

IN THE SUPREME COURT OF THE STATE OF NEVADA

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AIRMOTIVE INVESTMENTS, LLC, A )  
NEVADA LIMITED LIABILITY )  
COMPANY, )

Appellant, )

vs. )

BANK OF AMERICA, N.A., )

Respondent. )

Electronically Filed  
Dec 21 2020 05:53 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 80373

**APPEAL**

From the Eighth Judicial District Court,  
The Honorable Stefany A. Miley, District Judge  
District Court Case No. A-12-654840-C

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**JOINT APPENDIX - VOLUME 2**

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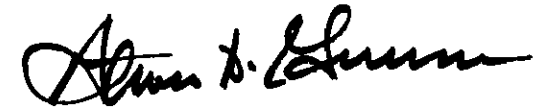
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CLERK OF THE COURT

**DISTRICT COURT FOR  
CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP,  
LLC  
Plaintiff,

vs.

BANK OF AMERICA; GENEVIEVE UNIZA-  
ENRIQUEZ; DOES 1 through 20, and ROE  
CORPORATIONS 1 through 20, inclusive,  
Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

**BANK OF AMERICA'S MOTION FOR  
LEAVE TO AMEND ITS ANSWER TO  
ADD AN AFFIRMATIVE DEFENSE AND  
COUNTERCLAIM AND TO JOIN  
PARTIES TO ADD CLAIMS**

Pursuant to Nevada Rules of Civil Procedure (NRCP) 15 and 20 and Eighth Judicial District Court Rule (EDCR) 2.30, Defendant Bank of America, N.A. (Bank of America) moves for leave to amend its answer to Plaintiff Las Vegas Development Group, LLC's (Plaintiff) quiet title complaint to add an affirmative defense and counterclaim and to join as parties and assert claims against the Palo Verde Ranch HOA (HOA) and Absolute Collection Services, LLC (ACS).

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that **BANK OF AMERICA, N.A.** will bring the foregoing **BANK OF AMERICA’S MOTION FOR LEAVE TO AMEND ITS ANSWER TO ADD AN AFFIRMATIVE DEFENSE AND COUNTERCLAIM AND TO JOIN PARTIES TO ADD CLAIMS** for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 15 day of Sept 2015, at the hour of 9 : 30 o'clock a .m.

DATED: August 7, 2015.

**AKERMAN LLP**

/s/ Matthew Knepper  
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Nevada Bar No. 10711  
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Nevada Bar No. 12796  
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1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144

*Attorneys for Defendants Bank of America, N.A.*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This is an HOA quiet title dispute. Plaintiff alleges it purchased residential property at an HOA foreclosure sale, free and clear of all liens and encumbrances. Bank of America disputes Plaintiff's allegations and seeks to add an additional affirmative defense and counterclaim to its answer in this case. To the extent Plaintiff's claims are deemed meritorious, the HOA and its trustee, ACS, are liable to Bank of America for damages flowing from their violations of Chapter NRS 116 and applicable law in connection with the sale. Further, this Court ordered that the HOA be joined as a party to this action on July 14, 2015. Accordingly, Bank of America now seeks not only to add the HOA, but also ACS, the entity that conducted the HOA foreclosure sale on behalf of the HOA to assert claims against them.

### II. STATEMENT OF RELEVANT FACTS

#### **A. Genevieve Uniza-Enriquez borrows \$360,000.00 from Utah Financial, Inc.**

On or about June 22, 2006, Genevieve Uniza-Enriquez (**Borrower**) entered into a deed of trust with Utah Financial, Inc. in the amount of \$360,000.00 to secure the purchase of real property located at 6279 Downpour Court, Las Vegas Nevada 89110 (the **Property**). **Exhibit A.** The Deed of Trust was assigned to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP on or about June 25, 2010. **Exhibit B.** Bank of America is successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP.

#### **B. The HOA, through ACS, sells the Property at a 99% discount**

On April 1, 2010 the HOA, through ACS, recorded a Notice of Delinquent Assessment Lien. **Exhibit C.** ACS recorded a Notice of Default and Election to Sell on July 14, 2010. **Exhibit D.** ACS recorded a Notice of Trustee's Sale on November 18, 2010, stating that a foreclosure sale would be held on January 11, 2011. **Exhibit E.** The HOA, through ACS, then recorded a Trustee's Deed Upon Sale on April 13, 2011, stating that it sold the HOA's interest to Plaintiff for \$4,001.00 on April 12, 2011. **Exhibit F.** The amount Plaintiff paid for the Property is less than 1 percent of the value of the Deed of Trust.



1           **C. Plaintiff files the instant quiet title suit.**

2           On August 1, 2013, Plaintiff filed the instant Second Amended Complaint against Bank of  
3 America seeking to quiet title to the Property purchased at the HOA foreclosure sale conducted by  
4 ACS. The HOA and ACS are not parties to this case.

5           **III. ARGUMENT**

6           **A. The Court should grant Bank of America leave to amend its answer to include an  
7 additional affirmative defense and counterclaim against Plaintiff.**

8           Bank of America filed its answer to Plaintiff's Second Amended Complaint on March 26,  
9 2015. A scheduling order has not yet been entered. Bank of America timely makes this request in  
10 conformance with NRCP 15 and EDCR 2.30 and respectfully requests that leave be granted to add  
11 an additional affirmative defense and counterclaim.

12           NRCP 15 governs amended and supplemental pleadings and states that "leave [to amend]  
13 shall be freely given when justice so requires." NRCP 15(a). In fact, the Nevada Supreme Court has  
14 stated that "[i]t is recognized that an affirmative defense can be considered (if not pleaded) if  
15 fairness so dictates and prejudice will not follow." *Ivory Ranch, Inc. v. Quinn River Ranch*, 101  
16 Nev. 471, 473, 705 P.2d 673, 675 (1985) (citation omitted). The court's language—which allows  
17 even unpleaded affirmative defenses to be considered—supports the inclusion of these additional  
18 affirmative defenses at this time.

19           Here, Bank of America's amendment is timely and will not prejudice Plaintiff. Moreover,  
20 the amendment relates to pertinent defenses of this case, and the interests of justice and fairness  
21 support the addition of this defense. The assertion of this defense is in the interest of justice because  
22 it places all parties on notice of matters that will be addressed at the time of trial. This is especially  
23 true given that this defense centers on important issues of law and fact, particularly in light of the  
24 Nevada Supreme Court's holding in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv.  
25 Op. 75, 334 P.3d 408 (2014). This case involves the potential loss, pursuant to a statute, of a  
26 significant property interest held by Bank of America, and Bank of America respectfully requests  
27 leave to amend its answer so that it can more fulsomely defend the property interest.

1 A discovery cut-off has not yet been set, leaving the parties ample time to conduct any  
2 discovery this additional defense and counterclaim would raise. As indicated above, Plaintiff will not  
3 be prejudiced by the inclusion of the additional defense or counterclaim, and the assertion of the  
4 defense and counterclaim is in the interest of justice because it places all parties on notice of matters  
5 that will be addressed at the time of trial. Accordingly, Bank of America should be granted leave to  
6 amend its answer to Plaintiff's Second Amended Complaint. Bank of America should be granted  
7 leave to include the following additional affirmative defense against Plaintiff:

8 **SIXTEENTH AFFIRMATIVE DEFENSE**  
9 **(Due Process—Facially Unconstitutional Provisions)**

10 Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its "opt-in"  
11 notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice  
12 to a record lien holder before depriving that lien holder of its property rights, in violation of the Due  
13 Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of  
14 the Nevada Constitution.

15 **B. The Court should grant Bank of America leave to assert claims against the HOA  
and its trustee, ACS.**

16 The Court should also grant Bank of America leave to assert claims against the HOA and  
17 ACS for declaratory relief. Plaintiff moved to dismiss Bank of America's counterclaims on May 13,  
18 2015. This Court denied Plaintiff's motion on July 14, 2015, and ordered that the HOA be joined as  
19 a party to this action. Bank of America now seeks not only to add the HOA, but also ACS, the entity  
20 that conducted the HOA foreclosure sale on behalf of the HOA.

21 A party may bring a claim against a nonparty if the nonparty can be joined "in accordance  
22 with the provisions of ... [NRCP] 20." NRCP 13(h). Under NRCP 20, parties may be joined as  
23 defendants in an action if the claims asserted against them (1) arise out of the same transaction or  
24 occurrence and (2) raise at least one common question of law or fact. NRCP 20(a). NRCP 13(h)  
25 should be construed "liberally in an effort to avoid multiplicity of litigation, minimize the circuitry of  
26 actions, and foster judicial economy." *Lund v. Eighth Judicial Dist. Court*, 255 P.3d 280, 282 (Nev.  
27 2011).

1 Bank of America seeks to assert claims against the HOA and ACS relating to the foreclosure  
2 of the Property in this case. Through their involvement in the foreclosure of the Property—the same  
3 transaction at issue in Plaintiff’s quiet title action—both the HOA and ACS failed to comply with the  
4 requirements set forth in NRS 116.1113. These claims are also based on ACS’s failure to provide  
5 sufficient notice of the HOA foreclose sale and, despite that failure, ACS’s decision to sell the  
6 Property at a foreclosure sale at a 99% discount.

7 Consequently, Bank of America’s claims against the HOA and ACS arise from the same  
8 transaction and will raise some of the same questions of law and fact as Plaintiff’s quiet title action  
9 against Bank of America. Bank of America’s claims against the HOA and ACS, as well as  
10 Plaintiff’s quiet title action, all arise from the same transaction—the events leading up to the  
11 foreclosure sale and the actual foreclosure sale. In addition, Bank of America’s claims against the  
12 HOA and ACS raise questions of law common to the questions in Plaintiff’s quiet title complaint  
13 against Bank of America: specifically, whether ACS provided actual notice of the super-priority  
14 amount to Bank of America prior to the foreclosure sale and whether the price paid at the foreclosure  
15 sale was commercially unreasonable, either of which would result in an improperly conducted  
16 foreclosure sale in violation of Nevada law. Accordingly, Bank of America should be granted leave  
17 to assert claims against the HOA and its trustee, ACS. Pursuant to EDCR 2.30(b), a proposed  
18 amended answer is attached as **Exhibit G**.

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1 **IV. CONCLUSION**

2 This Court should grant Bank of America leave to amend its answer to assert an additional  
3 affirmative defense against Plaintiff. This Court should also grant Bank of America leave to join the  
4 HOA and its trustee, ACS, as defendants in this action, as the claims Bank of America seeks to  
5 assert arise from the same foreclosure and raise some of the same questions of law and fact as  
6 Plaintiff's Complaint.

7  
8 DATED this 7th day of August, 2015.

9 **Akerman LLP**

10 /s/ Matthew Knepper

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22 *Attorneys for Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of August, 2015 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system Wiznet a true and correct copy of the foregoing **BANK OF AMERICA'S MOTION FOR LEAVE TO AMEND ITS ANSWER TO ADD AN AFFIRMATIVE DEFENSE AND COUNTERCLAIM AND TO JOIN PARTIES TO ADD CLAIMS** on all parties and counsel as identified on the Court generated notice of electronic filing.

Timothy Rhoda, Esq.  
Nevada Bar No. 7878  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148

*Attorney for Plaintiff*

/s/ Rebecca L. Thole  
An Employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



20060630-0002110

Fee: \$35.00

N/C Fee: \$25.00

06/30/2006

09:39:29

T20060115643

Requestor:

FIRST AMERICAN TITLE COMPANY OF NEVAD

Frances Deane

DGI

Clark County Recorder

Pgs: 22

C 22

PIN #: 140-34-413-075  
After Recording Return To:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100  
SALT LAKE CITY, UT 84107  
ATTN: FUNDING DEPARTMENT

Grantee:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100, SALT LAKE  
CITY, UT 84107

Mail Tax Statement To:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100  
SALT LAKE CITY, UT 84107

[Space Above This Line For Recording Data]

## DEED OF TRUST

UNIZA-ENRIQUEZ

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JUNE 22, 2006, together with all Riders to this document.

(B) "Borrower" is GENEVIEVE UNIZA-ENRIQUEZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY. Borrower is the trustor under this Security Instrument.

(C) "Lender" is UTAH FINANCIAL, INC.. Lender is a CORPORATION organized and existing under the laws of UT. Lender's address is 4001 SOUTH 700 EAST STE 100, SALT LAKE CITY, UT 84107.

(D) "Trustee" is FIRST AMERICAN TITLE.

(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 22, 2006. The Note states that Borrower owes Lender THREE HUNDRED SIXTY THOUSAND AND 00/100 Dollars (U.S. \$360,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 1, 2036.

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

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(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

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

☒ Adjustable Rate Rider  
☐ Balloon Rider  
☐ 1-4 Family Rider

☐ Condominium Rider  
☒ Planned Unit Development Rider  
☐ Other(s) [specify]

☐ Second Home Rider  
☐ Biweekly Payment Rider

(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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY (Type of Recording Jurisdiction) of CLARK (Name of Recording

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Jurisdiction):

**SEE EXHIBIT "A"**

which currently has the address of 5279 DOWNPOUR COURT, LAS VEGAS, Nevada 89110 ("Property Address").

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

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

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

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reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

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

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

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

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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 those 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.

**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).

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

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

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

Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

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

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

25. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$0.00.

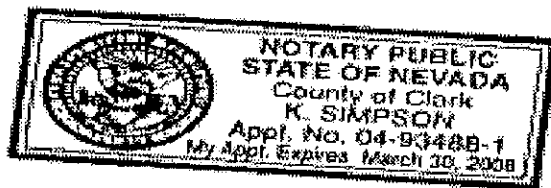
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Genevieve Uniza-Enriquez 0/23/01  
- BORROWER - GENEVIEVE UNIZA-ENRIQUEZ - DATE -

[Space Below This Line for Acknowledgment]

STATE OF Nevada  
COUNTY OF Clark

This instrument was acknowledged before me on June 23<sup>rd</sup> 2006 by  
Genevieve Louise Gray



[Signature]  
Notary Public

My Commission Expires: 33008

**EXHIBIT 'A'**

**PARCEL I:**

**LOT 75 OF CHARLESTON AND FOGG (A COMMON INTEREST COMMUNITY), AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA**

**PARCEL II:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT, LANDSCAPING AND PUBLIC UTILITIES PURPOSES ON, OVER AND ACROSS THE "PRIVATE DRIVES/ P.U.E." AND "COMMON AREAS" AS DELINEATED ON SAID MAP, AND AS FURTHER DEFINED BY THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR PALO VERDE RANCH RECORDED MARCH 12, 2004 IN BOOK 20040312, AS DOCUMENT NUMBER 01067, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.**

## PLANNED UNIT DEVELOPMENT RIDER

NOTICE - FIRE TOWER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 22ND 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 (the "Borrower") to secure Borrower's Note to UTAH FINANCIAL, INC., (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

6279 DOWNPOUR COURT, LAS VEGAS, NV 89110

[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

CHARLESTON & FOGG

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the

provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard 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.

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

Genevieve Unzueta-Enriquez 12/23/06  
- BORROWER - GENEVIEVE UNZUETA-ENRIQUEZ - DATE -

Doc ID#:

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

UNISA-ENRIQUEZ

THIS ADJUSTABLE RATE RIDER is made this 22ND 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 UTAH FINANCIAL, INC. ("Lender") of the same date and covering the property described in the Security Instrument and located at:

6279 DOWNPOUR COURT, LAS VEGAS, NV 89110  
[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 agrees as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

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

**2. INTEREST**

**(A) Interest Rate**

PayOption MTA ARM Rider  
FE-5315 (0511)

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JA 0089



Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.750%. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

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

**(C) Index**

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

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

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

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **THREE AND ONE-HALF** percentage point(s) 3.500% ("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.

I will make my monthly payments on the 1ST day of each month beginning on AUGUST 1, 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 this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 4001 SOUTH 700 EAST STE 100, SALT LAKE CITY, UT 84107 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. \$1,286.08 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 1ST 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 7.5% of my prior monthly payment. This 7.5% 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. I also have the option to pay the Full Payment for my monthly payment.

**(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 (115.000%) 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 monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% 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 **FIFTH** 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, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

PayOption MTA ARM Rider

FE-5315 (0511)

5538.20

Page 3 of 5

- (i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. 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) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
- (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 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.

Genevieve Uniza Enríquez 10/23/06  
- BORROWER - GENEVIEVE UNIZA ENRIQUEZ - DATE -

PayOption NTA ARM Rider  
FE-5315 (0511)  
\$538.20

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**EXHIBIT B**

**EXHIBIT B**

Inst #: 201006300004065  
Fees: \$14.00  
N/C Fee: \$0.00  
06/30/2010 03:27:38 PM  
Receipt #: 409485  
Requestor:  
FIDELITY NATIONAL DEFAULT S  
Recorded By: DXI Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

FIDELITY NATIONAL  
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. 10-0071205  
TITLE ORDER#: 100375035NVGTI  
APN 140-34-413-075

**CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA**

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:  
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 06/22/2006,  
EXECUTED BY: GENEVIEVE UNIZA-ENRIQUEZ, A MARRIED WOMAN AS HER SOLE AND  
SEPARATE PROPERTY, TRUSTOR: TO FIRST AMERICAN TITLE, TRUSTEE AND RECORDED  
AS INSTRUMENT NO. 0002110 ON 06/30/2006, IN BOOK 20060630, 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 25, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC.

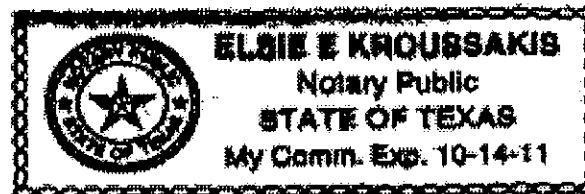
State of: Texas  
County of: Tarrant

BY: Khadija Gulley  
Khadija Gulley, Assistant Secretary

**JUN 28 2010**

On June 25, 2010 before me Elsie E. Kroussakis, personally appeared Khadija Gulley  
Asst. Secy. know to me (or proved to me on the oath of \_\_\_\_\_ or through  
\_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument and  
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.  
Witness my hand and official seal.

Elsie E. Kroussakis  
Notary Public's Signature



**EXHIBIT C**

**EXHIBIT C**

Inst #: 201004010001086

Fees: \$15.00

N/C Fee: \$0.00

04/01/2010 10:50:35 AM

Receipt #: 294131

Requestor:

CAMCO

Recorded By: BGN Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:  
Attn: Kelly Mitchell  
Absolute Collection Services, LLC  
PO Box 12117  
Las Vegas, NV 89112  
(702) 531-3394 phone

APN # 140-34-413-075

### Notice of Delinquent Assessment Lien

This **NOTICE OF DELINQUENT ASSESSMENT** is being given pursuant to N.R.S. 117.70 et seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and the provisions of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the Homeowners Association as follows:

Association Claimant: Palo Verde Ranch HOA Declarations of CC&Rs recorded 3/12/04 Instrument No: 01067, Book No.: 20040312, Page No: \_\_ County of CLARK, and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is as follows: Legal Unit No.: 6279 Downpour Ct., Charleston & Fogg Plat Book 113 Page 40 Lot 75

The reputed owner is: GENEVIEVE UNIZA-ENRIQUEZ

Common address: 6279 Downpour Ct., Las Vegas NV 89110

Owner's mailing address: Same

#### DELINQUENCY #A1259

Total Amount due as of 03/31/10	\$754.56
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Additional monies shall accrue under this claim at the rate of the claimant's periodic assessments, plus permissible late charges, costs of collection and interest and other charges, if any, that shall accrue subsequent to the date of this notice.

The acting agency for enforcement on this lien is:

ABSOLUTE COLLECTION SERVICES, LLC  
PO BOX 12117  
LAS VEGAS NV 89112  
(702) 531-3394

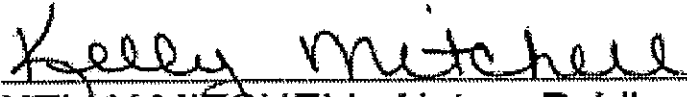
DATED: 03/31/2010

  
RICHARD KAYE, Trustee Sales Officer

STATE OF NEVADA  
COUNTY OF CLARK

On 3/31/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, RICHARD KAYE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

  
KELLY MITCHELL, Notary Public



**EXHIBIT D**

**EXHIBIT D**

Return to:  
Attn: Kelly Mitchell  
Absolute Collections Services, LLC  
PO Box 12117  
Las Vegas, NV 89112  
(702) 531-3394

APN # 140-34-413-075  
TS NO: A1259  
Title Order No:

Inst #: 201007140001222  
Fees: \$16.00  
N/C Fee: \$0.00  
07/14/2010 09:49:23 AM  
Receipt #: 424836  
Requestor:  
CAMCO  
Recorded By: GILKS Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO  
SELL UNDER NOTICE OF DELINQUENT  
ASSESSMENT**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default may be recorded or mailed. The amount is **\$1749.65** as of **July 13, 2010** and will increase until your account becomes current. Upon your written request, **Palo Verde Ranch HOA** will give you a written itemization of the entire amount you must pay. You and the Association may mutually agree in writing prior to the time the notice of sale is posted to, amount other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2). Following the expiration of the time period previously referred to, unless a separate written agreement between you and the Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by the Association.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, contact the following trustee who has been authorized by the Association to enforce its lien by sale: Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, 702-531-3394.

THIS NOTICE is given pursuant to NRS 117.070 et. Seq. or NRS 116.3115 et. Seq. and NRS 116.3116 through 116.31168 et. Seq., and pursuant to that certain Notice of

Delinquent Assessment Lien, recorded on 4/01/10 as Document no. 0001086 book 20100401 of Official Records in the office of the Recorder of Clark County, State of Nevada.

Owner: **Genevieve Uniza-Enriquez**  
Property Address: **6279 Downpour Ct, Las Vegas, NV 89110**

Legal Description-shown on the Subdivision map recorded in Book No.113 Page(s) 40 Inclusive, of Maps of the County of Clark, State of Nevada.

If you have any questions, you should contact a lawyer. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION**

NOTICE IS HEREBY GIVEN THAT: Absolute Collection Services, LLC, is the duly appointed Trustee/Agent authorized by the Association, pursuant to the terms contained in that certain Declaration of Covenants, Conditions and Restrictions, Recorded on 3/12/04 as document number 01067-20040312 of Official Records in the Office of the Recorder of Clark County, Nevada, and any and all amendments or annexations of record thereto, describing the land therein. That the beneficial Interest under said Notice of Delinquent Assessment is presently held by the Association. That a breach of, and default in, the obligation for which said Covenants, Conditions and Restrictions as security has occurred in that the payment(s) have not been made of:

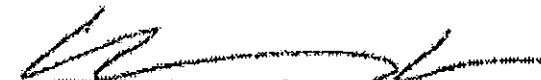
Periodic assessments, less credits and offsets, plus any late charges, interest, fees, charges, collection costs, trustee's fees, and attorney fees, if any.

That by reason thereof, the present Association under such Covenants, Conditions and Restrictions, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Covenants, Conditions and Restrictions and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the herein described property, liened by said Association, to be sold to satisfy the obligations secured thereby.

PLEASE NOTE THAT WE ARE A DEBT COLLECTOR.

Date: 7/13/10

Absolute Collection Services, LLC as Trustee

  
Richard Kaye, Trustee Sale Officer

STATE OF NEVADA  
COUNTY OF CLARK

On 7/13/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

  
Kelly Mitchell, Notary Public



**EXHIBIT E**

**EXHIBIT E**

Return to:  
Attn: Kelly Mitchell  
Absolute Collections Services, LLC  
PO Box 12117  
Las Vegas, NV 89112  
(702) 531-3394

APN # 140-34-413-075  
TS NO: A1259.  
Title Order No: 072210-4-J  
HOA: Palo Verde Ranch HOA

Inst #: 201011180001542  
Fees: \$15.00  
N/C Fee: \$25.00  
11/18/2010 09:18:10 AM  
Receipt #: 582556  
Requestor:  
CAMCO  
Recorded By: ARO Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ABSOLUTE COLLECTION SERVICES, LLC AT 702-531-3394. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT 877-829-9907 OR 702-486-4480 IMMEDIATELY.**

You are in default under a Notice of Delinquent Assessment LIEN, dated APRIL 1, 2010. 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 a lawyer.

NOTICE IS HEREBY GIVEN THAT: On JANUARY 11, 2011 at 4:00 PM, at the front entrance to Absolute Collection Services, LLC, 1820 E Sahara Ave #111, Las Vegas NV 89104, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on MARCH 12, 2004 as instrument number 01067 Book 20040312 of official records of Clark County, as the duly appointed agent and pursuant to Notice of Delinquent Assessment LIEN, recorded on 4/1/10 as Document No. 0001086 in Book 20100401 of Official Records in the Office of the Recorder of Clark County, Nevada, **WILL SALE AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH**, (payable at time of sale in lawful money of the United States) all right, title and interest in the following commonly known property as:

Address: 6279 DOWNPOUR CT.  
City, State, Zip: LAS VEGAS NV 89110

The owner(s) of said property as of the date of the recording of said lien is purported to be:

GENEVIEVE UNIZA-ENRIQUEZ

The undersigned agent disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum due under said Notice of Delinquent Assessment Lien, with interest thereon, as provided in said notice, advances, if any, estimated fees, charges, and expenses of the Trustee, to-wit:

\$2,873.86 Estimated Accrued interest and additional advances, if any, will increase this figure prior to sale.

The Notice of Default and Election to Sell the described property was recorded on JULY 14, 2010 as Instrument 0001222 Book 20100714 in the official records of Clark County.

PLEASE NOTE THAT WE ARE A DEBT COLLECTOR

Date: 11/18/10

Absolute Collection Service, LLC  
1820 E Sahara Ave #111  
Las Vegas NV 89104  
702-531-3394

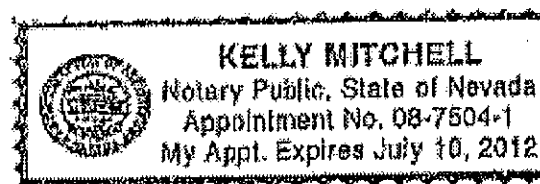
  
Richard Kaye, Trustee's Sale Officer

STATE OF NEVADA  
COUNTY OF CLARK

On 10/19/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

  
Kelly Mitchell, Notary Public





**EXHIBIT F**

**EXHIBIT F**

Inst #: 201104130000953

Fees: \$16.00 N/C Fee: \$0.00

RPTT: \$22.95 Ex: #

04/13/2011 09:13:03 AM

Receipt #: 738696

Requestor:

CAMCO

Recorded By: MSH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 140-34-413-075

WHEN RECORDED MAIL DEED AND  
TAX STATEMENTS TO:

Las Vegas Development Group, LLC  
397 3<sup>rd</sup> Ave, Ste A  
Chula Vista CA 91910

Title No. A1259  
Account NO. 77983  
TS No. 072210-4-J

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TRUSTEE'S DEED UPON SALE**

The undersigned declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary
- 2) The amount of the unpaid debt together with costs was \$4,001.00
- 3) The amount paid by the grantee at the trustee sale was \$4,001.00
- 4) The documentary transfer tax is \$ 22.95
- 5) City Judicial District of LAS VEGAS

And **Absolute Collection Services, LLC**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to: **Las Vegas Development Group, LLC, 397 3<sup>rd</sup> Ave, Ste A, Chula Vista CA 91910**

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

**6279 Downpour Ct., Las Vegas NV 89110**

Legal Description-shown on the Subdivision map recorded in Book No. 113 Page(s) 40 Inclusive, of Maps of the Country of Clark, State of Nevada; See Exhibit A Attached

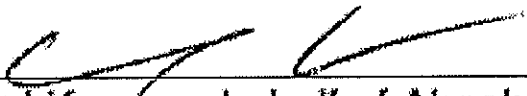
**AGENT STATES THAT:**

This conveyance is made pursuant to the powers granted to PALO VERDE RANCH HOA and conferred upon appointed trustee by the provisions of the Nevada Revised Statutes, the PALO VERDE RANCH HOA governing documents (CC&R's) recorded as instrument number 01067 Book 20040312 on MARCH 12, 2004 and that certain Notice of Delinquent Assessment Lien recorded on APRIL 1, 2010 instrument number 0001086

Book 20100401 Official Records of CLARK County; and pursuant to NRS 117.070 et Seq. or NRS 116.3115 et Seq and NRS 116.3116 through 116.31168 et Seq. The name of the owner(s) of the property (trustor) was: GENEVIEVE UNIZA-ENRIQUEZ

Default occurred as set forth in a Notice of Default and Election to Sell, recorded on JULY 14, 2010 as instrument 0001222 Book 20100714 which was recorded in the office of the recorder of said county. Absolute Collection Services, LLC. Has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of PALO VERDE RANCH HOA at public auction on April 12, 2011 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 \$4,001.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: April 13, 2011

  
By Richard Kaye on behalf of Absolute Collection Services

STATE OF NEVADA       )  
COUNTY OF CLARK     )

On 4/13/11 before me, Kelly Mitchell, personally appeared Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

  
Kelly Mitchell, Notary Public



## **EXHIBIT "A"**

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

**PARCEL I:**

LOT 73 OF CHARLESTON AND FOGG (A COMMON INTEREST COMMUNITY); AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA

**PARCEL II:**

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT, LANDSCAPING AND PUBLIC UTILITIES PURPOSES ON, OVER AND ACROSS THE "PRIVATE DRIVES/ P.U.E." AND "COMMON AREAS" AS DELINEATED ON SAID MAP, AND AS FURTHER DEFINED BY THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR PALO VERDE RANCH RECORDED MARCH 12, 2004 IN BOOK 20040312, AS DOCUMENT NUMBER 01067, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 140-34-413-075  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Townhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
☐ Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property  
b. Deed in Lieu of Foreclosure Only (value of property)  
c. Transfer Tax Value:  
d. Real Property Transfer Tax Due

\$ 4001.00  
\_\_\_\_\_  
\$ 4001.00  
\$ 22.95

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_

Capacity: Member, Grantee

Signature: \_\_\_\_\_

Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Absolute Collection Services  
Address: PO Box 12117  
City: Las Vegas  
State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: Las Vegas Development Group LLC  
Address: 397 RRD Ave Suite  
City: CITRUS VISTA  
State: CA Zip: 91910

COMPANY REQUESTING RECORDING

Print Name: CAMCO  
Address: PO Box 12117  
City: Las Vegas

Escrow #: N/A - foreclosure  
State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

**EXHIBIT G**

**EXHIBIT G**

1 ARIEL E. STERN, ESQ.  
Nevada Bar No. 10711  
2 MATTHEW KNEPPER, ESQ.  
Nevada Bar No. 12796  
3 AKERMAN LLP  
1160 Town Center Drive, Suite 330  
4 Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
5 Facsimile: (702) 380-8572  
Email: ariel.stern@akerman.com  
6 Email: matthew.knepper@akerman.com

7 *Attorneys for Bank of America, N.A.*

8 **DISTRICT COURT FOR**  
9 **CLARK COUNTY, NEVADA**

10 LAS VEGAS DEVELOPMENT GROUP,  
11 LLC

12 Plaintiff,

13 vs.

14 BANK OF AMERICA; GENEVIEVE UNIZA-  
15 ENRIQUEZ; DOES 1 through 20, and ROE  
CORPORATIONS 1 through 20, inclusive,

16 Defendants.  
17

Case No.: A-12-654840-C

Dept. No.: XXIII

**BANK OF AMERICA, N.A.’s *PROPOSED***  
**AMENDED ANSWER,**  
**COUNTERCLAIMS, AND**  
**CROSSCLAIMS TO SECOND AMENDED**  
**COMPLAINT**

18  
19 **ANSWER**

20 Defendant Bank of America, N.A. (“BANA”), answers the Complaint filed by Plaintiff Las  
21 Vegas Development Group, LLC (“Plaintiff”) as follows:  
22

23 1. BANA admits it does business in Clark County, Nevada. The remaining allegations  
24 in Paragraph 1 of the Complaint are directed to unnamed entities or persons and, therefore, no  
25 response is required. To the extent a response is required, BANA lacks sufficient information or  
26 knowledge to admit or deny such allegations and therefore denies same.  
27

1           2.       BANA admits that, at one time, Genevieve Uniza-Enriquez was record owner of the  
2 property located at 6279 Downpour Court, Las Vegas, Nevada 89110 (the "Property"). Except as  
3 specifically admitted, the remaining allegations in Paragraph 2 of the Complaint are denied for lack  
4 of information and belief.

5           3.       The allegations in Paragraph 3 of the Complaint are directed to unnamed entities or  
6 persons and, therefore, no response is required. To the extent a response is required, BANA lacks  
7 sufficient information to admit or deny such allegations and therefore denies same.

8           4.       The allegations in Paragraph 4 of the Complaint state legal conclusions to which no  
9 response is required. To the extent a response is required, BANA denies the allegations in Paragraph  
10 4 of the Complaint.

11           5.       BANA admits that Plaintiff purports to be the current record owner of the Property.  
12 BANA denies that Plaintiff is entitled to possession of the property.

13           6.       BANA admits that it claims an interest in the Property. Except as specifically  
14 admitted, the allegations in Paragraph 6 of the Complaint are denied.

15           7.       The allegations in Paragraph 7 of the Complaint state Plaintiff's requested relief, to  
16 which no response is required. To the extent a response is required, BANA denies that Plaintiff is  
17 entitled to the requested relief.

18           8.       The allegations in Paragraph 8 of the Complaint are directed to unnamed entities or  
19 persons and, therefore, no response is required. To the extent a response is required, BANA lacks  
20 sufficient information or knowledge to admit or deny such allegations and therefore denies same.

21  
22  
23  
24  
25                   **PRAYER FOR RELIEF**

26           1.       BANA denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the Prayer  
27 for Relief.



2. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the Prayer for Relief.

3. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 3 of the Prayer for Relief.

4. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 4 of the Prayer for Relief.

5. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 5 of the Prayer for Relief.

6. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 6 of the Prayer for Relief.

### **AFFIRMATIVE DEFENSES**

BANA asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and BANA reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. In further answer to the Complaint, and by way of additional defenses, BANA avers as follows:

#### **FIRST AFFIRMATIVE DEFENSE** **(Failure to State a Claim)**

Plaintiff has failed to state facts sufficient to constitute any cause of action against BANA.

#### **SECOND AFFIRMATIVE DEFENSE** **(Void for Vagueness)**

To the extent that Plaintiff may rely on and accurately interpret NRS 116.3116 to support its claim, the statute, and Chapter 116, are void for vagueness as applied to this matter.

#### **THIRD AFFIRMATIVE DEFENSE** **(Due Process Violations)**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Violation of Procedural Due Process)**

The super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

The homeowner's association foreclosure sale was not commercially reasonable, and the circumstances of sale of the property violated the homeowner's association's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(No Standing)**

Plaintiff lacks standing to bring some or all of its claims and causes of action.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

BANA avers the affirmative defense of unclean hands.

**NINTH AFFIRMATIVE DEFENSE**  
**(Plaintiff is Not Entitled to Relief)**

BANA denies that Plaintiff is entitled to any relief for which it prays.

**TENTH AFFIRMATIVE DEFENSE**  
**(Failure to Do Equity)**

BANA avers the affirmative defense of failure to do equity.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Failure to Provide Notice)**

BANA was not provided proper notice of the "superpriority" assessment amounts and the homeowner's association foreclosure sale, and any such notice provided to BANA failed to comply

1 with the statutory and common law requirements of Nevada and with state and federal constitutional  
2 law.

3 **TWELFTH AFFIRMATIVE DEFENSE**  
4 **(Void Foreclosure Sale)**

5 The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter  
6 116, and other provisions of law.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**  
8 **(Plaintiff is not a Bona Fide Purchaser for Value)**

9 Plaintiff purchased the property with record notice of the interest of the senior deed of trust  
10 recorded against the property.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**  
12 **(Barred by 12 U.S.C. § 4617(j)(3))**

13 Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3),  
14 which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts  
15 any state law to the contrary.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**  
17 **(Additional Affirmative Defenses)**

18 Pursuant to NRCP 11, Defendant reserves the right to assert additional affirmative defenses  
19 in the event discovery and/or investigation disclose the existence of other affirmative defenses.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**  
21 **(Due Process—Facially Unconstitutional Provisions)**

22 Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in”  
23 notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice  
24 to a record lien holder before depriving that lien holder of its property rights, in violation of the Due  
25 Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of  
26 the Nevada Constitution.

27 ...

28 ...

## COUNTERCLAIMS AND CROSSCLAIMS

Defendant/Counterclaimant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (“BANA”) hereby counterclaims against Plaintiff/Counter-Defendant Las Vegas Development Group, LLC (“Plaintiff”) and crossclaims against Cross-Defendants Palo Verde Ranch HOA (“HOA”) and Absolute Collection Services, LLC (“ACS”) as follows:

### PARTIES

1. BANA is a national association doing business in Clark County, Nevada.
2. On information and belief, Plaintiff is a Nevada limited liability company.
3. On information and belief, HOA is a Nevada non-profit corporation conducting business in Clark County, Nevada.
4. On information and belief, ACS is a Nevada limited liability company.

### JURISDICTION AND VENUE

This Court has jurisdiction over Plaintiff, HOA, and ACS because the allegations set forth in Bank of America’s counterclaims and crossclaims relate to Plaintiff’s purported purchase of an interest in, and the HOA and ACS’s purported foreclosure of, real property located and situated in Clark County, Nevada.

Venue is proper in this judicial district because the property that is the subject of this action is situated in this district.

### GENERAL ALLEGATIONS

Under Nevada law, homeowners’ associations have the right to charge property owners residing within the community assessments to cover the homeowners’ association’s expenses for maintaining or improving the community, among other things.

9. A homeowners' association may impose a lien for "any penalties, fees, charges, late charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

10. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "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[.]" NRS 116.3116(2)(c).

11. According to the Nevada Supreme Court's recent decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), if a homeowner's association properly forecloses on its super-priority lien, it can extinguish a first deed of trust. However, the homeowners' association's foreclosure in this case did not extinguish the first Deed of Trust because the foreclosure did not comply with Nevada law and was commercially unreasonable as a matter of law. To deprive BANA of its Deed of Trust under the circumstances of this case would deprive BANA of its due process rights.

## FACTUAL ALLEGATIONS

## The Deed of Trust and Assignment

12. On or about June 22, 2006, Genevieve Uniza-Enriquez (“Borrower”) executed a Note to finance the purchase of real property located at 6279 Downpour Court, Las Vegas Nevada 89110 (the “Property”), which was secured by a Deed of Trust. This Deed of Trust in favor of Mortgage

1 Electronic Registration Systems (“MERS”) was recorded on June 30, 2006. A true and correct copy  
2 of the Deed of Trust is attached as **Exhibit A**.

3 13. On or about June 25, 2010, the Deed of Trust was assigned to BAC Home Loans  
4 Servicing, LP via an Assignment of Deed of Trust. This Assignment was recorded on June 30,  
5 2010. A true and correct copy of the Assignment of the Deed of Trust is attached as **Exhibit B**.

6 14. Borrowers defaulted under the terms of the Note and First Deed of Trust.

7 15. The unpaid principal balance due on the loan secured by the Deed of Trust, as of  
8 April 12, 2011, exceeds \$452,557.77. The total amount due has continued to increase pursuant to the  
9 Note and Deed of Trust.

#### 11 The HOA Lien and Foreclosure

12 16. Upon information and belief, Borrower failed to pay the HOA all amounts due to it.  
13 Accordingly, on April 1, 2010, ACS, as agent for the HOA, recorded a Notice of Delinquent  
14 Assessment Lien. The Notice stated the amount due to the HOA was \$754.56. A true and correct  
15 copy of the Notice of Delinquent Assessment Lien is attached as **Exhibit C**. This Notice neither  
16 identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment”  
17 required by NRS 116.31162(1)(b)(1).

18 17. On July 14, 2010 the HOA, through ACS, recorded a Notice of Default and Election  
19 to Sell Under Notice of Delinquent Assessment. A true and correct copy of the Notice of Default and  
20 Election to Sell Under Notice of Delinquent Assessment is attached as **Exhibit D**. The Notice stated  
21 the amount due to the HOA was \$1,749.65. This Notice neither identifies the super-priority amount  
22 claimed by the HOA, nor describes the “deficiency in payment” required by NRS  
23 116.31162(1)(b)(1).

24 18. In none of the recorded documents did the HOA or the HOA Trustee identify the  
25 amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.  
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27  
28

1           19.     In none of the recorded documents nor in any notice did the HOA or ACS specify  
2 whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-priority  
3 portion of its lien.

4           20.     Despite the deficiency of the Notices, ACS, conducted a foreclosure sale on behalf of  
5 the HOA on April 12, 2011. The property was sold to Plaintiff for \$4,001.00. A true and correct  
6 copy of the Trustee's Deed is attached as **Exhibit E**.

7           21.     ACS's sale of the HOA's interest in the Property for less than 1% of the value of the  
8 unpaid principal balance of the loan secured by the first Deed of Trust, and, on information and  
9 belief, for a similarly diminutive percentage of the Property's fair market value, is commercially  
10 unreasonable and not in good faith as required by NRS 116.1113.

11           29.     Plaintiff, the HOA, and ACS were aware, prior to the sale, of a split among Nevada  
12 courts concerning their ability to eliminate BANA's Deed of Trust by foreclosing, and proceeded to  
13 sell the Property for an extremely depressed price due to the legal uncertainty.  
14

15           30.     This foreclosure sale was commercially unreasonable because the manner in which  
16 ACS conducted the sale, including the notices it provided, the legal uncertainty concerning the effect  
17 of the sale, and other circumstances surrounding the sale, was not calculated to attract proper  
18 prospective purchasers, and thus could not promote an equitable sales price of the Property.  
19

20                           **FIRST CAUSE OF ACTION**  
21                   **(Counterclaim for Declaratory Relief Against Plaintiff and Crossclaim for Declaratory Relief**  
22                           **Against HOA and ACS)**

23           31.     BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
24 herein and incorporates the same by reference.

25           32.     Under NRS 30.010 *et seq.*, this Court has the power and authority to declare  
26 BANAs' rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.  
27  
28

1           33.     The HOA, through ACS, foreclosed on the HOA's lien on April 12, 2011. Plaintiff  
2 purchased the Property at the HOA foreclosure sale.

3           34.     Upon information and belief, Plaintiff claims an interest in the Property adverse to  
4 BANA, in that Plaintiff claims that the HOA's foreclosure sale extinguished the first Deed of Trust.  
5 A judicial determination is necessary to ascertain the rights, obligations, and duties of the various  
6 parties.

7           35.     The HOA's foreclosure sale did not extinguish the first Deed of Trust because the  
8 recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as  
9 required by Nevada law, including, without limitation: whether the deficiency included a "super-  
10 priority" component, the amount of the super-priority component, how the super-priority component  
11 was calculated, when payment on the super-priority component was required, where payment was to  
12 be made, or the consequences for failure to pay the super-priority component.

13           36.     The foreclosure sale did not extinguish the first Deed of Trust because the sale was  
14 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS  
15 116.1113 in several respects, including, without limitation: the lack of sufficient notice, the sale of  
16 the Property for a fraction of the loan balance or actual market value of the Property, a foreclosure  
17 that was not calculated to promote an equitable sales price for the Property or to attract proper  
18 prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a  
19 maximum profit for the HOA and ACS without regard to the rights and interests of those who have  
20 an interest in the loan and made the purchase of the Property possible in the first place.

21           37.     The HOA's foreclosure sale did not extinguish the Deed of Trust because the statute  
22 authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does not  
23 mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as  
24 required by the Due Process Clause of the United States Constitution.  
25  
26  
27  
28



1           38.     Because the foreclosure sale conducted by ACS was commercially unreasonable, the  
2 sale is invalid. Consequently, the Deed of Trust continued to encumber the Property after the HOA  
3 foreclosure sale.

4           39.     Based on the adverse claims being asserted by the parties, a judicial determination is  
5 necessary to ascertain the rights, obligations, and duties of the various parties.

6           40.     Bank of America is entitled to a declaration that the HOA sale was not a valid sale.

7           41.     Bank of America is required to retain an attorney to prosecute this action, and is  
8 therefore entitled to collect its reasonable attorney's fees and costs.  
9

10                           **SECOND CAUSE OF ACTION**  
11                           **(Counterclaims for Quiet Title Against Plaintiff)**

12           42.     BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
13 herein and incorporates the same by reference.

14           43.     Under NRS 40.010, this Court has the power and authority to declare BANA's rights  
15 and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

16           44.     At the time of the HOA foreclosure sale, the Deed of Trust was a first secured interest  
17 on the Property as intended by NRS 116.3116(2)(b).

18           45.     Based on the adverse claims being asserted by the parties, the parties are entitled to a  
19 judicial determination regarding the rights and interests of the respective parties.

20           46.     BANA is entitled to a determination from this Court that, pursuant to NRS 40.010  
21 and NRS 116, that the HOA sale is unlawful and void under NRS 116.3102 *et seq.*

22           47.     BANA was required to retain an attorney to prosecute this action, and is therefore  
23 entitled to collect its reasonable attorney's fees and costs.  
24

25     ...

26     ...

27     ...  
28

**THIRD CAUSE OF ACTION**  
**(Counterclaim for Unjust Enrichment Against Plaintiff)**

48. BANA repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

49. The HOA's foreclosure sale unjustly enriched Plaintiff by allowing it to obtain title to real property secured by a Deed of Trust with an unpaid principal balance of \$452,557.77 for the inequitable purchase price \$4,001.00.

50. Upon information and belief, Plaintiff continues to retain and derive income from the Property to the detriment of BANA, contrary to fundamental principles of fairness, justice, and fair dealing.

51. BANA is entitled to the reasonable amount of the benefits obtained by Plaintiff based on a theory of unjust enrichment.

52. BANA was required to retain an attorney to prosecute this action, and are therefore entitled to collect its reasonable attorney's fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, BANA prays for the following:

1. An order declaring that, under state law, the HOA sale was invalid and that any subsequent transfer of the Property conveyed no legitimate interest to Plaintiff, and that BANA holds title to the Property;

2. An order establishing that the first Deed of Trust is senior and superior to any right, title, interest, lien, equity, or estate of Plaintiff.

3. Judgment in BANA's favor against Plaintiff for the amount that it was unjustly enriched in an amount in excess of \$10,000;

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3. Reasonable attorney's fees as special damages and the costs of the suit; and

4. For such other and further relief the Court deems proper.

DATED this 7th day of August, 2015.

**Akerman LLP**

/s/ Matthew Knepper

ARIEL E. STERN, ESQ.

Nevada Bar No. 10711

MATTHEW KNEPPER, ESQ.

Nevada Bar No. 12796

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*Attorneys for Bank of America, N.A.*

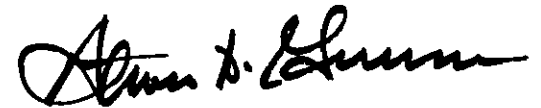
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of August, 2015 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system Wiznet a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'s PROPOSED AMENDED ANSWER, COUNTERCLAIMS, AND CROSSCLAIMS TO SECOND AMENDED COMPLAINT** on all parties and counsel as identified on the Court generated notice of electronic filing.

Timothy Rhoda, ESQ.  
Nevada Bar No. 7878  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148

*Attorney for Plaintiff*

/s/ Rebecca L. Thole  
An Employee of AKERMAN LLP



CLERK OF THE COURT

AANS  
ARIEL E. STERN, ESQ.  
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*Attorneys for Bank of America, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP,  
LLC

Plaintiff,

vs.

BANK OF AMERICA; GENEVIEVE UNIZA-  
ENRIQUEZ; DOES 1 through 20, and ROE  
CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-12-654840-C  
Dept. No.: XXIII

**BANK OF AMERICA, N.A.'s AMENDED  
ANSWER, COUNTERCLAIMS, AND  
CROSSCLAIMS TO SECOND AMENDED  
COMPLAINT**

Defendant Bank of America, N.A. (“BANA”), answers the Complaint filed by Plaintiff Las Vegas Development Group, LLC (“Plaintiff”) as follows:

1. BANA admits it does business in Clark County, Nevada. The remaining allegations in Paragraph 1 of the Complaint are directed to unnamed entities or persons and, therefore, no response is required. To the extent a response is required, BANA lacks sufficient information or knowledge to admit or deny such allegations and therefore denies same.

2. BANA admits that, at one time, Genevieve Uniza-Enriquez was record owner of the property located at 6279 Downpour Court, Las Vegas, Nevada 89110 (the “Property”). Except as

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AKERMAN LLP

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LAS VEGAS, NEVADA 89144  
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specifically admitted, the remaining allegations in Paragraph 2 of the Complaint are denied for lack of information and belief.

3. The allegations in Paragraph 3 of the Complaint are directed to unnamed entities or persons and, therefore, no response is required. To the extent a response is required, BANA lacks sufficient information to admit or deny such allegations and therefore denies same.

4. The allegations in Paragraph 4 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, BANA denies the allegations in Paragraph 4 of the Complaint.

5. BANA admits that Plaintiff purports to be the current record owner of the Property. BANA denies that Plaintiff is entitled to possession of the property.

6. BANA admits that it claims an interest in the Property. Except as specifically admitted, the allegations in Paragraph 6 of the Complaint are denied.

7. The allegations in Paragraph 7 of the Complaint state Plaintiff's requested relief, to which no response is required. To the extent a response is required, BANA denies that Plaintiff is entitled to the requested relief.

8. The allegations in Paragraph 8 of the Complaint are directed to unnamed entities or persons and, therefore, no response is required. To the extent a response is required, BANA lacks sufficient information or knowledge to admit or deny such allegations and therefore denies same.

### **PRAYER FOR RELIEF**

1. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the Prayer for Relief.

2. BANA denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the Prayer for Relief.

1           3.       BANA denies that Plaintiff is entitled to the relief sought in Paragraph 3 of the Prayer  
2 for Relief.

3           4.       BANA denies that Plaintiff is entitled to the relief sought in Paragraph 4 of the Prayer  
4 for Relief.

5           5.       BANA denies that Plaintiff is entitled to the relief sought in Paragraph 5 of the Prayer  
6 for Relief.

7           6.       BANA denies that Plaintiff is entitled to the relief sought in Paragraph 6 of the Prayer  
8 for Relief.  
9

10                           **AFFIRMATIVE DEFENSES**

11           BANA asserts the following additional defenses. Discovery and investigation of this case is  
12 not yet complete, and BANA reserves the right to amend this Answer by adding, deleting, or  
13 amending defenses as may be appropriate. Any allegations not specifically admitted are denied. In  
14 further answer to the Complaint, and by way of additional defenses, BANA avers as follows:  
15

16                           **FIRST AFFIRMATIVE DEFENSE**  
17                           **(Failure to State a Claim)**

18           Plaintiff has failed to state facts sufficient to constitute any cause of action against BANA.

19                           **SECOND AFFIRMATIVE DEFENSE**  
20                           **(Void for Vagueness)**

21           To the extent that Plaintiff may rely on and accurately interpret NRS 116.3116 to support its  
22 claim, the statute, and Chapter 116, are void for vagueness as applied to this matter.

23                           **THIRD AFFIRMATIVE DEFENSE**  
24                           **(Due Process Violations)**

25           A senior deed of trust beneficiary cannot be deprived of its property interest in violation of  
26 the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and  
27 Article 1, Sec. 8, of the Nevada Constitution.  
28

**FOURTH AFFIRMATIVE DEFENSE**  
                             **(Violation of Procedural Due Process)**

1 The super-priority lien was satisfied prior to the homeowner's association foreclosure under  
2 the doctrines of tender, estoppel, laches, or waiver.

3 **FIFTH AFFIRMATIVE DEFENSE**  
4 **(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

5 The homeowner's association foreclosure sale was not commercially reasonable, and the  
6 circumstances of sale of the property violated the homeowner's association's obligation of good faith  
7 under NRS 116.1113 and duty to act in a commercially reasonable manner.

8 **SIXTH AFFIRMATIVE DEFENSE**  
9 **(Failure to Mitigate Damages)**

10 Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps  
11 to mitigate its damages, if any.

12 **SEVENTH AFFIRMATIVE DEFENSE**  
13 **(No Standing)**

14 Plaintiff lacks standing to bring some or all of its claims and causes of action.

15 **EIGHTH AFFIRMATIVE DEFENSE**  
16 **(Unclean Hands)**

17 BANA avers the affirmative defense of unclean hands.

18 **NINTH AFFIRMATIVE DEFENSE**  
19 **(Plaintiff is Not Entitled to Relief)**

20 BANA denies that Plaintiff is entitled to any relief for which it prays.

21 **TENTH AFFIRMATIVE DEFENSE**  
22 **(Failure to Do Equity)**

23 BANA avers the affirmative defense of failure to do equity.

24 **ELEVENTH AFFIRMATIVE DEFENSE**  
25 **(Failure to Provide Notice)**

26 BANA was not provided proper notice of the "superpriority" assessment amounts and the  
27 homeowner's association foreclosure sale, and any such notice provided to BANA failed to comply  
28 with the statutory and common law requirements of Nevada and with state and federal constitutional  
law.



**TWELFTH AFFIRMATIVE DEFENSE**  
**(Void Foreclosure Sale)**

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Plaintiff is not a Bona Fide Purchaser for Value)**

Plaintiff purchased the property with record notice of the interest of the senior deed of trust recorded against the property.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Barred by 12 U.S.C. § 4617(j)(3))**

Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts any state law to the contrary.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Additional Affirmative Defenses)**

Pursuant to NRCP 11, Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Due Process—Facially Unconstitutional Provisions)**

Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in” notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice to a record lien holder before depriving that lien holder of its property rights, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of the Nevada Constitution.

...

...

**COUNTERCLAIMS AND CROSSCLAIMS**

1 Defendant/Counterclaimant Bank of America, N.A., as successor by merger to BAC Home  
2 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (“BANA”) hereby counterclaims  
3 against Plaintiff/Counter-Defendant Las Vegas Development Group, LLC (“Plaintiff”) and  
4 crossclaims against Cross-Defendants Palo Verde Ranch HOA (“HOA”) and Absolute Collection  
5 Services, LLC (“ACS”) as follows:

### 6 **PARTIES**

- 7
- 8 1. BANA is a national association doing business in Clark County, Nevada.
  - 9 2. On information and belief, Plaintiff is a Nevada limited liability company.
  - 10 3. On information and belief, HOA is a Nevada non-profit corporation conducting  
11 business in Clark County, Nevada.
  - 12 4. On information and belief, ACS is a Nevada limited liability company.

### 13 **JURISDICTION AND VENUE**

- 14
- 15 5. This Court has jurisdiction over Plaintiff, HOA, and ACS because the allegations set  
16 forth in Bank of America’s counterclaims and crossclaims relate to Plaintiff’s purported purchase of  
17 an interest in, and the HOA and ACS’s purported foreclosure of, real property located and situated in  
18 Clark County, Nevada.

- 19
- 20 6. Venue is proper in this judicial district because the property that is the subject of this  
21 action is situated in this district.

### 22 **GENERAL ALLEGATIONS**

- 23
- 24 7. Under Nevada law, homeowners’ associations have the right to charge property  
25 owners residing within the community assessments to cover the homeowners’ association’s expenses  
26 for maintaining or improving the community, among other things.

- 27
- 28 8. When these assessments are not paid, the homeowners’ association may both impose  
and foreclose on a lien.

1           9.       A homeowners' association may impose a lien for "any penalties, fees, charges, late  
2 charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

3           10.       NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
4 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
5 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
6 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
7 extent of the assessments for common expenses based on the periodic budget adopted by the  
8 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
9 during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS  
10 116.3116(2)(c).

11           11.       According to the Nevada Supreme Court's recent decision in *SFR Investments Pool 1,*  
12 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), if a homeowner's association properly forecloses  
13 on its super-priority lien, it can extinguish a first deed of trust. However, the homeowners'  
14 association's foreclosure in this case did not extinguish the first Deed of Trust because the  
15 foreclosure did not comply with Nevada law and was commercially unreasonable as a matter of law.  
16 To deprive BANA of its Deed of Trust under the circumstances of this case would deprive BANA of  
17 its due process rights.

## 20                               FACTUAL ALLEGATIONS

### 21                               The Deed of Trust and Assignment

22           12.       On or about June 22, 2006, Genevieve Uniza-Enriquez ("Borrower") executed a Note  
23 to finance the purchase of real property located at 6279 Downpour Court, Las Vegas Nevada 89110  
24 (the "Property"), which was secured by a Deed of Trust. This Deed of Trust in favor of Mortgage  
25 Electronic Registration Systems ("MERS") was recorded on June 30, 2006. A true and correct copy  
26 of the Deed of Trust is attached as **Exhibit A**.

13. On or about June 25, 2010, the Deed of Trust was assigned to BAC Home Loans Servicing, LP via an Assignment of Deed of Trust. This Assignment was recorded on June 30, 2010. A true and correct copy of the Assignment of the Deed of Trust is attached as **Exhibit B**.

14. Borrowers defaulted under the terms of the Note and First Deed of Trust.

15. The unpaid principal balance due on the loan secured by the Deed of Trust, as of April 12, 2011, exceeds \$452,557.77. The total amount due has continued to increase pursuant to the Note and Deed of Trust.

### **The HOA Lien and Foreclosure**

16. Upon information and belief, Borrower failed to pay the HOA all amounts due to it. Accordingly, on April 1, 2010, ACS, as agent for the HOA, recorded a Notice of Delinquent Assessment Lien. The Notice stated the amount due to the HOA was \$754.56. A true and correct copy of the Notice of Delinquent Assessment Lien is attached as **Exhibit C**. This Notice neither identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

17. On July 14, 2010 the HOA, through ACS, recorded a Notice of Default and Election to Sell Under Notice of Delinquent Assessment. A true and correct copy of the Notice of Default and Election to Sell Under Notice of Delinquent Assessment is attached as **Exhibit D**. The Notice stated the amount due to the HOA was \$1,749.65. This Notice neither identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

18. In none of the recorded documents did the HOA or the HOA Trustee identify the amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

1           19.     In none of the recorded documents nor in any notice did the HOA or ACS specify  
2 whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-priority  
3 portion of its lien.

4           20.     Despite the deficiency of the Notices, ACS, conducted a foreclosure sale on behalf of  
5 the HOA on April 12, 2011. The property was sold to Plaintiff for \$4,001.00. A true and correct  
6 copy of the Trustee's Deed is attached as **Exhibit E**.

7           21.     ACS's sale of the HOA's interest in the Property for less than 1% of the value of the  
8 unpaid principal balance of the loan secured by the first Deed of Trust, and, on information and  
9 belief, for a similarly diminutive percentage of the Property's fair market value, is commercially  
10 unreasonable and not in good faith as required by NRS 116.1113.

11           29.     Plaintiff, the HOA, and ACS were aware, prior to the sale, of a split among Nevada  
12 courts concerning their ability to eliminate BANA's Deed of Trust by foreclosing, and proceeded to  
13 sell the Property for an extremely depressed price due to the legal uncertainty.  
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15           30.     This foreclosure sale was commercially unreasonable because the manner in which  
16 ACS conducted the sale, including the notices it provided, the legal uncertainty concerning the effect  
17 of the sale, and other circumstances surrounding the sale, was not calculated to attract proper  
18 prospective purchasers, and thus could not promote an equitable sales price of the Property.  
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20                           **FIRST CAUSE OF ACTION**  
21           **(Counterclaim for Declaratory Relief Against Plaintiff and Crossclaim for Declaratory Relief**  
22                           **Against HOA and ACS)**

23           31.     BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
24 herein and incorporates the same by reference.

25           32.     Under NRS 30.010 *et seq.*, this Court has the power and authority to declare  
26 BANAs' rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.  
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1           33.     The HOA, through ACS, foreclosed on the HOA's lien on April 12, 2011. Plaintiff  
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4 BANA, in that Plaintiff claims that the HOA's foreclosure sale extinguished the first Deed of Trust.  
5 A judicial determination is necessary to ascertain the rights, obligations, and duties of the various  
6 parties.

7           35.     The HOA's foreclosure sale did not extinguish the first Deed of Trust because the  
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10 priority" component, the amount of the super-priority component, how the super-priority component  
11 was calculated, when payment on the super-priority component was required, where payment was to  
12 be made, or the consequences for failure to pay the super-priority component.

13           36.     The foreclosure sale did not extinguish the first Deed of Trust because the sale was  
14 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS  
15 116.1113 in several respects, including, without limitation: the lack of sufficient notice, the sale of  
16 the Property for a fraction of the loan balance or actual market value of the Property, a foreclosure  
17 that was not calculated to promote an equitable sales price for the Property or to attract proper  
18 prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a  
19 maximum profit for the HOA and ACS without regard to the rights and interests of those who have  
20 an interest in the loan and made the purchase of the Property possible in the first place.

21           37.     The HOA's foreclosure sale did not extinguish the Deed of Trust because the statute  
22 authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does not  
23 mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as  
24 required by the Due Process Clause of the United States Constitution.  
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1           38.     Because the foreclosure sale conducted by ACS was commercially unreasonable, the  
2 sale is invalid. Consequently, the Deed of Trust continued to encumber the Property after the HOA  
3 foreclosure sale.

4           39.     Based on the adverse claims being asserted by the parties, a judicial determination is  
5 necessary to ascertain the rights, obligations, and duties of the various parties.

6           40.     Bank of America is entitled to a declaration that the HOA sale was not a valid sale.

7           41.     Bank of America is required to retain an attorney to prosecute this action, and is  
8 therefore entitled to collect its reasonable attorney's fees and costs.  
9

10                   **SECOND CAUSE OF ACTION**  
11                   **(Counterclaims for Quiet Title Against Plaintiff)**

12           42.     BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
13 herein and incorporates the same by reference.

14           43.     Under NRS 40.010, this Court has the power and authority to declare BANA's rights  
15 and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

16           44.     At the time of the HOA foreclosure sale, the Deed of Trust was a first secured interest  
17 on the Property as intended by NRS 116.3116(2)(b).

18           45.     Based on the adverse claims being asserted by the parties, the parties are entitled to a  
19 judicial determination regarding the rights and interests of the respective parties.  
20

21           46.     BANA is entitled to a determination from this Court that, pursuant to NRS 40.010  
22 and NRS 116, that the HOA sale is unlawful and void under NRS 116.3102 *et seq.*

23           47.     BANA was required to retain an attorney to prosecute this action, and is therefore  
24 entitled to collect its reasonable attorney's fees and costs.

25     ...

26     ...

27     ...

**THIRD CAUSE OF ACTION**  
**(Counterclaim for Unjust Enrichment Against Plaintiff)**

48. BANA repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

49. The HOA's foreclosure sale unjustly enriched Plaintiff by allowing it to obtain title to real property secured by a Deed of Trust with an unpaid principal balance of \$452,557.77 for the inequitable purchase price \$4,001.00.

50. Upon information and belief, Plaintiff continues to retain and derive income from the Property to the detriment of BANA, contrary to fundamental principles of fairness, justice, and fair dealing.

51. BANA is entitled to the reasonable amount of the benefits obtained by Plaintiff based on a theory of unjust enrichment.

52. BANA was required to retain an attorney to prosecute this action, and are therefore entitled to collect its reasonable attorney's fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, BANA prays for the following:

1. An order declaring that, under state law, the HOA sale was invalid and that any subsequent transfer of the Property conveyed no legitimate interest to Plaintiff, and that BANA holds title to the Property;

2. An order establishing that the first Deed of Trust is senior and superior to any right, title, interest, lien, equity, or estate of Plaintiff.

3. Judgment in BANA's favor against Plaintiff for the amount that it was unjustly enriched in an amount in excess of \$10,000;

...

...



3. Reasonable attorney's fees as special damages and the costs of the suit; and

4. For such other and further relief the Court deems proper.

DATED this 29th day of February, 2016.

AKERMAN LLP

/s/ Matthew Knepper

ARIEL E. STERN, ESQ.

Nevada Bar No. 10711

MATTHEW KNEPPER, ESQ.

Nevada Bar No. 12796

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Telephone: (702) 634-5000

Facsimile : (702) 380-8572

Email: ariel.stern@akerman.com

Email: matthew.knepper@akerman.com

*Attorneys for Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S AMENDED ANSWER, COUNTERCLAIMS, AND CROSSCLAIMS TO SECOND AMENDED COMPLAINT** to:

Roger P. Croteau, Esq.  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
croteaulaw@croteaulaw.com

*Attorney for Plaintiff*

/s/ Lucille Chiusano  
An Employee of AKERMAN LLP

# EXHIBIT A

# EXHIBIT A

{30074750;1}

20060630-0002110

Fee: \$35.00

N/C Fee: \$25.00

06/30/2006

09:39:29

T20060115643

Requestor:

FIRST AMERICAN TITLE COMPANY OF NEVAD

Frances Deane

DGI

Clark County Recorder

Pgs: 22

PIN #: 140-34-413-075  
After Recording Return To:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100  
SALT LAKE CITY, UT 84107  
ATTN: FUNDING DEPARTMENT

Grantee:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100, SALT LAKE  
CITY, UT 84107

Mail Tax Statement To:  
UTAH FINANCIAL, INC.  
4001 SOUTH 700 EAST STE 100  
SALT LAKE CITY, UT 84107

[Space Above This Line For Recording Data]

## DEED OF TRUST

UNIZA-ENRIQUEZ

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JUNE 22, 2006, together with all Riders to this document.
- (B) "Borrower" is GENEVIEVE UNIZA-ENRIQUEZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY. Borrower is the trustor under this Security Instrument.
- (C) "Lender" is UTAH FINANCIAL, INC.. Lender is a CORPORATION organized and existing under the laws of UT. Lender's address is 4001 SOUTH 700 EAST STE 100, SALT LAKE CITY, UT 84107.
- (D) "Trustee" is FIRST AMERICAN TITLE.
- (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 22, 2006. The Note states that Borrower owes Lender THREE HUNDRED SIXTY THOUSAND AND 00/100 Dollars (U.S. \$360,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 1, 2036.
- (G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

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(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

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

☒ Adjustable Rate Rider

☐ Balloon Rider

☐ 1-4 Family Rider

☐ Condominium Rider

☒ Planned Unit Development Rider

☐ Other(s) [specify]

☐ Second Home Rider

☐ Biweekly Payment Rider

(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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY (Type of Recording Jurisdiction) of CLARK (Name of Recording

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Jurisdiction):

**SEE EXHIBIT "A"**

which currently has the address of 6279 DOWNPOUR COURT, LAS VEGAS, Nevada 89110 ("Property Address").

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

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

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

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reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

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

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

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

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as



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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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.

**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).

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 Lenders' election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on

Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$0.00.

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.

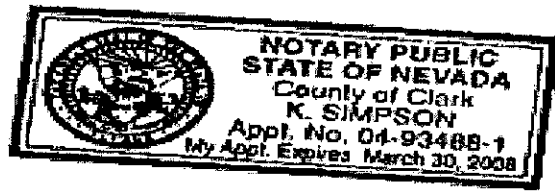
Genevieve Uniza-Enriquez 10/23/06  
- BORROWER - GENEVIEVE UNIZA-ENRIQUEZ - DATE -



[Space Below This Line for Acknowledgment]

STATE OF Nevada  
COUNTY OF Clark

This instrument was acknowledged before me on June 23<sup>rd</sup> 2006 by  
Genevieve Wynn Arp



[Signature]  
Notary Public

My Commission Expires: 33008

**EXHIBIT 'A'**

**PARCEL I:**

**LOT 75 OF CHARLESTON AND FOGG (A COMMON INTEREST COMMUNITY), AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA**

**PARCEL II:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT, LANDSCAPING AND PUBLIC UTILITIES PURPOSES ON, OVER AND ACROSS THE "PRIVATE DRIVES/ P.U.E." AND "COMMON AREAS" AS DELINEATED ON SAID MAP, AND AS FURTHER DEFINED BY THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR PALO VERDE RANCH RECORDED MARCH 12, 2004 IN BOOK 20040312, AS DOCUMENT NUMBER 01067, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.**

## PLANNED UNIT DEVELOPMENT RIDER

INITIALS - ENCL 10757

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 22ND 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 (the "Borrower") to secure Borrower's Note to **UTAH FINANCIAL, INC.**, (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

6279 DOWNPOUR COURT, LAS VEGAS, NV 89110

[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

**CHARLESTON & FOGG**

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the

provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard 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.

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

Genevieve Uniza-Enriquez 11/23/06  
- BORROWER - GENEVIEVE UNIZA-ENRIQUEZ - DATE -

Doc ID#:

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

UNIZA-ENRIQUEZ

THIS ADJUSTABLE RATE RIDER is made this 22ND 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 UTAH FINANCIAL, INC. ("Lender") of the same date and covering the property described in the Security Instrument and located at:

6279 DOWNPOUR COURT, LAS VEGAS, NV 89110  
[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 agrees as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

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

**2. INTEREST**

**(A) Interest Rate**

PayOption MTA ARM Rider  
FE-5315 (0511)

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Page 1 of 5

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.750%. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

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

**(C) Index**

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

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

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

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **THREE AND ONE-HALF** percentage point(s) 3.500% ("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.

I will make my monthly payments on the 1ST day of each month beginning on AUGUST 1, 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 this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 4001 SOUTH 700 EAST STE 100, SALT LAKE CITY, UT 84107 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. \$1,286.08 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 1ST 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

PayOption MTA ARM Rider

FE-5315 (0511)

5538.20

Page 2 of 3

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 7.5% of my prior monthly payment. This 7.5% 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. I also have the option to pay the Full Payment for my monthly payment.

**(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 (115.000%) 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 monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% 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 **FIFTH** 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, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

PayOption MTA ARM Rider

FE-5315 (0511)

5538.20

Page 3 of 5

- (i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. 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) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
- (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 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.

Genevieve Uniza-Enriquez 10/23/06  
- BORROWER - GENEVIEVE UNIZA-ENRIQUEZ - DATE -

# EXHIBIT B

# EXHIBIT B

{30074750;1}

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

Inst #: 201006300004065  
Fees: \$14.00  
N/C Fee: \$0.00  
06/30/2010 03:27:38 PM  
Receipt #: 409485  
Requestor:  
FIDELITY NATIONAL DEFAULT S  
Recorded By: DXI Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

TS No. 10-0071205  
TITLE ORDER#: 100375035NVGTI  
APN 140-34-413-075

**CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA**

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:  
**BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP**

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 06/22/2006,  
EXECUTED BY: GENEVIEVE UNIZA-ENRIQUEZ, A MARRIED WOMAN AS HER SOLE AND  
SEPARATE PROPERTY, TRUSTOR: TO FIRST AMERICAN TITLE, TRUSTEE AND RECORDED  
AS INSTRUMENT NO. 0002110 ON 06/30/2006, IN BOOK 20060630, 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 25, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC.

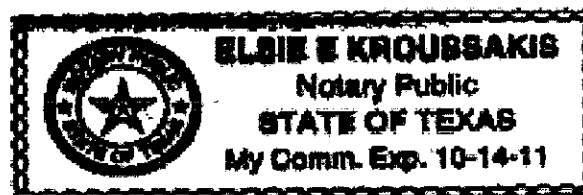
State of: Texas  
County of: Tarrant

BY: Khadija Gulley  
Khadija Gulley, Assistant Secretary

**JUN 28 2010**

On June 25, 2010 before me Elsie E. Kroussakis, personally appeared  
Asst. Secy, know to me (or proved to me on the oath of                      or through  
                    ) to be the person whose name is subscribed to the foregoing instrument and  
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.  
Witness my hand and official seal.

Elsie E. Kroussakis  
Notary Public's Signature



# EXHIBIT C

# EXHIBIT C

{30074750;1}

Inst #: 201004010001086

Fees: \$15.00

N/C Fee: \$0.00

04/01/2010 10:50:35 AM

Receipt #: 294131

Requestor:

CAMCO

Recorded By: BGN Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:  
Attn: Kelly Mitchell  
Absolute Collection Services, LLC  
PO Box 12117  
Las Vegas, NV 89112  
(702) 531-3394 phone

APN # 140-34-413-075

### **Notice of Delinquent Assessment Lien**

This **NOTICE OF DELINQUENT ASSESSMENT** is being given pursuant to N.R.S. 117.70 et seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and the provisions of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the Homeowners Association as follows:

Association Claimant: Palo Verde Ranch HOA Declarations of CC&Rs recorded 3/12/04 Instrument No: 01067, Book No.: 20040312, Page No:\_\_\_ County of CLARK, and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is as follows: Legal Unit No.: 6279 Downpour Ct., Charleston & Fogg Plat Book 113 Page 40 Lot 75

The reputed owner is: GENEVIEVE UNIZA-ENRIQUEZ

Common address: 6279 Downpour Ct., Las Vegas NV 89110

Owner's mailing address: Same

#### **DELINQUENCY #A1259**

Total Amount due as of 03/31/10	\$754.56
---------------------------------	----------

Additional monies shall accrue under this claim at the rate of the claimant's periodic assessments, plus permissible late charges, costs of collection and interest and other charges, if any, that shall accrue subsequent to the date of this notice.

The acting agency for enforcement on this lien is:

ABSOLUTE COLLECTION SERVICES, LLC  
PO BOX 12117  
LAS VEGAS NV 89112  
(702) 531-3394


DATED: 03/31/2010

  
RICHARD KAYE, Trustee Sales Officer

STATE OF NEVADA  
COUNTY OF CLARK

On 3/31/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, RICHARD KAYE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

  
KELLY MITCHELL, Notary Public



# EXHIBIT D

# EXHIBIT D

{30074750;1}

Inst #: 201007140001222

Fees: \$16.00

N/C Fee: \$0.00

07/14/2010 09:49:23 AM

Receipt #: 424836

Requestor:

CAMCO

Recorded By: GILKS Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:  
Attn: Kelly Mitchell  
Absolute Collections Services, LLC  
PO Box 12117  
Las Vegas, NV 89112  
(702) 531-3394

APN # 140-34-413-075  
TS NO: A1259  
Title Order No:

**NOTICE OF DEFAULT AND ELECTION TO  
SELL UNDER NOTICE OF DELINQUENT  
ASSESSMENT**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default may be recorded or mailed. The amount is **\$1749.65** as of **July 13, 2010** and will increase until your account becomes current. Upon your written request, **Palo Verde Ranch HOA** will give you a written itemization of the entire amount you must pay. You and the Association may mutually agree in writing prior to the time the notice of sale is posted to, amount other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2). Following the expiration of the time period previously referred to, unless a separate written agreement between you and the Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by the Association.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, contact the following trustee who has been authorized by the Association to enforce its lien by sale: Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, 702-531-3394.

THIS NOTICE is given pursuant to NRS 117.070 et. Seq. or NRS 116.3115 et. Seq. and NRS 116.3116 through 116.31168 et. Seq., and pursuant to that certain Notice of



Delinquent Assessment Lien, recorded on **4/01/10** as Document no. 0001086 book **20100401** of Official Records in the office of the Recorder of Clark County, State of Nevada.

Owner: **Genevieve Uniza-Enriquez**  
Property Address: **6279 Downpour Ct, Las Vegas, NV 89110**

Legal Description-shown on the Subdivision map recorded in Book No.113 Page(s) **40** Inclusive, of Maps of the County of Clark, State of Nevada.

If you have any questions, you should contact a lawyer. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION**

NOTICE IS HEREBY GIVEN THAT: Absolute Collection Services, LLC, is the duly appointed Trustee/Agent authorized by the Association, pursuant to the terms contained in that certain Declaration of Covenants, Conditions and Restrictions, Recorded on **3/12/04** as document number **01067-20040312** of Official Records in the Office of the Recorder of Clark County, Nevada, and any and all amendments or annexations of record thereto, describing the land therein. That the beneficial Interest under said Notice of Delinquent Assessment is presently held by the Association. That a breach of, and default in, the obligation for which said Covenants, Conditions and Restrictions as security has occurred in that the payment(s) have not been made of:

Periodic assessments, less credits and offsets, plus any late charges, interest, fees, charges, collection costs, trustee's fees, and attorney fees, if any.

That by reason thereof, the present Association under such Covenants, Conditions and Restrictions, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Covenants, Conditions and Restrictions and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the herein described property, liened by said Association, to be sold to satisfy the obligations secured thereby.

PLEASE NOTE THAT WE ARE A DEBT COLLECTOR.

Date: 7/13/10

Absolute Collection Services, LLC as Trustee

[Signature]  
Richard Kaye, Trustee Sale Officer

STATE OF NEVADA  
COUNTY OF CLARK

On 7/13/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

[Signature]  
Kelly Mitchell, Notary Public



# EXHIBIT E

# EXHIBIT E

{30074750;1}

Inst #: 201104130000953

Fees: \$16.00 N/C Fee: \$0.00

RPTT: \$22.95 Ex: #

04/13/2011 09:13:03 AM

Receipt #: 738696

Requestor:

CAMCO

Recorded By: MSH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 140-34-413-075

WHEN RECORDED MAIL DEED AND  
TAX STATEMENTS TO:

Las Vegas Development Group, LLC  
397 3<sup>rd</sup> Ave, Ste A  
Chula Vista CA 91910

Title No. A1259  
Account NO. 77983  
TS No. 072210-4-J

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TRUSTEE'S DEED UPON SALE**

The undersigned declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary
- 2) The amount of the unpaid debt together with costs was \$4,001.00
- 3) The amount paid by the grantee at the trustee sale was \$4,001.00
- 4) The documentary transfer tax is \$ 22.95
- 5) City Judicial District of LAS VEGAS

And **Absolute Collection Services, LLC.**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to: **Las Vegas Development Group, LLC, 397 3<sup>rd</sup> Ave, Ste A, Chula Vista CA 91910**

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

**6279 Downpour Ct., Las Vegas NV 89110**

Legal Description-shown on the Subdivision map recorded in Book No. 113 Page(s) 40 Inclusive, of Maps of the Country of Clark, State of Nevada; See Exhibit A Attached


**AGENT STATES THAT:**

This conveyance is made pursuant to the powers granted to PALO VERDE RANCH HOA and conferred upon appointed trustee by the provisions of the Nevada Revised Statutes, the PALO VERDE RANCH HOA governing documents (CC&R's) recorded as instrument number 01067 Book 20040312 on MARCH 12, 2004 and that certain Notice of Delinquent Assessment Lien recorded on APRIL 1, 2010 instrument number 0001086

Book 20100401 Official Records of CLARK County; and pursuant to NRS 117.070 et Seq. or NRS 116.3115 et Seq and NRS 116.3116 through 116.31168 et Seq. The name of the owner(s) of the property (trustor) was: GENEVIEVE UNIZA-ENRIQUEZ

Default occurred as set forth in a Notice of Default and Election to Sell, recorded on JULY 14, 2010 as instrument 0001222 Book 20100714 which was recorded in the office of the recorder of said county. Absolute Collection Services, LLC. Has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of PALO VERDE RANCH HOA at public auction on April 12, 2011 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 \$4,001.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: April 13, 2011

  
By Richard Kaye on behalf of Absolute Collection Services

STATE OF NEVADA       )  
COUNTY OF CLARK     )

On 4/13/11 before me, Kelly Mitchell, personally appeared Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

  
Kelly Mitchell, Notary Public



## **EXHIBIT "A"**

**THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:**

**PARCEL I:**

**LOT 75 OF CHARLESTON AND FOGG (A COMMON INTEREST COMMUNITY); AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA**

**PARCEL II:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT, LANDSCAPING AND PUBLIC UTILITIES PURPOSES ON, OVER AND ACROSS THE "PRIVATE DRIVES/ P.U.E." AND "COMMON AREAS" AS DELINEATED ON SAID MAP, AND AS FURTHER DEFINED BY THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR PALO VERDE RANCH RECORDED MARCH 12, 2004 IN BOOK 20040312, AS DOCUMENT NUMBER 01067, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA**

# STATE OF NEVADA DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 140-34-413-075

**2. Type of Property:**

a.	<input type="checkbox"/>	Vacant Land	b.	<input checked="" type="checkbox"/>	Single Fam. Res.
c.	<input type="checkbox"/>	Condo/Twuhse	d.	<input type="checkbox"/>	2-4 Plex
e.	<input type="checkbox"/>	Apt. Bldg	f.	<input type="checkbox"/>	Comm'l/Ind'l
g.	<input type="checkbox"/>	Agricultural	h.	<input type="checkbox"/>	Mobile Home
	<input type="checkbox"/>	Other			

**FOR RECORDER'S OPTIONAL USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes:

3. a. Total Value/Sales Price of Property

b. Deed in Lieu of Foreclosure Only (value of property)

c. Transfer Tax Value:

d. Real Property Transfer Tax Due

\$ 4001.00

\_\_\_\_\_

4001.00

22.95

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_

Capacity: Member, Grantee

Signature: \_\_\_\_\_

Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Absolute Collection Services  
Address: PO Box 12117  
City: Las Vegas  
State: NV Zip: 89112

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: LA Vena Development Group LLC  
Address: 397 BRD AVE Suite  
City: CITRUS AVE  
State: CA Zip: 91910

### COMPANY REQUESTING RECORDING

Print Name: Camco  
Address: PO Box 12117  
City: Las Vegas

Escrow #: W/A-foreclosure

State: WV Zip: 89112

As a public record this form may be recorded/microfilmed