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 Electronically Filed Nov 23 2020 01:43 p.m. Elizabeth A. Brown Clerk of Supreme Court **JOINT APPENDIX VOLUME 11**

Counsel for Appellant:

Roger P. Croteau, Esq.
Nevada Bar No. 4958
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Tel: (702) 254-7775
Fax: (702) 228-7719
Email: croteaulaw@croteaulaw.com

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RESP

DAVID R. KOCH
Nevada Bar No. 8830
STEVEN B. SCOW
Nevada Bar No. 9906
BRODY WIGHT
Nevada Bar No. 13615
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com
bwight@kochscow.com
Telephone: (702) 318-5040
Facsimile: (702) 318-5039

Attorneys for Counter-Defendant/Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK, Plaintiff, vs. THORNBURG MORTGAGE SECURITIES TRUST 2007-3; RECONSTRUCT COMPANY, N.A. a division of BANK OF AMERICA; FRANK TIMPA and MADELAINE TIMPA, individually and as trustees of the TIMPA TRUST, Defendants.	Case No.: A-14-710161-C Dept.: XXVI **RED ROCK FINANCIAL SERVICES' LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT**
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, Counterclaimant, vs. SATICOY BAY LLC SERIES 34 INNISBROOK, a Nevada Limited-liability company; SPANISH TRAIL MASTER ASSOCIATION, a Nevada Non-Profit Corporation; RED ROCK	

FINANCIAL SERVICES, LLC, an unknown entity; FRANK TIMPA, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Counter-Defendants.
RED ROCK FINANCIAL SERVICES, Counterclaimant, vs. THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAILS; MORTGAGE ELECTRONIC REGISRATION SYSTEM, INC.; REPUBLIC SERVICES; LAS VEGAS VALLEY WATER DISTRICT; FRANK TIMPA and MADELAINE TIMPA, individually and as trustees of the TIMPA TRUST U/T/D March 3, 1999; and DOES 1-100, inclusive, Counter-Defendants.

Red Rock Financial Services ("Red Rock") hereby files this limited response to Timpa Trust U/T/D March 3, 1999's ("Timpa Trust") Motion for Summary Judgment. The response is based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral arguments that this Court may permit.

Dated: July 9, 2019

KOCH & SCOW, LLC

By: /s/Steven B. Scow
Steven B. Scow
Attorneys for Red Rock Financial Services

MEMORANDUM OF POINTS AND AUTHORITIES

I. Argument

In its motion for summary judgment, Timpa Trust asks the Court for an order granting Timpa Trust the surplus funds from the HOA foreclosure sale of the property located at 34 Innisbrook Ave., Las Vegas, NV 89113 conducted by Red Rock on or about September 15, 2014. Timpa Trust moves to recover these funds in connection with an interpleader counterclaim Red Rock filed on May 21, 2015, which is attached as Exhibit 8 to Timpa Trust's motion. Until recently, Red Rock's counsel held $1,168,865.05 in excess proceeds from the foreclosure sale in its attorney-client trust account, claimed no interest in the excess proceeds, and filed the interpleader in order to properly allocate the excess proceeds. Red Rock deposited the funds with the Court on June 20, 2019, which is the date shown on the Court's official receipt.

Red Rock does not oppose Timpa Trust's motion for summary judgment, and Red Rock does not claim any interest in the excess proceeds. However, it is well settled law that when a party files a claim to interplead funds it has no interest in retaining, the trial court has discretion to award attorney's fees and costs for filing and conducting the interpleader action to the disinterested party, and the court may award such fees and costs from the interpleaded funds. *See*, *Premier Tr., Inc. v. Duvall*, 559 F. Supp. 2d 1109, 1117 (D. Nev. 2008); *Abex Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516 (9th Cir. 1984). Courts have further granted such fees and costs incurred for initiating the interpleader case, but also for those fees incurred in defending the interpleader claim. *See*, *e.g.*, *S. California Gas Co. v. Flannery*, 209 Cal. Rptr. 3d 842, 850 (Cal. App. 2d Dist. 2016).

The value of the foreclosed home and the excess proceeds in this case were substantial, and counsel for Red Rock has had to expend significant time prosecuting this matter and the interpleader claim. Although Red Rock has not had any interest in the excess funds, through the end of June, 2019 Red Rock has accrued $29,161.69 in fees and costs, all of which are itemized in Exhibit A attached to this motion.

Red Rock has been well aware of the nature of this interpleader action and has attempted to carefully record and mindfully accrue the fees and costs in this action. Red Rock, therefore, asks the Court to award the $29,161.69 in fees and costs from the interpleaded funds before awarding the funds to Timpa Trust.

II. Conclusion

For the reasons outlined above, Red Rock asks the Court to award its fees and costs accrued in the interpleader action out of the interpleaded funds.

DATED: July 9, 2019

KOCH & SCOW, LLC

/s/ Steven B. Scow
STEVEN B. SCOW
Attorneys for Red Rock Financial Services, LLC

DECLARARTION OF STEVEN SCOW IN SUPPORT OF THE LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT

I, Steven B. Scow, do hereby declare under penalty of perjury that the following assertions are true to the best of my knowledge and belief and as provided to me by my client:

1. I am the attorney for Red Rock Financial Services, LLC ("Red Rock") and have been for all times relevant to this action.

2. Following the foreclosure on the property located at 34 Innisbrook Ave., Las Vegas, NV 89113, held on or about September 15, 2014, my office received a check from Red Rock in the amount of $1,168,865.05, representing the excess proceeds from that sale; we deposited that check in our IOLTA attorney-client trust account.

3. On May 21, 2015, my office filed a interpleader counterclaim on behalf of Red Rock seeking direction regarding the excess proceeds.

4. The excess proceeds in this matter are substantial, and we have tracked time and costs since May 2015; through June 26, 2019, Red Rock has accrued $29,161.69 in attorneys fees and costs in connection with this action. A true and correct itemization of all fees and costs accrued is attached as Exhibit A to this response.

5. On or about June 20, 2019, I caused the $1,168,865.05 in excess proceeds to be deposited with the Court in compliance with the Court's June 19, 2019 order.

I declare under penalty of perjury pursuant to the laws of the State of Nevada that the above is true and correct to the best of my knowledge and belief.

DATED: July 9, 2019

KOCH & SCOW, LLC

/s/ Steven B. Scow
STEVEN B. SCOW
Attorneys for Interpleader
Red Rock Financial Services, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on July 9, 2019, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT** to be served by as follows:

[X] Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and/or;

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or

[ ] Pursuant to EDCR 7.26, to be sent via facsimile; and/or

[ ] hand-delivered to the attorney(s) listed below at the address indicated below;

[ ] to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:

[ ] by electronic mailing to:

Melanie Morgan (melanie.morgan@akerman.com)
Akerman LLP (AkermanLAS@akerman.com)
Jared Sechrist (jared.sechrist@akerman.com)
Gina LaCascia (glacascia@leachjohnson.com)
Sean Anderson (sanderson@leachjohnson.com)
Robin Callaway (rcallaway@lkglawfirm.com)
Ryan Hastings (rhastings@lkglawfirm.com)
Patty Gutierrez (pgutierrez@lkglawfirm.com)
Donald H. Williams, Esq. (dwilliams@dhwlawlv.com)
David R. Koch . (dkoch@kochscow.com)
Eserve Contact . (office@bohnlawfirm.com)
Robin Gullo . (rgullo@dhwlawlv.com)
Staff . (aeshenbaugh@kochscow.com)
Steven B. Scow . (sscow@kochscow.com)
Gregory Walch (greg.walch@lvvwd.com)
Sean Anderson (sanderson@leachjohnson.com)
Venicia Considine (vconsidine@lacsn.org)
Travis Akin (travisakin8@gmail.com)
Roger Croteau (croteaulaw@croteaulaw.com)
Bryan Naddafi (bryan@avalonlg.com)

Executed on July 9, 2019 at Henderson, Nevada.

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

EXHIBIT A

EXHIBIT A

KOCH & SCOW LLC
ATTORNEYS AT LAW

11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Phone: (702) 318-5040

STATEMENT

Red Rock Financial Services

Invoice Date: June 26, 2019
Invoice Number: RRFS-20190626
Invoice Amount: $29,161.69

Matter: Saticoy Bay v. Thornburg

Attorney's Fees

5/6/2015	Timpa-34 Innisbrook: reviewing counterclaim and drafting answer to counterclaim	R.E.	2.80	$840.00
5/7/2015	Timpa-34 Innisbrook: drafting Complaint for Interpleader	R.E.	1.70	$510.00
5/21/2015	Draft/revise Answer and Counterclaim (Saticoy Bay/Innisbrook)	D.R.K.	1.50	$487.50
5/21/2015	Work on Innisbrook response.	S.B.S.	.60	$180.00
6/2/2015	Work on strategy issues. Confer re same.	D.R.K.	.80	$260.00
6/10/2015	Innisbrook: Research service issues.	R.E.	.60	$180.00
7/13/2015	Correspond with counsel on Timpa case re response to interpleader complaint.	S.B.S.	.30	$90.00
8/2/2016	Conference calls re Saticoy Bay/Thornburg case and pending hearing before discovery commissioner; request plaintiff to add client to joint case conference report per commissioner order and review responses and parties to last amended complaint of plaintiff re same.	S.B.S.	.50	$137.50
8/16/2016	Prepare for and attend lengthy hearing in Innisbrook matter. Confer with counsel for lender following hearing re case issues and third-party purchaser position.	S.B.S.	2.40	$660.00
9/2/2016	Review Thornburg supplemental disclosures in Saticoy Bay/Innisbrook case.	S.B.S.	.50	$150.00
10/27/2016	Briefly review discovery propounded on lender in Saticoy/Thornburg case.	S.B.S.	.20	$55.00
12/16/2016	Work on response strategy issues re third party purchaser threatened claims and review prior pleadings re established arguments regarding impact of conditional offers/tendered payments in Saticoy Bay/Thornburg.	S.B.S.	.60	$165.00
1/10/2017	Confer with opposing counsel re notice of completion re mediation in Saticoy/Thornburg	S.B.S.	.20	$60.00

	case.			
2/28/2017	Review third party purchaser claims in Saticoy/Thornburg matter and work on response strategy re same.	S.B.S.	.30	$90.00
3/1/2017	Review lien holder response re interpleader issues in Saticoy/Thornbook case.	S.B.S.	.20	$60.00
3/2/2017	Saticoy v. Thornburg A710161: Research motion to dismiss third amended complaint and answer third amended complaint.	B.W.	1.80	$405.00
3/2/2017	Work on response to third party complaint in Saticoy/Thornburg case.	S.B.S.	.40	$120.00
3/27/2017	Analyze lender motion to amend counterclaims and add parties along with errata to same in Saticoy Bay/Thornburg case; briefly review discovery from lender along with lender answer to third amended complaint.	S.B.S.	.90	$270.00
4/18/2017	Review court order re amendment to answer and counterclaims in Saticoy Bay/Thornburg case.	S.B.S.	.20	$60.00
4/25/2017	Analyze purchaser responses to lender discovery in Saticoy Bay/Thornburg.	S.B.S.	.30	$90.00
4/28/2017	Analyze issues re proposed order allowing lender to amend and add parties in Saticoy/Thornburg.	S.B.S.	.30	$90.00
5/25/2017	Correspond with counsel for parties re pending discovery issues in Saticoy Innisbrook/Thornburg.	S.B.S.	.20	$60.00
5/26/2017	Review proposed stipulation in Saticoy/Thornburg re discovery and trial issues; analyze lender proposed amended response and counterclaims and outline issues re response.	S.B.S.	.50	$150.00
6/1/2017	Review court order granting lender motion to amend claims and add parties in Saticoy v. Thornburg case.	S.B.S.	.20	$55.00
6/2/2017	Review purchaser supplemental production in Saticoy Bay v. Thornburg.	S.B.S.	.30	$82.50
6/12/2017	Work on revising and finalizing response to third amended counterclaim and interpleader in Saticoy v. Thornburg.	S.B.S.	.90	$270.00
6/12/2017	Saticoy Bar v. Thornburg: Draft Answer to Counterclaim and Counterclaim for Interpleader.	B.W.	1.90	$427.50
6/14/2017	Analyze purchaser motion to dismiss lender counterclaims in Saticoy Bay/Thornburg.	S.B.S.	.30	$90.00
6/16/2017	Saticoy v. Thornburg: Research and outline opposition to Saticoy's motion to dismiss.	B.W.	2.70	$607.50
6/22/2017	Saticoy Bay/ Thornburg A-14-710161: Research opposition to Saticoy Bay's motion to dismiss.	B.W.	1.40	$315.00
6/27/2017	Saticoy Bay v. Thornburg A-14-710161: Research and draft opposition to Saticoy's motion to dismiss.	B.W.	3.10	$697.50
6/28/2017	Work on drafting, revising, and finalizing opposition to third party purchaser motion to dismiss claim by lender in Saticoy Bay v. Thornburg Mortgage case; review application documentation re same.	S.B.S.	1.10	$330.00
6/28/2017	Saticoy Bay v. Thornburg A-14-710161: Research and draft opposition to Saticoy's motion to dismiss.	B.W.	2.70	$607.50

7/17/2017	Analyze court order re recusal of court in Saticoy/Thornburg and new assignment order; confer re same.	S.B.S.	.20	$60.00
7/17/2017	Analyze purchaser replies in support of motion to dismiss in Saticoy Bay/Thornburg matter and work on possible response issues given arguments regarding tender and justified rejections.	S.B.S.	.40	$120.00
7/25/2017	Conference call re appearance issues for purchaser motion to dismiss in Saticoy/Thornburg matter.	S.B.S.	.20	$60.00
8/11/2017	Saticoy v. Thornburg A-14-710161-C: Respond to bank's interrogatories and requests for production.	B.W.	1.90	$427.50
8/14/2017	Work on drafting, revising, and finalizing responses to written discovery in Saticoy/Thornburg case; review underlying claims and numerous documents re same.	S.B.S.	1.40	$420.00
8/15/2017	Work on joinder re motion to dismiss in Saticoy Bay/Thornburg matter and analyze association arguments re same.	S.B.S.	.40	$120.00
8/15/2017	Review lender intent to default association in Saticoy/Thornburg; correspond re same.	S.B.S.	.20	$60.00
8/21/2017	Analyze lender responses and arguments to counterclaims and motion to dismiss in Saticoy/Thornburg case.	S.B.S.	.30	$90.00
8/22/2017	Review order denying purchaser motion to dismiss in Saticoy/Thornburg matter.	S.B.S.	.20	$60.00
8/28/2017	Review documentation re motion to extend dates given dismissal motion in Saticoy v. Thornburg.	S.B.S.	.20	$60.00
8/29/2017	Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C: Attend hearing on motion to extend discovery.	B.W.	2.90	$652.50
9/9/2017	Review purchaser answer to lender complaint in Saticoy/Thornburg matter.	S.B.S.	.20	$60.00
9/13/2017	Review and analyze association response and citations in connection with pending motion to dismiss in Saticoy Bay v. Thornburg; review various case law and work on response strategy issues to lender opposition.	S.B.S.	.60	$150.00
9/13/2017	Review various documentation and evidence produced and work on second supplement to initial disclosures in Saticoy/Thornburg case.	S.B.S.	.90	$270.00
9/19/2017	Analyze lender supplemental disclosures in Saticoy/Thornburg case and review documents and witness issues.	S.B.S.	.40	$120.00
9/19/2017	Work on for hearing strategy regarding motion to dismiss lender claims in Saticoy/Thornburg case and review filings and work on argument issues with association counsel.	S.B.S.	.40	$120.00
9/29/2017	Review proposed order granting in part and denying in part motion to dismiss in Saticoy/Thornburg matter; correspond re same.	S.B.S.	.30	$90.00
10/10/2017	Analyze court order granting in part and denying in part motion to dismiss claims in Saticoy bay v. Thornburg.	S.B.S.	.20	$60.00

10/16/2017	Conference call with counsel for lender re excess proceeds in Saticoy/Thornburg case and status issues.	S.B.S.	.20	$55.00
11/6/2017	Appear for and attend hearing in Saticoy/Thornburg matter; confer with counsel following hearing re possible settlement issues and pending discovery.	S.B.S.	1.90	$570.00
11/7/2017	Review court order re discovery issues in Saticoy/Thornburg; conference call with lender counsel re court instruction at hearing and need for amended order; correspond re same.	S.B.S.	.30	$90.00
11/8/2017	Review order granting extension of discovery and trial issues in Saticoy v. Thornburg.	S.B.S.	.20	$60.00
11/9/2017	Review proposed amended order re discovery and dispositive motion issues in Saticoy v. Thornburg matter; correspond with opposing counsel re same.	S.B.S.	.20	$60.00
11/15/2017	Review court order re Saticoy/Thornburg trial issues and work on strategy re same.	S.B.S.	.20	$60.00
12/4/2017	Conference calls with lender counsel re depositions in Saticoy/Thornburg matter.	S.B.S.	.20	$60.00
12/5/2017	Saticoy Bay v. Thornburg A-14-710161: Attend deposition of Red Rock Financial.	B.W.	3.10	$697.50
12/7/2017	Review amended notices in Saticoy v. Thornburg.	S.B.S.	.20	$60.00
1/2/2018	Review lender supplemental production in Saticoy v. Thornburg matter.	S.B.S.	.30	$90.00
1/5/2018	Review association initial production in Saticoy v. Thornburg matter.	S.B.S.	.30	$90.00
1/5/2018	Analyze court order re case status update and trial readiness in Saticoy/Thornburg matter and review with order setting trial.	S.B.S.	.20	$60.00
1/5/2018	Analyze lender discovery propounded on association and client in Saticoy v. Thornburg and outline issues re responses.	S.B.S.	.40	$120.00
1/8/2018	Conference call with counsel for lender in Saticoy v. Thornburg re various discovery and pre-trial issues.	S.B.S.	.20	$60.00
1/9/2018	Review issues re discovery and trial timing in Saticoy/Thornburg matter and correspond with opposing counsel re same.	S.B.S.	.20	$60.00
1/10/2018	Review deposition notices and related discovery documentation in Saticoy/Thornburg case; conference call with lender counsel re scheduling issues and re case concerns and possible resolution.	S.B.S.	.40	$120.00
1/11/2018	Review update provided to court in Saticoy/Thornburg matter and analyze issues re same.	S.B.S.	.20	$60.00
1/16/2018	Conference call with counsel for lender re discovery issues in Saticoy/Thornburg matter and confer re possible additional production issues.	S.B.S.	.20	$60.00
1/17/2018	Review lender motion to extend discovery in Thornburg/Saticoy matter.	S.B.S.	.20	$60.00
1/24/2018	Correspond with counsel re client deposition in Saticoy v. Thornburg matter and work on prep	S.B.S.	.20	$55.00

	issues.			
1/25/2018	Appear for and defend client at lengthy deposition in Saticoy/Thornburg matter; review numerous documents and confer with client re questioning.	S.B.S.	4.80	$1,440.00
2/2/2018	Saticoy v. Thornburg (Case No. 14-710161-C). Review voluminous lender supplemental document production and analyze arguments re same.	S.B.S.	.80	$240.00
2/2/2018	Saticoy v. Thornburg (Case No. 14-710161-C). Work on drafting, revising, and finalizing responses to lender discovery requests and review documents re same.	S.B.S.	1.80	$540.00
2/2/2018	Saticoy Bay v. Thornburg A-14-710161-C: Draft responses to requests for admission and interrogatories.	B.W.	2.90	$652.50
2/5/2018	Saticoy v. Thornburg (Case No. 14-710161). Review discovery responses and analyze factual issues as part of same.	S.B.S.	.20	$60.00
2/9/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze association supplemental disclosures and documentation.	S.B.S.	.20	$60.00
2/13/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze lender and purchaser opposing arguments regarding pending motion to extend discovery.	S.B.S.	.40	$110.00
2/26/2018	Saticoy v. Thornburg (Case No. 14-710161) Review proposed order re discovery and trial issues and correspond with opposing counsel re same.	S.B.S.	.20	$60.00
3/5/2018	Saticoy v. Thornburg (Case No. 14-710161) Review court order re discovery and trial issues.	S.B.S.	.20	$60.00
3/7/2018	Saticoy v. Thornburg (Case No. 14-710161) Review association discovery requests propounded to lender.	S.B.S.	.20	$60.00
4/5/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze lender supplemental disclosures.	S.B.S.	.20	$60.00
4/13/2018	Saticoy v. Thornburg (Case No. 14-710161) Further analyze lender supplemental disclosures.	S.B.S.	.30	$90.00
4/20/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on motion for summary judgment and evidentiary issues; confer with counsel for lender re same.	S.B.S.	.70	$210.00
4/25/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on finalizing declaration pertaining to authentication of documents for application to pending motion for summary judgment.	S.B.S.	.30	$90.00
4/26/2018	Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C: Research and begin drafting motions for summary judgment against the Bank and the Third Party Purchaser.	B.W.	4.80	$1,080.00
5/1/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on summary judgment strategy issues and review lender proposed arguments.	S.B.S.	.30	$90.00
5/21/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze lengthy competing motions for summary	S.B.S.	1.10	$330.00

	judgment from lender and purchaser, opposition briefing from public utility and lender, and new case law arguments.			
5/22/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze lender responses to association's various written discovery requests.	S.B.S.	.40	$120.00
5/25/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze arguments presented by purchaser in opposition to lender motion for summary judgment and review lender position re same.	S.B.S.	.80	$240.00
5/30/2018	Saticoy v. Thornburg (Case No. 14-710161) Draft and finalize joinder regarding counter motion for summary judgment.	S.B.S.	.40	$120.00
5/30/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze association opposition to lender motion for summary judgment and counter motion along with lender reply arguments in support of summary judgment.	S.B.S.	.70	$210.00
5/31/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with opposing counsel re competing motions for summary judgment and stipulation re hearing issues.	S.B.S.	.20	$60.00
6/4/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with opposing counsel re pending motions for summary judgment and hearing issues.	S.B.S.	.20	$60.00
6/5/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on edits re stipulation re pending motions for summary judgment.	S.B.S.	.20	$60.00
6/5/2018	Stacy Bay v. Thornburg (Case No. 14-710161) Analyze reply brief of Saticoy in support of its motion for summary judgment.	S.B.S.	.30	$90.00
6/6/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with opposing counsel re hearing on dispositive motions.	S.B.S.	.20	$60.00
6/7/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Prepare stipulation and order pertaining to pending hearing issues.	D.S.	.30	$67.50
6/11/2018	Stacy Bay v. Thornburg (Case No. 14-710161) Correspond with counsel for Thornburg re court response for hearing date on competing motions for summary judgment.	S.B.S.	.20	$60.00
6/27/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze purchaser's supplemental opposition to lender's motion for summary judgment and association reply brief in support of motion for summary judgment.	S.B.S.	.60	$180.00
7/2/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze lender sur-reply in support of motion for summary judgment and errata to motion for summary judgment.	S.B.S.	.30	$90.00
7/3/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze court ruling on motions for summary judgment and work on responsive strategy in preparation for trial.	S.B.S.	.70	$210.00
7/6/2018	Saticoy v. Thornburg (Case No. 14-710161)	S.B.S.	.50	$150.00

	Review pretrial disclosures filed by lender, association and purchaser.			
7/6/2018	Saticoy v. Thornburg (Case No. 14-710161) Draft, revise and finalize pre-trial disclosures.	S.B.S.	.40	$120.00
7/9/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with counsel for Saticoy, Thornburg and association re pre-trial conference and pre-trial memorandum issues.	S.B.S.	.30	$90.00
7/9/2018	Saticoy v. Thornburg (Case No. 14-710161) Attend pre-trial meeting with all opposing counsel and confer re all required aspects for pre-trial conference and pre-trial memorandum.	S.B.S.	.70	$210.00
7/9/2018	Saticoy v. Thornburg (Case No. 14-710161) Conference call with counsel for association to discuss case strategy and trial issues re possible bifurcation of claims.	S.B.S.	.30	$90.00
7/11/2018	Saticoy v. Thornburg (Case No. 14-710161) Review trial subpoenas issued by lender.	S.B.S.	.20	$60.00
7/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Appear for and attend hearing on calendar call and confer with all opposing counsel and court re trial issues and procedures.	S.B.S.	2.40	$720.00
7/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Confer with counsel for Saticoy re various issues surrounding elements of claims against client by Saticoy.	S.B.S.	.20	$60.00
7/18/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Correspond with counsel for lender re proposed joint pretrial memorandum.	S.B.S.	.20	$60.00
7/18/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on revising joint pretrial memorandum.	S.B.S.	.40	$120.00
7/19/2018	Saticoy v. Thornburg (Case No. 14-710161) Review association responses to amended claims of lender and purchaser.	S.B.S.	.20	$60.00
7/20/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze purchaser claims and potential arguments regarding duty to disclose to public in connection with pretrial memorandum.	S.B.S.	.40	$120.00
7/23/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with counsel for lender and purchaser re joint pretrial memorandum.	S.B.S.	.20	$60.00
7/24/2018	Saticoy v. Thornburg (Case No. 14-710161) Review finalized joint pre-trial memorandum as filed.	S.B.S.	.20	$60.00
7/24/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze proposed exhibit list for trial.	S.B.S.	.30	$90.00
7/24/2018	Saticoy Bay v. Thornburg A-14-710161-C: Review and edit joint findings of fact	B.W.	1.30	$292.50
8/7/2018	Thornburg: Review and revise stipulated facts	B.W.	1.70	$382.50
8/8/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on stipulated facts and revisions to same.	S.B.S.	.30	$90.00
8/15/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Work on revisions to statement of stipulated facts for trial.	S.B.S.	.40	$120.00
8/16/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Appear for and attend calendar call hearing and	S.B.S.	2.30	$690.00

	confer with court and opposing counsel re trial issues.			
8/17/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Review first amended notice of trial subpoenas from lender.	S.B.S.	.20	$60.00
8/21/2018	Saticoy v. Thornburg (Case No. 14-710161) Review proposed revisions to stipulated facts for trial.	S.B.S.	.20	$60.00
8/23/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with opposing counsel re trial procedures.	S.B.S.	.20	$60.00
8/29/2018	Saticoy Bay v. Thornburg Mortgage (Case No. 14-710161) Analyze proposed stipulation and order setting trial stack and timing issues for trial.	S.B.S.	.20	$60.00
8/31/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze purchaser revisions to proposed stipulation of facts for trial.	S.B.S.	.20	$60.00
9/6/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with opposing counsel re stipulated facts and admission of documents.	S.B.S.	.20	$60.00
9/11/2018	Saticoy v. Thornburg (Case No. 14-740161) Review court order regarding trial issues and procedures.	S.B.S.	.20	$60.00
9/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Review notice of entry of order re trial procedures.	S.B.S.	.20	$60.00
9/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Review correspondence and revisions from purchaser counsel re proposed stipulated facts for trial.	S.B.S.	.20	$60.00
9/17/2018	Saticoy v. Thornburg (Case No. 14-710161) Anlayze lender motion for reconsideration of order denying motion for summary judgment in light of new authority.	S.B.S.	.40	$120.00
10/3/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze purchaser opposition to lender motion for reconsidation.	S.B.S.	.30	$90.00
10/29/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with counsel for lender and purchaser re draft stipulated facts for purposes of pending trial	S.B.S.	.20	$60.00
11/1/2018	Saticoy v. Thornburg (Case No. 14-710161) Analyze lender reply in support of motion for reconsideration of summary judgment.	S.B.S.	.30	$90.00
11/5/2018	Saticoy v. Thornburg (Case No. 15-710161) Conference call with counsel for association re strategy for hearing on bank's motion for reconsideration.	S.B.S.	.30	$90.00
11/5/2018	Review Nevada Supreme Court ruling in Bank of America v. SFR Investments to prepare for hearing on motion to reconsider motion for summary judgment in the Saticoy Bay v. Thornburg Trust matter.	D.S.	.70	$157.50
11/6/2018	Appear for and attend hearing on motion for reconsideration in re Saticoy Bay v. Thornburg Mortgage Securities.	D.S.	2.90	$652.50

11/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Work on revisions to proposed order granting lender's motion for summary judgment.	S.B.S.	.40	$130.00
11/15/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with all opposing counsel re lender motion for summary judgment and impact on remaining claims.	S.B.S.	.20	$60.00
12/4/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze court's findings of fact and conclusions of law and lender memorandum of costs.	S.B.S.	.50	$150.00
12/5/2018	Saticoy Bay v. Thornburg (Case No. 14-710161) Review court order re trial issues relating to purchaser claims.	S.B.S.	.20	$60.00
12/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Review order purporting to close case despite pending claims.	S.B.S.	.20	$60.00
12/12/2018	Saticoy v. Thornburg (Case No. 14-710161) Correspond with counsel for association re calendar call issues.	S.B.S.	.20	$60.00
1/3/2019	Saticoy v. Thornburg (Case No. 14-710161) Correspond with all opposing counsel re trial issues and preparation.	S.B.S.	.20	$60.00
1/4/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze court order regarding further proceedings after improper dismissal.	S.B.S.	.20	$60.00
1/4/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze third party complaint claims and assertions of investor that remain for purposes of trial.	S.B.S.	.30	$90.00
2/1/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze prior homeowner response re interpleader allegations and claim to surplus funds from foreclosure.	S.B.S.	.30	$90.00
2/5/2019	Saticoy v. Thornburg (Case No. 14-710161) Analyze purchaser pending claims and work on strategy re possible dispositive motion.	S.B.S.	.30	$90.00
3/4/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Review and analyze court minute order re trial procedures and remaining claims.	S.B.S.	.20	$60.00
4/4/2019	Saticoy v. Thornburg (Case No. 14-710161) Review and analyze position statement from purchaser regarding remaining claims and trial issues.	S.B.S.	.30	$90.00
4/8/2019	Saticoy v. Thornburg (Case No. 14-710161) Review and analyze lender joinder to prior homeowner status memo.	S.B.S.	.20	$60.00
4/15/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze court order re case status and finality of dispositive motions.	S.B.S.	.20	$60.00
4/16/2019	Saticoy v. Thornburg (Case No. 14-710161) Analyze various procedural and strategic aspects of case including pending interpleader matter closed by court.	S.B.S.	.40	$120.00
4/16/2019	Saticoy v. Thornburg (Case No. 14-710161) Conference call with counsel for prior homeowner re excess funds from foreclosure sale	S.B.S.	.30	$90.00

	and interpleader claims.			
4/16/2019	Thornburg: discuss interpleader action with Olympia law group.	B.W.	.40	$90.00
4/29/2019	Timpa v. Thornburg/Saticoy (Case No. 19-793543) Analyze complaint and claims brought by trust against lender, purchaser, association, et al. re foreclosure.	S.B.S.	.30	$90.00
5/9/2019	Conference call with opposing counsel regarding opening 34 Innisbrook matter for interpleader action.	D.S.	.30	$67.50
6/11/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze proposed order regarding excess proceeds and claims of parties.	S.B.S.	.30	$90.00
6/18/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze court order re reinstatement of claims pertaining to excess funds.	S.B.S.	.20	$60.00
6/18/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Draft notice regarding deposit and correspondence to court re interpleader required for excess funds remaining after foreclosure.	S.B.S.	.50	$150.00
6/26/2019	Saticoy Bay v. Thornburg (Case No. 14-710161) Analyze motion for summary judgment from prior homeowner re foreclosure excess proceeds.	S.B.S.	.40	$120.00
SUBTOTAL:			104.7	$28,562.50

Costs

5/21/2015	Court Filing Fees for Answer to Counterclaim & Counterclaim - Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$236.69
6/10/2015	Junes Invoice EP171381 - Acceptance of Service on Kerr for Timpas-Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$20.00
6/18/2015	Junes Invoice EP112816 - Service on Estates West at Spanish Trails-Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$43.00
6/22/2015	Junes Invoice EP112815 - Service on Countrywide-Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$62.50
6/22/2015	Junes Invoice EP112811 - Service on Republic Services-Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$102.00
6/23/2015	Junes Invoice EP112813 - Service on MERS-Saticoy Bay/34 Innisbrook/Thornburg A-14-710161-C	$135.00
SUBTOTAL:		$599.19

TOTAL: $29,161.69

CURRENT BALANCE DUE AND OWING: $29,161.69

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
AVALON LEGAL GROUP LLC
9480 S. Eastern Ave., #257
Las Vegas, NV 89123
Telephone: (702) 522-6450
Email: bryan@avalonlg.com

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST
U/T/D MARCH 3, 1999

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK, Plaintiff, vs. THORNBURG MORTGAGE SECURITIES TRUST 2007-3, *et al.*, Defendants.	Case No.: A-14-710161-C Department No.: XXVI **TIMPA TRUST'S REPLY TO RED ROCK FINANCIAL SERVICES' LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT**
AND ALL RELATED ACTIONS	

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COMES NOW, claimant TIMPA TRUST U/T/D MARCH 3, 1999 (hereafter "Timpa Trust") by and through its attorneys, Bryan Naddafi, Esq. and Travis Akin, Esq., and hereby files this reply to Red Rock Financial Services' Limited Response to Timpa Trust's Motion for Summary Judgment. This Reply is based upon the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, and any oral arguments the Court may wish to entertain at a hearing on this matter.

DATED this 9th day of July 2019.

AVALON LEGAL GROUP LLC

/s/ Bryan Naddafi

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
9480 S. Eastern Avenue, Suite 257
Las Vegas, Nevada 89123
Telephone No. (702) 522-6450
Email: bryan@avalonlg.com

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST U/T/D MARCH 3, 1999

POINTS AND AUTHORITIES

I. ARGUMENT

Timpa Trust is in agreement with Red Rock Financial Services (hereafter "Red Rock") that they are entitled to receive fees and costs from the interpleader funds. Moreover, Timpa Trust has reviewed Red Rock's outlined attorney fees of $28,562.50 and costs of $599.19 which total $29,161.69. Timpa Trust has no objection to Red Rock's request that the amount of $29,161.69, which is the total of attorney fees and costs, be paid out from the excess proceeds currently held by this Court to Red Rock, with the remainder of the excess proceeds issued to Timpa Trust.

DATED this 9th day of July 2019.

AVALON LEGAL GROUP LLC

/s/ Bryan Naddafi

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
9480 S. Eastern Avenue, Suite 257
Las Vegas, Nevada 89123
Telephone No. (702) 522-6450
Email: bryan@avalonlg.com

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST U/T/D MARCH 3, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 9, 2019, a true and correct copy of the TIMPA TRUST'S REPLY TO RED ROCK FINANCIAL SERVICES' LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to: **E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan	melanie.morgan@akerman.com
Jared Sechrist	jared.sechrist@akerman.com
Sean L. Anderson	sanderson@leachjohnson.com
Robin Callaway	rcallaway@lkglawfirm.com
Patty Gutierrez	pgutierrez@lkglawfirm.com
Ryan D Hastings	rhastings@lkglawfirm.com
Gina LaCascia	glacascia@leachjohnson.com
"Donald H. Williams, Esq." .	dwilliams@dhwlawlv.com
David R. Koch .	dkoch@kochscow.com
Eserve Contact .	office@bohnlawfirm.com
Robin Gullo .	rgullo@dhwlawlv.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Travis Akin	travisakin8@gmail.com
Sean Anderson	sanderson@leachjohnson.com
Venicia Considine	vconsidine@lacsn.org
Roger P. Croteau	croteaulaw@croteaulaw.com
Bryan Naddafi	bryan@avalonlg.com
Gregory Walch	greg.walch@lvvwd.com

/s/ Luz Garcia
An employee of Avalon Legal Group LLC

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
AVALON LEGAL GROUP LLC
9480 S. Eastern Ave., Suite 257
Las Vegas, NV 89123
Telephone: (702) 522-6450
Email: bryan@avalonlg.com

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST U/T/D MARCH 3, 1999

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK, Plaintiff, vs. THORNBURG MORTGAGE SECURITIES TRUST 2007-3, *et al*., Defendants. AND ALL RELATED ACTIONS	CASE NO.: A-14-710161-C DEPARTMENT NO.: XXVI **TIMPA TRUST'S OPPOSITION TO SATICOY BAY LLC SERIES 34 INNISBROOK'S MOTION TO ENLARGE TIME IN WHICH TO FILE OPPOSITION TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, TIMPA TRUST U/T/D MARCH 3, 1999 (hereafter "Timpa Trust"), by and through its attorneys Bryan Naddafi, Esq. and Travis Akin, Esq., and hereby opposes SATICOY BAY LLC SERIES 34 INNISBROOK'S (hereafter "Saticoy") Motion to Enlarge Time in Which to File Opposition to Timpa Trust's Motion for Summary Judgment (hereafter "Motion to Enlarge Time").

This Opposition is based upon the pleadings and papers on file herein, the attached

exhibits, the attached Points and Authorities, and any oral arguments the Court may wish to entertain at a hearing on this matter.

DATED this 23rd day of July 2019.

AVALON LEGAL GROUP LLC

/s/ Bryan Naddafi

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
9480 S. Eastern Avenue, Suite 257
Las Vegas, Nevada 89123
Telephone No. (702) 522-6450
Email: bryan@avalonlg.com
TRAVIS AKIN, ESQ.
Nevada Bar No. 13059

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST U/T/D MARCH 3, 1999

POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to NRS chapter 16, RED ROCK FINANCIAL SERVICES (hereafter "Trustee"), on behalf of SPANISH TRAIL MASTER ASSOCIATION (hereafter "HOA"), sold real property (hereafter "Real Property") belonging to Timpa Trust. There are remaining surplus proceeds leftover from this sale which have been interplead with the Court. Timpa Trust filed a Motion for Summary Judgment (hereafter "Timpa Trust's MSJ") asserting that it is entitled to these remaining surplus proceeds. The rule codified in NRS 116.31164 as to how to disburse any remaining proceeds from a sale like the one which occurred in the instant matter is simple and unambiguous: any remaining proceeds go to the owner of the real property at the time of the sale. It is undisputed that the owner of the real property at the time of the sale was Timpa Trust,

and thus it is entitled to the remaining proceeds. As discussed at length in Timpa Trust's MSJ, Saticoy conceded this point as far back as July 2018 in the parties' Joint Pre-Trial Memorandum. Accordingly, once the Court's December 3, 2018 Order established Saticoy and THORNBURG MORTGAGE SECURITIES TRUST 2007-3's (hereafter "Thornburg") rights to the Real Property, this matter should have been resolved via stipulation.

No other party has filed an opposition to the Timpa Trust's MSJ. Trustee filed a responsive pleading requesting its attorney fees and costs, and Timpa Trust filed a reply in agreement with Trustee that Trustee is entitled to its attorney fees and costs. Instead of filing an opposition, Saticoy filed a Motion to Enlarge Time claiming it needs additional time to draft an opposition.

The Motion to Enlarge Time is a last-minute Hail Mary by Saticoy to unfairly buy itself more time and delay the inevitable. Saticoy's request for an extension of time to file an opposition is not only without good cause but is done in bad faith. Accordingly, the Court should deny Saticoy's Motion to Enlarge Time and should admonish Saticoy for its bad faith attempt to cause delay.

II. LEGAL ARGUMENT

a. Legal Authority

Eighth Judicial District Court Rule (hereafter "EDCR") 2.25 sets forth pleading requirements for the filing of a motion to extend deadlines:

> (a) Every motion or stipulation to extend time shall inform the court of any previous extensions granted and state the reasons for the extension requested. A request for extension made after the expiration of the specified period shall not be granted unless the moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect. Immediately below the title of such motion or stipulation there shall also be included a statement indicating whether it is the first second, third, etc., requested extension.

EDCR 2.25(a).[1] Meanwhile Nevada Rules of Civil Procedure (hereafter "NRCP") 6(b) requires that the Court must find "good cause" in order to grant a request to extend time. *See* NRCP 6(b).

Although there are no binding decisions that define "good cause" under NRCP 6(b), the Nevada Supreme Court has noted in the context of rule interpretations that "[g]ood cause generally is established when it is shown that the circumstances causing the failure to act are beyond the individual's control." *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 668, 188 P.3d 1136, 1140 (2008) (explaining the difference between "good cause" and "excusable neglect").

b. Good Cause Does Not Exist Here

Here, Saticoy asserts that additional time is warranted because: 1) its counsel "has been inundated with Motion, trial practice and lengthy trials of late"; 2) that there are multiple parties in this litigation with differing interest that need to be reconciled; 3) Saticoy's research has taken longer than expected; and 4) Saticoy's counsel was out of town during the week the Motion was served (hereafter, collectively "Alleged Good Cause Claims"). *Saticoy Motion to Enlarge Time,* page 6, lines 18-21.

i. Saticoy's factual assertions for good cause are devoid of support in violation of EDCR 2.21.

First and foremost, Saticoy's Alleged Good Cause Claims are not supported by any admissible evidence, in direct contravention of EDCR 2.21 which requires that:

> [f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, and admissions on file. Oral testimony will not be received at the hearing, except upon the stipulation of parties and with the approval of the court, but the court may set the matter for a hearing at a time in the future and require or allow oral examination of the affiants/declarants to resolve factual issues shown by the affidavits/declarations to be in dispute.

EDCR 2.21 (emphasis added). Though Saticoy's counsel did file a brief declaration in support of the Motion to Enlarge Time, conspicuously missing from counsel's attested declaration is the

[1] Noticeably absent from Saticoy's Motion to Enlarge Time is "a statement indicating whether it is the first second, third, etc., requested extension." This is in direct violation of EDCR 2.25(a), and this Court may deny Saticoy's Motion on this ground alone.

following: testimony regarding counsel's court trial schedule, testimony regarding counsel having been "inundated" with motions, testimony regarding counsel's efforts to research and prepare Saticoy's opposition; or testimony regarding counsel's travel schedule that resulted in him being out of town during the week Timpa Trust's MSJ was served. Simply put, none of counsel's claims as to the Alleged Good Cause Claims are backed up by his declaration. It is curious that when the time came to support the statements in the Motion to Enlarge Time with a declaration, Saticoy's counsel failed to testify under penalty of perjury to the truth of any of those assertions. The Motion to Enlarge Time provides the Court with only boilerplate, unattested excuses (Saticoy's counsel was busy with trials, Saticoy's research took longer than expected, Saticoy's counsel was out of town, etc.). Which trials and on what dates? How long did Saticoy expect the research to take and how long did it take? What dates was Saticoy's counsel out of town? None of those necessary and relevant details are provided in the Motion to Enlarge Time and the accompanying declaration.

Whatever may be the reason for the deficiencies in the Motion to Enlarge Time, the Court should strike all factual allegations in the Motion that are not supported by the proffered declaration of counsel as a violation of EDCR 2.21. Saticoy's failure to support the factual contentions in its Motion to Enlarge Time with a declaration or affidavit is a fatal defect. As the Court of Appeals of the State of Nevada recently affirmed in its March 14, 2019 decision in *Nev. Corp. Headquarters, Inc. v. Weinstein* (Nev. App., 2019), a motion submitted without a declaration or affidavit supporting the factual contentions therein will fail under EDCR 2.21 and be denied.[2]

ii. Saticoy's failure to act within the appropriate time period does not amount to good cause sufficient to extend time.

First, as this Court is well aware, a motion for summary judgment is denied when a genuine issue of material fact is presented by the non-moving party. The Motion to Enlarge Time fails to identify any facts alleged in Timpa Trust's MSJ that Saticoy could refute if given more time for more research. The Motion to Enlarge Time only states that there are "differing

[2] Additionally, the *Nev. Corp. Headquarters* Court also held that EDCR 2.21 cannot be fulfilled via "counsel's signature per NRCP 11."

interests that need to be reconciled" and that it is seeking to avoid a decision that produces an "absurd result." Saticoy fails to identify how Timpa Trust's application of NRS 116 for disbursal of proceeds is such a novel or complex concept that it requires the Court to afford Saticoy more than twice the amount of time EDCR 2.20 affords a party to file an opposition.[3] Indeed, even if the unsupported Alleged Good Cause Claims are taken as true (which they should not be), under the standard set out by the court in *Moseley*, Saticoy's scheduling failures are completely within its own control and cannot amount to good cause. *See Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 668, 188 P.3d 1136, 1140 (2008) (explaining the difference between "good cause" and "excusable neglect").

In addition, Saticoy's claim that there are "differing interests that need to be reconciled" is objectively false as there has been no opposition filed by any other party to Timpa Trust's MSJ – nothing from Thornburg (whom Saticoy believes should be paid), nothing from HOA.[4] The only party to have filed a responsive pleadings to Timpa Trust's MSJ was Trustee, and Trustee's interest in the proceeds has already been resolved. *See* Timpa Trust's Reply filed on July 9, 2019 wherein Timpa Trust agreed that Trustee has the right to recover attorney fees and costs. In sum, Saticoy has not met its burden to show good cause to extend the deadline to file its opposition to Timpa Trust's MSJ.

iii. An extension of time for Saticoy would prejudice Timpa Trust.

Saticoy's conclusory statement that granting it an extension to July 24, 2019 will not adversely affect the parties is preposterous. Because the hearing on Timpa Trust's MSJ is set for August 13, 2019, Timpa Trust has until August 6, 2019 to file any reply briefing under EDCR

[3] Saticoy requests an extension to July 24, 2019 to file its opposition. This is fifteen (15) additional days on top of the ordinary fourteen (14) days a non-moving party is afforded to file an opposition.

[4] Because Thornburg has not filed an Opposition to Timpa Trust's MSJ, Saticoy's argument that Thornburg is to receive the interpleader proceeds is a non-starter because in an interpleader proceeding, "each claimant is treated as a plaintiff and must recover on the strength of his own right or title and not upon the weakness of his adversary's [and] [c]onsequently, the failure of one claimant to prove his claim does not mean that the other claimant automatically wins." *Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). Accordingly, Saticoy only has standing to make a claim to the funds on behalf of itself. Saticoy has no standing to make a claim to the interpleader proceeds on behalf of any other party, including on behalf of Thornburg (which, to reiterate, has not filed a claim to the surplus proceeds).

2.20. Had Saticoy filed its opposition on the date it was due (July 9, 2019), Timpa Trust would have been afforded twenty-eight (28) calendar days to file its Reply briefing. However, if Saticoy is allowed to file a belated opposition on July 24, 2019, as it has requested, then Timpa Trust will have only thirteen (13) calendar days to file it's Reply briefing. This is less than half the time Timpa Trust should be afforded under EDCR 2.20. Saticoy wants to more-than double the time it is allowed to file its opposition under EDCR 2.20 while in turn reducing Timpa Trust's time to file its response by more than half. Clearly it would be prejudicial to Timpa Trust if the Court granted Saticoy's request. The only other recourse Timpa Trust would have is to then request an extension to file its Reply briefing, which would further consume Court time and resources and would necessitate a delay of the August 13, 2019 hearing, which would cause additional prejudice to Timpa Trust.

iv. Saticoy's request is done in bad faith and illustrative of a pattern of behavior that shows a clear disregard for this Court.

As discussed in detail in Timpa Trust's MSJ, in the July 2018 Joint Pre-Trial Memorandum (hereafter "Pre-Trial Memo"), Saticoy already conceded the issue of which party should receive the interpleader funds. In the Pre-Trial Memo, Saticoy took the position that if the Court determined that Thornburg's Deed of Trust survived the foreclosure then "the excess proceeds should be paid to the previous homeowners on the Property." *See* July 2018 Joint Pre-Trial Pre-Trial Memo, page 25, lines 9-15. Emphasis added. The Court subsequently did make the determination that Thornburg's Deed of Trust survived the foreclosure. *See* Findings of Fact filed on December 3, 2018, page 6, lines 8-1. In light of all this, the fact that Saticoy now seeks to change its position and argue that it is entitled to the proceeds when it already admitted in the Pre-Trial Memo that Timpa Trust is entitled to the proceeds runs afoul of the doctrine of judicial estoppel. Saticoy's current position is clearly inconsistent with its earlier position, and judicial estoppel bars such flip-flopping within the same case.

The Supreme Court of Nevada has elaborated that "one of [judicial estoppel's] purposes is to prevent parties from deliberately shifting their position to suit the requirements of another case concerning the same subject matter." *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 273, 44 P.3d 506, 514 (2002). Indeed, judicial estoppel is designed "not only to prevent a party

from gaining an advantage by taking inconsistent positions, but also because of 'general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings,' and to 'protect against a litigant playing fast and loose with the courts.'" *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990)). The fact that Saticoy is asking for an extension to file an opposition that will ultimately run afoul of the doctrine of judicial estoppel is an example of its bad faith and is reason enough to deny the request.

Moreover, the unattested Alleged Good Cause Claims presented by Saticoy as to why it requires more time are dubious at best, and Saticoy appears to be acting in bad faith. A primary reason cited by Saticoy as to why it needs additional time is its counsel's schedule (counsel has been "inundated with Motion, trial practice and lengthy trials" and Saticoy's counsel was out of town during the week the Motion was served). *Saticoy Motion to Enlarge Time,* page 6, lines 18-21. Saticoy's counsel is in control of his schedule and was well-aware ahead of time of how busy he would be. There is no reason he should have waited until the day his opposition was due to seek an extension (either from this court or from Timpa Trust's counsel). Saticoy also claims it needs additional time because its research for its opposition "took longer than expected." Likewise, if true, this too was well within counsel's control. Attorneys often juggle multiple demanding cases at once, and it is an attorney's responsibility to properly allocate his or her time so as to meet all deadlines. In any case, an individual attorney's busy schedule or poor time management skills are not circumstances beyond the individual's control which would warrant an extension. See *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 668, 188 P.3d 1136, 1140 (2008) (explaining the difference between "good cause" and "excusable neglect").

The timing of Saticoy's request for an extension (on the day its opposition was due) is suspicious[5], and one wonders whether Saticoy may have simply forgotten that the opposition was due that day. This would not be far-fetched given Saticoy's recent behavior in this matter. For

[5] Tellingly, in its Motion to Enlarge Time, Saticoy is careful not to reveal to the Court that it asked Timpa Trust for additional time on the same day its opposition was due, July 9, 2019. *See* Declaration of Elena Nutenko, Esq. attached hereto as **Exhibit 1**. Moreover, no reason was provided to counsel regarding the need for the requested extension, nor did Saticoy propose a date for the requested extension. Exhibit 1.

instance, on June 11, 2019, Saticoy failed to attend its own hearing to reopen the instant matter, a violation of EDCR 7.60.

In sum, Saticoy has taken inconsistent positions and has provided unsupported and dubious excuses for why it failed to file a timely opposition. There is ample evidence that Saticoy may be acting in bad faith.

III. CONCLUSION

For the above-stated reasons, Timpa Trust respectfully requests that the Court deny Saticoy's Motion to Enlarge Time in Which to File its Opposition.

DATED this 23rd day of July 2019.

AVALON LEGAL GROUP LLC

/s/ Bryan Naddafi

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
9480 S. Eastern Avenue, Suite 257
Las Vegas, Nevada 89123
Telephone No. (702) 522-6450
Email: bryan@avalonlg.com
TRAVIS AKIN, ESQ.
Nevada Bar No. 13059

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
8275 S. Eastern Ave.
Las Vegas, NV 89123
Telephone: (702) 510-8567
Email: travisakin8@gmail.com

Attorneys for TIMPA TRUST U/T/D MARCH 3, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 23 2019, a true and correct copy of TIMPA TRUST'S OPPOSITION TO SATICOY BAY LLC SERIES 34 INNISBROOK'S MOTION TO ENLARGE TIME IN WHICH TO FILE OPPOSITION TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

E-MAIL AND/OR ELECTRONIC MEANS: N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan	melanie.morgan@akerman.com
Jared Sechrist	jared.sechrist@akerman.com
Sean L. Anderson	sanderson@leachjohnson.com
Robin Callaway	rcallaway@lkglawfirm.com
Patty Gutierrez	pgutierrez@lkglawfirm.com
Ryan D Hastings	rhastings@lkglawfirm.com
Gina LaCascia	glacascia@leachjohnson.com
"Donald H. Williams, Esq." .	dwilliams@dhwlawlv.com
David R. Koch .	dkoch@kochscow.com
Eserve Contact .	office@bohnlawfirm.com
Robin Gullo .	rgullo@dhwlawlv.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Travis Akin	travisakin8@gmail.com
Sean Anderson	sanderson@leachjohnson.com
Venicia Considine	vconsidine@lacsn.org
Roger P. Croteau	croteaulaw@croteaulaw.com
Bryan Naddafi	bryan@avalonlg.com
Gregory Walch	greg.walch@lvvwd.com

/s/ Luz Garcia
An employee of Avalon Legal Group LLC

EXHIBIT 1

DECLARATION OF ELENA NUTENKO, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Elena Nutenko, Esq. states and declares under penalty of perjury of the laws of the state of Nevada that the following statements are true and correct to the best of my understanding:

1. I am an attorney at Avalon Legal Group LLC and counsel for Timpa Trust in the foregoing matter, and am duly authorized to practice in the state of Nevada, and familiar with the facts and circumstances surrounding this matter; and make this Declaration on personal knowledge and if necessary I am prepared to testify regarding the matters contained herein.
2. On June 25, 2019, my office filed and served Timpa Trust's Motion for Summary Judgment ("Timpa Trust MSJ").
3. Per EDCR 2.20, NRCP 6, and the Advisory Committee Note to NRCP6(a)-2019 Amendment, the deadline for a party to file a responsive pleading to the Timpa Trust MSJ was July 9, 2019.
4. On July 9, 2019, at approximately 12:10 p.m., my office received electronic service through the Odyssey filing system of Red Rock Financial Services' Limited Response to Timpa Trust's Motion for Summary Judgment. This was the only responsive pleading filed to the Timpa Trust MSJ. There were no oppositions filed to the Timpa Trust MSJ.
5. About five minutes later, on July 9, 2019 at approximately 12:15 p.m., my office received a telephone call from Roger Croteau's office (counsel for Saticoy Bay)

seeking an extension to file Saticoy Bay's opposition to the Timpa Trust MSJ.

6. This was the first time my office had received a request from Mr. Croteau's office requesting additional time to file Saticoy Bay's opposition.

7. Fifteen minutes later, at approximately 12:30 p.m. on July 9, 2019, I returned the call from Mr. Croteau's office and spoke with an individual there named Mindy.

8. I informed Mindy that my office would not agree to grant an extension of time for Saticoy Bay to file its opposition.

9. Mindy did not provide me with a reason for the requested extension nor did she provide me with a requested date of extension.

10. After hanging up with Mindy, I sent her an e-mail communication memorializing our conversation. Attached hereto as **Exhibit A** please find a true and correct copy of my July 9, 2019 email to Mindy at Roger Croteau's office confirming our conversation wherein I denied her office's request for an extension of the deadline to file its opposition to the Timpa Trust MSJ.

Dated: July 23, 2019

ELENA NUTENKO, ESQ.

EXHIBIT A

Bryan Naddafi

From: Elena Nutenko
Sent: Tuesday, July 9, 2019 12:35 PM
To: mindy@croteaulaw.com
Cc: Travis Akin; Bryan Naddafi; Kurt Naddafi
Subject: Opposition due today A-14-710161-C

Hi Mindy,

This is to confirm that you reached out to our office today to request an extension on your client's opposition that is due today, and we have respectfully declined the request for an extension.

Best,
Elena

Elena Nutenko
AVALON LEGAL GROUP
https://www.avalonlegalgroup.com
Tel: (702) 522-6450
Fax: (702) 848-5420
Email: elena@avalonlg.com

OPPS
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
(702) 254-7775 (telephone)
(702) 228-7719 (facsimile)
Attorney for Plaintiff
SATICOY BAY LLC, SERIES 34
INNISBROOK

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC, SERIES 34 INNISBROOK, Plaintiff, vs. THORNBURG MORTGAGE SECURITIES TRUST 2007-3; FRANK TIMPA and MADELAINE TIMPA, individually and as trustees of the TIMPA TRUST, Defendants. AND ALL RELATED ACTIONS.	Case No.: A-14-710161-C Dept. No.: XXVI

OPPOSITION TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT AND RED ROCK FINANCIAL SERVICES' LIMITED RESPONSE TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGEMENT

COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 34 INNISBROOK (*"Saticoy Bay"* and/or *"Plaintiff"*), by and through its attorney, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Opposition to Timpa Trust's Motion for Summary Judgement (the *"Motion"*) and Red Rock Financial Services Limited Responses to Timpa Trust's Motion for Summary Judgement (the *"RR Response"*). This Opposition is made and based upon the papers and pleadings on file herein, the points and authorities submitted in support hereof, and any oral argument which this Honorable Court may entertain at the hearing of said Motion.

/ / /

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

DATED this 25th day of July, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

For the past several years, the purchasers of real properties at homeowners association lien foreclosure sales have been embroiled in litigation with purportedly secured deed of trust holders regarding the force and effect of NRS §116.3116, which provides an HOA with a superpriority lien on an individual homeowner's property for up to nine months of unpaid HOA dues pursuant to NRS 116.3116 *et seq.* (*"SuperPriority Lien Amount"*). In a nutshell, the purchasers of these properties have always asserted that HOA lien foreclosure sales served to extinguish all junior liens, including a first position deed of trust, pursuant to black letter lien law. Deed of trust holders incorrectly asserted that their security interests survived the HOA lien foreclosure sales.

The conflicting positions of the purchasers and the purportedly secured mortgage holders were the subject of significant dispute for a lengthy period of time. However, on September 18, 2014, the Nevada Supreme Court, in the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), definitively determined that the foreclosure of a HOA's superpriority lien does indeed extinguish a first deed of trust; however, the Nevada Supreme Court has rendered numerous clarifying decisions since *SFR Investments*. The Nevada Supreme Court has repeatedly applied and upheld *SFR Investments*.

///

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

"The *SFR* decision made winners out of the investors who purchased foreclosure properties in HOA sales and losers of the lenders who gambled on the opposite result, elected not to satisfy the HOA liens to prevent foreclosure, and thus saw their interests wiped out by sales that often yielded a small fraction of the loan balance." *Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 2015 U.S. Dist. LEXIS 66249, 1-2 (D. Nev. May 19, 2015) (Dorsey, J.).

Pursuant to its decision in *SFR Investments*, the Nevada Supreme Court resolved the divergent opinions that previously existed in the state and federal courts of the State of Nevada regarding the force, effect and interpretation of NRS §116.3116 *et seq*. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners association with a true super-priority lien over real property that can and does extinguish a first deed of trust when non-judicially foreclosed. *Id.*

Since *SFR Investments* decision and its progeny, the purchasers at homeowners association's (*"HOA"*) NRS 116 assessment lien foreclosure sales have substantially increased the bid amounts to reflect their belief supported by *SFR Investments* that the offered HOA property was being sold free of the first deed of trust, thereby creating substantial excess proceeds as a result of the HOA foreclosure sales after satisfying the HOA lien for delinquent assessments and related charges and costs. The present case represents the most egregious presentation of inequitable facts related to such sales.

In this case, the TIMPA TRUST U/T/D March 3, 1999 (the *"Trust"*) by and through its Trustees, Frank Timpa (*"Frank"*) and Madelaine Timpa (*"Madelaine"*, and together with Frank as *"Trustees"*) entered into a loan secured by the real property located at 34 Innisbrook Ave, Las Vegas, Nevada (the *"Property"*) from Countrywide Home Loans, Inc. (*"Lender"*) in the original loan of $3,780,000.00, on June 12, 2006, that was recorded in the Clark County, Nevada Recorder's Office (the *"Loan"*) that was secured by a Deed of Trust against the Property. See Exhibit A. As of October 14, 2010, pursuant to Nevada Notice of Trustee's Sale filed by RECONTRUST COMPANY on behalf of the Lender, the Trust owed $4,752,378.45 on the Loan. See Exhibit B. In addition to the forgoing, the Trust failed to pay the Spanish Trails Master Association's (*"HOA"*) monthly assessments related to the Property causing the HOA to

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initiate foreclosure proceedings.

Ultimately, on November 7, 2014, the Property was sold by the HOA Trustee at the HOA foreclosure sale on November 7, 2014 (*"HOA Foreclosure Sale"*) to Plaintiff for the highest bid amount of $1,201,000.00. See Exhibit C. According to RR Response, the excess proceeds created by the sale to Plaintiff after deducting all sums due to the HOA and Red Rock Financial Services, Inc. (*"HOA Trustee"*) was $1,168,865.05 (the *"Excess Proceeds"*). According to Zillow, the current fair market value of the Property is approximately $2,656,580.00. See Exhibit D.

Based upon counsel's inquiry to Lender, the Trust owes the Lender on its Loan Secured by First Deed of Trust an amount in excess of $5,000,000.00. After the estimated sale proceeds of the Lender's proposed foreclosure sale, the Lender will incur a deficiency of approximately ($2,343,420.00). In addition to the forgoing, based upon the Court's Finding of Fact, Conclusions of Law and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgement (the *"Order"*), "Saticoy Bay purchased...the Property...subject to the deed of trust which remains a first position encumbrance against the Property". Order, pg 6, lines 12-14. Plaintiff is in the inequitable position of being the title holder of the Property valued at $2,656,580.00 with an outstanding Loan in excess of $5,000,000.00. Now to add insult to injury, the Trust that never paid the Lender and caused the HOA Foreclosure Sale hereby is asserting its opportunistic view that the Trust should receive a windfall of the Excess Proceeds. Fortunately, the law does not allow such an absurd result.

II.

STATEMENT OF CASE

Since *SFR Investments* decision and its progency, Plaintiff's bid amounts at the homeowner association lien foreclosure sales reflected the belief that the offered HOA Property was being sold free of the First Deed of Trust, thereby creating substantial Excess Proceeds from the HOA Foreclosure Sale after satisfying the HOA lien for delinquent assessments charges and costs. The present case represents the most egregious presentation of inequitable facts related to such sales. Defendants seek to rewrite centuries old lien law, common law, and codifications of

such concepts. From the Trust's most rudimentary legal analysis, the Trust interprets NRS 116.31164(3) to mandate that if the lender, that holds the interest in the Property pursuant to a first deed of trust, pays the Superpriority Lien Amount to the HOA Trustee, the Lender is no longer a junior, subordinate lienholder of the HOA, and as such, it is not entitled to any excess proceeds of a HOA foreclosure sale (the "*Flipping Interest*"). In using the Trust's analysis of a Flipping Interest, if a property has only one loan secured by a deed of trust, the first security deed of trust holder may only look to the Property for payment of its loan with claims for deficiency against the unit owner. Curiously, the Trust asserts that the Former Owner, who defaulted on the HOA and the Lender is to receive the windfall of the Excess Proceeds. However, if the Lender does not pay the HOA Superpriority Lien Amount, Plaintiff, the Trust and the Lender agree the Excess Proceeds would go to the Lender. Under the facts of this case, who and or what entity in priority is to receive the Excess Proceeds?

III.

STATEMENT OF FACTS

1. The Trust entered into the Loan secured by the Property Lender in the original loan of $3,780,000.00, on June 12, 2006, secured by the First Deed of Trust. See Exhibit A.
2. As of October 14, 2010, the Trust owed $4,752,378.45 on the Loan. See Exhibit B.
3. The Trust failed to pay the HOA the monthly assessments related to the Property.
4. The Property was sold at the HOA Foreclosure Sale on November 7, 2014 to Plaintiff for the highest bid amount of $1,201,000.00 creating the Excess Proceeds. See Exhibit C.
5. According to RR Response, the Excess Proceeds created by the sale to Plaintiff after deducting all sums due to the HOA and HOA Trustee was $1,168,865.05.
6. According to Zillow, the current fair market value of the Property is $2,656,580.00. See Exhibit D.
7. Based upon counsel's inquiry to Lender, the Trust owes the Lender in excess of $5,000,000.00 on the Loan secured by the First Deed of Trust.
8. After the estimated sale proceeds of the Lender's proposed foreclosure sale, the Lender will incur a deficiency of approximately ($2,343,420.00).

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

9. Based upon the Court's Finding of Fact, Conclusions of Law and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgement, "Saticoy Bay purchased...the Property...subject to the deed of trust which remains a first position encumbrance against the Property". Order, pg 6, lines 12-14.

10. On February 25th, 1984, the Master Declaration of Restrictions for Spanish Trail was recorded in the Clark County, State of Nevada recorder's Office that runs with the land and governs the Property. ("Master CC&R") See Exhibit E.

11. On or about August 17, 1988, the Declaration of restrictions for Estates West at Spanish Trail was recorded in Clark County, State of Nevada Recorder's Office that runs with the land and governs the Property. (*"Estates CC&R"*, and together with the Master CC&R, shall hereafter be referred to as the "*CC&Rs*") See Exhibit F.

12. As a result of the Trust's failure to pay its HOA assessments, on August 4, 2011, HOA Trustee, on behalf of the HOA, recorded a lien for delinquent assessments indicating Trust owed $5,543.92 (the "*HOA Lien*"). The HOA Lien indicated it was recorded "in accordance with" the CC&Rs. See Exhibit G.

13. At the time the HOA Lien was recorded, the HOA's assessments were $225.00 per month. There were no nuisance abatement charges. The superpriority amount of the HOA's Lien was $2,025.00 ($225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

14. From July 9, 2013 through December 13, 2013, the Trust made payments totaling $2,350.00. HOA Trustee accepted the payments and applied the payments to the delinquent assessments coming due December 1, 2010 through August 1, 2011.

15. On December 6, 2011, HOA Trustee recorded a Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments asserting the HOA was owed $8,312.52. See Exhibit F.

16. On December 23, 2011, BAC Home Loan Servicing ("*BANA*"), then the loan service, through its counsel Miles, Bauer, Bergstorm &Winters ("*Miles Bauer*") sent correspondence to HOA Trustee seeking to determine the Superpriority Lien Amount and

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Telephone: (702) 254-7775 • Facsimile (702) 228-7719

offered to "pay that sum upon adequate proof." HOA Trustee received the letter on December 27, 2011.

17. On January 26, 2012, HOA Trustee responded with a ledger indicating the total amount due was $9,255.44.

18. On February 10, 2012, Miles Bauer, by courier sent correspondence to HOA Trustee enclosing a $2,025.00 check. HOA Trustee received the check on February 10, 2012. HOA Trustee rejected the payment without explanation at the time of the rejection.

19. On September 15, 2014, the HOA Trustee on behalf of the HOA, recorded a Notice of Foreclosure Sale providing a sale date of October 8, 2014, with $20,309.95 being due as of September 15, 2014. See Exhibit I.

20. On November 7, 2014, Plaintiff purchased the Property at the HOA Foreclosure Sale conducted by HOA Trustee. See Exhibit C.

21. As a result of the HOA Payment and pursuant to the Order, Plaintiff purchased the Property subject to the first deed of trust recorded against the Property and held by the Bank. See Order.

22. The HOA Trustee has deposited the Excess Proceeds with the Court, pursuant to its Notice of Red Rock Financial Services' Deposit of Interpleaded Funds With the Court filed on July 9, 2019.

23. As a result of the HOA Payment and pursuant to the Order, Plaintiff purchased the Property subject to the first deed of trust recorded against the Property and held by the Bank.

19. On June 4, 2010, MERS, on behalf of BANA executed a Corporation Assignment of Deed of Trust Nevada to Thornburg Mortgage Securities Trust 2007-3, as Lender. See Exhibit J.

IV.

LEGAL ARGUMENT

A. STATEMENT OF THE LAW

Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact; and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court must first determine, in the light most favorable to the non-moving party "whether issues of material fact exist, thus precluding judgment by summary proceeding." *National Union Fire Ins. Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

The Supreme Court has indicated that Summary Judgment is a drastic remedy and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev. 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995). "Actions for declaratory relief are governed by the same liberal pleading standards that are applied in other civil actions." See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260-61 (1993). For purposes of this Opposition, the allegations of the Plaintiff's Complaint and the evidence must be viewed in the light most favorable to the Plaintiff. There is little, if any, dispute regarding the facts at hand. For example, there is no doubt that the Plaintiff purchased the Property at the HOA Foreclosure Sale and that there are substantial Excess Proceeds as a result from the HOA Foreclosure Sale that are currently deposited with this Court that must be addressed.

A. NRS 116.3116 DOES NOT DETERMINE "PRIORITY" FOR DISTRIBUTION OF EXCESS PROCEEDS.

The instant Motion demonstrates a fundamental lack of understanding of various aspects of NRS 116 et. seq., and its interplay with the date that creates the lien priority determination of the subordinate lien status related to the payment of Excess Proceeds, and therefore, the Flipping Interest theory must be rejected for the logical interpretation of the excess proceeds provisions of NRS 116.31164(3).

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• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

Using the version of NRS 116. *et. seq.* that was in force and effect at the time of the commencement of an action in this case and that was in effect as of the HOA Foreclosure Sale, NRS 116.31164(3)©, which governed the distribution of the proceeds generated from a HOA Foreclosure Sale, that provided that after conducting the HOA Foreclosure Sale and complying with the provisions of subsection 2 of NRS 116.31166, the HOA or the HOA Trustee shall:

> Apply the proceeds of the sale for the following purposes in the following order:
> (1) The reasonable expenses of sale;
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
> (3) Satisfaction of the association's lien;
> (4) Satisfaction in the order of priority of any subordinate claim of record; and
> (5) Remittance of any excess to the unit's owner.
>
> Emphasis added.

The Plaintiff interprets NRS 116.31164 to require that, after satisfying the expenses of sale; attorneys fees and other legal expenses; and the association's lien, all as enumerated in subsections (1), (2) and (3) of NRS 116.31164, any remaining funds must be paid to the Lender, the holder of any First Deed of Trust recorded against the Property first, then to any junior lien holders in priority of recording as of the filing of the Notice of Delinquent Assessment (NRS 116.31162 (1)(a)), in order to partially or wholly satisfy any such previously recorded security interest, and if any funds remain thereafter, then to the Trust. Contrary to the assertions of the Trust, the Plaintiff possesses the specific right to request this relief pursuant to NRS 30.030 and NRS 30.040(1), as set forth herein.

Plaintiff contends that the priority status of "any subordinate claim of record" as set forth in NRS 116.31164(3)(c)(4), is determined when the Notice of Delinquent Assessment is mailed by certified or registered mail to the Trust by the HOA Trustee. NRS 116.31162(1)(a). Plaintiff further asserts that any payment of the Superpriority Lien Amount at that time merely operates to protect the First Deed of Trust in maintaining its attachment to the Property and not being extinguished. For purposes of this analysis, the First Deed of Trust is always junior to the HOA Lien. If Superpriority Lien Amount of the HOA Lien is being paid to preserve the First Deed of

Trust, it operates to preserve the Property as security.

Pursuant to NRS116.3116(5), "recording of the declaration [CC&Rs] constitutes record notice and perfection of the lien, no further recordation of any claim of lien for assessment under this section [NRA 116.3116] is required." Pursuant to NRS 116.037, the "Declaration" is defined as *"Declaration"* means any instruments, however denominated, that create a common-interest community, including any amendment to these instruments." In other words, the HOA Lien is perfected upon the recording of the CC&Rs which all predate the Loan and the First Deed of Trust.

As set forth in SFR Investments, the Nevada Supreme Court provided that:

> To initiate foreclosure under *NRS 116.31162* through *NRS 116.31168*, a Nevada HOA must notify the owner of the delinquent assessments. *NRS 116.31162(1) (a).* if the owner does not pay within 30 days, the HOA may record a notice of default and election to sell. *NRS 116.31162(1)(b).* Where the UCIOA states general third-party notice requirements, *see* 1982 UCIOA § 3-116(j)(4) ("In the case of foreclosure under [insert reference to state power of sale statute], the association shall give reasonable notice of its action to all lien holders of the unit whose interest would be affected."), *NRS 116.31168* imposes specific timing and notice requirements. *SFR Investments, 334 P. 3d *410, 2014 Nev. LEXIS 88, **5.*

If the HOA is to foreclose the HOA Liens as if it were a deed of trust under NRS 107.090, and the CC&Rs determine the priority of the HOA Lien, then the First Deed of Trust is junior to the HOA Lien.

Pursuant to NRS 116.36116(1), the HOA Lien arises when assessments are due. NRS 116.3116(2) determines the HOA Lien from the service of a Notice of Delinquent Assessment as the 9 months immediately preceding an action to enforce a lien.

> "The provisions of *NRS 107.090*," governing notice to junior lienholders and others in deed-of-trust foreclosure sales, "apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed." *NRS 116.31168(1) SFR Investments, 334 P. 3d *410, 2014 Nev. LEXIS 88, **5.*

When determining "priority" of lien holders, based upon the CC&Rs recordation date, all liens and deed of trust holders shall be junior to the HOA Lien.

In SFR Investments, the Nevada Supreme Court specifically addressed the language specific to NRS 116.3116(2) as not being applicable to payment priorities or proceeds.

///

NRS 116.3116(2) does not speak in terms of *payment* priorities. It states that the

> HOA "lien ... is *prior to"* other liens and encumbrances *"except* ... [a] first security interest," then adds that, "The lien is *also prior to* [first] security interests" to the extent of nine months of unpaid HOA dues and maintenance and nuisance-abatement charges. *Ibid.* (emphases added). "Prior" refers to the lien, not payment or proceeds, and is used the same way in both sentences, a point the phrase *"[**11] also* prior to" drives home. And "priority lien" and "prior lien" mean the same thing, according to *Black's law Dictionary* 1008 (9th ed. 2009): "A lien that is superior to one or more other liens on the same property, usu. because it was perfected first." *SFR Investments, 334 P. 3d *412, 2014 Nev. LEXIS 88, **9.*

A careful reading of NRS 116.3116(2), specifically limits the analysis of NRS 116.3116(2) to that specific section and to all provisions of NRS 116 et. seq. by providing "lien under this section is prior to all other liens and encumbrances on a unit except..."

The use of the word "prior" does not mean "priority" that is delineated in NRS 116.31164(c)(4). If the drafters of the Uniform Common Interest Ownership Act of 1982 ("*UCIOA*") wanted to make the priority of the HOA Lien as a Flipping Interest, the UCIOA would not have chosen two distinct words with different meanings. The use of different descriptions of interests was intentional and logical.

A review of NRS 116 *et. seq.* is consistent with black letter lien law, payment priority, but it was intended to create a unique balancing of equities between lenders, HOAs and unit owners.

> "As to first deeds of trust, *NRS 116.3116(2)* thus splits an HOA lien into two **[**6]** pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all HOA fees or assessments, is subordinate to a first deed of trust." *SFR Investments, 334 P. 3d at 408, 2014 NEV LEXIS 88, 5-6.*

NRS 116.3116 Liens against units for assessments.

> 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
>
> 2. **A lien under this section is prior to all other liens and encumbrances on a unit except:**
>
> (a) Liens and encumbrances recorded before the recordation of the declaration

and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics or materialmen s liens, or the priority of liens for other assessments made by the association.

***

5. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

Emphasis added.

NRS 116.31166 - Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase money; title vested in purchaser without equity or right of redemption.

1. The recitals in a deed made pursuant to NRS 116.31164 of:

(a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;

(b) The elapsing of the 90 days; and

(c) The giving of notice of sale, are conclusive proof of the matters recited.

2. Such a deed containing those recitals is conclusive against the unit s former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit s owner without equity or right of redemption. (Added to NRS by 1991, 570; A 1993, 2373)

Emphasis added.

Defendants, individually and as trustees of the Trust seek to rewrite centuries old lien

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law, common law, and codifications of such concepts. From the Trust's most rudimentary legal analysis, the Trust interprets NRS 116.3116(2) to mandate that if the Lender, that holds the interest in the Property pursuant to a First Deed of Trust, pays the Superpriority Lien Amount to the HOA Trustee, the Lender is no longer a junior, subordinate lienholder of the HOA, and as such, it is not entitled to any Excess Proceeds of the HOA Foreclosure Sale (the "*Flipping Interest*"). In using the Trust's analysis, if a property has only one loan secured by deed of trust, the first security deed of trust holder may only look to the Property for the NRS 116 *et seq.* foreclosure proceeds and to the unit owner/Trust in a deficiency action to collect its Loan balance if any portion of its Loan is unsecured. Curiously, the Trust asserts that the Trust, who defaulted on the HOA and the Lender is to receive the windfall of the Excess Proceeds. However, if the Lender does not pay the HOA Superpriority Lien Amount, Plaintiff, the Trust and the Lender agree the Excess Proceeds would go to the Lender.

Pursuant to the Order, the Court determined that Plaintiff purchased its interest in the Property subject to the First Deed of Trust held by Lender. Therefore, Plaintiff contends that the Excess Proceeds in this matter should go to the Lender to be applied towards paying off the First Deed of Trust that secures the Property.

In order for NRS 116 et seq. to operate as an HOA foreclosure statute, it must not produce absurd results and follow the general tenets of lien law foreclosure. To infer such a departure from hundreds of years of jurisprudence, and to infer that it was the intent of the UCOIA drafters that such an absurd result when paying the Superpriority Lien Amount would cause the Lender to make a conscious decision to either pay that Superpriorty Lien Amount and maintain its First Deed of Trust as secured on Property that may be over uncumbered or allow the HOA Foreclosure Sale to proceed without paying the Superpriority Lien Amount and hope that the HOA Foreclosure Sale would yield a greater net return to the Lender. Essentially, the Flipping Interest theory requires the Lender to gamble.

The alternative analysis as set forth herein is the correct and logical analysis. NRS 116.3116(2) mearly provides a mechanism for the Lender to maintain its First Deed of Trust secured by the Property with the payment of Excess Proceeds going to the Lender as a pay down of its First Deed of Trust. Effectively, in each case the result is the same using that analysis with

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the UCOIA producing the same net results. If the Lender does not choose to pay the Superpriority Lien Amount, its First Deed of Trust coverts to a claim for Excess Proceeds. If the Lender pays the preseves its collateral, the Property, it would then reduce its unpaid balances on the Loan by the net Excess Proceeds of the HOA Foreclosure Sale. In that scenario the First Deet of Trust will always receive the Excess Proceeds and function as expected consittent with real property lien law.

As Plaintiff has contended throughout this process, it is the HOA and HOA Trustee's responsibility to pay the Lender the Excess Proceeds and so Lender can apply them to the Loan secured by the First Deed of Trust. As it relates to Excess Proceeds, same process and priority applicable to an NRS 107 sale dealing with priority and excess proceeds of the sale should be followed when dealing with an NRS 116 sale. Based upon the foregoing, it is clear that the Court should deny the Trusts Motion and order that that the Excess Proceeds be paid as directed by the Lender.

Thus, the following charges are specifically not subordinated to the First Deed of Trust as the Superpriority Lien Amount include: (1) any charges incurred by the association on a unit for maintenance and nuisance abatement pursuant to NRS 116.310312; (2) that portion of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to NRS 116.31162(1)(b); and (3) the costs incurred by the association to enforce the lien, subject to certain statutory limitations, including limits on the amounts that may be charged and certain superseding regulations that may be adopted by Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

In all cases, an HOA Lien Foreclosure Sale extinguishes all security interests that are subordinate to the First Deed of Trust. Plaintiff interprets NRS 116.31164 to require that the Excess Proceeds be distributed to the Lender to satisfy or partially satisfy the debt secured by the First Deed of Trust recorded against the Property.

As the SFR Investments court stated:

> The HOA lien statute, NRS 116.3116, is a creature of the Uniform Common Interest Ownership Act of 1982, § 3-116, 7 U.L.A., part II 121-24 (2009) (amended 1994, 2008) (UCIOA), which Nevada adopted in 1991, 1991 Nev. Stat., ch. 245, § 1-128, at 535-79, and codified as NRS Chapter 116. *See* NRS 116.001. One purpose of adopting a Uniform Act like the UCIOA is "to make uniform the law with respect to [its] subject [matter] among states enacting it." NRS 116.1109(2). Thus, in addition to the usual tools of statutory construction, we have available the comments of the National Conference of Commissioners on Uniform State Laws, national commentary, and other states' [**4] cases to explicate NRS Chapter 116. 2A Nomian J. Singer & Shambie Singer, *Sutherland Statutory Construction* § 48:11, at 603-08 (7th ed. 2014); *see* Casey v. Wells Fargo Bank, N.A., 128 Nev. , , 290 P. 3d 265, 268 (2012).

In interpreting the UCIOA, the SFR Investments court stated that:

> The Uniform [**13] Law Commission (ULC) has established a Joint Editorial Board for Uniform Real Property Acts (JEB), made up of members from the ULC; the ABA Section of Real Property, Probate and Trust Law; and the American College of Real Estate Lawyers, which "is responsible for monitoring all uniform real property acts," of which the UCIOA is one, http://.www.uniformlawcommission.com/Committee.aspx?title=Joint Editorial Board for Uniform Real Property Acts. The JEB's 2013 report entitled. *The Six-Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act*, also supports that § 3-116(b) establishes a true priority lien. *Id at 334 P.3d at 314, 2014 LEXIS 88, *13.* (the *"JEB Report"*)

By way of clarification, the JEB Report provides some guidance. See Exhibit K. In the JEB Report, the author reviews various senarios regarding the prior lien language of what is NRS 116.3116(2), but this example is instructive becasue it presumes that the HOA Foreclosure Sale does not generate enough proceeds to pay off the First Deed of Trust after the Lender paying the Superpriority Lien Amount.

> **Example Three. Because of a dispute over PPOA's enactment of parking rules and imposition of parking files, Homeowner withheld payment of the monthly installment of assessments. After six months, PPOA brings an action to enforce its lien for the six preceding months of unpaid assessments and to collect fines (joining Bank as party). Homeowner continues to withhold assessments. Six months later, while the first action is pending, PPOA bring second action to enforce another lien for the most recent six months of unpaid assessments and fines. Again, PPOA joins Bank as party and seeks to establish its lien priority over Bank for the additional six months of unpaid assessments. Bank objects that PPOA is entitled to only one six-month limited priority lien and cannot extend its lien priority through successive actions.**

> Thus, in Example Three, Bank can redeem its first mortgage lien from the burden of PPOA's limited priority lien by payment of $1,500 (reflecting the immediately preceding six months of unpaid assessments) plus the costs (including reasonable attorney's fees) incurred by PPOA in bringing the action to enforce its lien).[11] Once Bank has paid this amount to PPOA, PPOA's foreclosure sale to enforce the balance of unpaid assessments would transfer title to the unit/parcel subject to the remaining balance of Bank's first mortgage. PPOA's lien for the unpaid assessment balance would transfer to the proceeds of the sale (if there are any proceeds). [12]
>
> ***
>
> [12] If the value of the unit/parcel is less than the remaining balance due to Bank, of course, PPOA will have no substantial incentive to proceed with the foreclosure sale. No third party will agree to purchase the unit/parcel without an agreement by Bank to reduce the mortgage loan balance. PPOA could acquire the unit by credit bid, but this would obligate PPOA to pay ongoing assessments - accentuating the burden on the rest of the residents of the community, who will have to bear assessment increases or service decreases until PPOA could re-sell the unit/parcel.

The Plaintiff is directly affected by the failure of the HOA, by and through its agent, the HOA Trustee, for failure to make the payment of the Excess Proceeds to the Lender consistent with this analysis, and Plaintiff has a significant interest in assuring that the Excess Proceeds will be properly distributed.

Non-judicial foreclosure sales commonly enforce substantially identical statutory schemes for the distribution of foreclosure sale proceeds such as set forth in NRS 116.31164, but in all cases the proceeds are paid to secured interest holders in order of priority as limited by the availability, and extent. Again, since the HOA Lien is foreclosed as if it were in deed of truist, the HOA's Lien priotity dated from the recording of the CC&Rs and liens would be junior to the HOA Lien

Plaintiff is a proper party and has rights in the Excess Proceeds. Pursuant to NRS 30.040, the Plaintiff's rights, status and legal relations are and will be greatly affected by the manner in which the Excess Proceeds are distributed, because all Excess Proceeds paid to the Lender as holder of the First Deed of Trust recorded against the Property purchased by Plaintiff will directly reduce the Loan that remains secured by the First Deed of Trust with a first security interest in the Property after the HOA Foreclosure Sale. Any funds paid to subordinate lien holders or the unit owner in lieu of the holder of the First Deed of Trust would constitute a windfall to which the subordinate lien holder and/or the Trust should not be entitled. Junior lienholders would be prejudiced by the payment of any Excess

Proceeds to the Trust of prior to the satisfaction of all security interests recorded against the applicable real property in order of priority.

B. PLAINTIFF SEEKS DECLARATORY JUDGMENT FROM THIS COURT WHICH ANSWERS A QUESTION OF STATUTORY CONSTRUCTION OF NRS CHAPTER 116 AND SPECIFICALLY NRS 116.31164

A controversy exists between Plaintiff and Defendants regarding the construction and interpretation of NRS 116.31164 and the manner in which the Excess Proceeds should be distributed. The Plaintiff is entitled to a declaratory judgment interpreting NRS 116.31164 and determining that after satisfying the expenses of sale; attorney's fees and other legal expenses; and the association's lien, all as enumerated in subsections (1), (2) and (3) of NRS 116.31164(3), any Excess Proceeds must be paid to the Lender to satisfy Loan secured by the Deed of Trust recorded against the Property in order to partially or wholly satisfy such debt.

The Plaintiff requests that this Court review and interpret NRS Chapter 116, and specifically NRS 116.31164, and that it determine to whom Excess Procceeds should be disbursed according to the statute when the Superpriority Lien Amount has been paid to the HOA Trustee as in this case. Plaintiff is specifically entitled to request this relief by NRS 30.040(1), which provides as follows:

> Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.
>
> See NRS 30.040.

In this case, Plaintiff is a "person" as defined by NRS 30.020. As pleaded in its Complaint, Plaintiff's "rights, status or other legal relations are affected by a statute," specifically NRS Chapter 116.

Pursuant to its Motion, the Trust argues that it should receive the Excess Proceeds. On the contrary, Plaintiff is simply asking that this Court to interpret NRS Chapter 116 and that it make a determination as to what the language of the statute means regarding the priority of distribution of Excess Proceeds. Plaintiff provided the purchase price of $1,201,000.00 that created the Excess Proceeds, and it is subject to the First Deed of Trust pursuant to the Order. As a result the Plaintiff has

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Telephone: (702) 254-7775 • Facsimile (702) 228-7719

the right to assert this claim for the Excess Proceeds since it directly affects the balance of the Loan that the Plaintiff must assume with the Property and affects its rights to the Proprty. Even after the payment of the Superpriority Lien Amount, there still remains a subpriority portion of the Loan secured by the First Deed of Trust.

1. **NRS 116.31164(3) does provide that surplus proceeds/Excess Proceeds be paid to subordinate lien holders.**

As discussed previously, this issue revolves around when does the determination of a subordinate lienholder occur? Based upon *SFR Investments,* if any sum is due to the HOA, all liens are subordinate to the HOA Lien/Superpriority Lien Amount, and if the Superpriority Lien Amount is paid prior to the HOA Foreclosure Sale, the First Deed of Trust will not be extinguished but would recieve the Excess Proceeds. Under the Trust's analysis, if the Superpriority Lien Amount is paid, is it appropriate to change the First Deed of Trust's priority and to deprive Lender of receiving the Excess Proceeds, because it chose to pay the Superpriority Lien Amount? The priority of the liens should never change as it relates to Excess Proceeds, it is only by paying the Superpriority Lien Amount that the Lender preserves its claim to the Property. If the Lender does not pay the Superpriority Lien Amount, the Lender's collateral would attach to the Excess Proceeds.

After payment of the Superpriority Lien Amount, the remainder of the Loan becomes a subpriority lien. If a subpriority lien remains, then the Lender should be considered a "subordinate claim of record" at the time of the Notice of Delinquent assessment that does not change at the time of the HOA Foreclosure Sale.

Pursuant to NRS 107.200-220, Plaintiff is a successor-in-interest in the Property which is subject to the Lender's Deed of Trust. Under NRS 107.200-220, Plaintiff is entitled to a payoff with reduction by the application of the Excess Proceeds.

NRS 107.220 reads in pertinent part as follows:

> Persons authorized to request statement from beneficiary; proof of identity of successor in interest.
> 1. A statement described in NRS 107.200 or 107.210 may be requested by:
> (a) The grantor of, or a successor in interest in, the property which is the subject of the deed of trust;
> (b) A person who has a subordinate lien or encumbrance of record on the property which is secured by the deed of trust;

Plaintiff, as the subsequent purchaser of the Property, is a "successor in interest in the Property which is subject of the deed of trust." As such, under NRS 107.220, Plaintiff is entitled to deal with the Lender on the Trust's account and request the relief sought herein where the Plaintiff seeks to have the Excess Proceeds applied to the Loan.

CONCLUSION

Based upon the foregoing analysis, the Plaintiff respectfully requests that the Court deny the Trust's Motion in its entirety and rule consistent with the analysis provided for in this Opposition and order the Excess Proceeds be paid for the benefit of Lender as the Lender so directs.

DATED this 25th day of July, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorney for Plaintiff

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 25th day of July, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's eflex e-file and serve system.

LEACH JOHNSON SONG & GRUCHOW
Robin Callaway - rcallaway@leachjohnson.com
rcallaway@lkglawfirm.com
Patty Guttierez - pgutierrez@leachjohnson.com
pgutierrez@lkglawfirm.com
Ryan Hastings - rhastings@leachjohnson.com
rhastings@lkglawfirm.com
Gina LaCascia - glacascia@leachjohnson.com
glacascia@lkglawfirm.com
Sean Anderson - sanderson@leachjohnson.com
sanderson@lkglawfirm.com

OLYMPIA LAW, P.C.
Bryan Naddafi, Esq. - bryan@olympialawpc.com

LAW OFFICES OF DONALD WILLIAMS
Donald H. Williams, Esq. - dwilliams@dhwlawlv.com
Robin Gullo - rgullo@dhwlawlv.com

AKERMAN, LLP
Akerman LLP - AkermanLAS@akerman.com
Melanie Morgan, Esq. - melanie.morgan@akerman.com
Jared Sechrist - jared.sechrist@akerman.com
Thera A. Cooper, Esq. - thera.cooper@akerman.com

LAW OFFICE OF TRAVIS AKIN
Travis Akin, Esq. - travisakin8@gmail.com

KOCH &SCOW LLC
David R. Koch, Esq. - dkoch@kochscow.com
Staff - aeshenbaugh@kochscow.com
Steven B. Scow, Esq. - sscow@kochscow.com

LAW OFFICES OF GREGORY J. WALCH
Gregory Walch - greg.walch@lvvwd.com

Eserve Contact - office@bohnlawfirm.com
Venicia Considine - vconsidine@lacsn.org
Brian Naddifi - bryan@avalonig.com

___ VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

___ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

___ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Kristi L. Hewes
An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT A

20060612-0001581

Fee: $40.00
N/C Fee: $0.00

06/12/2006 09:05:04
T20060102569
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.

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

COUNTRYWIDE HOME LOANS, INC.

1455 FRAZEE ROAD #102
SAN DIEGO
CA 92108

[Space Above This Line For Recording Data]

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

23991

1383443350000001006A

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]:

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

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 THRITEEN (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

any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

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

reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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,

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

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 (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 2, 2006 by

Frank A. Timpa.

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

TIFFANY L. BARKLEY
Notary Public State of Nevada
No. 04-91213-1
My appt. exp. Aug. 10, 2008

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

* 2 3 9 9 1 *

* 1 3 8 3 4 4 3 3 5 0 0 0 D 0 1 0 0 7 R *

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: [signature]

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:_____

DOC ID #: [redacted]

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

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 [redacted]
[Escrow/Closing #] [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this SECOND day of JUNE, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.

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

34 Innisbrook Ave
Las Vegas, NV 89113-1225
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

DOC ID #: [redacted]

2. INTEREST

(A) Interest Rate

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

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 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 Interst 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.

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.

DOC ID #: [redacted]

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my Minimum Payment would cause me to exceed that limit, I will instead pay a new Minimum Payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the tenth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, the Note Holder may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." The Payment Options are calculated using the new interest rate in accordance with Section 2(D). I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

DOC ID #: [redacted]

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

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

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

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

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

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

DOC ID #: [redacted]

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

FRANK A. TIMPA -Borrower

-Borrower

-Borrower

-Borrower

EXHIBIT B

Inst #: 201010140002560
Fees: $15.00
N/C Fee: $0.00
10/14/2010 01:25:56 PM
Receipt #: 540309
Requestor:
CLARK RECORDING SERVICE
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, RGV-D7-450
Richardson, TX 75082

TS No. 08-0061701
Title Order No. 3766435

APN No.:163-28-614-007

NEVADA NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 06/02/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that RECONTRUST COMPANY, N.A., as duly appointed trustee pursuant to the Deed of Trust executed by FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE PROPERTY, dated 06/02/2006 and recorded 06/12/2006, as Instrument No. 0001581, in Book 20060612, Page , of Official Records in the office of the County Recorder of CLARK County, State of Nevada, will sell on 11/01/2010 at 10:00 AM, at at the front entrance to the Nevada Legal News, 930 S. Fourth St., Las Vegas, NV at public auction, to the highest bidder for cash(in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and as more fully described in the above referenced Deed of Trust. The street address and other common designation, if any, of the real property described above is purported to be: 34 INNISBROOK AVE, Las Vegas, NV 89113-1225. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The total amount of the unpaid balance with interest thereon of the obligation secured by the property to be sold plus reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $4,752,378.45. It is possible that at the time of sale the opening bid may be less than the total indebtedness due.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender othere than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter or right. Said sale will be made, in an "AS IS" condition, but without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid principal of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust.

DATED: October 12, 2010
RECONTRUST COMPANY NA, Trustee
2380 Performance Dr., TX 2-985-07-03
Richardson, TX 75082
Phone/Sale Information (800)281-8219

By: Melisa Martin
Melisa Martin, Authorized Signer

RECONTRUST COMPANY NA is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

EXHIBIT C

Inst #: 20141110-0002475
Fees: $18.00 N/C Fee: $25.00
RPTT: $6125.10 Ex: #
11/10/2014 11:49:45 AM
Receipt #: 2215809
Requestor:
RESOURCES GROUP
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Mail Tax statement to:
Saticoy Bay LLC, Series 34 Innisbrook
900 S. Las Vegas Blvd., #810
Las Vegas, NV 89101

APN # 163-28-614-007

FORECLOSURE DEED

The undersigned declares: $6125.10

Red Rock Financial Services, herein called agent for (Spanish Trail Master Association), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 08/04/2011 as instrument number 0002324 Book 20110804, in Clark County. The previous owner as reflected on said lien is TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN). Red Rock Financial Services as agent for Spanish Trail Master Association does hereby grant and convey, but without warranty expressed or implied to: **Saticoy Bay LLC, Series 34 Innisbrook** (herein called grantee), pursuant to NRS 116.3116 through NRS 116.31168, all its right, title and interest in and to that certain property legally described as: ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 which is commonly known as **34 Innisbrook Ave Las Vegas, NV 89113.**

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Spanish Trail Master Association governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/06/2011 as instrument number 0001106 Book 20111206 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Spanish Trail Master Association at public auction on **11/07/2014**, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale became the purchaser of said property and paid therefore to said agent the amount bid **$1,201,000.00** in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

Dessie Conaway
RECORDER

CERTIFIED COPY, THIS DOCUMENT IS A TRUE AND CORRECT COPY OF THE RECORDED DOCUMENT MINUS ANY REDACTED PORTIONS

Dated: November 10, 2014

By: Christie Marling, employee of Red Rock Financial Services, agent for Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On November 10, 2014, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

When Recorded Mail To: Saticoy Bay LLC, Series 34 Innisbrook
900 S. Las Vegas Blvd., #810
Las Vegas, NV 89101

JULIA THOMPSON
Notary Public State of Nevada
No. 08-7932-1
My appt. exp. Sept. 4, 2016

Sept 4 2016

Dessie Conway
RECORDER

CERTIFIED COPY, THIS DOCUMENT IS A TRUE AND CORRECT COPY OF THE RECORDED DOCUMENT MINUS ANY REDACTED PORTIONS

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number (s)

a) 163-28-614-007
b)
c)
d)

2. Type of Property:

a) ☐	Vacant Land	b)	☑	Single Fam Res.
c) ☐	Condo/Twnhse	d)	☐	2-4 Plex
e) ☐	Apt. Bldg.	f)	☐	Comm'l/Ind'l
g) ☐	Agricultural	h)	☐	Mobile Home
i) ☐	Other			

FOR RECORDERS OPTIONAL USE ONLY
Notes:

3. Total Value/Sales Price of Property: $ 1,201,000.00
Deed In Lieu of Foreclosure Only (value of property) $
Transfer Tax Value: $ 1,201,000.00
Real Property Transfer Tax Due: $ 6125.10

4. If Exemption Claimed:
a. Transfer Tax Exemption, per NRS 375.090, Section:
b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 376.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ **Capacity** AGENT
Signature _____ **Capacity** _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Red Rock Financial Services	**Print Name:**	Saticoy Bay LLC, Series 34 Innisbrook
Address:	4775 West Teco Ave #140	**Address:**	900 S. Las Vegas Blvd., #810
City:	Las Vegas	**City:**	Las Vegas
State:	NV **Zip:** 89118	**State:**	NV **Zip:** 89101

COMPANY/PERSON REQUESTING RECORDING
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Renown Property LLC **Escrow #**
Address: 900 S Las Vegas Blvd #810
City: LV **State:** NV **Zip:** 89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

Debbie Conaway
RECORDER

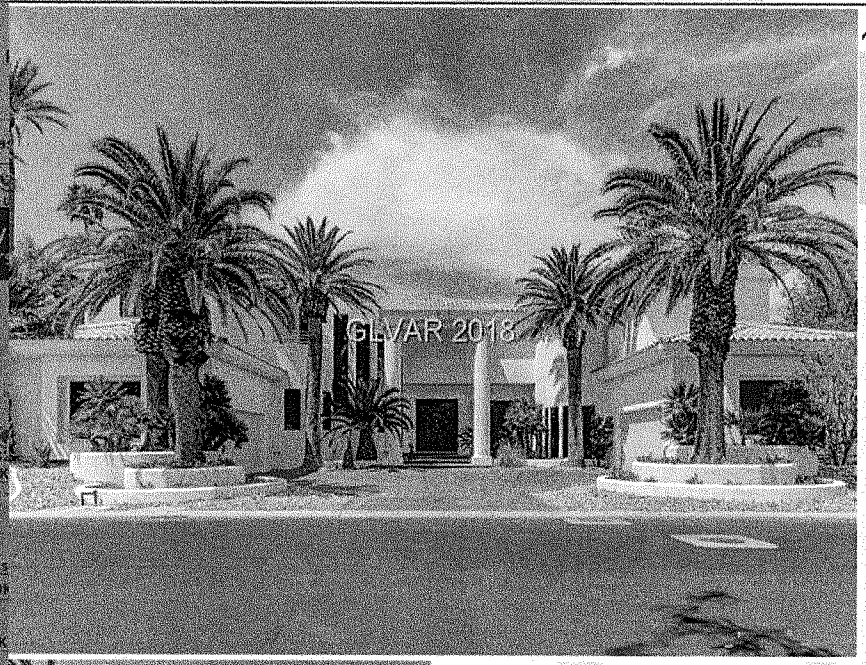
CERTIFIED COPY, THIS DOCUMENT IS A TRUE AND CORRECT COPY OF THE RECORDED DOCUMENT MINUS ANY REDACTED PORTIONS

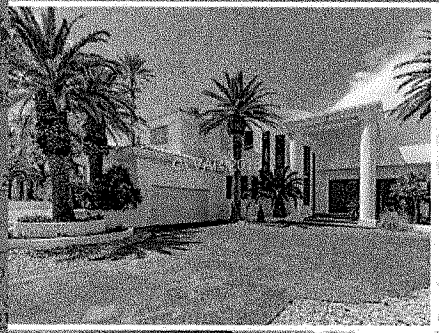
EXHIBIT D

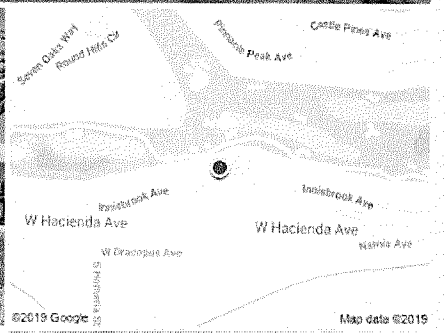
https://www.zillow.com/homedetails/34-Innisbrook-Ave-Las-Vegas-NV Zillow, Inc. [US] 34 Innisbrook Ave, Las Vega...

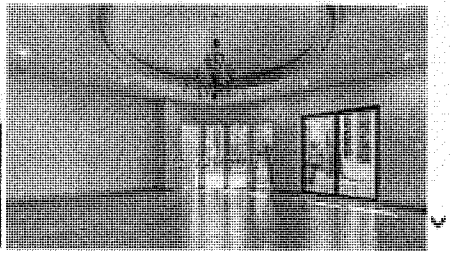
Buy

Only filters









Help

Saved Ho

Zillow

Saved Share More

$2,656,580 5 bd | 8 ba | 11,354 sqft

34 Innisbrook Ave, Las Vegas, NV 89113

Get more info

Foreclosure information

3/24/2019	**Home in default**	
6/11/2006	**Loan issued**	**$3,780,000**

See more foreclosure information

Home value

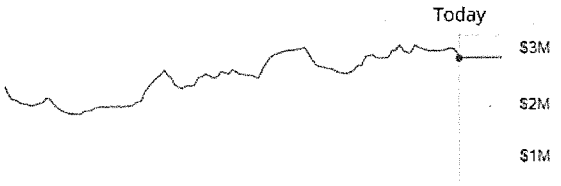
Zestimate®

$2,796,400

Estimated sales range: $2.57M - $3.24M

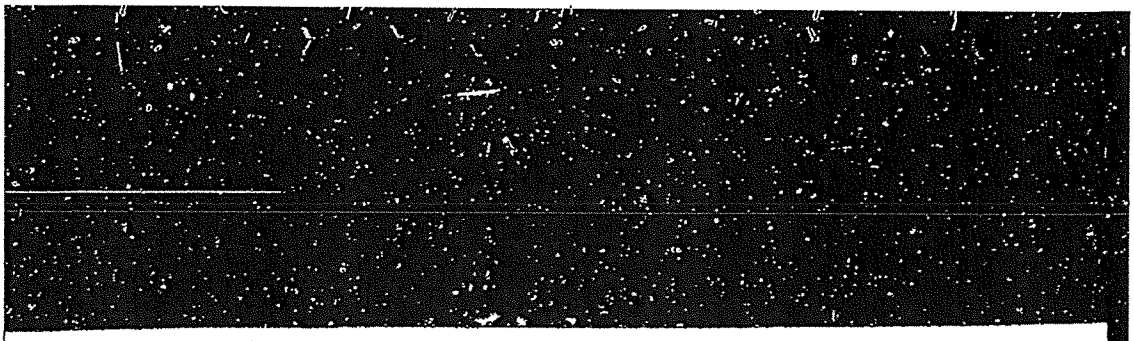
Zestimate history

This home	Spring Valley	Las Vegas
$2.8M	$275.5K	$274.5K



JA1942

EXHIBIT E



AMENDED

B 1 1 2 0 0 7 1 5

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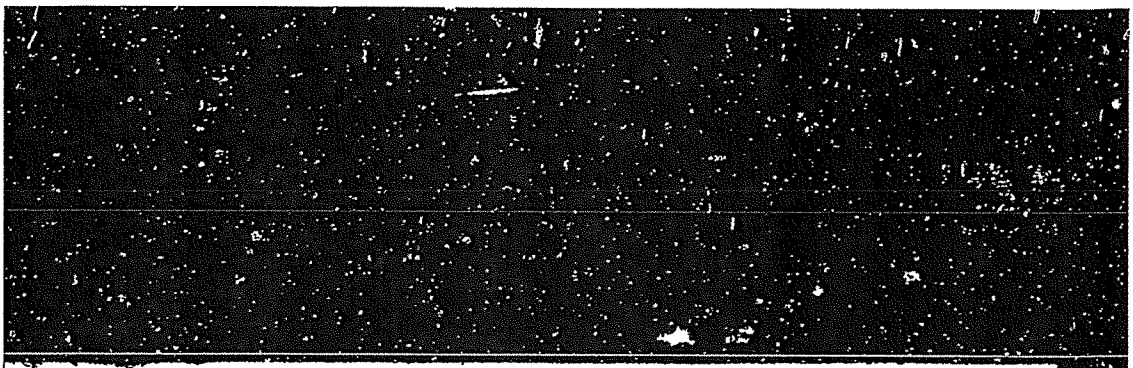
Recording Requested By
and
When Recorded Return To:

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

MASTER
DECLARATION OF RESTRICTIONS
FOR
SPANISH TRAIL

RERECORDED TO CORRECT LEGAL DESCRIPTION ON EXHIBIT "A"



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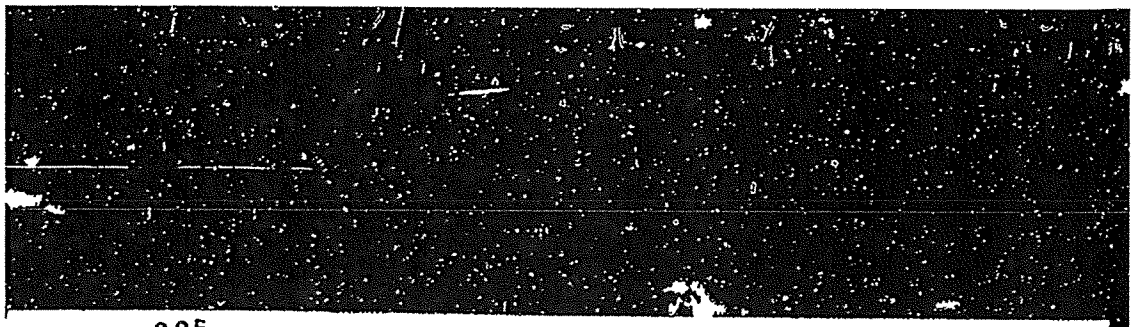

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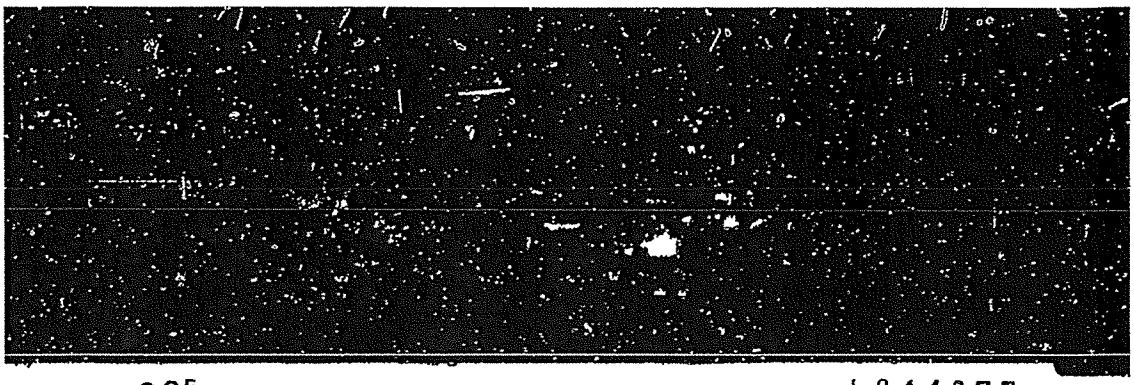

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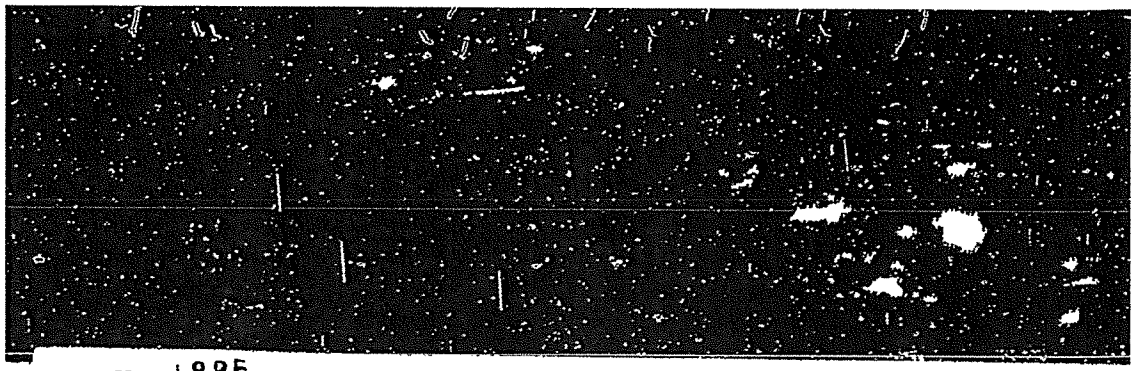

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MASTER
DECLARATION OF RESTRICTIONS
Spanish Trail

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

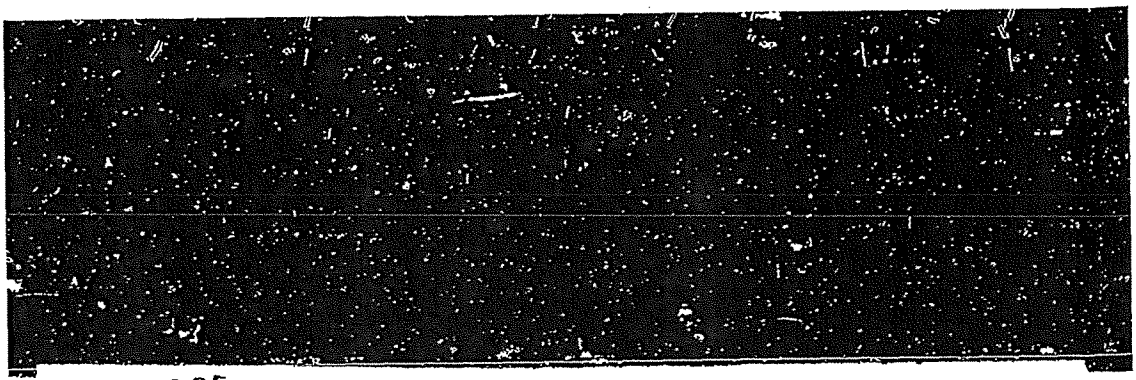
C. The first Phase of development of the Planned Unit Development Properties consists of 58 Lots described as follows:

> 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



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 sec ty system repair purposes over, under, upon and across Spanish Trail Lane, as shown on ES ES 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

BOOK 1885 1844877

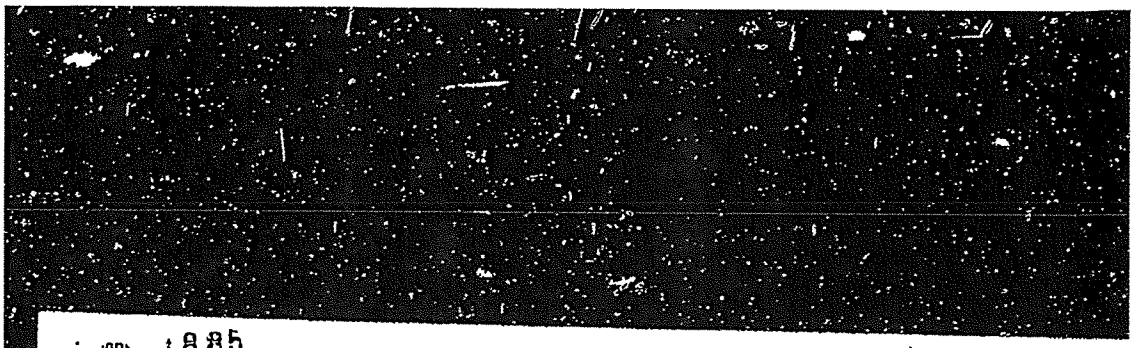
County, Nevada on MARCH 1, 1984 in Book 31 of Plats, Page 9.

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 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 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. "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.

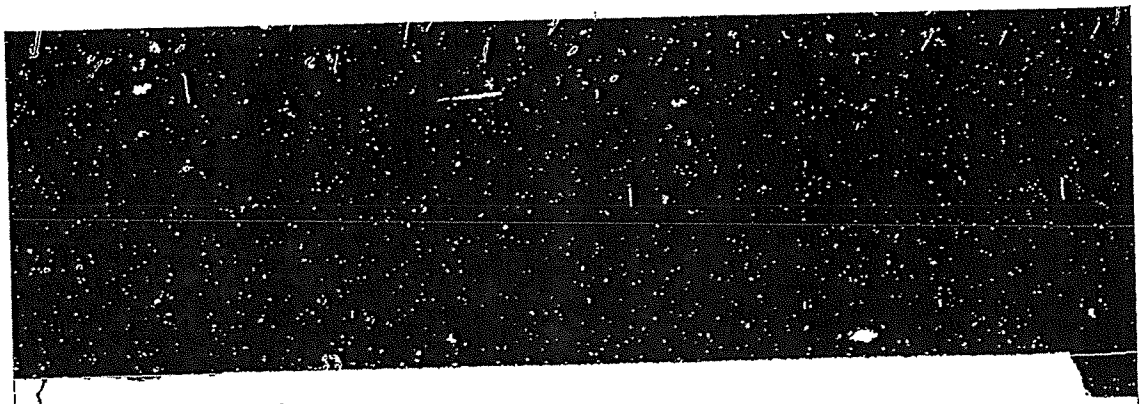
Section 4. "Declaration" shall mean and refer to this enabling Master Declaration of Restrictions as it may from time to time be amended.

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.



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:

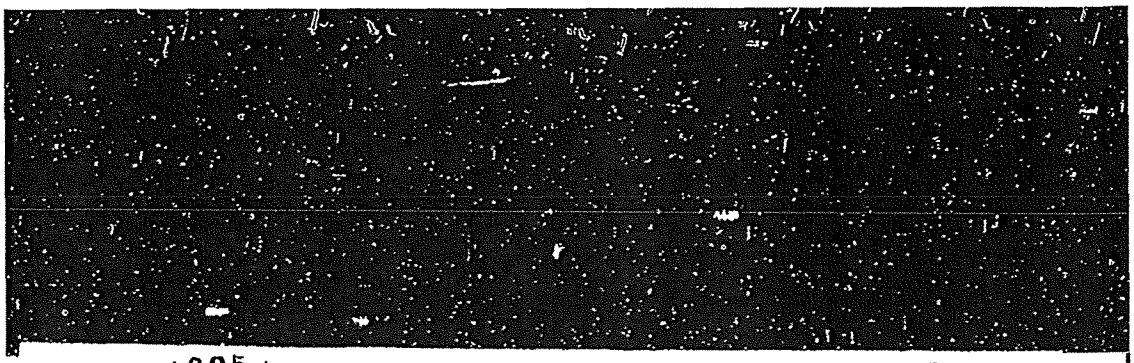
> Lots 1 through 58, inclusive, of ESTATES AT SPANISH TRAIL UNIT 1 filed with the County Recorder of Clark County, Nevada, on MARCH 1, 1984 in Book 31 of Plats, Page 9.

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:



(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.

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

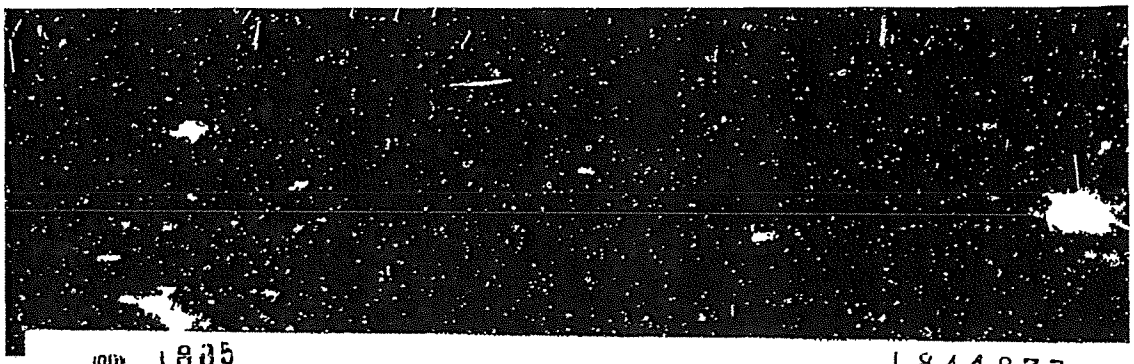
MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION

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.



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.

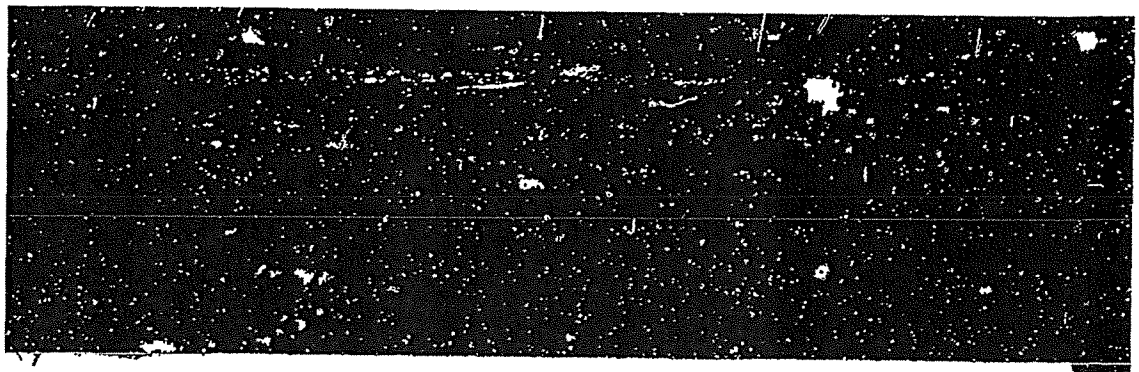
Section 4. No Degradation of System. No Owner shall do anything which shall degrade the effectiveness of the security system and each Owner shall exercise the greatest care to not lose any card key, remote control device or similar equipment which might be used with the security system.

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 criminial activity.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION

Section 1. Creation of Liens. The Declarant, for each Lot owned, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Master Association: (1) regular assessments, and (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



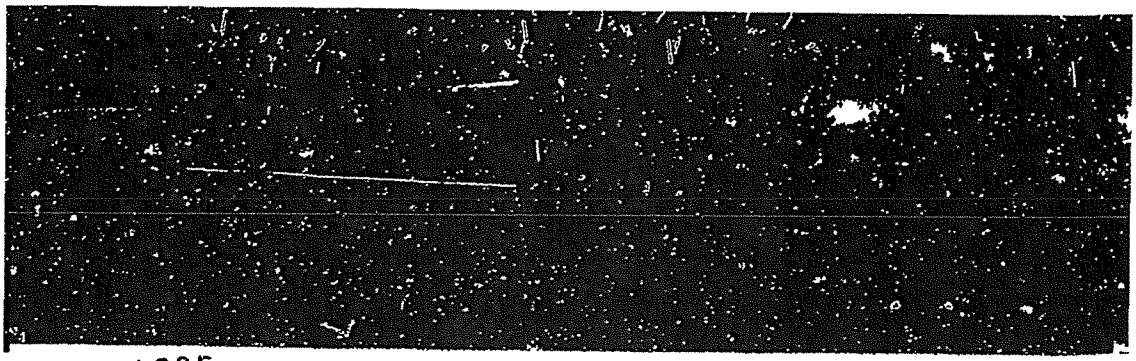
be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Late payment charges shall be in the amount provided for in the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

Section 2. Purpose of Assessments. The assessments levied by the 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 Cou , 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



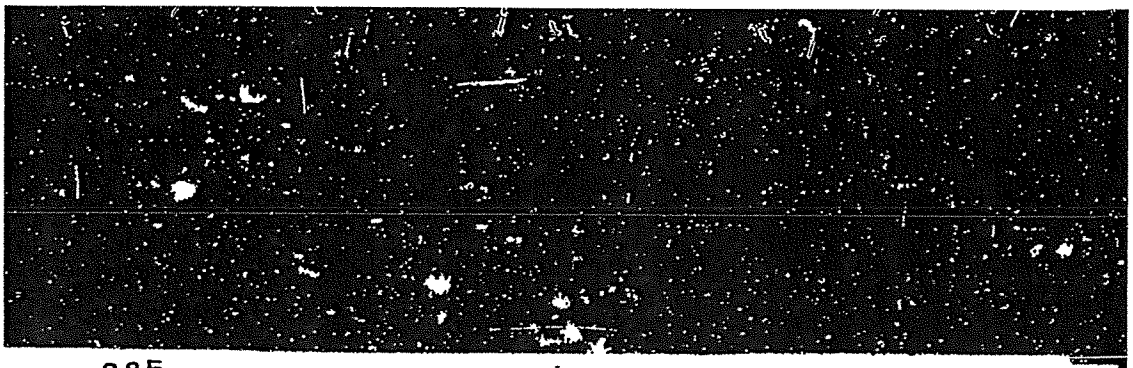
personally obligated to pay the same, and in addition thereto or in lieu thereof, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Master Association Property or abandonment of his Lot.

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



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.

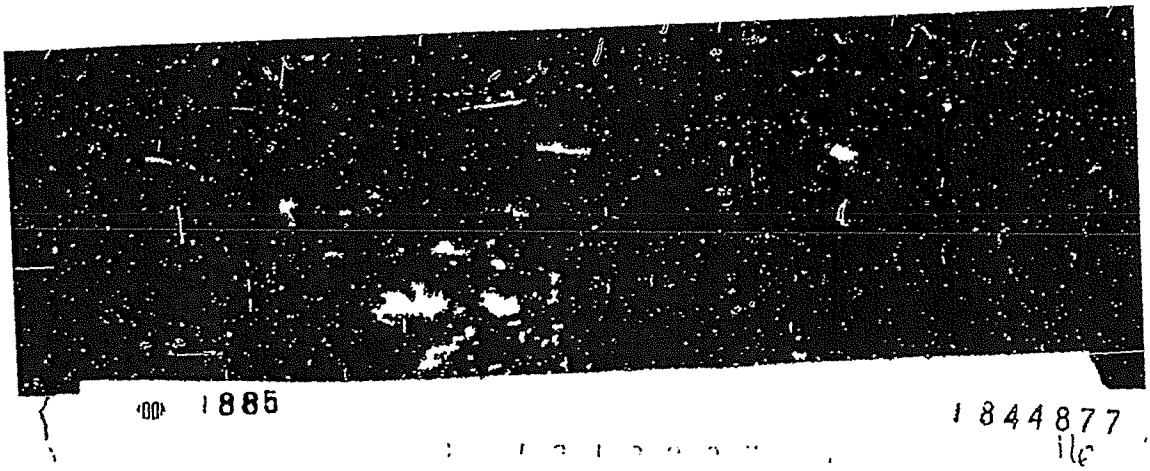
Section 7. Trust Account. The Master Association shall immediately deposit the regular and special assessments it receives in a trust account maintained by it with a bank or recognized depository in the State of Nevada.

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 for submittal to the ARC as well as architectural, landscaping and other applicable

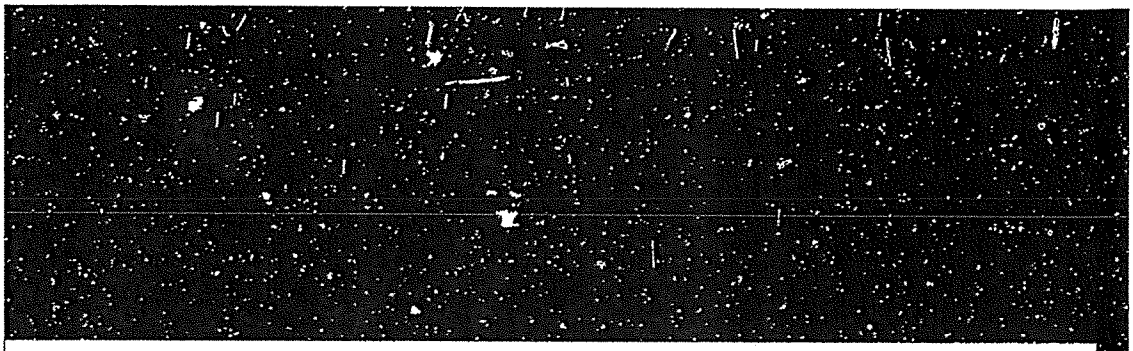


substantive specifications. A reasonable fee may be imposed or applicants for review by the ARC. Failure to comply with the requirements for ARC approval shall be deemed sufficient basis for the ARC to refuse to review the submission. In the event the ARC fails to approve or disapprove the location, 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



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.

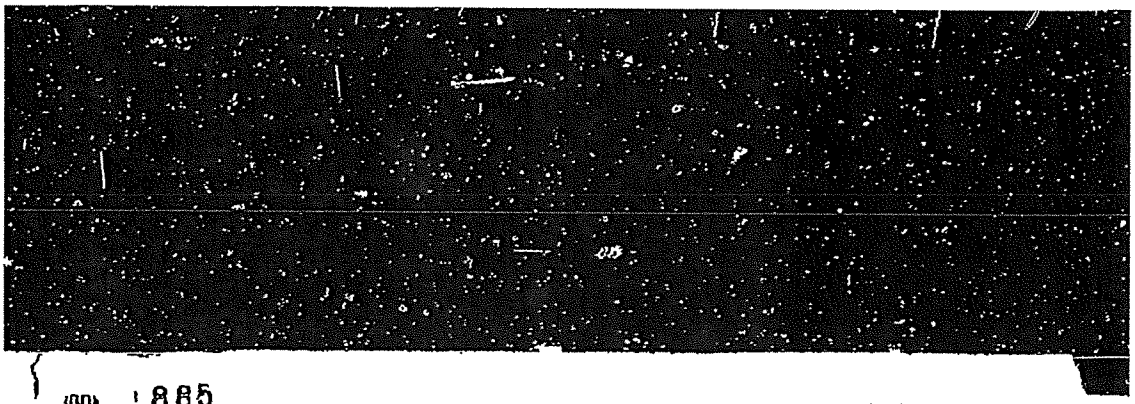
Section 6. Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(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.



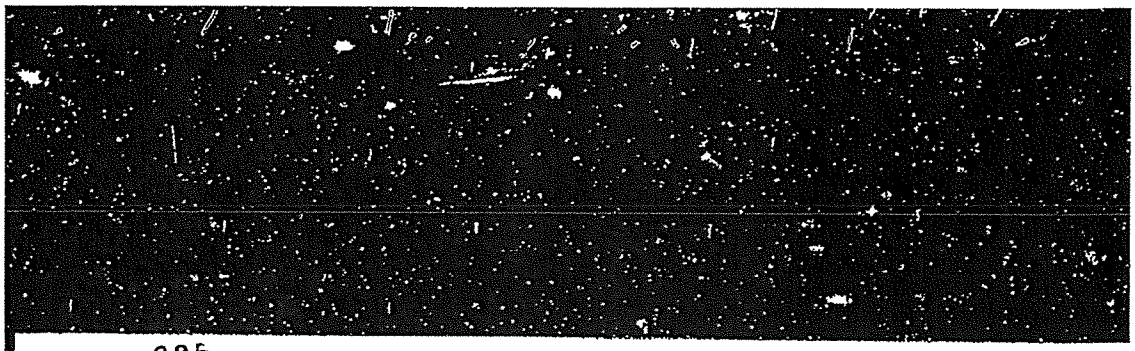
Section 7. No Waiver. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent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



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.

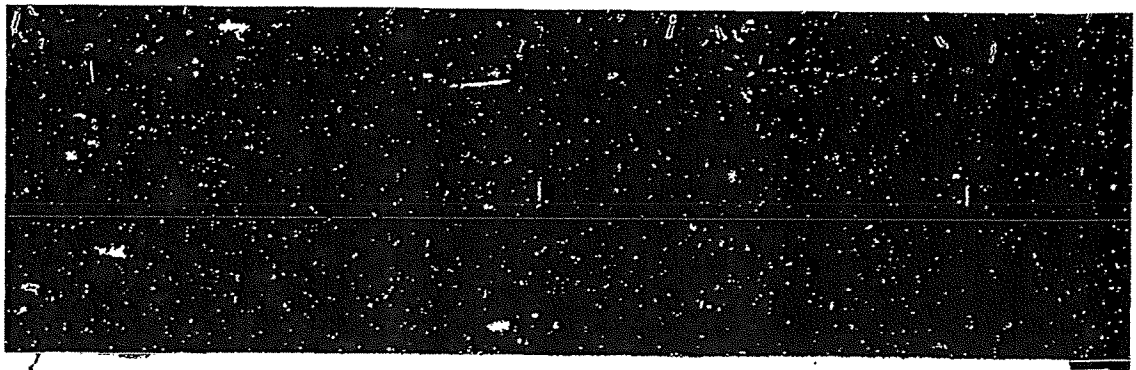
ARTICLE VII

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



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.

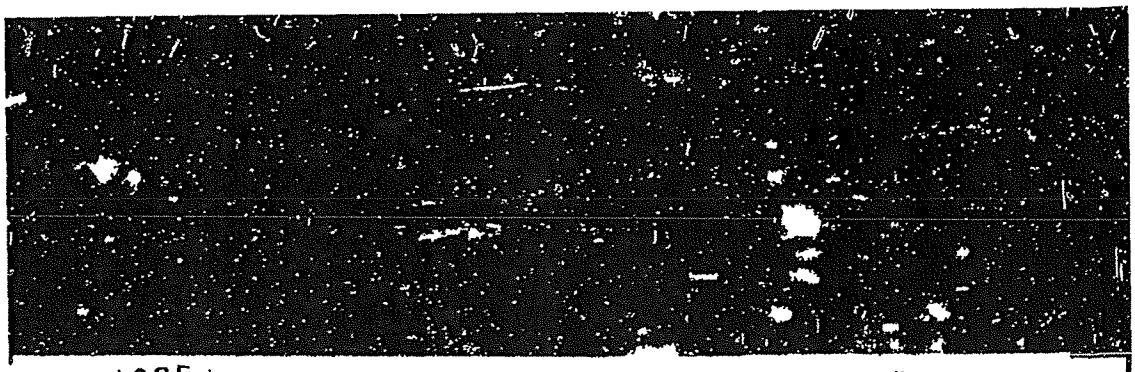
Section 5. Other Insurance; Annual Review. The Master Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, errors and omission insurance and blanket policies of hazard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



ARTICLE IX

MAINTENANCE 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.

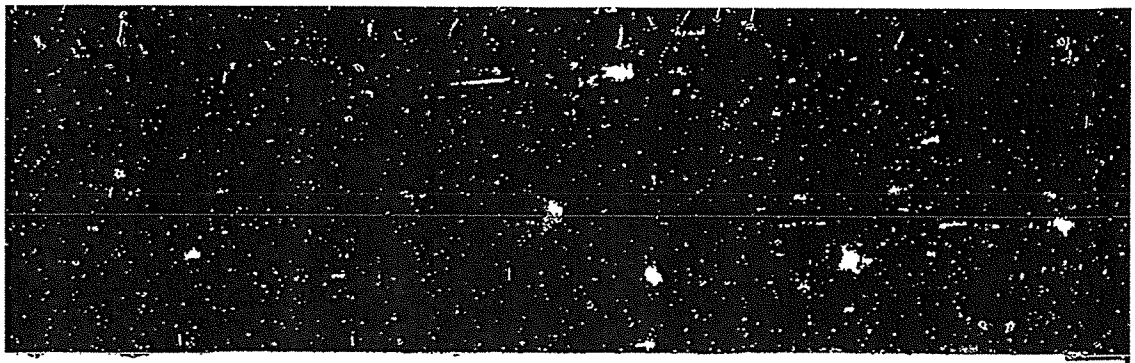
Section 2. Owner Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his Lot and improvements thereon, including, but not limited to, any fence which is on the Lot line and the residence located on his Lot. The Owner of each Lot shall water, weed, maintain and 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 X

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 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 Mortgagees. 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.



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 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 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.

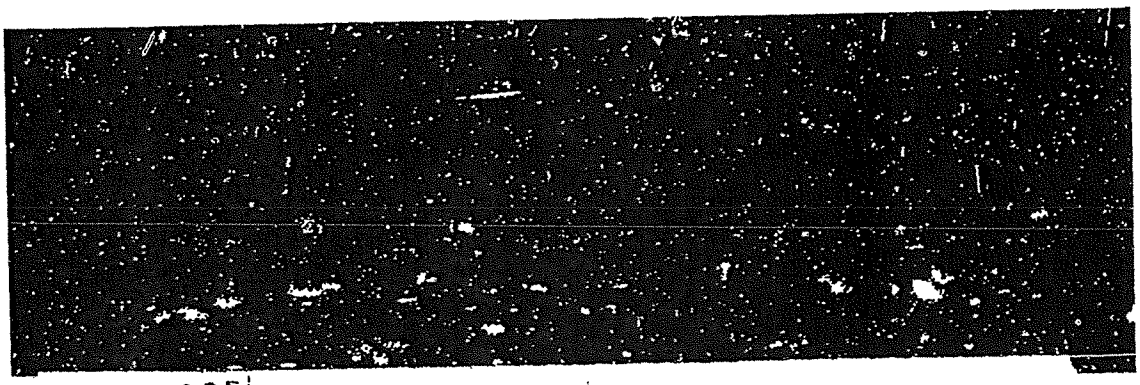
(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(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



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:

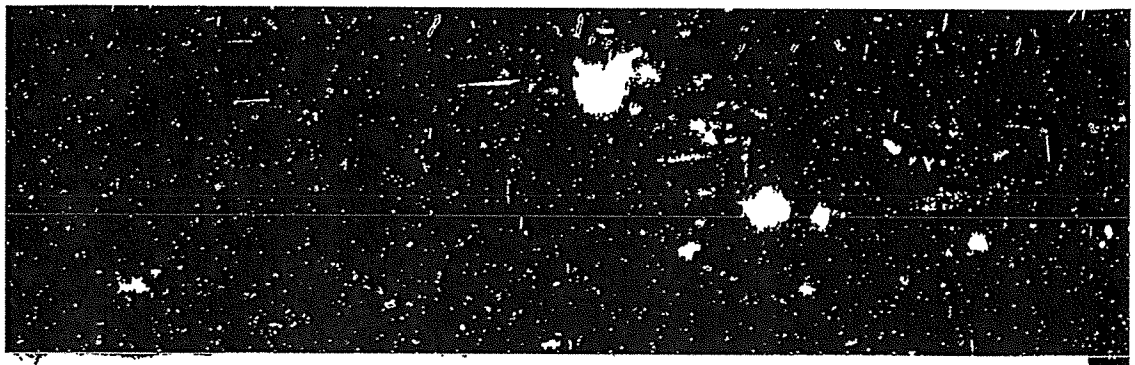
(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor; notice from the Master Association shall pertain to the Lots only.

(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.



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.

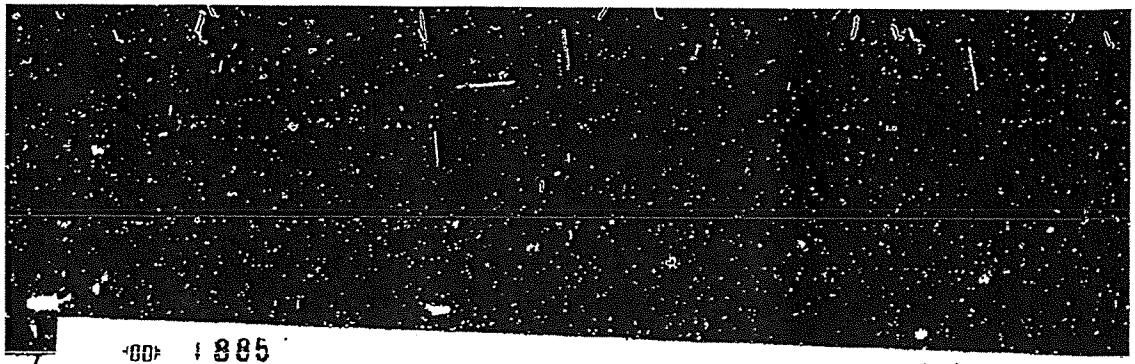
Section 2. No Waiver. Failure by the Master Association, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

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



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 of Master Association Property.

(h) Annexation.

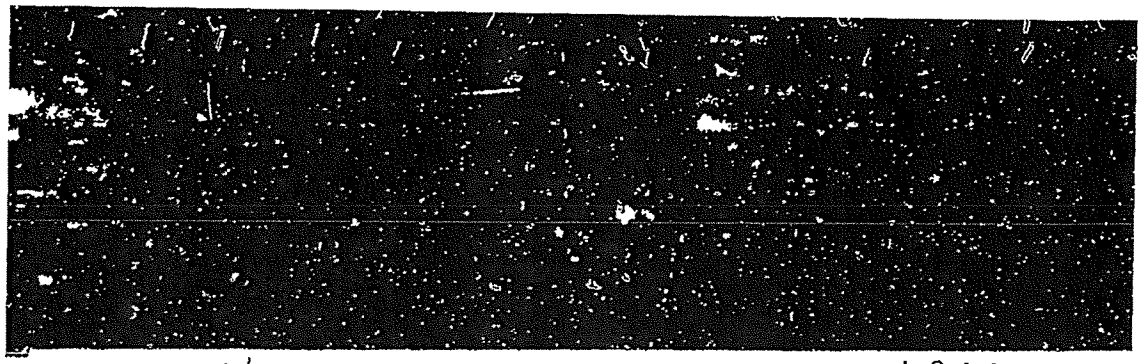
(i) Voting.

(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.



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.

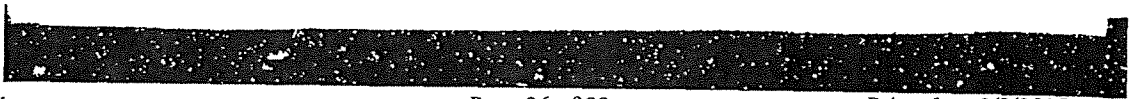
Notwithstanding anything herein stated to the contrary, none of the following Sections hereof may be amended without Declarant's prior written consent: Section 12 of Article VI, Section 4, Section 5 or Section 8 of Article XII.

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



the first day of the month following close of the first sale of a Lot by Declarant to that particular Owner.

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

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

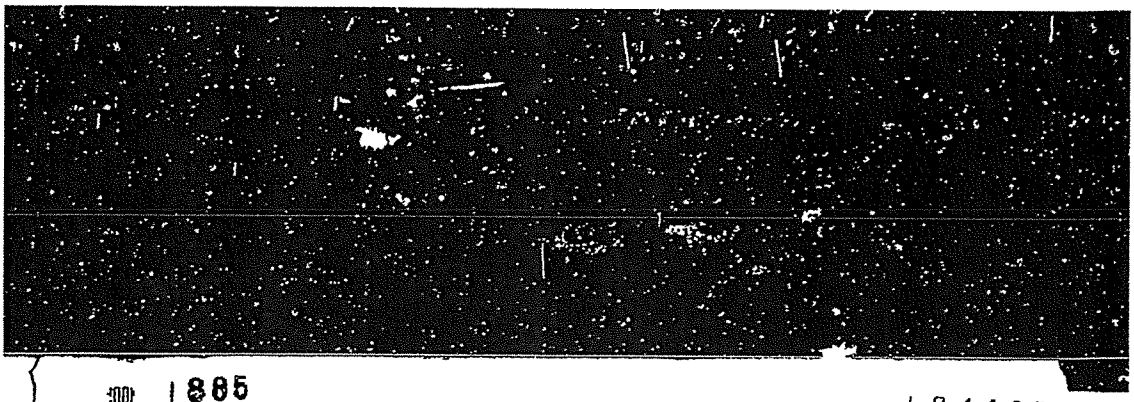
Section 7. Annexation by Owners. In addition to the provisions of Sections 4 and 5 above, additional land may be annexed to the jurisdiction of the Master Association and this Declaration upon the vote or written consent of two-thirds (2/3) of the voting power of each class of members of the Master Association.

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

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

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

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



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

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

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

SPANISH TRAIL ASSOCIATES, a Nevada limited partnership

By _____
JOSEPH A. BLASCO

By _____
JAMES BLASCO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 25th 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.

_____
Notary Public in and for said County and State.

NORMA S. POSS
Notary Public-State Of Nevada
COUNTY OF CLARK
My Appointment Exp. July 11, 1985

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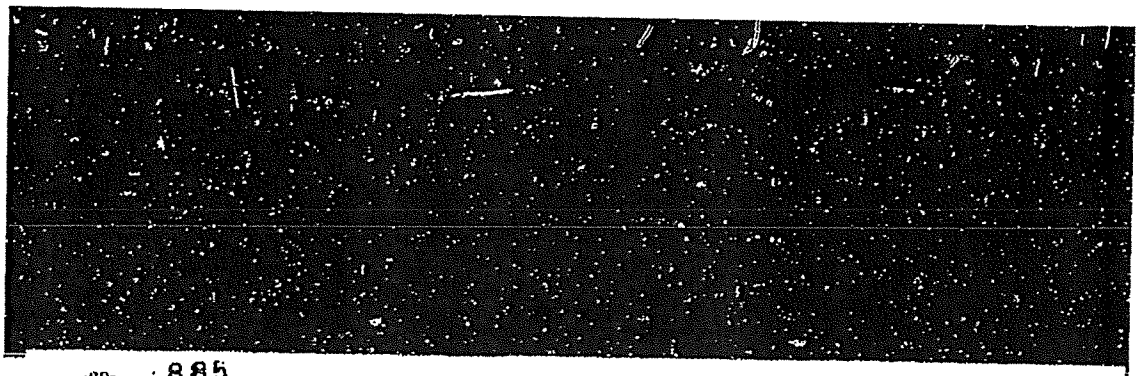

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EXHIBIT "A"

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.

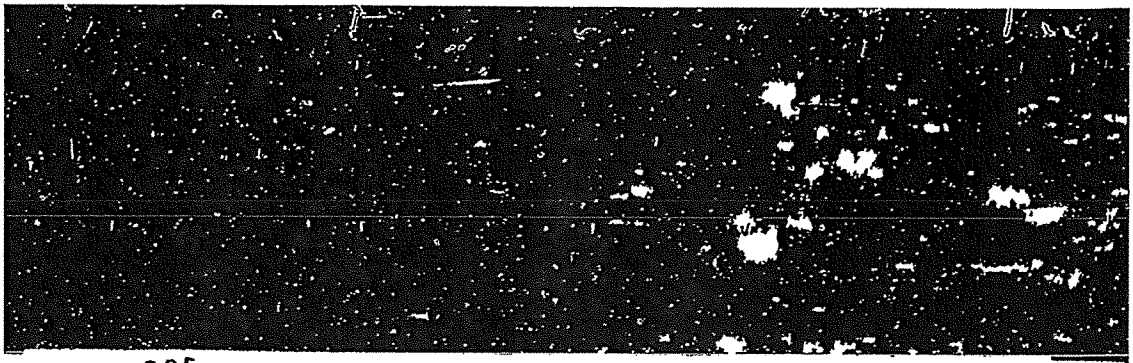
~~PARCEL II:~~

NOT A PART ~~The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 22 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.



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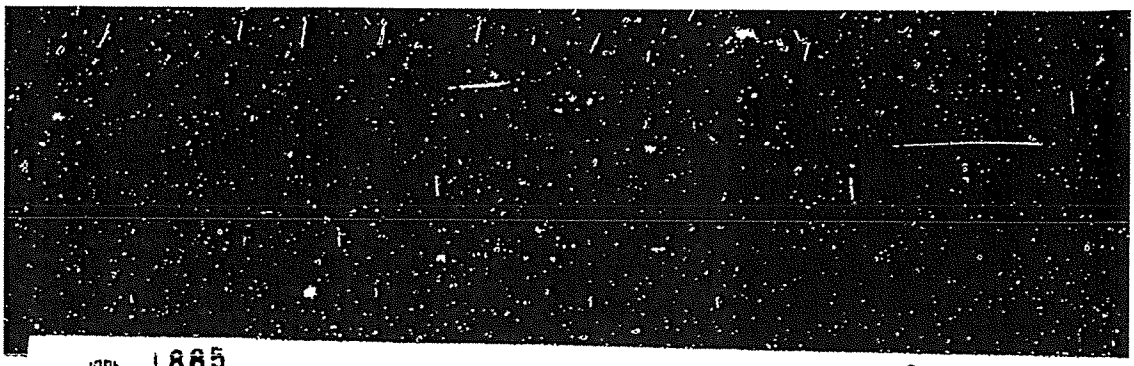
EXCEPTING THEREFROM the South Forty (40) feet; together with a spandrel area in the Southwest corner thereof, being the Northeast corner of the intersection of Hacienda Avenue and Durango Drive, bounded as follows: On the West by the East line of the West fifty feet (50.00') thereof; on the South by 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 _____
JACK RAFTERY CORP. REAL ESTATE LOAN OFFICER

By _____
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.

_____
Notary Public in and for said County and State.

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SUBORDINATION AGREEMENT

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

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

STATE OF NEVADA)
) 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 freely and voluntarily and for the uses and purposes therein mentioned.

Notary Public in and for said County and State.

NORMA S. ROSS
Notary Public State Of Nevada
COUNTY OF CLARK
My Appointment Exp. July 11, 1985

JOAN L. SWIFT RECORDER
RECORDED AT REQUEST OF
LAWYERS TITLE OF LAS VEGAS, INC
MAR 7 8 42 AM '84
FEE $6.00 DEPUTY
OFFICIAL RECORDS
BOOK INSTRUMENT
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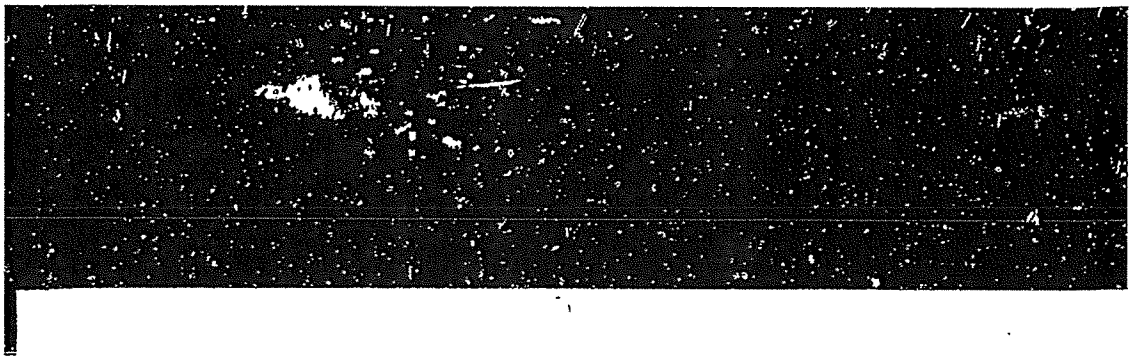

RE-RECORDED

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

OFFICIAL RECORDS
BOOK INST
FILE APPT

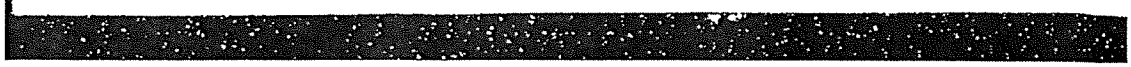

EXHIBIT F

Recording Requested By
and
When Recorded Mail To:

Mr. E. J. Quirk
Seiler, Quirk & Trafos
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".

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, 1983 (hereinafter referred to as the "Master Development"). There is, however, no guaranty nor obligation that the Estates West and the Planned Unit Development Properties will be developed in their entirety or in the manner so approved by Clark County.

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

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

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

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.

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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[redacted]

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

appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(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

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

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

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 By-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

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 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

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.

ARTICLE VI

CONDEMNATION

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 VII

MAINTENANCE 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 mow, 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.

(a) Upon the finding by the Board or 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

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 neighbor-

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.

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

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-

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

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

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

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

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

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.

(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 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

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 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.

(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

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.

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 limited partnership

By _____
JOSEPH A. BLASCO

By _____
JAMES BLASCO

8/10/88 -24-

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

Notary Public-State Of Nevada
COUNTY OF CLARK
JULIETTE R. HAINES
My Appointment Expires
July 26, 1991

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

SUBORDINATION AGREEMENT

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

FIRST INTERSTATE BANK OF NEVADA, N.A.

By _____
DENNIS GULLIN

By _____
Its Duly Elected

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

WITNESS my hand and official seal.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
JACKIE S. HOUCHIN
My Appointment Expires Oct. 20, 1991

_____
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.

Notary Public State of Nevada
COUNTY OF CLARK
JULIETTE R. HAINES
My Commission Expires
July 29, 1991

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

PARCEL IV:

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

EXCEPTING THEREFROM the North Fifty (50) feet and the West Fifty (50) feet; together with a spandrel area in the Northeast 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
JOAN L. DAMELI, RECORDER
RECORDED AT REQUEST OF:
E QUIRK
08-17-88 15:31 PRI
OFFICIAL RECORDS
BOOK 880817 INST. 00703
FEE: 35.00 RPTT: .00

EXHIBIT G

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 Statues 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
Notary Public State of Nevada
No. 08-7932-1
My appt. exp. Sept. 4, 2012

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

EXHIBIT H

Inst #: 201112060001106
Fees: $17.00
N/C Fee: $0.00
12/06/2011 09:17:00 AM
Receipt #: 998591
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas, NV 89113
Title Order Number: 35401

NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE LIEN FOR DELINQUENT ASSESSMENTS

◆ IMPORTANT NOTICE ◆

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association, under the Lien for Delinquent Assessments, recorded on 08/04/2011, in Book Number 20110804, as Instrument Number 0002324, reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record on said lien, land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 03/07/1984, in Book Number 1885, as Instrument Number 1844877, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 29, 2011, the amount owed is $ 8,312.52. This amount will continue to increase until paid in full.

Dated: November 29, 2011

Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On November 29, 2011, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

JULIA THOMPSON
Notary Public State of Nevada
No. 08-7932-1
My appt. exp. Sept. 4, 2012

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

EXHIBIT I

Inst #: 20140915-0001527
Fees: $18.00
N/C Fee: $0.00
09/15/2014 01:50:20 PM
Receipt #: 2152614
Requestor:
RED ROCK FINANCIAL SERVICES
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas NV 89113

NOTICE OF FORECLOSURE SALE

UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.

Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 08/04/2011 in Book Number 20110804 as Instrument Number 0002324 reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 12/06/2011 in Book Number 20111206 as Instrument Number 0001106 of the Official Records in the Office of the Recorder.

NOTICE IS HEREBY GIVEN: That on ***10/08/2014***, at ***10:00 a.m.*** at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 34 Innisbrook Ave, Las Vegas, NV 89113 and land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas NV 89113

or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of **$20,309.95** as of 9/15/2014, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

Dated: September 11, 2014

Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On September 11, 2014, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Reinstatement Information: (702) 483-2996 or **Sale Information:** (714) 573-7777

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 483-2996 or (702) 932-6887

JULIA THOMPSON
Notary Public State of Nevada
No. 08-7921-1
My appt. exp. Sept. 4, 2016

EXHIBIT J

Inst #: 201006090003189
Fees: $14.00
N/C Fee: $0.00
06/09/2010 01:46:06 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 4
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

JUN 07 2010

Khadija Gulley

On _____ before me Elsie E. Kroussakis, personally appeared _____, Asst Secty, 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.

_____
Notary Public's Signature

ELSIE E KROUSSAKIS
Notary Public
STATE OF TEXAS
My Comm. Exp. 10-14-11

EXHIBIT K

REPORT OF THE JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

THE SIX-MONTH "LIMITED PRIORITY LIEN" FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT

JUNE 1, 2013

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JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

THE SIX-MONTH "LIMITED PRIORITY LIEN" FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT

Introduction

Role of Association Assessments. In the modern common interest community (the most common forms of which are the condominium, the planned community, and the cooperative), each unit/parcel is subject to an assessment for its proportionate share of the common expenses needed to operate the owners' association (the "association") and to maintain, repair, replace, and insure the community's common elements and amenities. Assessments constitute the primary source of revenue for the community, and the ability to collect assessments is crucial to the association's ability to provide the maintenance and services expected by community residents. If some owners do not pay their proportionate share of common expenses, the association will be forced to shift the burden of delinquent assessments to the remaining unit owners through increased assessments or reduced services and maintenance, potentially threatening property values within the community.

Statutory Lien. To facilitate the association's ability to collect assessments, assessments unpaid by an owner constitute a lien on the owner's unit/parcel. In theory, the lien provides the association with the leverage needed to assure timely collection of assessments. If an owner fails to pay assessments, the association can institute an action to foreclose on the owner's interest in the unit/parcel and can use the proceeds of the foreclosure sale to satisfy the balance of the unpaid assessments (along with interest, costs, and to the extent authorized by the declaration and applicable law, attorney's fees incurred by the association in enforcing its lien).

Uniform Law Treatment. The Uniform Common Interest Ownership Act (UCIOA) — along with its predecessor acts, the Uniform Condominium Act, the Model Real Estate Cooperative Act, and the Uniform Planned Community Act (collectively, the "Uniform Laws") — facilitate an association's ability to collect common expense assessments by providing that, subject to limited exceptions, the association's lien is prior to all encumbrances that arise after the recording of the declaration. The rationale for this approach lies in the realization that (1) the association is an involuntary creditor that is obligated to advance services to owners in return for a promise of future payments; and (2) the owners' default in these payments could impair the association's financial stability and its practical ability to provide the obligated services. The priority of the association's lien is critical because if there is insufficient equity in a unit/parcel to provide a full recovery of unpaid assessments, the association must (as explained above) either reassess the remaining unit owners or reduce maintenance and services. The potential impact of these acts on the community and the association's status as an

involuntary creditor argue in favor of providing the association lien with priority vis-à-vis competing liens.

Nevertheless, many practical and regulatory barriers militate against complete priority for an association's assessment lien. Because the interests of the general public outweigh the interests of the community alone, real estate tax liens and other governmental charges should have priority over an association's assessment lien. Likewise, complete priority for association liens could discourage common interest community development. Traditional first mortgage lenders might be reluctant to lend from a subordinate lien position if there was no "cap" on the potential burden of the an association's assessment lien. In addition, some federally- or state-regulated lenders face regulatory restrictions on the amount of mortgage lending they can undertake involving security other than first lien security.

For these and other reasons, the general rule in the Uniform Laws (granting the association's lien priority as of the recording of the declaration) does not apply to first mortgages. Instead, the priority of the association's lien with respect to first mortgages is a function of the time the assessment becomes due. If the assessment becomes due after a first mortgage is of record, the assessment lien is generally subordinate to the lien of the first mortgage. However, this subordination is not absolute; under UCIOA § 3-116(c), the association's lien is given a limited or "split" priority over the first mortgage lien to the extent of six months' worth of assessments based on the association's periodic budget:[1]

> A lien under this section is also prior to [a first mortgage lien] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

In this way, the Uniform Laws mark a substantial deviation from prior law, striking what the drafters described as "an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." UCIOA § 3-116, comment 1. Since its introduction in 1976, the six-month priority for association liens has been adopted in more than twenty

[1] Comparable priority provisions appear in the Uniform Condominium Act [UCA § 3-116], the Model Real Estate Cooperative Act [MRECA § 3-115], and the Uniform Planned Community Act [UPCA § 3-116].

jurisdictions, either through adoption of the UCA, UCIOA, or in nonuniform legislation comparable in substance to UCIOA § 3-116.[2]

The drafters of § 3-116(c) believed that the six-month association lien priority struck a workable and functional balance between the need to protect the financial integrity of

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[2] The relevant Uniform Laws include Ala. Code § 35-8A-316(b) (six-month limited priority for assessment lien for condominium association); Alaska Stat. Ann. § 34.08.470(b) (six-month limited priority for assessment lien for common interest community association); Colo. Rev. Stat. Ann. § 38-33.3-316(b) (six-month limited priority for assessment lien for common interest community association); Conn. Gen. Stat. Ann. § 47-258(b) (six-month limited priority for assessment lien for common interest community association, plus association's costs and attorney fees in enforcing its lien); Del. Code Ann. tit. 25, § 81-316(b) (six-month limited priority for assessment lien for common interest community association); Minn. Stat. Ann. § 515B.3-116(c) (six-month limited priority for assessment lien for common interest community association); Vernon's Ann. Mo. Stat. § 448.3-116(2) (limited priority for six months of condominium association assessments and fines which are due at time of subsequent refinancing); Nev. Rev. Stat. Ann. § 116.3116(2) (nine-month limited priority for assessment lien for common interest community association; although duration may be reduced to six months if required by federal regulation); Purdon's Pa. Cons. Stat. Ann. tit. 68, § 5315(b) (six-month limited priority for assessment lien for planned community association); *id.* § 3315(b) (six-month limited priority for assessment lien for condominium association); *id.* § 4315(b) (six-month limited priority for assessment lien for cooperative association); R.I. Gen. Laws Ann. § 34-36.1-3.16(b) (six-month limited priority for assessment lien for condominium association); Vt. Stat. Ann. tit. 27A, § 3-116(b) (six-month limited priority for assessment lien for common interest community association); Rev. Code Wash. Ann. § 64.34.364(3) (six-month limited priority for assessment lien for condominium association); W. Va. Code § 36B-3-116(b) (six-month limited priority for assessment lien for common interest community association).

Jurisdictions that have not enacted one of the Uniform Laws, but that have adopted a limited priority lien provision, include the District of Columbia, D.C. Code § 42-1903.13(a)(2) (six-month limited priority for assessment lien for condominium association); Florida, Fla. St. Ann. §§ 718.116(1)(b), 720.3085(2)(c) (priority for assessment lien for association limited to twelve months of assessments or one percent of the original mortgage debt); Illinois, 765 Ill. Comp. Stat. § 605/9(g)(4) (six-month limited priority for assessment lien for condominium association); Maryland, Md. Code Real Prop. § 11B-117(c) (four-month limited priority for assessment lien of homeowners association); Massachusetts, Mass. Gen. Laws Ann. ch. 183A, § 6(c) (six-month limited priority for assessment lien for condominium association); New Hampshire, N.H. Rev. Stat. § 356-B:46(I) (six-month limited priority for assessment lien for condominium association); New Jersey, N.J. Stat. Ann. § 46:8B-21 (six-month limited priority for assessment lien for condominium association); and Tennessee, Tenn. Code Ann. § 66-27-415(b) (six-month limited priority for assessment lien for condominium association).

Although Kentucky, Maine, Nebraska, New Mexico, North Carolina, Texas, and Virginia each adopted versions of the UCA, those states did not enact the six-month limited-priority for condominium association liens. Ky. Rev. Stat. Ann. § 381.9193; Me. Rev. Stat. Ann. tit. 33, § 1603-116(b); Neb. Rev. Stat. § 76-874; N.M. Stat. Ann. § 47-7C-16; N.C. Gen. Stat. § 47C-3-116; Tex. Prop. Code § 82.113(b); Va. Code Ann. § 55-79.84.

the association and the legitimate expectations of first mortgage lenders. Fundamental to that belief was the assumption that, if an association took action to enforce its lien and the unit/parcel owner failed to cure its assessment default, the first mortgage lender would promptly institute foreclosure proceedings and pay the prior six months of unpaid assessments to the association to satisfy the limited priority lien — thus permitting the mortgage lender to preserve its first lien position and deliver clear title in its foreclosure sale. The drafters further understood — based on circumstances then existing — that the first mortgage lender's foreclosure proceeding would likely be completed within six months (particularly in jurisdictions with nonjudicial foreclosure) or a reasonable period of time thereafter, minimizing the period during which unpaid assessments would accrue for which the association would not have first lien priority. Finally, the drafters anticipated that the unit/parcel would, in the typical situation, have a value sufficient to enable the first mortgagee to recover the both the unpaid mortgage balance and the cost of six months of assessments. Once a buyer was in place — whether the foreclosing first mortgagee or a third party — that buyer would have to begin making monthly assessment payments, thus preserving the association's ability to carry out its maintenance and services obligations.

Today's Marketplace. The real estate market facing common interest communities today is quite different from the one contemplated by the drafters of the Uniform Laws:

- Many units/parcels in common interest communities are "underwater," with values below the outstanding first mortgage balance.

- More significantly — particularly in states with judicial foreclosure — there are long delays in the completion of foreclosures. During this time, neither the unit/parcel owner nor the mortgagee typically pays the common expense assessments — the unit/parcel owner is unable or unwilling to do so, and the mortgagee is not legally obligated to do so prior to acquiring title.

If it takes 24 months for a mortgagee to complete a foreclosure, but the association has a first priority lien for only the immediately preceding six months of unpaid assessments, the consequences for the association can be devastating. The association may receive payment of six months worth of assessments, but because of depressed unit/parcel values, the sale will not generate surplus proceeds from which the association could satisfy the subordinate portion of its lien — and the association likely could not collect a judgment against the unit/parcel owner for that unpaid balance.

Because an association's sources of revenues are usually limited to common assessments, the remaining residents of the community bear the consequences of default by a unit/parcel owner of its assessment obligations, unless the state's statute requires the mortgagee to bear some portion of that cost. As suggested above, § 3-116(c)'s "split" priority for association liens was premised on the assumption that the six-

month limited priority lien would protect the mortgagee's expected first lien position while enabling an association to recover a substantial portion of the common expense costs that would accrue during a period in which the first mortgagee was foreclosing on the unit/parcel. However, if foreclosure takes substantially longer than six months and foreclosure proceeds are inadequate to pay off the first mortgage, the association can collect only a fraction of unpaid assessments from the mortgagee, effectively forcing the remaining owners to bear increased assessments or decreased maintenance/services.

This problem has become extreme in the current economic environment, in which long foreclosure delays have become commonplace. In some cases, delay is attributable to the size of defaulted mortgage portfolios having overwhelmed the capacity of lenders and their servicers. Faulty record-keeping and transaction practices by both lenders and servicers have prompted statutory and judicial responses that have lengthened the foreclosure timeline in judicial foreclosure states.[3] Further, anecdotal evidence suggests that some mortgage lenders are delaying the institution of foreclosure proceedings on units/parcels affected by common interest assessments. If the lender acquires such a unit/parcel at a foreclosure sale via credit bid, the lender (as a successor owner of the unit/parcel) becomes legally obligated to pay assessments arising during the lender's period of ownership. The lender may fear that it may be unable to resell the unit/parcel quickly and for an appropriate return in a depressed housing market — recognizing that it will incur liability for assessments during any period in which it holds the unit/parcel for resale. Thus, for two reasons, the lender has a substantial economic incentive to delay the foreclosure. First, the lender may benefit from a higher recovery in the event that the local housing market experiences any recovery during the period of delay. Second, the delay enables the lender to avoid incurring any legal obligation to pay common expense assessments on the unit/parcel as those assessments accrue during the delay prior to foreclosure.

While the existing legal infrastructure gives the mortgage lender a substantial economic incentive to delay foreclosure, the consequences of this delay are devastating to the community and the remaining residents. To account for the unpaid assessments, the association must either increase the assessment burden on the remaining

[3] The Federal Housing Finance Authority, conservator for Fannie Mae and Freddie Mac, has published foreclosure timelines for all 50 states, reflecting the "periods within which Enterprise servicers are expected to complete the foreclosure process for mortgages that did not qualify for loan modification or other loss mitigation alternatives." Notice, State-Level Guarantee Fee Pricing, Federal Housing Finance Agency (September 25, 2012), 77 Fed. Reg. 58991, 58992. FHFA prepared these timelines from an analysis of the actual experience of Fannie Mae and Freddie Mac with foreclosure processing in each state, as adjusted for each state's statutory requirements and changes in law or practice in response to the foreclosure crisis. *Id.* The national average of the FHFA timelines is 396 days, ranging from 270 days (a common timetable in nonjudicial foreclosure states such as Georgia, Michigan, Minnesota and Missouri) to 750 days in New Jersey and 820 days in New York. *Id.* at 58992, 58993.

unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities). If the other community residents have to pay the burden of increased assessments to preserve community services/amenities, the delaying lender receives a benefit — the value of its collateral is preserved, to some extent, while the lender waits to foreclose. Yet this preservation of the mortgage lender's collateral value comes through the community's imposition of assessments that the lender does not have to pay or reimburse. This benefit arguably constitutes unjust enrichment of the mortgage lender, particularly to the extent that the lender enjoys this benefit by virtue of a conscious decision to delay instituting or prosecuting a foreclosure. See generally Andrea Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53 (2011).

THE PURPOSE OF THIS REPORT

The Board has two primary purposes in issuing this Report. The first purpose is to address the appropriate interpretation of the existing six-month limited priority lien provision in the Uniform Acts. In states that have adopted § 3-116(c) or a provision substantially comparable to it, the pressures described in the Introduction have produced an increasing volume of litigation between associations and first mortgage lenders regarding the proper scope of the association's lien priority. This litigation may include not only questions regarding the effect of foreclosure proceedings by the association and/or the first mortgage lender, but also questions regarding whether an association can assert its six-month assessment lien priority only on a one-time basis or on a recurring basis (i.e., each time it brings an action to enforce its lien for unpaid assessments). As a result, the Board has prepared this Report to clarify, for the benefit of parties and courts faced with these disputes, the intended application of § 3-116(c) in a variety of scenarios in which priority disputes might arise.

The second purpose is to acknowledge — as addressed in the Introduction — that the existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In a slight majority of states, association liens are subordinate to first mortgage liens and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the lender's acquisition of title in a foreclosure sale. As a result, first mortgage lenders effectively can shift the costs of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests. The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents.[4]

[4] In a state that has adopted § 3-116(c) of the Uniform Laws or a similar provision, the new uniform law would effectively function as an amendment to the existing state statute. In states

APPLICATION OF § 3-116(c) AND THE SIX-MONTH LIMITED PRIORITY LIEN

This portion of the Report addresses the intended application of § 3-116(c) through examining a series of examples, the facts of which are reflective of those in judicial opinions addressing the relative priority of association liens and mortgage liens under § 3-116(c). Each example presumes the following facts: Pinecrest is a common interest community created by virtue of a recorded declaration pursuant to UCIOA. Under the declaration, parcels or units within Pinecrest are subject to a mandatory annual common expense assessment of $3,000, payable to Pinecrest Property Owners Association (PPOA) in monthly installments of $250. The assessments pay for operating expenses of PPOA, including the maintenance and insurance of common facilities and recreational areas within Pinecrest.

Unpaid assessments constitute a lien in favor of PPOA upon the affected parcel or unit. Homeowner is the owner of a parcel or unit within Pinecrest, which parcel or unit is subject to a properly recorded mortgage or deed of trust in favor of Bank, securing the repayment of the unpaid balance of Homeowner's mortgage debt to Bank in the amount of $200,000. In each example, Homeowner is in default to Bank on its debt secured by a mortgage or deed of trust, and is also in default to PPOA in payment of assessments.

Example One: Homeowner has failed to pay both its common expense assessments and its mortgage for a period of 12 months, Bank institutes a foreclosure proceeding, joining PPOA as a party. Bank ultimately proceeds with a proper foreclosure sale, at which Buyer purchases the unit/parcel for $150,000.

Section § 3-116(c) establishes that the association's assessment lien is "prior to" even the lien of a first mortgage to the extent of "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien." This means that prior to the sale, PPOA had a first priority lien in the unit/parcel to secure the payment of the preceding six months of common expense assessments ($1,500); Bank effectively had a second priority lien to secure the outstanding mortgage balance ($200,000); and PPOA had a third priority lien to secure the payment of the additional six months of unpaid assessments ($1,500).

When Bank forecloses its mortgage in this context, the foreclosure sale extinguishes its mortgage and PPOA's subordinate lien, with these liens being transferred to the sale proceeds. Bank's foreclosure sale does not extinguish PPOA's first priority "limited priority lien" for the immediately preceding six months of assessments, as that lien is senior under § 3-116(c) and is thus unaffected by Bank's foreclosure sale. Buyer will thus take title to the unit/parcel subject to PPOA's six-month limited priority lien; Buyer

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that do not currently have a limited priority provision for association liens, the new uniform law could be enacted as a freestanding statute.

must pay $1,500 to PPOA to extinguish this lien and clear her title.[5] The $150,000 sale proceeds will be applied first to costs of sale, then to the unpaid balance of Bank's mortgage. As the sale proceeds are insufficient to satisfy Bank's claim, PPOA is left with an unsecured claim for unpaid assessments beyond its six-month priority.

In Example One, it is conceivable that PPOA and Bank may agree, in advance, that the foreclosure sale will deliver clear title to the foreclosure sale purchaser. If PPOA and Bank so agree, the sale would also extinguish PPOA's six-month limited priority lien. If that sale produced a price of $151,500,[6] the proceeds would be applied first to costs of sale; the next $1,500 would be distributed to PPOA on account of its limited priority lien, and the balance would be distributed to Bank to be applied to the unpaid mortgage balance. Again, as the sale proceeds would be insufficient to satisfy Bank's claim, PPOA would be left with an unsecured claim for unpaid assessments beyond its six-month priority.

As described above, Example One involves a third party buying the property at Bank's foreclosure sale. It is perhaps more likely that Bank would end up as the foreclosure sale buyer by means of a credit bid, but this would not make a difference in terms of the appropriate application of § 3-116(c). If Bank buys the property for a credit bid in an amount less than or equal to the unpaid mortgage balance, Bank will receive clear title only if it pays PPOA $1,500 to satisfy its assessment limited priority lien; to the extent Bank does not pay that amount, Bank will take title subject to PPOA's lien, which PPOA could enforce by bringing a foreclosure proceeding of its own.

Example Two: Homeowner has failed to pay its common expense assessment for 12 consecutive months (a total unpaid balance of $3,000). PPOA brings an action to foreclose its lien, joining Homeowner and Bank as parties. Bank does not institute a foreclosure action. PPOA obtains a judgment allowing it to foreclose; neither Homeowner nor Bank takes steps to redeem their respective interests. At the sale, Buyer purchases Homeowner's interest for a cash bid of $207,000. PPOA incurs costs and attorney's fees of $5,000 in conjunction with the sale.

This example is based in part on the facts of *Summerhill Village Homeowners Association v. Roughley*, 270 P.3d 639 (Wash. Ct. App. 2012). In *Summerhill Village*, the association commenced an action against the unit owner and her mortgagee (GMAC) to obtain a judgment for unpaid assessments and to foreclose its lien. The association obtained a default judgment and sold the unit to a third-party buyer for

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[5] If Buyer redeems her title by paying off the lien before PPOA brings an action to enforce it, Buyer can redeem by paying only the six months of unpaid assessments. By contrast, if Buyer does not pay off the lien until after PPOA brings an action to enforce it, Buyer must also pay the costs and reasonable attorney's fees incurred by PPOA in its lien enforcement action.

[6] In this context, the sale should produce a higher price (by an increment of $1,500) as the foreclosure sale purchaser will receive clear title rather than title subject to PPOA's senior lien for $1,500 worth of assessments.

$10,302 ($100 over the balance of the judgment). GMAC later sought to set aside the default judgment and establish the priority of its mortgage lien (or, in the alternative, to redeem the property). The Washington Court of Appeals held that under the six-month limited priority lien as incorporated in Washington's version of the Uniform Condominium Act, Rev. Code Wash. Ann. § 64.34.364(3), the association's foreclosure sale had extinguished the lien of the mortgagee. Under this view, the association's six-month limited priority lien constituted a true lien priority and not merely a distributional preference in favor of the association.

To the extent that *Summerhill Village* held that the association's foreclosure sale extinguished GMAC's mortgage lien,[7] the decision is consistent with the proper understanding of the six-month limited priority lien reflected in § 3-116. Section 3-116(c) establishes that the association's lien is "prior to" even the lien of a first mortgage to the extent of both "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien" and "reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien." A foreclosure sale of the association's lien (whether judicial or nonjudicial)[8] is governed by the principles generally applicable to lien foreclosure sales, i.e., a foreclosure sale of a lien entitled to priority extinguishes that lien and any subordinate liens, transferring those liens to the sale proceeds. Nothing in the Uniform Laws establishes (or was intended to establish) a contrary result.[9]

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[7] The *Summerhill Village* court also concluded that under Washington's post-sale redemption statute, GMAC was not entitled to redeem the property. As the question of GMAC's right to redeem did not involve the interpretation of § 3-116(c), this Report expresses no opinion as to that aspect of the *Summerhill Village* decision.

[8] The Uniform Laws provide that in a condominium or planned community, the association must foreclose its lien in the manner in which a mortgage is foreclosed. Thus, an association may foreclose its lien by nonjudicial proceedings if the state permits nonjudicial foreclosure. See UCIOA § 3-116(k), UCA § 3-116(a).

[9] Two recent Nevada federal decisions interpreting Nevada's limited priority lien statute, Nev. Rev. Stat. § 116.3116(2)(c), rejected the reasoning of *Summerhill Village* and concluded that an association's nonjudicial foreclosure of its assessment lien did not extinguish the lien of the senior mortgage lender. See Weeping Hollow Avenue Trust v. Spencer, 2013 WL 2296313 (D. Nev. May 24, 2013); Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 (D. Nev. Feb. 11, 2013). For example, in *Weeping Hollow*, the court held that the limited priority lien provision did not create a true lien priority, but instead merely provided that the association's lien would continue to encumber the property following a foreclosure sale by the first mortgagee, to the extent of the assessments unpaid during the preceding nine months. Weeping Hollow, 2013 WL 2296313, at *5 ("Read in its entirety, NRS 116.3116(2)(c) states that an HOA's unpaid charges and assessments incurred during the nine months prior to the foreclosure of a first position mortgage continue to encumber the property after the foreclosure of the first position deed of trust.... However, the super priority lien does not extinguish the first position deed of trust."). These decisions misread and misinterpret the Uniform Laws limited

As a result, in Example Two, under a proper application of § 3-116(c), PPOA would have a first priority lien on Homeowner's unit/parcel to the extent of $6,500, reflecting six months of unpaid assessments ($1,500) and the reasonable costs and attorney's fees incurred by PPOA in its foreclosure ($5,000). Bank would have a second priority lien on the unit/parcel to the extent of the $200,000 unpaid balance of Homeowner's mortgage debt. PPOA would have a third priority lien to the extent of the unpaid assessments beyond the six-month threshold (a total of $1,500).

PPOA's foreclosure sale in Example Two would extinguish both of its liens (the six month "limited priority lien" as well as the third-priority lien) as well as the Bank's mortgage lien, thereby delivering a clear title to Buyer. The extinguished liens would transfer to the $207,000 sale proceeds in the same order of priority. PPOA would receive the first $6,500 of the sale proceeds on account of its limited priority lien. Bank would receive the next $200,000 in sale proceeds on account of its mortgage lien. PPOA would receive the final $500 of sale proceeds on account of its third-priority lien, and the remaining $1,000 of PPOA's claim would be unsecured.

Example Three. Because of a dispute over PPOA's enactment of parking rules and imposition of parking fines, Homeowner withheld payment of the monthly installment of assessments. After six months, PPOA brings an action to enforce its lien for the six preceding months of unpaid assessments and to collect fines (joining Bank as a party). Homeowner continues to withhold assessments. Six months later, while the first action is still pending, PPOA brings a second action to enforce another lien for the most recent six months of unpaid assessments and fines. Again, PPOA joins Bank as a party and seeks to establish its lien priority over Bank for the additional six months of unpaid assessments. Bank objects that PPOA is entitled to only one six-month limited priority lien and cannot extend its lien priority through successive actions.

Example Three is based upon the facts in *Drummer Boy Homes Association, Inc. v. Britton*, 2011 Mass. App. Div. 186 (2011). In *Drummer Boy*, the association commenced three successive actions, seeking to establish lien priority for a total of 18 months of unpaid assessments. The association argued that the six-month limited priority lien provision in the Massachusetts statute [Mass. Gen. Laws Ann. Ch. 183A, § 6(c)] did not explicitly forbid — and thus presumptively permitted — successive actions to extend the association's six-month lien priority. The court rejected this view, instead concluding that the association's lien priority was limited to only six months of unpaid assessments:

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priority lien provision, which provides the association with priority to the extent of assessments accruing in the period immediately prior to the association's enforcement of its lien. As discussed in the text, this constitutes a true lien priority, and thus the association's proper enforcement of its lien would thus extinguish the otherwise senior mortgage lien.

> Under the Association's theory, however, a condominium association could file successive suits and thereby enlarge the priority portion of its lien such that its entire lien, no matter how large and no matter how much time was encompassed, would be prior to the first mortgage. If the Legislature had intended to make the condominium lien prior to the first mortgage, it could have done so explicitly.... Recognizing that a condominium association's lien could be extinguished entirely by a foreclosing first mortgagee, the legislature gave condominium associations a limited six-month period of priority. This was meant to be an "equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders." [quoting Uniform Condominium Act (1980) § 3-116, Comment 2.]

On its face, the language of § 3-116(c) does not explicitly address whether an association may file successive actions every six months to extend its limited priority lien priority. Section 3-116(c) provides, in pertinent part:

> A lien under this section is also prior to [a first mortgage recorded prior to the due date of the unpaid assessments] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

Nevertheless, the result reached by the court in *Drummer Boy* is consistent with the appropriate understanding of § 3-116(c). *See also* Hudson House Condo. Ass'n v. Brooks, 223 Conn. 610, 61 A.2d 862 (1992) (rejecting the view that Connecticut six-month limited priority lien statute permitted an association to institute a foreclosure proceeding every six months and thereby obtain perpetual superpriority over mortgagee). Section 3-116(c) provides an association with a first priority lien for the common expense assessments accruing during the six months preceding the filing of "an action" to foreclose (either an action by the association to foreclose its lien, or by the first mortgagee to foreclose the mortgage). The second and third lien foreclosure actions commenced by the association in *Drummer Boy* were not necessary to enforce the association's lien; only one such action is needed for the purpose of selling the unit/parcel and delivering clear title.[10] Thus, the association's commencement of the successive actions could only have been to extend the association's lien priority beyond the six months reflected in § 3-116(c). In such a situation, a court should properly consolidate those successive actions into a single action — in which the association would receive first lien priority only for the immediately preceding six months of unpaid assessments.

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[10] Recognizing this, the court in *Drummer Boy* properly consolidated the three actions into a single action. *Drummer Boy*, 2011 Mass.App.Div. 186, at *1.

Thus, in Example Three, Bank can redeem its first mortgage lien from the burden of PPOA's limited priority lien by payment of $1,500 (reflecting the immediately preceding six months of unpaid assessments) plus the costs (including reasonable attorney's fees) incurred by PPOA in bringing the action to enforce its lien).[11] Once Bank has paid this amount to PPOA, PPOA's foreclosure sale to enforce the balance of unpaid assessments would transfer title to the unit/parcel subject to the remaining balance of Bank's first mortgage. PPOA's lien for the unpaid assessment balance would transfer to the proceeds of the sale (if there are any proceeds).[12]

Once the Association Brings an Action to Enforce Its Lien, Is Its Lien Priority Limited to the Prior Six Months of Unpaid Assessments, or Does Its Priority Extend to Include Any Assessments that Accrue During the Pendency of the Lien Enforcement Action? Example Three addressed whether an association could extend its lien priority by filing successive lien enforcement actions every six months. In a recent set of Vermont decisions, however, several associations argued that once an association files an action to enforce its lien, its lien priority should extend not only to the unpaid assessments that had accrued during the preceding six months, but also to all assessments that accrued and remained unpaid during the pendency of the lien enforcement action. Two recent Vermont Superior Court decisions have accepted this argument. *Bank of America, N.A. v. Morganbesser*, No. 675-10-10 (Jan. 18, 2013); *Chase Home Finance, LLC v. Maclean*, http://www.vermontjudiciary.org/20112015%20Tcdecisioncvl/2012-5-25-13.pdf (Jan. 31, 2012). In the *Morganbesser* case, the court concluded that section 3-116(c) is "silent" as to the issue of continuing priority, and reasoned that continuing priority is justified because the association could "extend its superpriority merely by filing a new action for unpaid assessments which have come due every six months" and requiring the association "to repeatedly file new actions simply to extend its priority position serves no purpose." In addition, the court in *Morganbesser* justified its interpretation of section 3-116(c) by observing that "[e]xtending the superpriority from 6 months prior to institution through to the end of the action also provides the mortgage lender with an incentive, albeit a small one, to proceed as expeditiously as permitted in their foreclosure actions."

As explained in Example Three, however, section 3-116(c) does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as a means to extend the association's limited lien priority. Only one action

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[11] In this situation, the court might reasonably conclude that the attorney fees incurred by PPOA in bringing a repetitive action were not reasonable and thus not secured by PPOA's superlien.

[12] If the value of the unit/parcel is less than the remaining balance due to Bank, of course, PPOA will have no substantial incentive to proceed with the foreclosure sale. No third party will agree to purchase the unit/parcel without an agreement by Bank to reduce the mortgage loan balance. PPOA could acquire the unit by credit bid, but this would obligate PPOA to pay ongoing assessments — accentuating the burden on the rest of the residents of the community, who will have to bear assessment increases or service decreases until PPOA could re-sell the unit/parcel.

is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive actions would only serve to extend the association's lien priority beyond the six-month period expressed in section 3-116(c). Two other Vermont Superior Court decisions have disagreed with *Morganbesser* and *Maclean*, correctly concluding that section 3-116(c) places a six-month limit on the association's lien priority. See Vermont Hous. Fin. Auth. v. Coffey, S0367-11 CnC (Aug. 11, 2011) (Toor, J.); EverHome Mtge. Co. v. Murphy, No. 115-3-10 Bncv (Dec. 6, 2011) (Hayes, J.).

Example Four. Homeowner fails to pay common expense assessments and its mortgage debt for a period of six months. Both Bank and PPOA institute foreclosure proceedings. In response to PPOA's foreclosure proceeding, Bank redeems its lien position by tendering payment of $3,500 to PPOA ($1,500 for six months of unpaid common expense assessments plus $2,000 in costs and attorney fees incurred to that date by PPOA in enforcing its lien). For the next six months, while Bank's foreclosure action is pending, Homeowner again fails to pay common expense assessments. PPOA brings another action to enforce its lien, once again joining Bank as a party.

Example Four is based upon the facts in *Lake Ridge Condominium Association, Inc. v. Vega*, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012). Example Four presents a question about the appropriate interpretation of UCIOA § 3-116(c). Is the six-month limited priority lien a "one-time" lien; i.e., once an association brings an action to enforce its limited priority lien and the mortgagee responds by redeeming that lien by paying six months of common expense assessments, does the association no longer have the right to assert the limited priority lien for any future unpaid assessments? Or is the six-month limited priority lien a potentially recurring lien; i.e., in Example Four, can PPOA assert the limited priority lien a second time, and thereby successfully obtain lien priority over Bank's mortgage lien to the extent of the most recent six months of unpaid assessments?

In *Lake Ridge*, the association commenced a second action to enforce its lien two years after the mortgagee had ostensibly redeemed the association's priority by paying off the then-immediately preceding six months of assessments. The association argued that under the text of the statute and sound policy, there was no bar on repetitive association foreclosures and that in each such proceeding the association should be permitted to assert a limited priority lien for assessments unpaid during the immediately preceding six months. The mortgagee disagreed, asserting that under UCIOA as adopted in Connecticut, Conn. Gen. Stat. § 47-258, the six-month limited priority lien created but a "one-time" lien priority over the mortgagee.

The Connecticut Superior Court agreed with the lender, stating that the association had "previously satisfied its 'superpriority' lien" and holding that the statute "allows the assertion of that lien only once during the pendency of either an action to enforce either

the association's lien or a security interest (first priority mortgage)." See also Linden Condo. Ass'n, Inc. v. McKenna, 247 Conn. 575, 726 A.2d 502 (1999) (statute prevents association from asserting limited priority lien more than once during the course of a foreclosure action by the mortgagee).

The result reached by the court in *Lake Ridge* is consistent with the appropriate understanding of § 3-116(c) as drafted. Section 3-116(c) provides an association with first lien priority only to the extent of the six months of unpaid common expense assessments that accrued immediately preceding a lien foreclosure action by either the association or the first mortgagee. In Example Four, Bank had a foreclosure action pending at the time it made the $3,500 payment to redeem its mortgage from PPOA's limited priority lien, and that action remained pending at the time of PPOA's second lien enforcement proceeding. By its terms, § 3-116(c) does not permit PPOA to assert a first lien priority for more than six months of unpaid common expense assessments in the context of the same foreclosure proceeding by Bank.

As discussed in the Introduction, in fashioning the six-month limited priority lien, the drafters of UCIOA § 3-116(c) did not contemplate the now-common scenario in which the first mortgagee's foreclosure action might remain pending for two years or more. In such a situation, the mortgagee's delay in foreclosure may unreasonably force the community residents to bear either increased assessments or decreased maintenance/services.

Example Five. Homeowner fails to pay common expense assessments for a period of six months. PPOA notifies Bank that Homeowner has not paid those assessments. Before PPOA commences an action to enforce its lien, Bank pays PPOA an amount equal to the preceding six months of common expense assessments. For the ensuing six months, Homeowner again fails to pay its common expense assessments. PPOA then commences an action to enforce its lien and joins Bank as a party. Bank responds by instituting a proceeding to foreclose its mortgage lien.

In Example Five, Bank's payment of the unpaid common charges to PPOA does not prevent PPOA from now asserting its six-month limited priority lien. Under § 3-116(c), PPOA can assert a limited priority lien to the extent of "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien." Under the proper understanding of § 3-116(c), PPOA can thus assert a limited priority lien either in (a) an action by PPOA to enforce its association lien, or (b) an action by Bank to foreclose its mortgage lien. In Example Five, at the time of Bank's payment of the unpaid common expense assessments, PPOA had not commenced an action to enforce its lien, nor had Bank instituted a foreclosure proceeding. Bank's payment of the unpaid common charges was a voluntary business decision which Bank was not compelled to make to

protect its lien priority.[13] As a result, the payment does not prevent PPOA from asserting its limited priority lien in PPOA's subsequent lien enforcement action. To redeem its lien priority in PPOA's action, Bank will have to pay PPOA the immediately preceding six months of unpaid common expense assessments, as well as costs and reasonably attorney's fees incurred by PPOA in its lien enforcement action.

CONCLUSION: A PROPOSAL FOR A NEW UNIFORM LAW

As discussed above, existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In many states, association liens are entirely subordinate to first mortgage liens, and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the time that the lender acquired title in a foreclosure sale. This permits first mortgage lenders to delay in foreclosing mortgages on common interest units/parcels, while effectively and unjustly shifting the cost of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests.

The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents. A new uniform law might take a number of potential approaches:

- It might simply extend the association's existing limited priority lien from six months to a longer fixed duration, such as one year or more. A uniform law taking this approach might reflect a more appropriate response to the longer foreclosure timetables that have resulted in the wake of the mortgage crisis.[14]
- It might establish alternatives for the duration of association's limited priority lien, such that the duration of the association's lien priority might vary from state to state. A uniform law taking this approach might acknowledge that differences in local circumstances (i.e., the duration of a state's foreclosure

[13] Bank likely can add this payment to the balance of the Homeowner's mortgage debt as an amount advanced to protect Bank's security, at least to the extent permitted by the terms of Bank's mortgage or deed of trust (which typically provides that the lien shall secure such advances).

[14] It is worth noting that Florida's limited priority lien provides the association with priority to the extent of the lesser of twelve (12) months' worth of unpaid association assessments or one percent (1%) of the outstanding mortgage loan amount. Fla. Stat. Ann. § 718.116. Professor Andrea Boyack has observed that given the delays customarily experienced in Florida foreclosures, even this expanded lien priority has not been sufficient to permit Florida associations to recover all unpaid assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116 (2011).

timetable, or the extent of decreases in unit values) might warrant local differences in the duration of an association's lien priority.

- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the lender must pay assessments as they accrue during that period of delay (or some portion of those assessments). This would permit a first mortgage lender to make a determination to delay in foreclosing if the lender concludes that delay is justified, but would prevent the lender from being unjustly enriched by forcing the remaining unit/parcel owners to bear the increased cost of preserving the lender's collateral.
- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the association's lien would have priority (or extended priority) for the assessments accruing during that period of delay.
- It could analogize common interest ownership assessments to real property taxes, and give the association full priority over the first mortgage lender for unpaid assessments to the same extent as real property taxes currently enjoy a superpriority over first mortgage liens.[15]

The Board does not advocate for any one of these approaches; a drafting committee should make a determination following deliberations involving the participation of all relevant stakeholder groups (including first mortgage lenders, community associations, and government-sponsored enterprises like Fannie Mae and Freddie Mac).

[15] To a significant extent, an analogy between community assessments and property taxes is compelling, as the association often provides public services such as paving, snow removal, open space maintenance, and land use control/enforcement. First mortgage lenders would no doubt voice strong objections to giving association liens full priority, which raises a concern as to whether such a change would affect the availability of home mortgage credit for common interest units/parcels. Nevertheless, as Professor Boyack has noted, priority for real property taxes has not dissuaded lenders from making first mortgage loans; lenders have addressed this risk by requiring real property escrow accounts, and could demand similar escrow accounts for association assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116, 122 (2011).