chemical Co.*, 101 Nev. 664, 675, 709 P.2d  
23 164, 172 (1985). However, a subsequent purchaser with notice, actual or constructive, of an interest

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25 <sup>6</sup> Nowhere in NRS 116, or the resultant case law, is a first deed of trust holder's payment of the  
26 superpriority lien constitute an assignment of the HOA's interest such that the bank is obligated, or even  
27 entitled, to record a release of a lien originally recorded by the HOA Trustee. The Nevada supreme court  
28 signaled, a beneficiary's payment of the superpriority amount is effective to extinguish the superpriority  
portion of the HOA's lien, even were the purchaser did not know of the payment. *See Saticoy Bay LLC Series*  
*2141 Golden Hill v. JP Morgan Chase Bank, N.A.*, Case No. 71246, Slip Op. at 2. (Dec. 22, 2017)  
(unpublished).

1 in the land superior to that which he is purchasing is not a purchaser in good faith, and not entitled to  
2 the protection of the recording act." *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471  
3 P.2d 666, 669 (1970). A party has constructive notice of any recorded interest in the real property  
4 records—regardless of whether the party searched the real property records. *Tai-Si Kim v. Kearney*,  
5 838 F. Supp. 2d 1077, 1086-88 (D. Nev. 2012) (noting the purpose of Nevada's recording statute is  
6 to provide constructive notice of all recorded instruments to any subsequent purchaser or  
7 mortgagee). A person has constructive notice of a senior deed of trust's interest in the property if the  
8 deed of trust or an assignment is recorded in the real property records. *Fed. Nat'l Mortg. Ass'n v.*  
9 *SFR Invs. Pool 1, LLC*, No. 2:14-cv-02046, 2015 WL 5723647, at \*3 (D. Nev. Sept. 28, 2015)("The  
10 2011 recording of Fannie Mae's assignment of the deed of trust put the purchaser on constructive  
11 notice of Fannie Mae's interest and prevents the purchaser from claiming BFP status in this case.").

12 The deed of trust contained the two provisions which put Plaintiff on inquiry notice of  
13 BANA's tender. Section 9: "**Protection of Lender's Interest in the Property and Right Under**  
14 **this Security Instrument**" permits the lender to "pay[] any sum secured by a lien which has  
15 priority over" the deed of trust. **Ex. A.**

16 The PUD Rider provided "[i]f Borrower does not pay [HOA] dues and assessment, the  
17 Lender may pay them." *Id.* These provisions of the publicly-recorded deed of trust put Plaintiff on  
18 inquiry notice that the first lien holder could pay off a lien which had priority over the deed of trust.  
19 Whether Plaintiff actually knew of BANA's payment is irrelevant.

20 The bona fide purchaser doctrine is "shield to protect, and not a sword to attack." *Oliver v.*  
21 *Piatt*, 44 U.S. 333, 333 n.1 (1845). Plaintiff cannot use the bona fide purchaser doctrine as a sword  
22 to elevate its junior interest in the property. Because Plaintiff is not a bona fide purchaser, it is not  
23 entitled to the protection of the recording statutes, and cannot invoke the equitable arguments  
24 espoused in *Shadow Wood*.

25 **2. A finding that Plaintiff is a bona fide purchaser is not dispositive**

26 Even if Plaintiff was a bona fide purchaser, Plaintiff claims title to the Property, at best,  
27 subject to the deed of trust. *Shadow Wood* admonished courts to consider the "totality of the  
28

1 circumstances," purchaser's status as a bona fide purchaser is only one "circumstance" the court  
2 should consider.

3 When weighing the totality of the circumstances it is clear equity weighs in Thornburg's  
4 favor- regardless of Plaintiff's purported bona fide purchaser status. Thornburg's predecessor  
5 provided Borrower with a \$3,780,000 mortgage loan, allowing borrower to buy a house within the  
6 HOA. **Ex. A.** Borrower later failed to pay the HOA assessments, so BANA, then servicer, sent a  
7 check to Red Rock for a portion of those assessments. **Ex. H.** Red Rock rejected then payment,  
8 and then sent correspondence to BANA and Thornburg asserting the HOA's lien was junior to the  
9 deed of trust. *Id.*, and **Ex. F.**

10 On the other hand, Plaintiff purchased that property, worth \$2,000,000 the time of the HOA  
11 sale for 60% of its value. **Exs. J & K.** Plaintiff has had unrestricted use of the Property, including  
12 the ability to obtain rents, since 2014. **Ex. L.** In sum, Thornburg tried to pay the HOA prior to the  
13 foreclosure sale. But, Red Rock prevented the payment. Plaintiff, on the other hand, purchased the  
14 property at a 40% discount and seeks to obtain a windfall. To the extent equitable balancing is  
15 necessary to resolve the quiet title and declaratory relief claims in this case, the undisputed facts  
16 show that equity weighs in Thornburg's favor.

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1 **VI. CONCLUSION**

2 Foreclosure sales are *caveat emptor*. See *Allison Steel*, 86 Nev. at 499 (in the absence of a  
3 statute,<sup>7</sup> a purchaser acquires no better title than the debtor could have conveyed at the time the lien  
4 attached). Plaintiff is a sophisticated entity and was well aware of the risks of purchasing properties  
5 at HOA foreclosure sale. The superpriority portion of the HOA's lien was extinguished before the  
6 sale through borrower's payments or BANA's tender. Thornburg did all the law required to protect  
7 the priority of the deed of trust. There is no unfairness to Plaintiff neither the deed nor NRS 116  
8 promise Plaintiff title unencumbered by the deed of trust. The court should grant Thornburg's motion  
9 and enter an order declaring Plaintiff's interest in the property, if any, is subject to the deed of trust.

10 DATED this 4<sup>th</sup> day of May 2018.

11 **AKERMAN LLP**

12 /s/ Thera A. Cooper

13 MELANIE D. MORGAN, ESQ.

14 NEVADA BAR NO. 8215

15 THERA A. COOPER, ESQ.

16 Nevada Bar No. 13468

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 *Attorneys Thornburg Mortgage*  
20 *Securities Trust 2007-3*

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28 <sup>7</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 4<sup>th</sup> day of May, 2018, I caused to be served a true and correct copy of the foregoing **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/ Erin Surguy

An Employee of Akerman LLP

# **EXHIBIT A**



Fee: \$40.00  
N/C Fee: \$0.00  
06/12/2006 09:05:04  
T20060102568  
Requestor:  
NEVADA TITLE COMPANY  
Frances Deane CDO  
Clark County Recorder Pgs: 27

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

27

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

82

COUNTRYWIDE HOME LOANS, INC.

1455 FRAZEE ROAD #102  
SAN DIEGO  
CA 92108

[Space Above This Line For Recording Data]

06-04-1186JLP [Redacted]  
[Escrow/Closing #] [Doc ID #]  
**DEED OF TRUST**  
MIN [Redacted]

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.

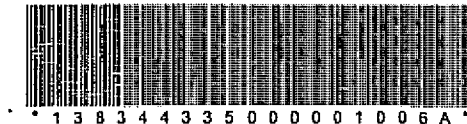
NEVADA-Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 16

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

VMP Mortgage Solutions, Inc.

Form 3029 1/01



DOC ID #: [REDACTED]

(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 . Lender's address is 4500 Park Granada MSN# SVB-314

Calabasas, CA 91302-1613

(D) "Trustee" is ReconTrust Company, N.A

225 West Hillcrest Dr., MSN TO-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]:

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

DOC ID #: [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 seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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 attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums



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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 repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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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 to the merger in writing.

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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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) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

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

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

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**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 to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).



DOC ID #: [REDACTED]

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

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

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

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00



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

Page 14 of 16

Form 3029 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. Timra*  
FRANK A. TIMRA

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

DOC ID #: [REDACTED]

STATE OF NEVADA  
COUNTY OF Clark

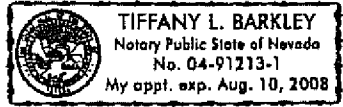
This instrument was acknowledged before me on June 9, 2006 by

Frank A. Timpa  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Tiffany L. Barkley*  
\_\_\_\_\_

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065



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

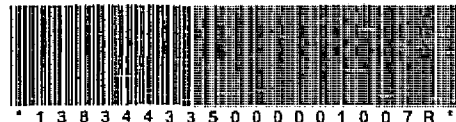
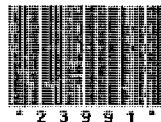
Prepared By:  
JOHNNA HOBDY

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

[Redacted]  
[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: *JH*  
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: 

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: \_\_\_\_\_

 -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 PUD Rider.

*Frank A. Timpa*  
FRANK A. TIMPA

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

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

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

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



**ADJUSTABLE RATE RIDER**  
(PayOption MTA Twelve Month Average Index - Payment Caps)

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

[Redacted]  
[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 #: XXXXXXXXXX**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 first 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 B**

1 **AFFD**  
 MELANIE D. MORGAN, ESQ.  
 2 Nevada Bar No. 8215  
 THERA A. COOPER, ESQ.  
 3 Nevada Bar No. 13468  
**AKERMAN LLP**  
 4 1635 Village Center Circle, Suite 200  
 Las Vegas, Nevada 89134  
 5 Telephone: (702) 634-5000  
 Facsimile: (702) 380-8572  
 6 Email: melanie.morgan@akerman.com  
 Email: [thera.cooper@akerman.com](mailto:thera.cooper@akerman.com)  
 7 *Attorneys for defendant, counterclaimant, and*  
*counter-defendant Thornburg Mortgage Securities*  
 8 *Trust 2007-3*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 SATICOY BAY LLC SERIES 34  
 12 INNISBROOK,

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No.: A-14-710161-C

Division: XXVI

**NATIONSTAR MORTGAGE LLC'S  
 AFFIDAVIT**

18 And All Related Actions.

19  
 20  
 21 I, Crystal Clopton, under penalty of perjury, declare as follows:

22 1. My name is Crystal Clopton. I have personal knowledge of and am competent to  
 23 testify as to the matters stated herein by virtue of my position as a Senior Assistant Secretary of  
 24 Litigation Support and Resolution Analyst for Nationstar Mortgage LLC (**Nationstar**).

25 2. As a Senior Assistant Secretary of Litigation Support and Resolution Analyst for  
 26 Nationstar, I am familiar with Nationstar's systems that contain data regarding mortgage loans  
 27 owned by Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) that Nationstar services. This  
 28 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.

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...

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

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

Executed this 23rd day of April, 2018

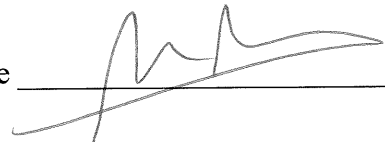
By 

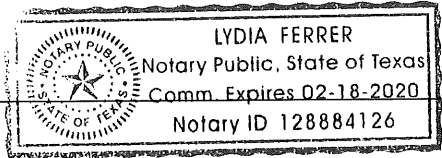
Title: Senior Assistant Secretary of Litigation Support and Resolution Analyst

State of Texas

County of Dallas

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

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: *Carrie Haseltine*  
Authorized Signature  
(Please print name below)



By: *Agnes McFadden* President  
ATTEST *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 any 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.
- 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.
- Defects, liens, encumbrances, adverse claims or other matters:
- (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) 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;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) 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
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
- 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.
- 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.
- 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 contracted 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.
- 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:
- (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) 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 an insured under the provisions of Section 12(c) of these Conditions and Stipulations arising, however, all rights and defenses as to any successor that the Company may 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 to title to the estate or interest in the land;

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, and 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" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records reflected in this policy or any other records which impart constructive notice of matters 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, alleys, 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 4(iv) of the Exclusions From Coverage, "public records" shall also include environmental 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 mortgagee to be released from the obligation to purchase by virtue of a contractual condition preventing 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 insureds; 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 title or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amount advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

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

The insured shall notify the Company promptly in writing (i) in case of an action or 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 of

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

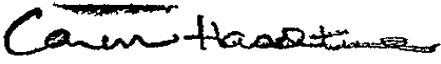
Trustor: Frank A. Timpa, a married man, as his sole and separate property

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

JA0527

**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.

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.

JA0530

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.

JA0531

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:

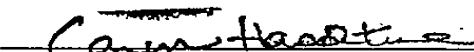
1. The existence of any of the following:
  - (a) Covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
  - (b) Present violations on the land of any enforceable covenants, conditions, or restrictions;
  - (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

JA0532



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**

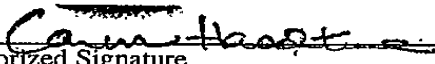
To be located on the land at Date of Policy, or (ii) the map attached to this policy to correctly shown the location and dimensions of the land according to the public records.

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

JA0533

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:

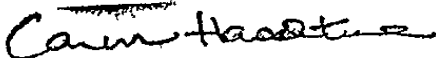
NONE

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 8.1 (3-27-87)  
ENVIRONMENTAL PROTECTION LIEN

JA0534

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

JA0535



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

insured under this policy unless the Company shall be prejudiced by the failure of the insured to do so 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 in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance on other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

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

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

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall procure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of an 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 furnished to 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 shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a 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 designated 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 the 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**

In the case of 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 as the insured mortgage, together with any collateral security, to the Company upon payment therefor.

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

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

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

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

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

**7. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage as a result 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 lesser 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 an insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, 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 matter described in Section 2(a) of these Conditions and Stipulations or has conveyed a title, then the liability of the Company shall continue as set forth in Section 7 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 claimant liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

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

(b) Payment in part by any person of the principal of the indebtedness, or 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, 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)

(c) Payment in full by any person or 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 understood 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 this policy 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 those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of title to 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 the 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 situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

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

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

(a) This policy together with all endorsements, if any, attached hereto 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 by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

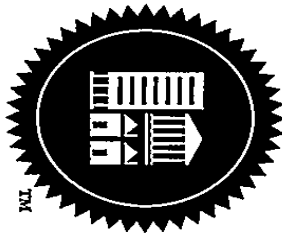
**15. SEVERABILITY**

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

**16. NOTICES, WHERE SENT**

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

Fidelity National Title Insurance Company



FIDELITY  
NATIONAL  
TITLE  
INSURANCE  
COMPANY

# **EXHIBIT 2**





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

JA0541

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

JA0542

# **EXHIBIT C**

Inst #: 201006090003189

Fees: \$14.00

N/C Fee: \$0.00

06/09/2010 01:45:06 PM

Receipt #: 381952

Requestor:

CLARK RECORDING SERVICE

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

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

TS No. 08-0061701

TITLE ORDER#: 3766435

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 06/12/2006, IN BOOK 20060612, 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: Tarrant

BY: Khadija Gulley, Assistant Secretary  
Khadija Gulley

JUN 07 2010

On June 07 2010 before me Elsie E. Koussakis, personally appeared  
Asst Secy, know to me (or proved to me on the oath of \_\_\_\_\_ or through  
\_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument and  
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.  
Witness my hand and official seal.

Elsie E. Koussakis  
Notary Public's Signature



# **EXHIBIT D**



Recording Requested By  
and  
When Recorded Mail To:

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

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

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**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".

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E. 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 Real Property approved by Clark County on December 7, 1993 (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 by an Owner are described as follows:

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Parcel B shown on ESTATES AT SPANISH TRAIL  
NO. 5, filed for record with the County  
Recorder of Clark County, Nevada, on July 27,  
1988 in Book 40, Page 6 of Plats.

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.

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**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.

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**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 1885 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

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appurtenant 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

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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

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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 agrees 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 assessment 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

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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 P laws 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

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

Section 6. 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

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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.

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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 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 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.

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(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

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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.

(f) 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 Streetscapes 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 neighbors.

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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.

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**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 smokey 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

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

**Section 15. 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 16. 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 17. 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 Mortgagees. Mortgagees may, jointly or severally, also pay over-

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due premiums on casualty insurance policies, or secure a new casualty insurance policies, 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 Cures 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 units, the exterior maintenance of

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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.

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(3) 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 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 X

#### ENFORCEMENT

**Section 1. Enforcement Entities.** 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

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this Declaration shall in no event be deemed a waiver of the right to do so hereafter.

**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 XI

#### 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.

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(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

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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.

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**Section 9. Declarant Exemption.** Declarant is undertaking the work of construction of residential dwellings and incidental improvements upon the property described in Recital F 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  
JOSEPH A. BLASCO  
By James Blasco  
JAMES BLASCO

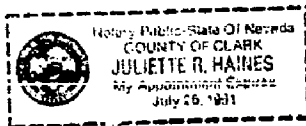
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STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

On this 17 day of August, 1988, before me, a Notary Public in and for said state, personally appeared David A. Blasco and James Blasco 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

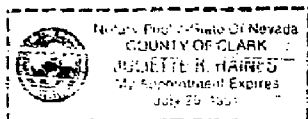
JOSEPH BLASCO, Trustee under Trust Agreement dated March 11, 1974, being the beneficiary under that certain deed of trust dated September 7, 1983 and recorded September 12, 1983 as File/Page No. 1761633, in Book 1802 of Official Records of Clark County, Nevada, hereby declares that the lien and charge 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.



*Juliette R. Haines*  
\_\_\_\_\_  
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, 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.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, 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 II:

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 III:

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.

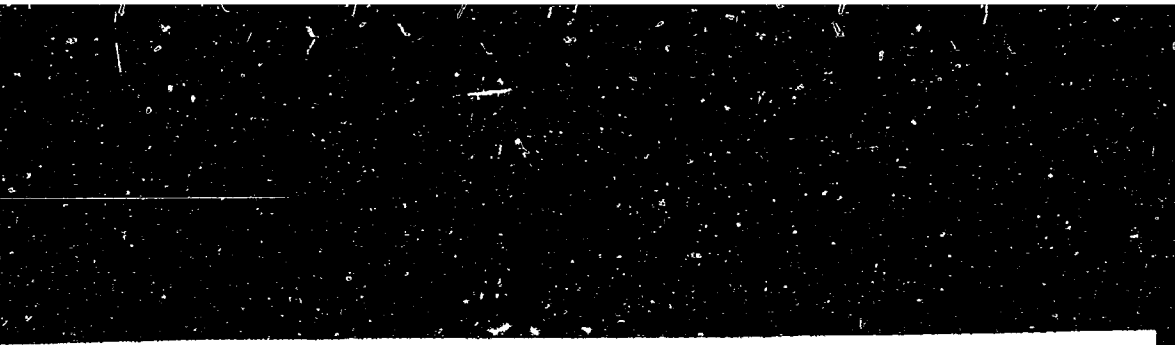
EXCEPTING THEREFROM the South forty (40) feet together with a spandrel area in the Southwest corner thereof, being the Northeast corner of the intersection of Hacienda Avenue and Durango Drive, bounded as follows: On the West by the East line of the West fifty feet (50.00') thereof; on the South by the 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.4M.

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 QUINN, RECORDER  
 RECORDED AT REQUEST OF  
 E. QUIRK  
 08-17-88 15:31 FRI 72  
 OFFICIAL RECORDS  
 BOOK 880817 INST. 00703  
 35.00 RPT: .00



RECORDED

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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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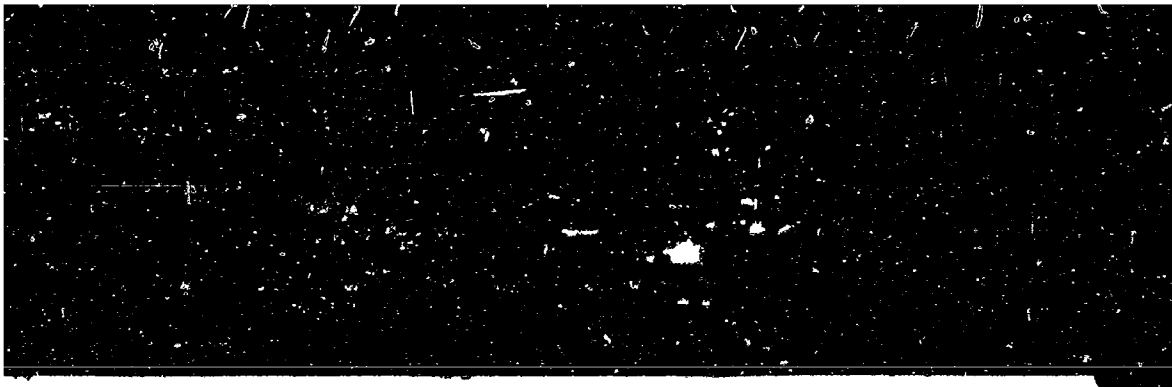
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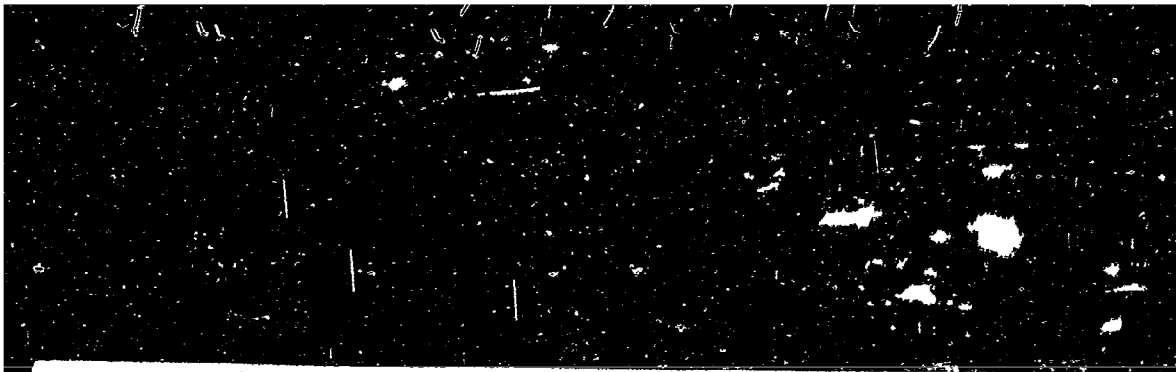
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MASTER  
DECLARATION OF RESTRICTIONS  
 Spanish Trail

THIS MASTER DECLARATION OF RESTRICTIONS is made as of this 28<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.

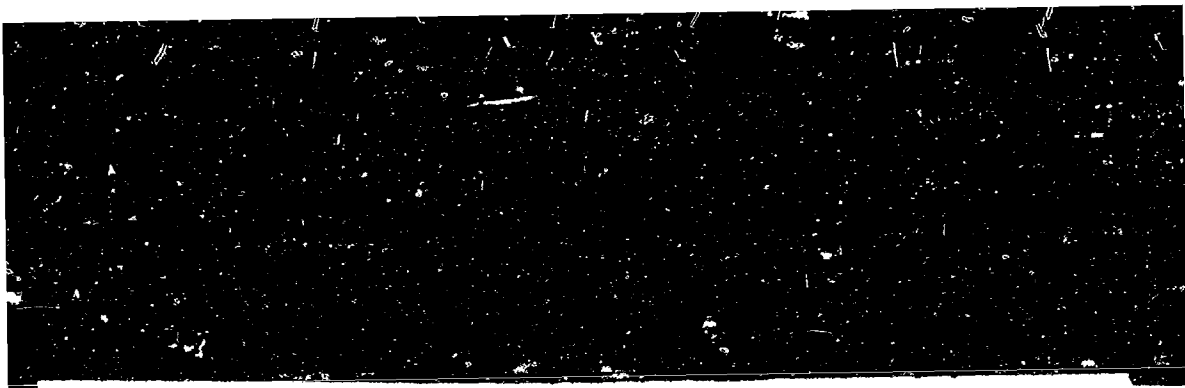
C. The first Phase of development of the Planned Unit Development Properties consists of 58 Lots described as follows:

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 9

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 Plats, Page 9.

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.

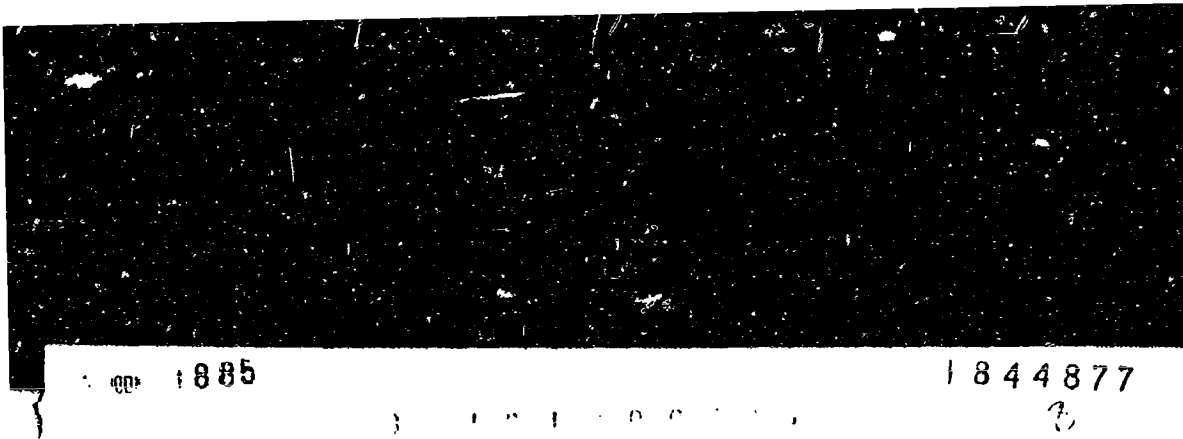
All easements and other property rights (including, but not limited to, any ownership in fee simple) owned by the Master Association is hereinafter referred to as the "Master Association Property".

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

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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 March 1, 1984 in Book 31 of Plats, Page 9.

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.

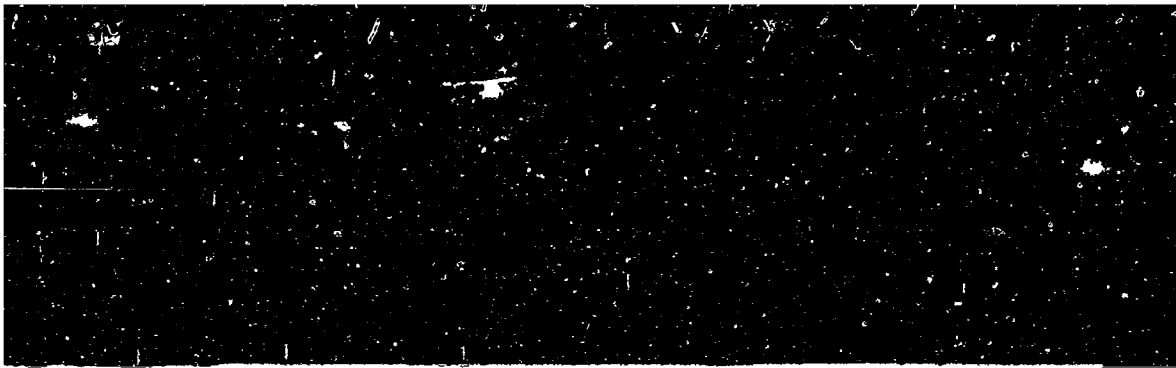
(c) The right of the Master Association, after an opportunity for a hearing before the Board as provided in the Bylaws, to suspend the voting rights and right to use of any recreational facilities by an Owner for nonpayment of any assessment by the Master Association against his Lot or if he is otherwise 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.

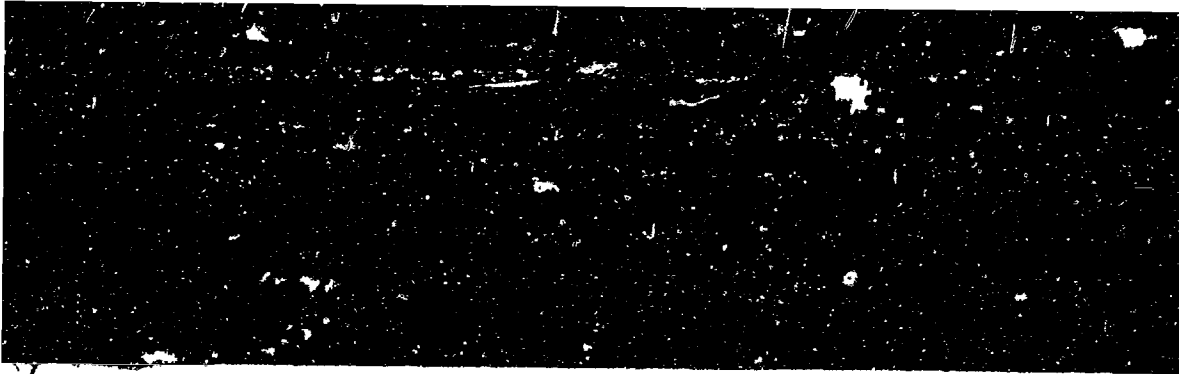
Section 4. No Degradation of System. No Owner shall do anything which shall degrade the effectiveness of the security system and each Owner shall exercise the greatest care to not lose any card key, remote control device or similar equipment which might be used with the security system.

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: (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



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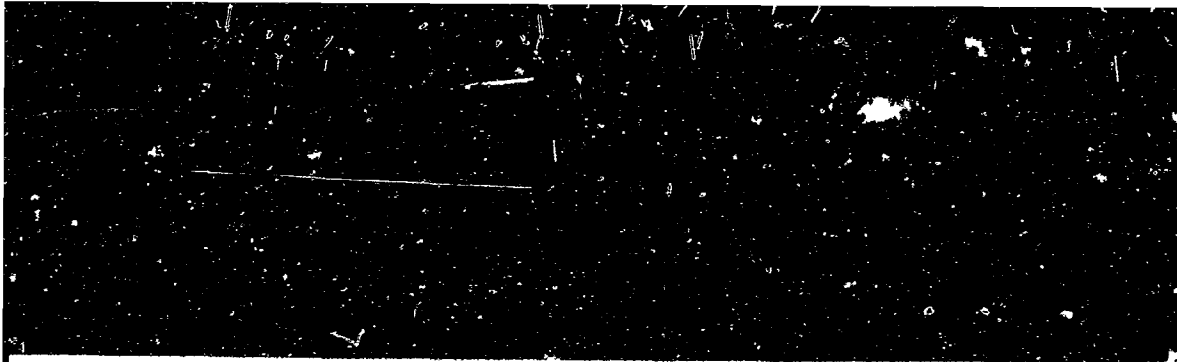
be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Late payment charges shall be in the amount provided for in the 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 1 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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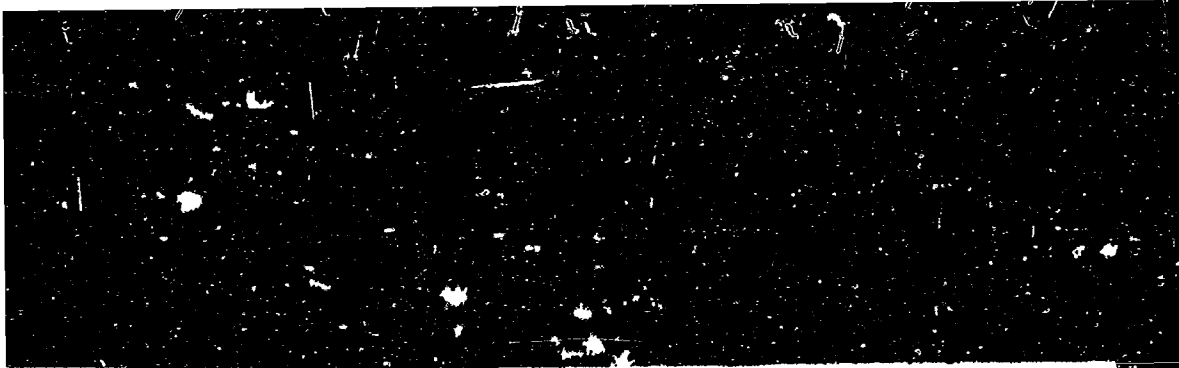
personally obligated to pay the same, and in addition thereto or in lieu thereof, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Master Association Property or abandonment of his Lot.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The amount of ar, 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 of 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:

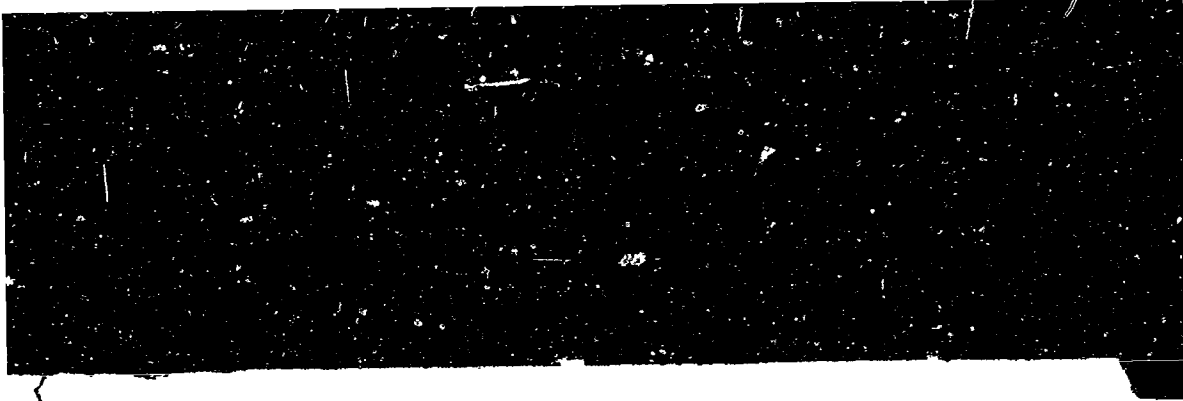
(a) Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARC.

(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.

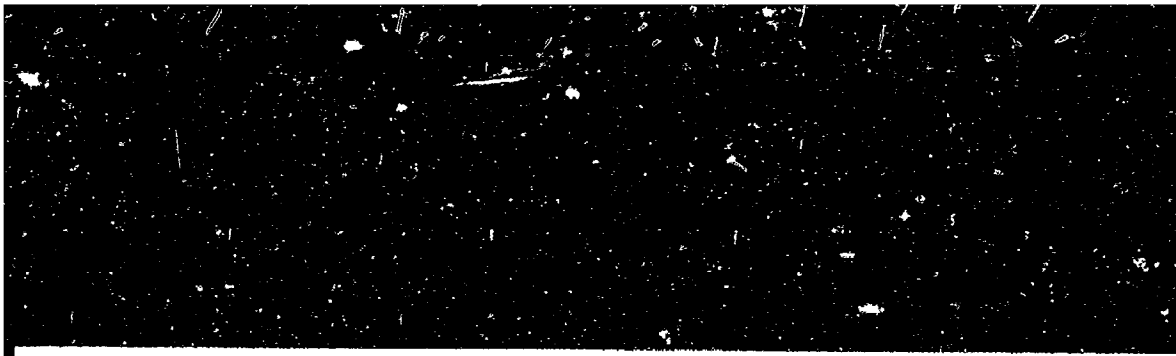
Section 8. Reimbursement. The members of the ARC shall receive no compensation for services rendered, other than reimbursement by the Master Association for expenses incurred by them in the performance of their duties hereunder.

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 thereof. This Article shall not be amended without Declarant's written consent set forth on the amendment.

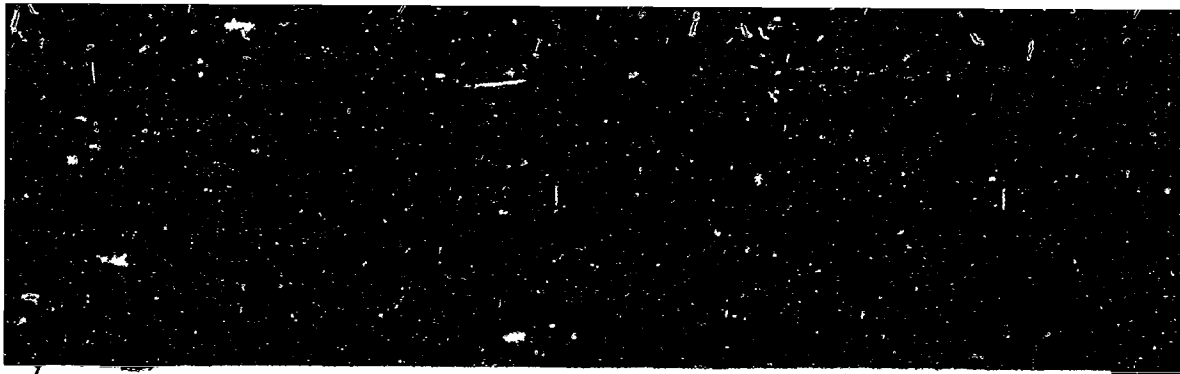
#### ARTICLE VII

##### 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.

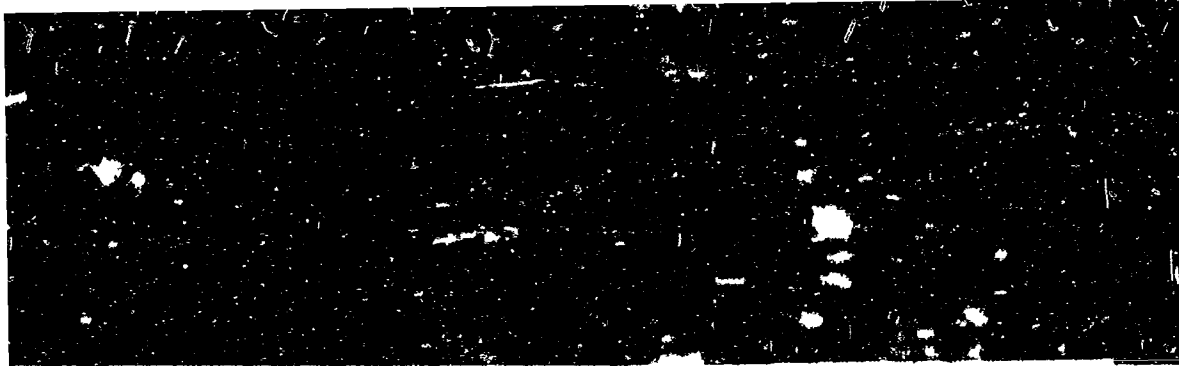
Section 5. Other Insurance; Annual Review. The Master Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, errors and omission insurance and blanket policies of hazard 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 casualty 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.

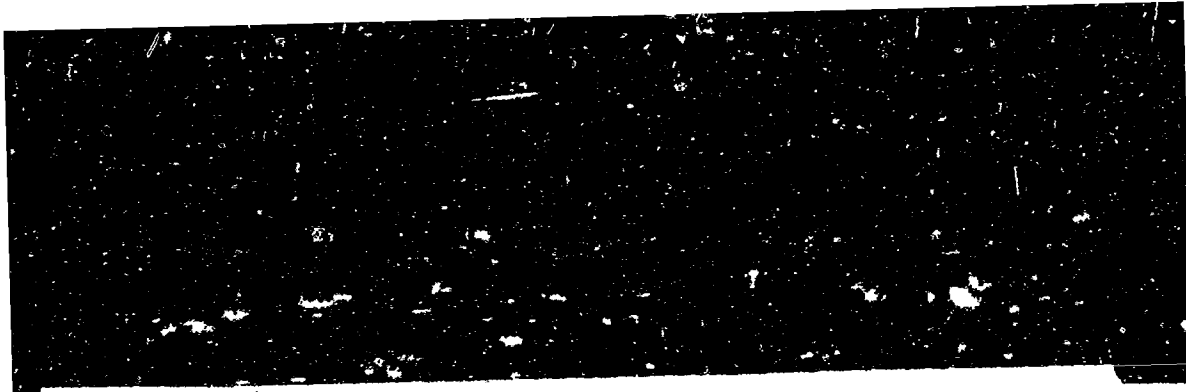
(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(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:

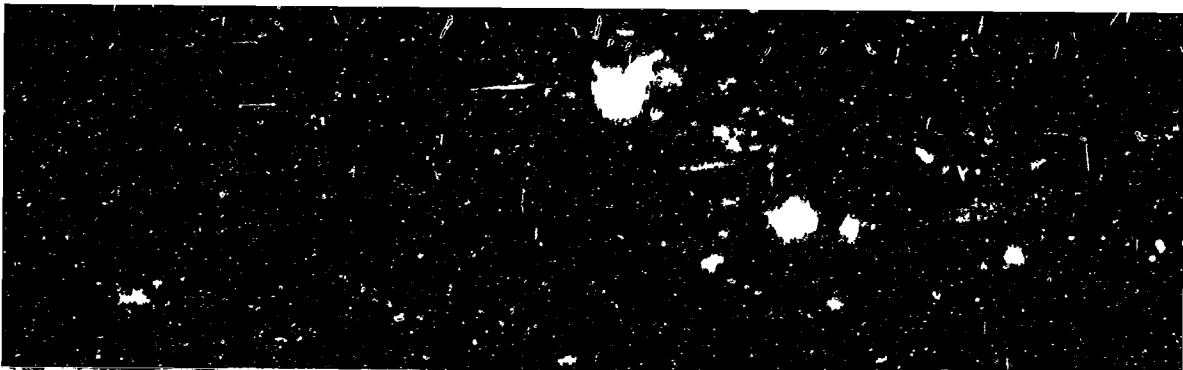
(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor; notice from the Master Association shall pertain to the Lots only.

(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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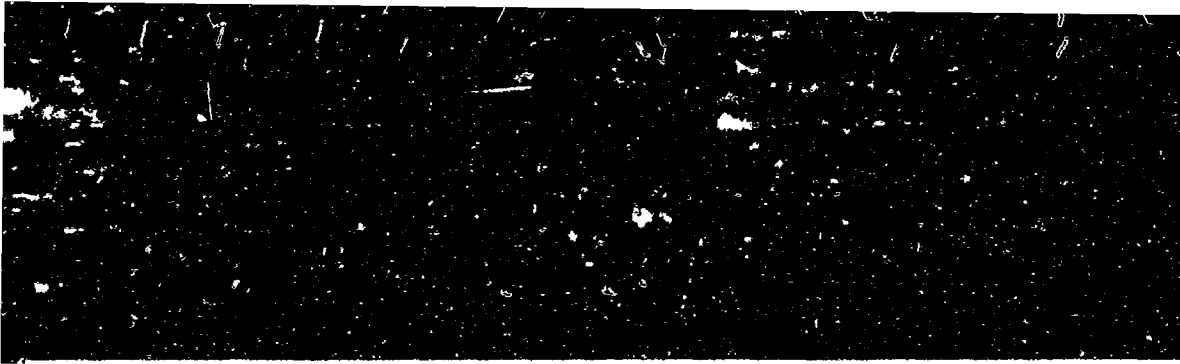
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equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

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 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.

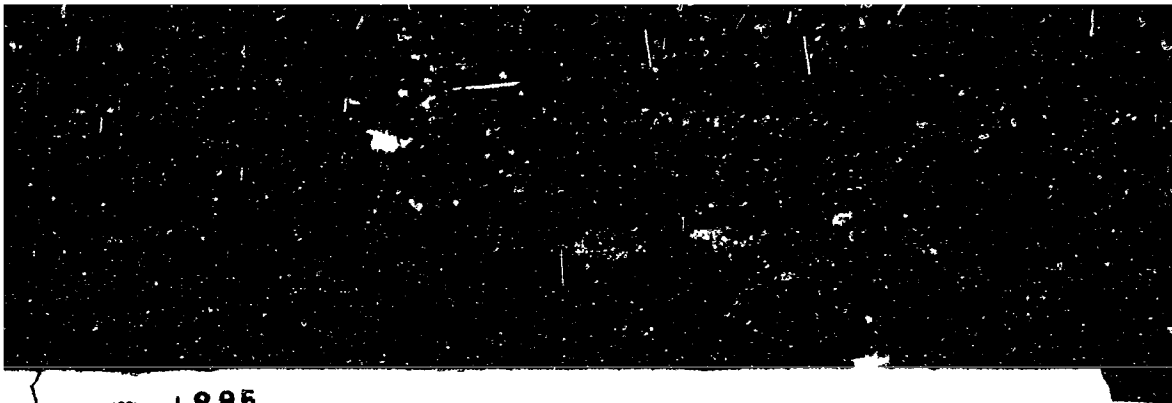
Section 7. Annexation by Owners. In addition to the provisions of Sections 4 and 5 above, additional land may be annexed to the jurisdiction of the Master Association and this Declaration upon the vote or written consent of two-thirds (2/3) of the voting power of each class of members of the Master Association.

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

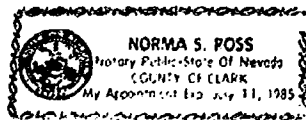
By Jose A. Blasco  
JOSEAN A. ASCO

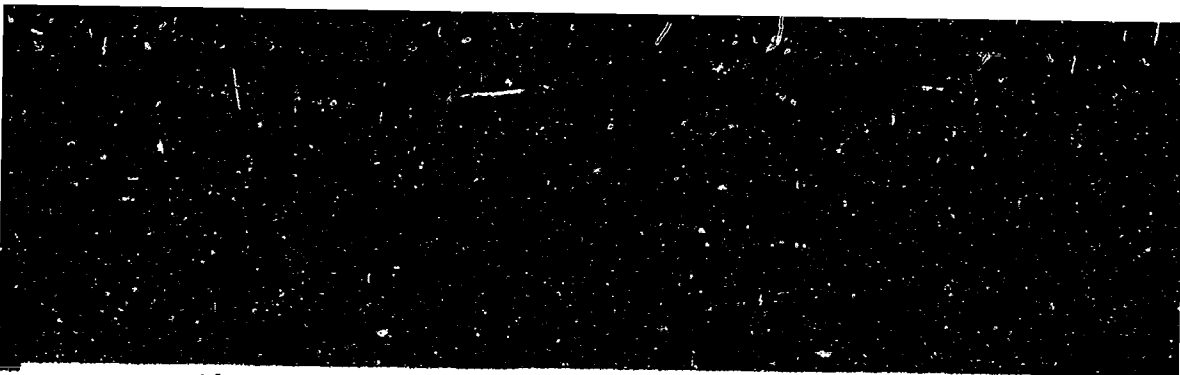
By James Blasco  
JAMES BLASCO

STATE OF NEVADA )  
                  ) SS.  
COUNTY OF CLARK )

On this 25 day of February, 1984,  
Joseph A. Blasco and James Blasco  
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 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"

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, 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.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, 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 II:

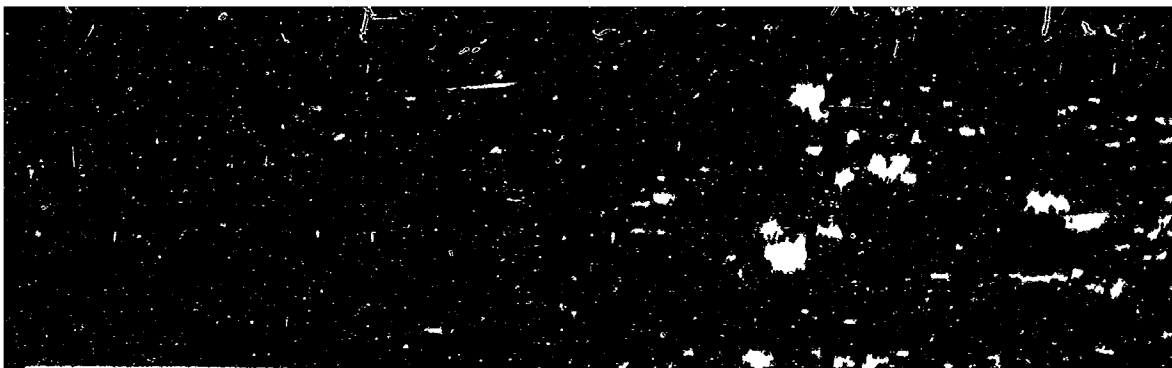
The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 21 South, Range 60 East, M.D.B.&M.

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

PARCEL III:

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.

NOT PART



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EXCEPTING THEREFROM the South Forty (40) feet; together with a spandrel area in the Southwest 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').



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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, 1983 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 CORP. REAL ESTATE LOAN OFFICER

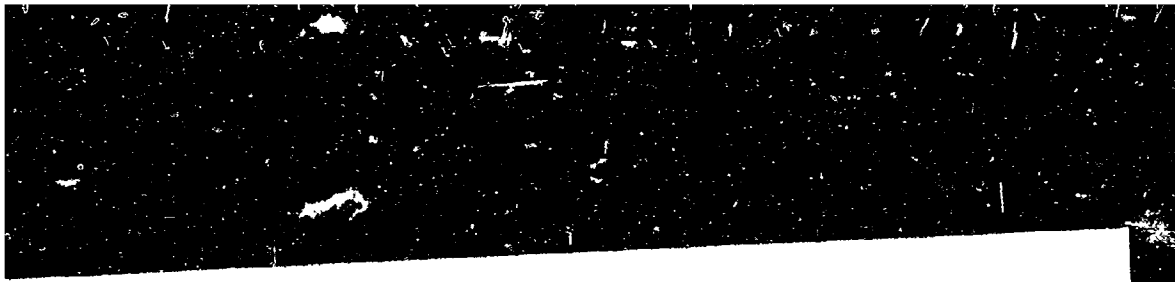
By *[Signature]*  
DIANE GALLION CLOSING LOAN OFFICER

STATE OF NEVADA )  
                          ) SS.  
COUNTY OF CLARK )

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 notary seal or stamp]*



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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.

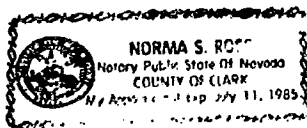
Joseph Blasco  
JOSEPH BLASCO, Trustee under Trust Agreement dated March 11, 1974

STATE OF NEVADA )  
                          ) SS.  
COUNTY OF CLARK )

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 in and voluntarily and for the uses and purposes therein mentioned.

Norma S. Ross  
Notary Public in and for said County and State.

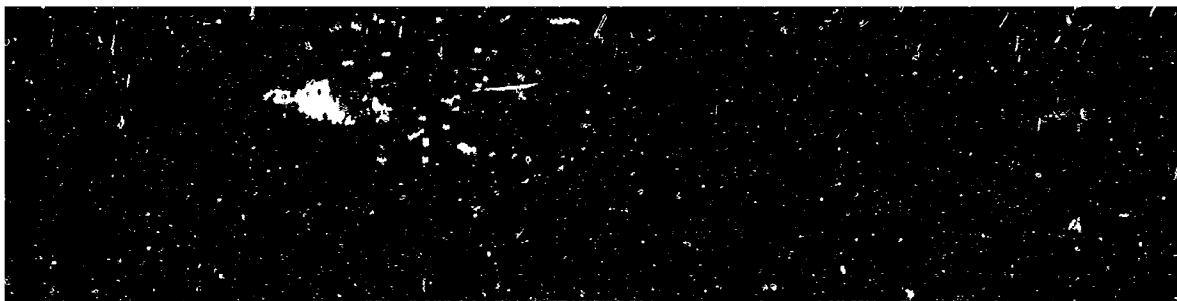


CLARK COUNTY, NEVADA  
JOAN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF  
LAWYERS TITLE OF LAS VEGAS, INC  
MAR 7 8 42 AM '84

FEB 26 1984  
DEPUTY CLERK  
OFFICIAL RECORDS  
INSTRUMENT

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**RE-RECORDED**

CLARK COUNTY NEVADA  
JOAN L SWIFT, RECORDER  
RECORDED AT REQUEST OF

BOOK	OFFICIAL RECORDS
FILE	INST
	RPTT

# **EXHIBIT E**



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

Assessor Parcel Number: 163-28-614-007

File Number: R74507

**Accommodation**

**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.

*Julia Thompson*

When Recorded Mail To: Red Rock Financial Services  
7251 Amigo Street, Suite 100  
Las Vegas, Nevada 89119  
702-932-6887

