

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Saticoy Bay LLC Series 8149 Palace Monaco

Appellant

vs.

Wells Fargo Bank, N/A.

Respondent

No. 81453

DOCKETING

CIVIL APPEALS

Electronically Filed
Oct 20 2020 01:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 16

County Clark Judge Ronald J Israel

District Ct. Case No. A-18-770245-C

2. Attorney filing this docketing statement:

Attorney Michael F. Bohn, Esq. Telephone 702-642-3113

Firm Law Offices of Michael F. Bohn, Esq., Ltd.

Address 2260 Corporate Circle, Suite 480
Henderson, NV 89074

Client(s) Saticoy Bay LLC Series 8149 Palace Monaco

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Aaron D. Lancaster, Esq. Telephone 702-475-7964

Firm Wright Finlay & Zak, LLP

Address Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

Client(s) Wells Fargo Bank, NA

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

The plaintiff filed this action seeking quiet title and declaratory relief. The district court granted judgment in favor of Wells Fargo Bank based on a tender of the super priority lien amount prior to the foreclosure sale

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. If the homeowner payments were properly allocated by the district court to the super priority of the HOA lien.
2. If the banks deed of trust survived the HOA foreclosure sale

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

A-13-679804-C SC#79100 Homeowner payments.

A-12-671509-C SC#76017 Homeowner payments.

A-13-683467-C SC#76683 Homeowner payments.

A-14-696873-C SC#74127 Homeowner payments.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is an appeal from a judgement on an HOA foreclosure matter. The issues in this case do not appear to fit in either the presumptive assignment category of either the Supreme Court or the Court of Appeals.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? n/a _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
n/a

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jun 4, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Jun 4, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Jul 6, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4 (a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Appeal from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Saticoy Bay LLC Series 8149 Palace Monaco, plaintiff; Robert Nardizzi a/k/a Robert A. Nardizzi; Monaco Landscape Maintenance Association, Inc.; Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass Through Certificates Series 2005-11, defendants; and Counter Defendant Red Rock Financial Services, Llc,.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Red Rock Financial Services was dismissed by stipulation on 4/24/19
Claims against Robert Nardizzi a/k/a Robert A. Nardizzi; Monaco Landscape Maintenance Association, Inc. are still pending

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

1. Injunctive relief;
2. Quiet title; and
3. Declaratory relief

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Claims against Robert Nardizzi a/k/a Robert A. Nardizzi and Monaco Landscape Maintenance Association, Inc. are still outstanding

(b) Specify the parties remaining below:

Robert Nardizzi a/k/a Robert A. Nardizzi; Monaco Landscape Maintenance Association, Inc.;

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Saticoy Bay LLC Series 8149 Palace Mo
Name of appellant

Michael F. Bohn, Esq.
Name of counsel of record

Oct 20, 2020
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed


CERTIFICATE OF SERVICE

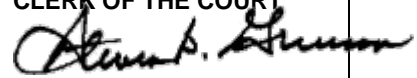
I certify that on the 20th day of October, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

R. Samuel Ehlers, Esq.
Aaron D. Lancaster, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

Dated this 20th day of Octobe, 2020


Signature



COMP

Richard Vilkin, Esq.
Nevada Bar No. 8301
Charles L. Geisendorf, Esq.
Nevada Bar No. 6985
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Direct Dial: (702) 371-6401
Email: richard@gvattorneys.com
Attorneys for plaintiff Saticoy Bay LLC Series 8149 Palace Monaco

DISTRICT COURT

CLARK COUNTY, NEVADA

**SATICOY BAY LLC SERIES 8149 PALACE
MONACO, a Nevada limited liability company,**

Plaintiff,

v.

**ROBERT NARDIZZI a/k/a ROBERT A.
NARDIZZI, an individual; MONACO
LANDSCAPE MAINTENANCE
ASSOCIATION, INC., a Nevada domestic non-
profit corporation; WELLS FARGO BANK,
NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE STRUCTURED ADJUSTIBLE
RATE MORTGAGE LOAN TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2005-11, a business
entity location unknown; DOE individuals 1
through 10; and ROE business entities 11
through 30,**

Defendants.

Case No.: A-18-770245-C

Dept. No.: Department 28

**COMPLAINT FOR DECLARATORY
RELIEF AND QUIET TITLE**

Exemption from Arbitration:

- (1) Title to Real Property;**
- (2) Declaratory Relief**

COMES NOW, plaintiff Saticoy Bay LLC Series 8149 Palace Monaco, by and through its attorneys, Geisendorf & Vilkin, PLLC, and hereby complains and alleges as follows:

PARTIES

1. At all times herein relevant, plaintiff Saticoy Bay LLC Series 8149 Palace Monaco (“plaintiff” or “Saticoy Bay”), was and is a Nevada limited liability company, licensed to do business and doing business in the County of Clark, State of Nevada.

2. Upon information and belief, at all times relevant to this matter, defendant ROBERT NARDIZZI a/ka/ ROBERT A. NARDIZZI, was and is an individual and resident of the County of Clark, State of Nevada.

3. Upon information and belief, at all times relevant to this matter, defendant MONACO LANDSCAPE MAINTENANCE ASSOCIATION, INC. (“HOA”), was and is a Nevada domestic non-profit corporation, licensed to do business and doing business in the County of Clark, State of Nevada.

4. Upon information and belief, at all times relevant to this matter, defendant WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTIBLE RATE MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-11 (“bank”), was and is a national banking association, authorized to do business and doing business in the County of Clark, State of Nevada.

6. Plaintiff is unaware of the true names and legal capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as DOES 1-10 and ROE CORPORATIONS 11-30, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff prays for leave to insert said defendants' true names and legal capacities when

1 ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the defendants
2 designated herein as a DOE or ROE is in some way legally responsible and liable for the events
3 referred to herein, and proximately caused the damages alleged herein.
4

5 7. At all times herein relevant, and in doing the acts and omissions alleged herein,
6 the defendants, and each of them, including the DOE defendants and ROE defendants, acted by
7 and through their officers, agents, employees, and co-conspirators, including the fictitious
8 defendants named herein, each of whom was acting within the purpose and scope of that
9 agency, employment, and conspiracy, and said acts and omissions were known to and
10 authorized and ratified by each of the other defendants.
11

12 **JURISDICTION AND VENUE**

13 8. Venue is proper in this Judicial District, pursuant to NRS 13.010, NRS 13.040,
14 NRS 30.010, et seq., and NRS 40.010, as the actions described, herein, occurred within the
15 County of Clark, State of Nevada and the subject real estate is situated therein.
16

17 9. This Court has subject matter jurisdiction over this action, pursuant to Article 6
18 of the Nevada Constitution and personal jurisdiction pursuant to NRS 14.065.
19

20 **GENERAL ALLEGATIONS**

21 10. Plaintiff repeats and realleges each and every allegation contained in Paragraphs
22 1 through 9 hereof as if set forth fully herein.

23 11. Saticoy Bay is the owner of the real property commonly known as 8149 Palace
24 Monaco Avenue, Las Vegas, NV 89117, APN 163-09-817-050, legally described as Lot Two
25 Hundred Thirty (230) in Block "J" of Monaco No. 12, as shown by map thereof on file in Book
26 89 of Plats, Page 81, in the office of the County Recorder, Clark County, Nevada ("subject
27 property").
28

1 12. Saticoy Bay obtained title to the property as a result of an HOA foreclosure sale
2 conducted by the HOA on December 3, 2013 and as evidenced by the Foreclosure Deed
3 recorded on December 27, 2013, 2012 as Instrument No. 201312270002296.
4

5 13. The title held by Saticoy Bay arises from the foreclosure of an HOA lien arising
6 from a delinquency in assessments due from the former owner to the HOA pursuant to NRS
7 Chapter 116.
8

9 14. Upon information and belief, bank is the purported assigned beneficiary of a
10 deed of trust which was recorded as an encumbrance against the subject property on March 15,
11 2005, Instrument Number 20050315-0004331.
12

13 16. The former owner may claim an interest in the subject property.
14

15 17. The HOA may claim an interest in the subject property.
16

17 18. The bank may claim a beneficial interest in the Deed of Trust, and as such, may
18 claim an interest in the subject property.
19

20 **FIRST CLAIM FOR RELIEF**
21

22 **(Declaratory Relief/Quiet Title against all parties)**
23

24 19. Plaintiff repeats and realleges Paragraphs 1 through 18, inclusive, and they are
25 incorporated as though fully set forth herein.
26

27 20. A justiciable controversy exists regarding the right, title and interest held by
28 plaintiff and defendants in the subject property.
29

30 21. The interests of plaintiff and defendants are adverse in this justiciable
31 controversy.
32

33 22. The plaintiff has a legally protectible interest in the subject property.
34

1 23. The controversy between plaintiff and defendants is ripe for judicial
2 determination.

3 24. This court should enter an Order which determines all and every claim, estate or
4 interest of the parties in the subject property.
5

6 25. The plaintiff is entitled to a declaratory judgment finding that: (1) plaintiff is the
7 title owner of the subject property; (2) the HOA foreclosure sale extinguished the applicable
8 defendants' ownership and security interests in the subject property as a matter of law; and (3)
9 plaintiff's rights and interest in the property are superior to any interest claimed by the
10 defendants.
11

12 26. Title to the subject property should be quieted solely in the name of plaintiff and
13 defendants should be forever enjoined from making any claims to the subject property adverse
14 to plaintiff.
15

16 **SECOND CAUSE OF ACTION**
17 **(Fraudulent Concealment and Negligence against HOA)**

18 27. Plaintiff repeats and realleges paragraphs 1 through 26, inclusive, and they are
19 incorporated as though fully set forth herein.

20 28. It is anticipated that bank will assert that it tendered or offered to tender its
21 calculation of the superpriority amount of the HOA lien to the HOA or its sales trustee prior to
22 the sale. It is further anticipated that the bank will assert that its tender or attempted tender was
23 expressly rejected or ignored by the HOA and its sales trustee. It is also anticipated that the
24 bank will claim that the superpriority lien was otherwise paid prior to the sale.
25

26 29. Prior to the sale, neither the HOA nor its sales trustee provided any information
27 to bidders that the bank had tendered or attempted to tender the superpriority portion of the lien
28

1 and that the HOA and its sales trustee had rejected or ignored such tender or offer to tender or
2 that the superpriority lien had otherwise been paid prior to the sale.

3 30. The HOA had a duty to inform the bidders at the foreclosure sale that the super
4 priority portion of the HOA lien had been tendered or offered or otherwise been paid prior to
5 the foreclosure sale.
6

7 31. Plaintiff is informed and believes and thereupon alleges that HOA intended that
8 the buyers at the HOA foreclosure sale believe that the assessment lien being foreclosed
9 included a superpriority component that would extinguish the first deed of trust recorded
10 against the property.
11

12 32. Plaintiff reasonably relied upon the notices and absence of disclosures from the
13 HOA and entered the high bid of \$17,400 for the subject property with the reasonable belief
14 that the HOA's assessment lien being foreclosed by the HOA included a superpriority portion
15 that would extinguish the first deed of trust recorded against the subject property.
16

17 33. HOA was in a superior position of knowledge and thus had a duty to disclose its
18 receipt of a tender or offer of such or payment of such, and failed to make such a disclosure.
19

20 34. Plaintiff still believes that the HOA assessment lien contained a superpriority
21 portion, but if the Court finds otherwise, then plaintiff will have been damaged in an amount in
22 excess of \$15,000 by HOA failing to disclose that the tender was made or offered by bank or
23 otherwise paid at some point prior to the foreclosure sale.

24 35. If the court finds that the HOA assessment lien did not contain a superpriority
25 portion, then plaintiff's high bid for the subject property should be rescinded due to the
26 misrepresentations and/or omissions made by HOA in the foreclosure documents and prior to
27 the sale, and all monies paid by plaintiff should be refunded to plaintiff.
28

1 36. By reason of the premises, and as a direct and proximate result thereof, plaintiff
2 has been caused to incur expenses as and for attorneys' fees and costs of suit herein and is
3 entitled to compensation for those expenditures in an amount to be determined by the court.
4

5 **THIRD CAUSE OF ACTION**
6 **(Unjust Enrichment against HOA)**

7 37. Plaintiff repeats and realleges Paragraphs 1 through 36, inclusive, and they are
8 incorporated as though fully set forth herein.

9 38. If HOA had disclosed in the documents recorded with the County Recorder, or
10 at the public auction, that the assessment lien being foreclosed did not have a superpriority
11 component or that the bank had tendered or attempted to tender the superpriority amount,
12 plaintiff would not have bid and paid \$17,400 for the subject property.
13

14 39. If the court finds that the HOA assessment lien did not contain a superpriority
15 portion, then HOA will have been unjustly enriched by the amount of plaintiff's bid that would
16 not have been made by plaintiff if the HOA had disclosed that bank tendered or offered to
17 tender the superpriority amount of the assessment lien, which is an amount in excess of
18 \$15,000.
19

20 40. By reason of the premises, and as a direct and proximate result thereof, plaintiff
21 has been caused to incur expenses as and for attorneys' fees and costs of suit herein and is
22 entitled to compensation for those expenditures in an amount to be determined by the court.
23

24 WHEREFORE, plaintiff prays for judgment against defendants as follows:

25 1. On its First Cause of Action, for an Order which determines all and every claim,
26 estate or interest of the parties in the subject property, finding that: (1) plaintiff is the title
27 owner of the subject property free and clear of all claims, liens and encumbrances by
28

defendants; and (2) the HOA foreclosure sale extinguished the applicable defendants' ownership interests and security interests in the subject property.

2. For general and special damages in an amount in excess of \$15,000;
3. For attorneys' fees and costs of suit reasonably incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: February 27, 2018

GEISENDORF & VILKIN, PLLC

/s/ Richard Vilkin

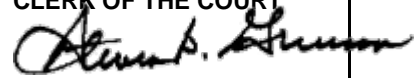
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*Attorneys for plaintiff Saticoy Bay LLC
Series 8149 Palace Monaco*



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Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE
MONACO,

Plaintiff,

vs.

ROBERT NARDIZZI a/k/a ROBERT A.
NARDIZZI, an individual; MONACO
LANDSCAPE MAINTENANCE
ASSOCIATION, a Nevada domestic non-
profit corporation; WELLS FARGO BANK,
NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE STRUCTURED ADJUSTABLE
RATE MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11, a business entity location unknown; DOE
individuals 1 through 10; and ROE business
entities 11 through 30,

Defendants.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Counterclaimant,

Case No.: A-18-770245-C
Dept. No.: XXVIII

**WELLS FARGO'S ANSWER TO
PLAINTIFF'S COMPLAINT,
COUNTER-CLAIMS, CROSS-CLAIMS
and THIRD PARTY COMPLAINT**

1 vs.

2 SATICOY BAY LLC SERIES 8149 PALACE
3 MONACO; MONACO LANDSCAPE
4 MAINTENANCE ASSOCIATION; and RED
5 ROCK FINANCIAL SERVICES, LLC,

6 Counterdefendants.

7
8 COMES NOW Plaintiff, Wells Fargo Bank, National Association, as Trustee for the
9 Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates Series
10 2005-11 (hereinafter "Wells Fargo"), by and through its attorneys of record, Christopher A.J.
11 Swift, Esq. and Lindsay D. Robbins, Esq., of the law firm of Wright, Finlay & Zak, LLP, and
12 hereby files its Answer and Counterclaims against Plaintiff Saticoy Bay LLC Series 8149
13 Palace Monaco (hereinafter "Plaintiff" or "Saticoy Bay"), its Cross-Claims against Defendant
14 Monaco Landscape Maintenance Association (hereinafter "HOA"), and Third Party claims
15 against Red Rock Financial Services, LLC (hereinafter "Red Rock").

16 **PARTIES**

17 1. Answering Paragraph 1 of the Complaint, Wells Fargo is without sufficient
18 knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of
19 these allegations and therefor denies the same.

20 2. Answering Paragraph 2 of the Complaint, Wells Fargo is without sufficient
21 knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of
22 these allegations and therefor denies the same.

23 3. Answering Paragraph 3 of the Complaint, Wells Fargo is without sufficient
24 knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of
25 these allegations and therefor denies the same.

26 4. Answering Paragraph 4 of the Complaint, Wells Fargo admits the allegations
27 therein.¹

28

¹ Saticoy Bay's Complaint does not include a para. 5.

1 /././

2 6. Answering Paragraph 6 of the Complaint, Wells Fargo states the allegations
3 contained therein constitute conclusions of law and thus, no response is required. To the extent
4 Paragraph 6 contains allegations of fact, Wells Fargo denies the allegations contained therein.

5 7. Answering Paragraph 7 of the Complaint, Wells Fargo states the allegations
6 contained therein constitute conclusions of law and thus, no response is required. To the extent
7 Paragraph 7 contains allegations of fact, Wells Fargo denies the allegations contained therein.

8 **JURISDICTION AND VENUE**

9 8. Answering Paragraph 8 of the Complaint, Wells Fargo repeats and re-alleges each
10 and every answer and response to Paragraphs 1 through 7 as if more fully set forth herein, and
11 thereby incorporates them.

12 9. Answering Paragraph 9 of the Complaint, Wells Fargo states the allegations
13 contained therein constitute conclusions of law and thus, no response is required. To the extent
14 Paragraph 9 contains allegations of fact, Wells Fargo denies the allegations contained therein.

15 **GENERAL ALLEGATIONS**

16 10. Answering Paragraph 10 of the Complaint, Wells Fargo repeats and re-alleges
17 each and every answer and response to Paragraphs 1 through 9 as if more fully set forth herein,
18 and thereby incorporates them.

19 11. Answering Paragraph 11 of the Complaint, Wells Fargo states the allegations
20 contained therein constitute conclusions of law and thus, no response is required. To the extent
21 Paragraph 11 contains allegations of fact, Wells Fargo denies the allegations contained therein.

22 12. Answering Paragraph 12 of the Complaint, Wells Fargo is without sufficient
23 knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of
24 these allegations and therefor denies the same.

25 13. Answering Paragraph 13 of the Complaint, Wells Fargo is without sufficient
26 knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of
27 these allegations and therefor denies the same.

28 14. Answering Paragraph 14 of the Complaint, Wells Fargo admits that it is the

beneficiary of the Deed of Trust recorded on March 15, 2005 as Book and Instrument Number 20050315-0004331 with the Clark County Recorder's Office.²

16. Answering Paragraph 16 of the Complaint, Wells Fargo is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the same.

17. Answering Paragraph 17 of the Complaint, Wells Fargo is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the same.

18. Answering Paragraph 18 of the Complaint, Wells Fargo admits the allegations therein.

FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title against all parties)

19. Answering Paragraph 19 of the Complaint, Wells Fargo repeats and re-alleges each and every answer and response to Paragraphs 1 through 18 as if more fully set forth herein, and thereby incorporates them.

20. Answering Paragraph 20 of the Complaint, Wells Fargo states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 20 contains allegations of fact, Wells Fargo denies the allegations contained therein.

21. Answering Paragraph 21 of the Complaint, Wells Fargo states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 21 contains allegations of fact, Wells Fargo denies the allegations contained therein.

22. Answering Paragraph 22 of the Complaint, Wells Fargo states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 22 contains allegations of fact, Wells Fargo denies the allegations contained therein.

23. Answering Paragraph 23 of the Complaint, Wells Fargo states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 23 contains allegations of fact, Wells Fargo denies the allegations contained therein.

² Saticoy Bay's Complaint does not include a para. 15.

1 24. Answering Paragraph 24 of the Complaint, Wells Fargo states the allegations
2 contained therein constitute a prayer for relief and thus, no response is required. To the extent
3 Paragraph 24 contains allegations of fact, Wells Fargo denies the allegations contained therein.

4 25. Answering Paragraph 25 of the Complaint, Wells Fargo states the allegations
5 contained therein constitute conclusions of law and a prayer for relief and thus, no response is
6 required. To the extent Paragraph 25 contains allegations of fact, Wells Fargo denies the
7 allegations contained therein.

8 26. Answering Paragraph 26 of the Complaint, Wells Fargo states the allegations
9 contained therein constitute a prayer for relief and thus, no response is required. To the extent
10 Paragraph 26 contains allegations of fact, Wells Fargo denies the allegations contained therein.

11 **SECOND CLAIM FOR RELIEF**

12 **(Fraudulent Concealment and Negligence against HOA)**

13 27. Answering Paragraph 27 of the Complaint, Wells Fargo repeats and re-alleges
14 each and every answer and response to Paragraphs 1 through 26 as if more fully set forth herein,
15 and thereby incorporates them.

16 28. Answering Paragraph 28 of the Complaint, to the extent the allegations are
17 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
18 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
19 same.

20 29. Answering Paragraph 29 of the Complaint, to the extent the allegations are
21 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
22 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
23 same.

24 30. Answering Paragraph 30 of the Complaint, to the extent the allegations are
25 directed at Wells Fargo, Wells Fargo states the allegations contained therein constitute
26 conclusions of law and thus, no response is required. To the extent Paragraph 30 contains
27 allegations of fact, Wells Fargo denies the allegations contained therein.

28 31. Answering Paragraph 31 of the Complaint, to the extent the allegations are

1 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
2 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
3 same.

4 32. Answering Paragraph 32 of the Complaint, to the extent the allegations are
5 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
6 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
7 same.

8 33. Answering Paragraph 33 of the Complaint, to the extent the allegations are
9 directed at Wells Fargo, Wells Fargo states the allegations contained therein constitute
10 conclusions of law and thus, no response is required. To the extent Paragraph 33 contains
11 allegations of fact, Wells Fargo denies the allegations contained therein.

12 34. Answering Paragraph 34 of the Complaint, to the extent the allegations are
13 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
14 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
15 same.

16 35. Answering Paragraph 35 of the Complaint, to the extent the allegations are
17 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
18 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
19 same.

20 36. Answering Paragraph 36 of the Complaint, to the extent the allegations are
21 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
22 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
23 same.

24 **THIRD CLAIM FOR RELIEF**

25 **(Unjust Enrichment against HOA)**

26 37. Answering Paragraph 37 of the Complaint, Wells Fargo repeats and re-alleges
27 each and every answer and response to Paragraphs 1 through 36 as if more fully set forth herein,
28 and thereby incorporates them.

1 //./

2 38. Answering Paragraph 38 of the Complaint, to the extent the allegations are
3 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
4 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
5 same.

6 39. Answering Paragraph 39 of the Complaint, to the extent the allegations are
7 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
8 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
9 same.

10 40. Answering Paragraph 40 of the Complaint, to the extent the allegations are
11 directed at Wells Fargo, Wells Fargo is without sufficient knowledge and/or belief upon which to
12 form a basis for belief as to the truth and/or falsity of these allegations and therefor denies the
13 same.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 Plaintiff's Complaint fails to state claim against Wells Fargo upon which relief can be
17 granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 Plaintiff took title of the Property subject to Wells Fargo's first priority Deed of Trust,
20 thereby forestalling any enjoinder/extinguishment of Wells Fargo's interest in the Property.

21 **THIRD AFFIRMATIVE DEFENSE**

22 The occurrence referred to in Plaintiff's Complaint, and all injuries and damages, if any,
23 resulting therefrom, were caused by the acts or omissions of Plaintiff.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 The occurrence referred to in Plaintiff's Complaint, and all injuries and damages, if any,
26 resulting therefrom, were caused by the acts or omissions of a third party or parties over whom
27 Wells Fargo had no control.

28 **FIFTH AFFIRMATIVE DEFENSE**

1 Plaintiff failed to mitigate its damages, if any.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations
4 or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and unclean
5 hands.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 It has been necessary for Wells Fargo to retain counsel to defend this action, and it is,
10 therefore, entitled to an award of reasonable attorney's fees.

11 **NINTH AFFIRMATIVE DEFENSE**

12 All possible affirmative defenses may not have been alleged herein, so far as sufficient
13 facts were not available after a reasonable inquiry upon the filing of Wells Fargo's Answer. In
14 the event further investigation or discovery reveals the applicability of any such defenses, Wells
15 Fargo reserves the right to seek leave of court to amend its Answer to specifically assert the
16 same. Such defenses are herein incorporated by reference for the specific purpose of not
17 waiving the same. Wells Fargo currently has insufficient information upon which to form a
18 belief as to whether there may be additional, yet unstated, affirmative defenses available. Wells
19 Fargo specifically reserves the right to assert additional affirmative defenses in the event
20 discovery indicates such defenses apply.

21 **WELLS FARGO'S COUNTERCLAIMS, CROSS-CLAIMS AND THIRD PARTY**

22 **CLAIMS**

23 COMES NOW Defendant/Counter-Claimant/Cross-Claimant, Wells Fargo Bank,
24 National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust,
25 Mortgage Pass-Through Certificates Series 2005-11 (hereinafter "Wells Fargo"), by and
26 through its attorneys of record, Christopher A.J. Swift, Esq. and Lindsay D. Robbins, Esq., of
27 the law firm of Wright, Finlay & Zak, LLP, and hereby files its Counterclaims against Plaintiff
28 Saticoy Bay LLC Series 8149 Palace Monaco (hereinafter "Plaintiff" or "Saticoy Bay"), its

1 Cross-Claims against Defendant Monaco Landscape Maintenance Association (hereinafter
2 “HOA”), and Third Party claims against Red Rock Financial Services, LLC (hereinafter “Red
3 Rock”).

4 **PARTIES, JURISDICTION AND VENUE**

5 16. The real property at issue is known as 8149 Palace Monaco Avenue, Las Vegas,
6 Nevada 89117, APN: 163-09-817-050 (hereinafter, the “Property”).

7 17. Wells Fargo is authorized to bring this action in the State of Nevada pursuant to
8 NRS 40.430.

9 18. Venue and jurisdiction is proper in this judicial district because Counter-
10 Defendants reside in this district, a substantial party of the events or omissions giving rise to
11 Wells Fargo’s claims occurred in this district, and the Property that is the subject of this action
12 is situated in this district, in Clark County, Nevada.

13 19. Wells Fargo is a national banking association organized under the laws of the
14 United States with its main office in South Dakota.

15 20. Wells Fargo is now and at all times relevant herein, the assigned Beneficiary
16 under a Deed of Trust signed by Robert Nardizzi, and recorded on March 15, 2005, (hereinafter
17 “Deed of Trust”), which encumbers the Property and secures a promissory note.

18 21. Upon information and belief, Saticoy Bay is a Nevada limited-liability company
19 and claims to be the current titleholder of the Property.

20 22. Upon information and belief, the HOA is a Nevada domestic non-profit
21 corporation and was the HOA that foreclosed on the Property.

22 23. Upon information and belief, Red Rock is foreign limited-liability company and
23 was the agent who foreclosed on the Property on behalf of the HOA.

24 24. Upon information and belief, Red Rock was the agent of the HOA, and the HOA
25 is responsible for their acts and omissions under the doctrine of respondeat superior.

26 25. In accordance with NRS Chapter 38.310, a Nevada Real Estate Division
27 Alternative Dispute Resolution (hereinafter, “NRED”) claim was filed on or about December 29,
28 2015, and named the HOA, Saticoy Bay, and Red Rock as Respondents.

1 26. HOA submitted a Response on April 26, 2016 to the NRED claim. Neither
2 Saticoy Bay nor Red Rock submitted any response.

3 27. NRED mediation was scheduled and completed on October 19, 2016, in which
4 Wells Fargo and HOA participated and reached an impasse.

5 **GENERAL ALLEGATIONS**

6 28. On or about February 3, 2003, Robert Nardizzi (hereinafter “Nardizzi”)
7 purchased the Property.³

8 29. The Deed of Trust executed by Nardizzi identified IndyMac Bank, F.S.B. as the
9 Lender, Mortgage Electronic Registration Systems, Inc. (MERS) as the Beneficiary, and Ticor
10 Title Insurance Co. as the Trustee, and secured a loan in the amount of \$185,700.00 (hereinafter
11 “Nardizzi Loan”).⁴

12 30. On February 24, 2014, an Assignment of Deed of Trust was recorded against the
13 Property where by MERS, as nominee for IndyMac Bank, F.S.B. assigned all beneficial interest
14 in the Deed of Trust to Aurora Commercial Corp. as Successor Entity to Aurora Bank, F.S.B.
15 F/k/a Lehman Brothers Bank, F.S.B.⁵

16 31. On January 26, 2017, an Assignment of Deed of Trust was recorded, whereby
17 Aurora Commercial Corp. assigned the Nardizzi Deed of Trust and Note to Wells Fargo.⁶

18 32. On May 20, 2009, a Notice of Delinquent Assessment Lien was recorded against
19 the Property by Red Rock, on behalf of the HOA.⁷

20 33. On July 7, 2009, a Notice of Default and Election to Sell was recorded against
21 the Property by Red Rock on behalf of the HOA, stating that the amount due as of July 2, 2009

22

23 ³ A true and correct copy of the GBS Deed recorded in the Clark County Recorder’s Office as
24 Book and Instrument Number 20030218-02324 is attached hereto as **Exhibit 1**. All other
25 recordings stated hereafter are recorded in the same manner.

26 ⁴ A true and correct copy of the Deed of Trust recorded as Book and Instrument Number
27 20050315-0004331 is attached hereto as **Exhibit 2**.

28 ⁵ A true and correct copy of the Assignment recorded as Book and Instrument Number
29 201402240000507 is attached hereto as **Exhibit 3**.

30 ⁶ A true and correct copy of the Assignment recorded as Book and Instrument Number
31 201701260002373 is attached hereto as **Exhibit 4**.

32 ⁷ A true and correct copy of the Notice of Lien recorded as Book and Instrument Number
33 20090520-0002871 is attached hereto as **Exhibit 5**.

1 was \$1,740.42.⁸

2 34. Upon information and belief, the HOA lien recorded pursuant to NRS Chapter
3 16 expired and extinguished as a matter of NRS 116.3116(6) on or about May 20, 2012.

4 35. On April 8, 2013, a Notice of Foreclosure Sale was recorded against the Property
5 by Red Rock on behalf of the HOA, stating that the amount due as of the initial publication of
6 the Notice of Sale was \$3,876.82.⁹

7 36. Upon information and belief, a non-judicial foreclosure sale occurred on
8 December 3, 2013 (hereinafter, the "HOA Sale"), whereby, according to the Foreclosure Deed,
9 Saticoy Bay acquired its interest, if any, in the Property for \$17,400.00.¹⁰

10 37. A homeowner's association sale conducted pursuant to NRS Chapter 116 must
11 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and
12 NRS 107.090.

13 38. A lender or holder of a senior deed of trust, such as Wells Fargo and its
14 predecessors-in-interest in the Deed of Trust, has a right to cure a delinquent homeowner's
15 association lien in order to protect its interest.

16 39. Further the Amended and Restated Declaration of Covenants, Conditions and
17 Restrictions for Monaco ("CC&Rs")¹¹ require reasonable notice of delinquency to all lien
18 holders on the Property.

19 40. Upon information and belief, the HOA and its agent, Red Rock, attempted to sell
20 the Property under an expired and extinguished HOA lien.

21 41. Pursuant to NRS 116.3116(6), a lien for unpaid assessments is extinguished
22 unless proceedings to enforce the lien are instituted within 3 years after the full amount of the
23

24 ⁸ A true and correct copy of the Notice of Default recorded as Book and Instrument Number
20090707-0001621 is attached hereto as **Exhibit 6**.

25 ⁹ A true and correct copy of the Notice of Sale recorded as Book and Instrument Number
201304080002068 is attached hereto as **Exhibit 7**.

26 ¹⁰ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
201312270002296 is attached hereto as **Exhibit 8**.

27 ¹¹ A true and correct copy of the current HOA CC&R's recorded as Book and Instrument
28 Number 980921.02422, and re-recorded as Book and Instrument Number 980923.01097 is
attached hereto as **Exhibit 9**.

1 assessments becomes due.

2 42. Upon information and belief, the full amount of the assessments became due on
3 or before May 20, 2012, such that the HOA lien became extinguished on or before May 20,
4 2012.

5 43. Upon information and belief, the non-judicial foreclosure sale was set on or after
6 December 3, 2013 or nearly nineteen (19) months after the HOA lien extinguished.

7 44. The HOA Sale occurred under an expired and extinguished HOA lien.

8 45. Upon information and belief, the HOA and its agent, Red Rock, did not comply
9 with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168,
10 or as required by the CC&Rs.

11 46. A recorded notice of default must “describe the deficiency in payment.”

12 47. The above-identified Notice of Default did not properly “describe the deficiency
13 in payment” in violation of NRS Chapter 116.

14 48. The HOA assessment lien and foreclosure notices included improper fees and
15 costs in amount demanded.

16 49. The HOA Sale occurred without notice to Wells Fargo, or its predecessors,
17 agents, servicers or trustees, what proportion whether any amount of the HOA lien included a
18 super-priority amount.

19 50. The HOA Sale occurred without notice to Wells Fargo, or its predecessors,
20 agents, servicers or trustees, whether the HOA was foreclosing on the “super-priority” portion
21 of its lien, if any, or under the non-super-priority portion of the lien.

22 51. The HOA Sale occurred without notice to Wells Fargo, or its predecessors,
23 agents, servicers or trustees, of a right to cure the delinquent assessments and the super-priority
24 lien, if any.

25 52. The HOA Sale was an invalid sale and could not have extinguished Wells
26 Fargo’s secured interest because of defects in the notices given to Wells Fargo, or its
27 predecessors, agents, servicers or trustees, if any.

28 /././

1 53. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs
2 and fees that are specifically enumerated in the statute.

3 54. A homeowner's association may only collect as a part of the super priority lien
4 (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
5 nine months of common assessments which became due prior to the institution of an action to
6 enforce the lien.

7 55. Upon information and belief, the HOA Foreclosure Notices included improper
8 fees and costs in the amount demanded.

9 56. The attorney's fees and the costs of collecting on a homeowner's association lien
10 cannot be included in the super-priority lien.

11 57. Upon information and belief, the HOA assessment lien and foreclosure notices
12 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
13 properly included in a super-priority lien under Nevada law and that are not permissible under
14 NRS 116.3102 et seq.

15 58. The HOA Sale did not comply with NRS 116.3102 et seq. because none of the
16 aforementioned notices identified above identified what portion of the claimed lien were for
17 alleged late fees, interest, fines/violations, or collection fees/costs.

18 59. Alternatively, the sale itself was valid but Saticoy Bay took its interest subject to
19 Wells Fargo's first position Deed of Trust.

20 60. A homeowner's association sale must be done in a commercially reasonable
21 manner.

22 61. At the time of the HOA Sale, the amount owed on the Nardizzi Loan exceeded
23 \$168,000.00.

24 62. Upon information and belief, at the time of the HOA Sale, the fair market value
25 of the Property exceeded \$152,000.00.

26 63. The amount paid at the HOA Sale allegedly totaled \$17,400.00.

27 64. Upon information and belief, there were multiple irregularities surrounding the
28 HOA sale, constituting evidence of fraud, oppression and/or unfairness to the detriment of

1 Wells Fargo.

2 65. The Property was purchased at an unreasonably low sales price, and coupled
3 with evidence of fraud, oppression and unfairness, renders the HOA sale void as a matter of
4 law.

5 66. The circumstances of the HOA Sale of the Property breached the HOA's
6 obligations of good faith under NRS 116.1113 and its duty to act in a commercially reasonable
7 manner.

8 67. The HOA Sale by which Saticoy Bay took its interest was commercially
9 unreasonable if it extinguished Wells Fargo's Deed of Trust.

10 68. In the alternative, the HOA Sale was an invalid sale and could not have
11 extinguished Wells Fargo's secured interest because it was not a commercially reasonable sale.

12 69. Without providing Wells Fargo, or its predecessors, agents, servicers or trustees,
13 notice of the correct super-priority amount and a reasonable opportunity to satisfy that amount,
14 including its failure to identify the super-priority amount and its failure to adequately describe
15 the deficiency in payment as required by Nevada law, the HOA Sale is commercially
16 unreasonable and deprived Wells Fargo of its right to due process.

17 70. Pursuant to NRS 116.31162(1) an association may only proceed with foreclosure
18 under NRS 116.31162-116.31168 if the declaration or CC&Rs so provide.

19 71. The CC&Rs for the HOA provide in Section 8.14 that "[t]he lien of any of the
20 Assessments, including interest, costs, expenses and attorneys' fees as provided for herein, shall
21 be subordinate to the lien of any First Mortgage Recorded prior to Recordation of a Notice of
22 Default."¹²

23 72. The CC&Rs for the HOA provide in Section 15.1 that "Notwithstanding any
24 other provision of this Declaration, no amendment or violation of this Declaration shall operate
25 to defeat or render invalid the rights of the Beneficiary under any Deed of Trust...made in good
26 faith and for value, and recorded prior to the Recordation of such amendment." ("Mortgage
27

28 _____
¹² See **Exhibit 9**.

Protection Clause”).¹³

73. Because the recorded CC&Rs contained a Mortgagee Protection Clause, and because Wells Fargo, or its predecessors, agents, servicers or trustees, were not given proper notice that the HOA intended to foreclose on the super-priority portion of the dues owe, Wells Fargo did not know that it had to attend the HOA Sale to protect its security interest.

74. Because the recorded CC&Rs contained a Mortgagee Protection Clause, and because proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale commercially unreasonable.

75. Defendants knew that Wells Fargo would rely on the Mortgagee Protection Clause contained in the recorded CC&Rs which are of public record, and knew that Wells Fargo would not know that HOA was foreclosing on super-priority amounts because of the failure of HOA and Red Rock to provide such notice. Wells Fargo’s absence from the HOA Sale allowed Saticoy Bay to appear at the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale commercially unreasonable.

76. Defendants knew that prospective bidders would be less likely to attend the HOA Sale because the public at large believed that Wells Fargo was protected under the Mortgagee Protection Clause in the CC&Rs of public record, and that the public at large did not receive notice, constructive or actual, that the HOA was foreclosing on a super-priority portion of its lien because HOA and HOA Trustee improperly failed to provide such notice. The general public’s belief therefore was that Saticoy Bay at the HOA Sale would take title to the Property subject to Wells Fargo’s Deed of Trust. This general belief resulted in the absence of prospective bidders at the HOA Sale, which allowed Saticoy Bay to appear at the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale commercially unreasonable.

77. Upon information and belief, Saticoy Bay is in the business of buying and selling real estate and/or is otherwise a professional property purchaser, and either knew or should have

¹³ *Id.*

1 known of defects with the HOA Sale based on the sales price, among other factors.

2 78. The circumstances of the HOA Sale of the Property and Saticoy Bay's status as a
3 professional property purchaser prevent Saticoy Bay from being deemed a bona fide purchaser
4 for value.

5 79. Upon information and belief, Saticoy Bay had actual, constructive or inquiry
6 notice of Wells Fargo's first Deed of Trust, and the CC&Rs including the Mortgage Protection
7 Clause which prevents Saticoy Bay from being deemed a bona fide purchaser or encumbrancer
8 for value.

9 80. Upon information and belief, Saticoy Bay knew or should have known that it
10 would not be able to obtain insurable title to the Property as a result of the HOA Sale.

11 81. As a direct and proximate result of the foregoing, Saticoy Bay is not entitled to
12 bona fide purchaser protection.

13 82. In the event Wells Fargo's interest in the Property is not reaffirmed nor restored,
14 Wells Fargo will have suffered damages in the amount of the fair market value of the Property
15 or the unpaid balance of the Nardizzi Loan and Deed of Trust, at the time of the HOA Sale,
16 whichever is greater, as a proximate result of Defendants' acts and omissions.

17 **FIRST CAUSE OF ACTION**

18 **(Quiet Title/Declaratory Relief versus all Counter-Defendants)**

19 83. Wells Fargo incorporates and re-alleges all previous paragraphs, as if fully set
20 forth herein.

21 84. Pursuant to NRS 30.010 et seq., and NRS 40.010, this Court has the power and
22 authority to declare Wells Fargo's rights and interests in the Property and to resolve Counter-
23 Defendant's adverse claims in the Property.

24 85. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority
25 to declare the rights and interests of the parties following the acts and omissions of the HOA
26 and HOA Trustee in foreclosing the Property.

27 86. Wells Fargo's Deed of Trust is the first secured interest on the Property as
28 intended by and whose priority is protected by NRS 116.3116(2)(b).

1 87. Upon information and belief, Saticoy Bay claims an interest in the Property
2 through a Foreclosure Deed recorded in the Clark County Recorder's Office as Book and
3 Instrument Number 201312270002296 that is adverse to Wells Fargo's interest.

4 88. Wells Fargo is the current beneficiary under the Deed of Trust and the Nardizzi
5 Loan and is entitled to enforce its interest and first position status in the chain of title against
6 Saticoy Bay, or any successor in interest, for the reasons alleged herein.

7 89. Because the CC&Rs and the Mortgage Protection Clause did not provide the
8 HOA with authority to foreclose on the Property, the HOA Sale could not have extinguished the
9 Deed of Trust or displaced it from its first position status in the chain of title, such that Saticoy
10 Bay took subject to the Deed of Trust. Or in the alternative, the HOA Sale is void, invalid
11 and/or should be set aside.

12 90. Because, upon information and belief, the HOA and the HOA Trustee attempted
13 to sell the Property under an expired and extinguished HOA lien pursuant to NRS 116.3116(6)
14 more than three (3) years after the full amount of the assessments became due, the HOA Sale
15 could not have extinguished the Deed of Trust or displaced it from its first position status in the
16 chain of title, such that Saticoy Bay took subject to the Deed of Trust. Or in the alternative, the
17 HOA Sale is void, invalid and/or should be set aside.

18 91. Because, upon information and belief, the HOA and the HOA Trustee failed to
19 provide proper, adequate and sufficient notices required by Nevada law and the CC&Rs, the
20 HOA Sale could not have extinguished the Deed of Trust or displaced it from its first position
21 status in the chain of title, such that Saticoy Bay took subject to the Deed of Trust. Or in the
22 alternative, the HOA Sale is void, invalid and/or should be set aside.

23 92. Based on the adverse claims being asserted by the parties, Wells Fargo is entitled
24 to a judicial determination regarding the rights and interests of the respective parties to the case.

25 93. A justiciable controversy exists between Wells Fargo and Defendants and Wells
26 Fargo has a legally protectable interest in the controversy. The issue is ripe for judicial
27 determination.

28 ///

1 94. For all the reasons set forth above and in the Factual Background, Wells Fargo is
2 entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that Wells
3 Fargo is the beneficiary of a first position Deed of Trust which still encumbers the Property.

4 95. Based upon the foregoing, Wells Fargo is entitled to a determination from this
5 Court, pursuant to NRS 30.010 and NRS 40.010, that the purported HOA Sale did not
6 extinguish the Deed of Trust because it was conducted in violation of NRS 116.3116 *et seq.* and
7 the CC&Rs.

8 96. Wells Fargo is entitled to a determination from this Court, pursuant to NRS
9 30.010 and NRS 40.010, that Wells Fargo's secured interest by virtue of its Deed of Trust is
10 superior to the interest, if any, acquired by Saticoy Bay through the Foreclosure Deed and all
11 other parties, if any.

12 97. In the alternative, if it is found under state law that Wells Fargo's interest could
13 have been extinguished by the HOA Sale, for all the reasons set forth above and in the Factual
14 Background, Wells Fargo is entitled to a determination from this Court, pursuant to NRS 30.010
15 and NRS 40.010, that the HOA Sale was void, invalid and/or should be set aside and conveyed
16 no legitimate interest to Saticoy Bay.

17 98. Wells Fargo has been compelled to retain counsel to represent it in this matter
18 and has and will continue to incur attorney's fees and costs.

19 **SECOND CAUSE OF ACTION**

20 **(Permanent and Preliminary Injunction versus Saticoy Bay)**

21 99. Wells Fargo incorporates by reference the allegations of all previous paragraphs,
22 as if fully set forth herein.

23 100. As set forth above, Saticoy Bay claims an ownership interest in the Property that
24 is adverse to Wells Fargo.

25 101. Any sale or transfer of the Property, prior to a judicial determination concerning
26 the respective rights and interests of the parties to the case, may be rendered invalid if Wells
27 Fargo's Deed of Trust still encumbered the Property in first position and was not extinguished
28 by the HOA Sale.

102. Wells Fargo has a reasonable probability of success on the merits of its Counterclaim, Cross-Claim, Third-Party Claims, for which compensatory damages will not compensate Wells Fargo for the irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority status secured by the Property.

103. Wells Fargo has no adequate remedy at law due to the uniqueness of the Property involved in the case.

104. Wells Fargo is entitled to a preliminary injunction and permanent injunction prohibiting Saticoy Bay, its successors, assigns, and agents from conducting any sale, transfer or encumbrance of the Property if it is claimed to be superior to Wells Fargo's Deed of Trust or not subject to that Deed of Trust.

105. Wells Fargo is entitled to a preliminary injunction requiring Saticoy Bay to pay all taxes, insurance and homeowner's association dues during the pendency of this action.

106. Wells Fargo is entitled to a preliminary injunction requiring Saticoy Bay to segregate and deposit all rents with the Court or a Court-approved trust account over which Saticoy Bay has no control during the pendency of this action.

107. Wells Fargo has been compelled to retain counsel to represent it in this matter and has and will continue to incur attorney's fees and costs.

THIRD CAUSE OF ACTION

(Unjust Enrichment versus Saticoy Bay)

108. Wells Fargo incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

109. Wells Fargo has been deprived of the benefit of its secured deed of trust by the actions of Saticoy Bay.

110. Saticoy Bay has benefitted from the unlawful HOA Sale and nature of the real property.

111. Saticoy Bay has benefitted from Wells Fargo's payment of taxes, insurance and/or homeowner's association assessments since the time of the HOA Sale.

112. Should Wells Fargo's Complaint be successful in quieting title against Saticoy

1 Bay and setting aside the HOA Sale, Saticoy Bay will have been unjustly enriched by the HOA
2 Sale and usage of the Property.

3 113. Wells Fargo will have suffered damages if Saticoy Bay is allowed to retain its
4 interest in the Property.

5 114. Wells Fargo will have suffered damages if Saticoy Bay is allowed to retain its
6 interest in the Property and the benefit of Wells Fargo's payment of taxes, insurance and/or
7 homeowner's association assessments since the time of the HOA Sale.

8 115. Wells Fargo is entitled to general and special damages.

9 116. Wells Fargo has been compelled to retain counsel to represent it in this matter
10 and has and will continue to incur attorney's fees and costs.

11 **FOURTH CAUSE OF ACTION**

12 **(Tortious Interference with Contract versus HOA and HOA Trustee)**

13 117. Wells Fargo incorporates by reference the allegations of all previous paragraphs,
14 as if fully set forth herein.

15 118. At all times mentioned, Wells Fargo had a valid and existing contract with the
16 Borrowers, and the contract terms included the power of sale in the Deed of Trust.

17 119. The Deed of Trust evidencing the contract was and is a matter of public record,
18 and therefore known to Saticoy Bay.

19 120. Defendants engaged in acts intended or designed to disrupt the contractual
20 relationship between Wells Fargo and the Borrowers by ostensibly electing to enforce the "super
21 priority" rights of the Association through a power of sale, notwithstanding: (i) the covenants
22 contained in the CC&R's; (ii) no notice to Wells Fargo or its predecessors in interest of the intent
23 to do so; (iii) no notice to Wells Fargo or its predecessors in interest of the foreclosure
24 proceedings; and (iv) failing to provide an opportunity to cure to Wells Fargo before the sale.

25 121. At all times the HOA could have elected to honor the covenant in its CC&R's
26 evidenced by the Mortgagee Protection Clause and chosen not to enforce the super priority
27 portion of its lien, or to do so only after ensuring Wells Fargo had notice and was prepared to
28 waive its rights to foreclose under the Deed of Trust.

122. Wells Fargo's contractual rights to enforce the power of sale have been disrupted and frustrated through Defendants' actions.

123. As an actual and proximate result of the Defendants' actions and inactions, Wells Fargo has sustained damages in excess of \$75,000.00.

124. As an actual and proximate result of Defendants' actions and inactions, Wells Fargo has sustained special damages, in the form of costs and attorney's fees, in an amount not yet liquidated, to defend its rights under the Deed of Trust in this action.

SEVENTH CAUSE OF ACTION

(Wrongful/Defective Foreclosure versus the HOA and the HOA Trustee)

125. Wells Fargo incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

126. Upon information and belief, the HOA and HOA Trustee did not comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

127. The HOA and HOA Trustee failed to provide notice pursuant to Nevada law and assure due process.

128. Because the HOA Sale was wrongfully conducted and violated applicable law, the Court should set it aside to the extent that it purports to have extinguished the Deed of Trust.

129. Because the HOA Sale was not commercially reasonable, it was invalid, wrongful and should be set aside.

130. Because the HOA and HOA Trustee did not give Wells Fargo, or its agents, servicers or predecessors-in-interest, the proper, adequate notice of the sale and the opportunity to cure the deficiency or default in the payment of the HOA's assessments required by Nevada statutes, the CC&R's, and Due Process, the HOA Sale should be set aside.

131. As a proximate result of the HOA and HOA Trustee's wrongful/ statutorily defective foreclosure of the Property by the HOA Sale, as more particularly set forth above and in the General Allegations, Wells Fargo has suffered general and special damages in an amount not presently know. Wells Fargo will seek leave of court to assert said amounts when they are determined.

132. If it is determined that the Deed of Trust has been extinguished by the HOA Sale as a proximate result of HOA and HOA Trustee's wrongful foreclosure of the Property by the HOA Sale, Wells Fargo has suffered special damages in the amount equal to the fair market value of the Property or the unpaid balance of the Nardizzi Loan, plus interest, at the time of the HOA Sale, whichever is greater, in an amount not presently known or liquidated, and according to proof at trial.

133. Wells Fargo has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

EIGHTH CAUSE OF ACTION

(Negligence versus the HOA and the HOA Trustee)

134. Wells Fargo incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

135. The HOA and HOA Trustee owed a duty to Wells Fargo and subordinate lienholders to conduct the HOA Sale at issue in this case properly.

136. The HOA and HOA Trustee breached their duty by failing to disclose the amount of the super-priority lien, by failing to specify that it was foreclosing on the super-priority portion of its lien as opposed to the non-super-priority portion, and by failing to provide notice of the HOA Sale and the notice that Wells Fargo and subordinate lienholders had an opportunity to cure.

137. As an actual and proximate result of the breaches of duties owed by the HOA and HOA Trustee, Wells Fargo has incurred general and special damages in excess of \$75,000.00.

138. If Wells Fargo is found to have lost its first secured interest in the Property, it was the proximate result of the HOA and HOA Trustee's breaches of their duties, and Wells Fargo has thereby suffered general and special damages.

139. Wells Fargo has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

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1 Clause.

2 160. The HOA and HOA Trustee failed to exercise reasonable care or competence in
3 communication the information within the provisions of the CC&Rs, including without
4 limitation, the Mortgagee Protection Clause, were false or it had insufficient basis for making.

5 161. The HOA and HOA Trustee acted in contravention to the provisions in the
6 CC&Rs, including without limitation, the Mortgagee Protection Clause, when they conducted the
7 HOA Sale in a manner that could extinguish the Deed of Trust.

8 162. Wells Fargo has suffered general and specific damages in excess of \$75,000.00 as
9 a proximate cause of its reliance.

10 163. Wells Fargo has been required to retain counsel to prosecute this action and is
11 entitled to recover reasonable attorney's fees to prosecute this action.

12 **TWELFTH CAUSE OF ACTION**

13 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and the HOA**
14 **Trustee)**

15 164. Wells Fargo incorporates and re-alleges all previous paragraphs, as if fully set
16 forth herein.

17 165. Implicit in every contract in the state of Nevada is an implied covenant of good
18 faith and fair dealing.

19 166. Wells Fargo was an intended beneficiary of the HOA's CC&Rs.

20 167. The HOA and HOA Trustee breached the duties, obligations, promises, covenants
21 and conditions, express and implied, in the CC&Rs owed to Wells Fargo by the circumstances
22 under which they conducted the HOA Sale and failed to act in good faith.

23 168. The HOA and HOA Trustee acts and omissions proximately caused Wells Fargo
24 general and special damages.

25 169. Wells Fargo has been required to retain counsel to prosecute this action and is
26 entitled to recover reasonable attorney's fees to prosecute this action.

27 **PRAYER**

28 Wherefore, Wells Fargo prays for judgment against the Defendants as follows:

1. For a declaration and determination that Wells Fargo's interest is secured against the Property, and that Wells Fargo's first Deed of Trust was not extinguished by the HOA Sale;
2. For a declaration and determination that Saticoy Bay's interest, and any and all successors' interest, in the Property, if any, is subject to the Deed of Trust;
3. For a declaration and determination that the HOA Sale was invalid to the extent it purports to convey the Property free and clear to Saticoy Bay;
4. In the alternative, for a declaration and determination that the HOA Sale was void, invalid and/or should be set aside and conveyed no legitimate interest to Saticoy Bay;
5. For a preliminary injunction that Saticoy Bay, its successors, assigns, and agents are prohibited from conducting a sale or transfer of the Property and representing the sale is free and clear of the Deed of Trust, unless Saticoy Bay tenders payment of the debt secured by the Deed of Trust, or from encumbering the Property during the pendency of this action;
6. For a preliminary injunction that Saticoy Bay, its successors, assigns, and agents pay all taxes, insurance and homeowner's association dues during the pendency of this action;
7. For a preliminary injunction that Saticoy Bay, its successors, assigns, and agents be required to segregate and deposit all rents with the Court or a Court-approved trust account over which Saticoy Bay have no control during the pendency of this action;
8. If it is determined that Wells Fargo's Deed of Trust has been extinguished by the HOA Sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Nardizzi Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater;
9. For general and special damages;
10. For attorney's fees;

1 11. For costs incurred herein, including post-judgment costs; and

2 12. For any and all further relief deemed appropriate by this Court.

3 DATED this 10th day of October, 2018.

4 WRIGHT, FINLAY & ZAK, LLP

5 /s/ Lindsay D. Robbins, Esq.

6 Christopher A.J. Swift, Esq.

7 Nevada Bar No. 11291

8 Lindsay D. Robbins, Esq.

9 Nevada Bar No. 13474

10 7785 W. Sahara Ave., Suite 200

11 Las Vegas, NV 89117

12 (702) 475-7964; Fax: (702) 946-1345

13 lrobbins@wrightlegal.net

14 Attorneys for Defendant Wells Fargo Bank,

15 National Association, as Trustee for the Structured

16 Adjustable Rate Mortgage Loan Trust, Pass-

17 Through Certificates Series 2005-11

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP and that I electronically served on the 10th day of October, the foregoing **WELLS FARGO’S ANSWER TO PLAINTIFF’S COMPLAINT, COUNTER-CLAIMS, CROSS-CLAIMS and THIRD PARTY COMPLAINT** to all parties and counsel as identified on the Court-generated Notice of Electronic Filing.

/s/ Nicole L. Lane
An Employee of WRIGHT, FINLAY

EXHIBIT 1

EXHIBIT 1

37

20030218
02324STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 163-09-817-050

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY	
Document Instrument No.:	
Book:	Page:
Date of Recording:	
Notes:	

3. Total Value/Sales Price of Property:

\$185,000.00 182,000.00

Deed in Lieu of Foreclosure Only (value of property)

\$

Transfer Tax Value per NRS 375.010, Section 2:

\$185,000.00 182,000.00

Real Property Transfer Tax Due:

\$ 462.50 455.05

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 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 375.839, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity _____

Signature _____

Capacity _____

SELLER (GRANTOR) INFORMATION

(Required)

Print Name: Mario A. RodriguezAddress: 8149 Palace Monaco Av.City/State/Zip: Las Vegas, NV 89117

BUYER (GRANTEE) INFORMATION

(Required)

Print Name: Robert Vincent NardizziAddress: 8149 Palace Monaco Av. Las Vegas, NVCity/State/Zip: Las Vegas, NV 89117

COMPANY REQUESTING RECORDING

Co. Name: Pioneer National Title of Nevada, Inc.
7548 West Sahara Ave., Ste 101
Las Vegas, NV 89117

Esc #: 3030018-JL

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

2374

37
Escrow No. 3030018-JL
APN No.: 163-09-817-050
R.P.T.T: \$ 455.00

20030218
02324

Grant, Bargain, Sale Deed

THIS INDENTURE WITNESSETH: That Marco A. Rodriguez, a married man as his sole and separate property and Sandra Montano, an unmarried woman, as joint tenants

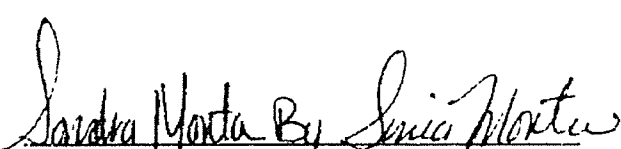
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to ROBERT NARDIZZI, A SINGLE MAN

all that real property situated in the County of Clark, State of Nevada, described as follows:

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

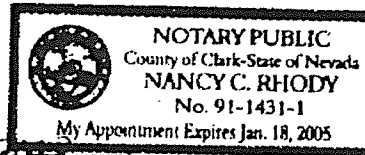
Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.


Marco A. Rodriguez


Sandra Montano, BY SONIA MONTANO
as her attorney in fact
AS HER ATTORNEY IN FACT

STATE OF NEVADA
COUNTY OF CLARK

} ss:



This instrument was acknowledged before me on February 3, 2005
by Marco A. Rodriguez & Sandra Montano by Sonia Montano
as her attorney in fact

NOTARY PUBLIC

WHEN RECORDED MAIL TO:
Rob Nardizzi
8149 PALACE MONACO AVENUE
LAS VEGAS, NV 89117

MAIL TAX STATEMENTS TO:
Rob Nardizzi
8149 PALACE MONACO AVENUE
LAS VEGAS, NV 89117

SPACE FOR RECORDER'S USE

20030218
02324**EXHIBIT A
LEGAL DESCRIPTION**

Lot Two Hundred Thirty (230) in Block "J" of Monaco No. 12, as shown by map thereof on file in Book 89 of Plats, Page 81, in the office of the County Recorder, Clark County, Nevada.

***** CLARK COUNTY, NEVADA *****
FRANCES DEANE, RECORDER
RECORDED AT REQUEST OF: PIONEER NATIONAL TITLE
02-18-2003 15:24 D61 PAGE COUNT: 2
OFFICIAL RECORDS
BOOK/INSTR:20030218-02324 FEE: 15.00
RPTT: 455.00

EXHIBIT 2

EXHIBIT 2



20050315-0004331

Fee: \$35.00

N/C Fee: \$0.00

03/15/2005

14:27:45

T20050047074

Requestor:

TICOR TITLE OF NEVADA INC

Frances Deane

OSA

Clark County Recorder

Pgs: 22

Assessor's Parcel No.: 16309817050

After recording please return to:

IndyMac Bank, F.S.B. c/o Document Management

[Company Name]

[Name of Natural Person]

3465 E. Foothill Blvd.

[Street Address]

Pasadena, CA 91107

[City, State Zip Code]

Until a change is requested, all tax statements
shall be sent to the following address:
IndyMac Bank, F.S.B.

[Name]

P.O. Box 78826

[Street Address]

Phoenix, AZ 85062-8826

[City, State Zip Code]

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN 100055401209419094

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 March 7, 2005, together with all Riders to this document.

(B) "Borrower" is Robert Nardizzi, a married man, as his sole and separate property

Borrower is the trustor under this Security Instrument.

(C) "Lender" is IndyMac Bank, F.S.B., a federally chartered savings bank. Lender is a Federal Savings Bank organized and existing under the laws of United States of America. Lender's address is 155 North Lake Avenue, Pasadena, CA 91101.

Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
—THE COMPLIANCE SOURCE, INC.—
www.compliance-source.com

Page 1 of 14

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14301NV 08/01
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(D) "Trustee" is Ticor Title Insurance Co

(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 March 7, 2005. The Note states that Borrower owes Lender one hundred eighty five thousand seven hundred and NO/100ths Dollars (U.S. \$ 185,700.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2035.

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

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

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

- | | | |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Revocable Trust Rider | |
| <input checked="" type="checkbox"/> Other(s) <i>[specify]</i> <u>Fixed/Adjustable Rate Interest Only LIBOR Rider</u> | | |

(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.

Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
—THE COMPLIANCE SOURCE, INC.—
www.compliancesource.com

Page 2 of 14

MERS Modified Form 3029 01/01
14301NV 08/01
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(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. §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 of Clark :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof.

which currently has the address of

8149 Palace Monaco Avenue
(Street)
Las Vegas, Nevada 89117 ("Property Address"):
(City) (Zip Code)

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

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

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.

Loan No. [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
—THE COMPLIANCE SOURCE, INC.—
www.compliancesource.com

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UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

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

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

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

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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, Loan No: [REDACTED]



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

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

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

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

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

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

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

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected



by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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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

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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,

Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
—THE COMPLIANCE SOURCE, INC.—
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Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$100 where no credit checks are required, the greater of \$400 or 1% of unpaid principal balance of the mortgage - up to a maximum of \$900 - if the change of ownership requires credit approval of the new mortgagor; or any maximum prescribed by Applicable Law.

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.

Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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Witnesses:

Robert Nardizzi (Seal)
-Borrower
[Printed Name]

Printed Name: _____
(Please Complete)

(Seal)
-Borrower
[Printed Name]

(Seal)
-Borrower
[Printed Name]

Printed Name: _____
(Please Complete)

(Seal)
-Borrower
[Printed Name]

[Acknowledgment on Following Page]

Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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www.compliancesource.com

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14301NV 08/01
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State of Nevada
County of Clark

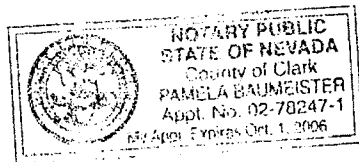
§
§
§

Before me the undersigned authority, on this day personally appeared Robert Nardizzi

known to me (or proved to me through an identity card or other document) to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.
Given under my hand and seal on this

(Seal)

9th day of March 2005.
Pamela Baumeister
Notary Public Pamela Baumeister [Printed Name]
My Commission Expires: Oct 1, 2006



Loan No: [REDACTED]

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of March, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to IndyMac Bank, F.S.B., a federally chartered savings bank (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

8149 Palace Monaco Avenue, Las Vegas, NV 89117

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions (the "Declaration"). The Property is a part of a planned unit development known as:

Monaco

[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,

Loan No: 002419094

MIN: 100055401209419094

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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14501MU 08.00 Rev. 11/04

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hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then:

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

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

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

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

[Signatures on Following Page]_____

Loan No: 

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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


Robert Nardizzi (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Loan No: 

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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**FIXED/ADJUSTABLE RATE RIDER
INTEREST ONLY FIXED PERIOD****(LIBOR 6 Month Index (As Published In *The Wall Street Journal*)- Rate Caps)**

Loan # [REDACTED]

MIN: 100055401209419094

THIS FIXED/ADJUSTABLE RATE RIDER is made this 7th day of March, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to IndyMac Bank, F.S.B., a federally chartered savings bank

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

8149 Palace Monaco Avenue, Las Vegas, NV 89117

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.750 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April 2010, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - LIBOR 10 - Single Family

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Form 5008

8480396 (0208)

VMP MORTGAGE FORMS - (800)521-7291

8/2002



(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs 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.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding two and 750/1000ths (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.750 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than 1.00 percentage points from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.750 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment due after the first Change Date.

Loan No: 8480396 (0208)

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8/2002



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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be 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 also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

8480396 (0208)
Loan No: [REDACTED]


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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 Fixed/Adjustable Rate Rider.

 (Seal) _____ (Seal)
Robert Nardizzi -Borrower -Borrower

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

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

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

Loan No: 
8480396 (0208)

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8/2002



EXHIBIT A

Lot Two Hundred Thirty (230) in Block "J" of MONACO NO. 12, as shown by map thereof on file in Book 89 of Plats, Page 81, in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT 3

EXHIBIT 3

APN #: 16309817050
Prepared by: Fred Jenne
When Recorded Mail To:
Ocwen Loan Servicing,LLC
5720 Premier Park Dr,
West Palm Beach, FL 33407
Phone Number: 561-682-8835
MERS Ph.#: (888) 679 - 6377

Inst #: 201402240000507
Fees: \$18.00
N/C Fee: \$25.00
02/24/2014 08:02:59 AM
Receipt #: 1940730
Requestor:
PREMIUM TITLE TSG
Recorded By: STN Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

**ASSIGNMENT OF DEED OF TRUST
NEVADA**

This ASSIGNMENT OF DEED OF TRUST from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) as nominee for INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK its successors and assigns, whose address is PO Box 2626 Flint, MI 48501-2026 ("Assignor) to AURORA COMMERCIAL CORP. AS SUCCESSOR ENTITY TO AURORA BANK, FSB F/K/A LEHMAN BROTHERS BANK, FSB, whose address is c/o Ocwen Loan Servicing,LLC, 5720 Premier Park Dr, West Palm Beach, FL 33407, (Assignee) all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of CLARK County, State of NEVADA, as follows:

Trustor: ROBERT NARDIZZI
Trustee: TICOR TITLE INSURANCE CO
Beneficiary: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS
NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A
FEDERAL SAVINGS BANK
Document Date: MARCH 07, 2005
Amount: \$185,700.00
Date Recorded: MARCH 15, 2005
Document/Instrument/Entry Number: 0004331 BOOK: 20050047074
Property Address: 8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117

Property more particularly described in the above referenced recorded Deed of Trust

APN #: 16309817050
Prepared by: Fred Jenne
When Recorded Mail To:
Ocwen Loan Servicing,LLC
5720 Premier Park Dr,
West Palm Beach, FL 33407
Phone Number: 561-682-8835
MERS Ph.#: (888) 679 - 6377

This Assignment is made without recourse, representation or warranty.

DATED: FEBRUARY 12, 2014

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
ACTING SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B.,
A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK
ITS SUCCESSORS AND ASSIGNS

BY: _____
NAME: Jool Pires
TITLE: Assistant Secretary

STATE OF FLORIDA)
COUNTY OF PALM BEACH)SS.

On FEBRUARY 12, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Jool Pires, the Assistant Secretary at MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK its successors and assigns, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.
Ivelka Angeles
Notary Signature - Ivelka Angeles

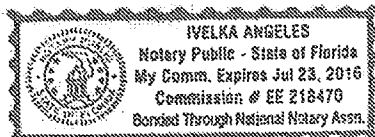


EXHIBIT 4

EXHIBIT 4

4

Inst #: 20170126-0002373

Fees: \$20.00

N/C Fee: \$0.00

01/26/2017 11:20:34 AM

Receipt #: 2993698

Requestor:

NATIONWIDE LEGAL

Recorded By: MAYSM Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 163-09-817-050

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Corporate Assignment of Deed of Trust

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Wright, Finlay & Zak, LLP on behalf of Ocwen Loan Servicing, LLC

RETURN TO: Name Ocwen Loan Servicing, LLC

Address 240 Technology Drive

City/State/Zip Idaho Falls, Id 83401

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

Assessor's/Tax ID No. 16309817050

Recording Requested By:
OCWEN LOAN SERVICING, LLC

When Recorded Return To:
OCWEN LOAN SERVICING, LLC
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401



CORPORATE ASSIGNMENT OF DEED OF TRUST

Clark, Nevada

SELLER'S SERVICING #: [REDACTED] "NARDIZZI"

SELLER'S LENDER ID#: DP 25315

OLD SERVICING #: [REDACTED]

MIN #: 100055401209419094 SIS #: 1-888-679-6377

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT SUBMITTED FOR RECORDING DOES NOT CONTAIN PERSONAL INFORMATION ABOUT ANY PERSON.

Date of Assignment: December 30th, 2016

Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK, its successors and/or assigns at PO BOX 2026 FLINT MI 48501, 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834

Assignee: WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-11 at C/O OCWEN LOAN SERVICING, LLC., 1661 WORTHINGTON ROAD, STE 100, WEST PALM BEACH, FL 33409

Executed By: ROBERT NARDIZZI, A MARRIED MAN, AS HIS SOLE AND SEPARATE PROPERTY To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B. A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS

Date of Deed of Trust: 03/07/2005 Recorded: 03/15/2005 in Book: 20050315 as Instrument No.: 0004331 In the County of Clark, State of Nevada.

Assessor's/Tax ID No. 16309817050

Property Address: 8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117

Legal: NA

*RRM*RR2GMAC*12/30/2016 11:08:50 AM* GMAC40GMACA0000000000000000
NVCLARK*[REDACTED] NVCLARK_TRUST_ASSIGN_ASSN *RP*RP1GMAC*

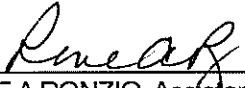
THE PURPOSE OF THIS CORRECTIVE ASSIGNMENT OF DEED OF TRUST IS TO CORRECT THE ASSIGNEE ON THE ASSIGNMENT RECORDED ON 02/24/2014, IN BOOK NUMBER 20140224, AS INSTRUMENT NUMBER 0000507.

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Deed of Trust having an original principal sum of \$185,700.00 with interest, secured thereby, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Deed of Trust.

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK, its successors and/or assigns

On JAN 05 2017


By: 
RENE A PONZIO, Assistant Secretary

CORPORATE ASSIGNMENT OF DEED OF TRUST Page 3 of 3

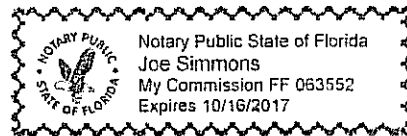
STATE OF FLORIDA
COUNTY OF PALM BEACH

On JAN 05 2017, before me, Joe Simmons, a Notary Public in and for PALM BEACH in the State of FLORIDA, personally appeared RENE A PONZIO, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature 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,



Joe Simmons
Notary Expires: 10/16/2017



(This area for notarial seal)

Mail Tax Statements To: ROBERT NARDIZZI, 8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117

*RRM*RR2GMAC*12/30/2016 11:08:50 AM* GMAC40GMACA00000000000000
NVCLARK NVCLARK_TRUST_ASSIGN_ASSN * RP*RP1GMAC*

EXHIBIT 5

EXHIBIT 5

Assessor Parcel Number: 163-09-817-050
File Number: R30907

20090520-0002871

Fee: \$14.00
N/C Fee: \$0.00
05/20/2009 10:56:07
T20090176765
Requestor:
NORTH AMERICAN TITLE COMPANY
Debbie Conway BGN
Clark County Recorder Pgs: 1

LIEN FOR DELINQUENT ASSESSMENTS

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

NOTICE IS HERBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., herein also called the Association, in accordance with Nevada Revised Statutes and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada. Which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:
8149 Palace Monaco Avenue, Las Vegas, NV 89117

MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, in the County of Clark

Current Owner(s) of Record:
ROBERT NARDIZZI

The amount owing as of the date of preparation of this lien is **\$606.71.

This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.

**The said amount will increase as assessments, late fees, interest, fines/violations, collection fees and costs and/or decrease as partial payments are applied to the account.

Dated: May 13, 2009

Prepared By Kim Whipple, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On May 13, 2009, before me, personally appeared Kim Whipple, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118
702-932-6887

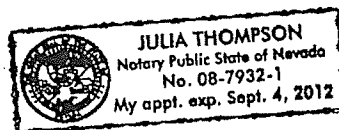


EXHIBIT 6

EXHIBIT 6


20090707-0001621

Assessor Parcel Number: 163-09-817-050
File Number: R30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117
Title Order Number: 17233

Fee: \$14.00
N/C Fee: \$0.00
07/07/2009 10:20:46
T20090234582
Requestor:
NORTH AMERICAN TITLE COMPANY
Debbie Conway BGN
Clark County Recorder Pgs: 1

220

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

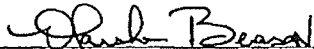
◆ IMPORTANT NOTICE ◆

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

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., under the Lien for Delinquent Assessments, recorded on 5/20/2009, in Book Number 20090520, as Instrument Number 0002871, reflecting ROBERT NARDIZZI as the owner(s) of record on said lien, land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 11/13/1998, in Book Number 981113, as Instrument Number 02435, has been breached. As of 1/1/2009 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of July 2, 2009, the amount owed is \$1,740.42. This amount will continue to increase until paid in full.



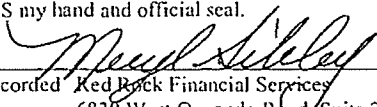
Dated: July 2, 2009

Prepared By Marsha Beason, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On July 2, 2009, before me, personally appeared Marsha Beason, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


When Recorded: Red Rock Financial Services
Mail To: 6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118 • 702-932-6887

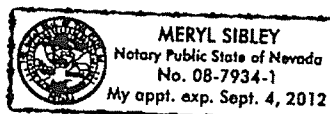


EXHIBIT 7

EXHIBIT 7

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

Inst #: 201304080002068
Fees: \$18.00
N/C Fee: \$0.00
04/08/2013 01:19:36 PM
Receipt #: 1566007
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Accommodation

NOTICE OF FORECLOSURE SALE

UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

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

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

Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS,** recorded on 05/20/2009 in Book Number 20090520 as Instrument Number 0002871 reflecting ROBERT NARDIZZI as the owner(s) of record on said lien. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 07/07/2009 in Book Number 20090707 as Instrument Number 0002871 of the Official Records in the Office of the Recorder.

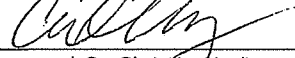
NOTICE IS HEREBY GIVEN: That on 05/02/2013, at 10:00 a.m. at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 8149 Palace Monaco Avenue, Las Vegas, NV 89117, and land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of \$3,876.82 as of 04/05/2013, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

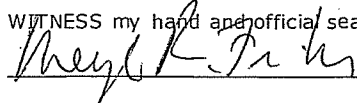
Dated: April 5, 2013


Prepared By Christie Marling, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc

STATE OF NEVADA)
COUNTY OF CLARK)

On April 5, 2013, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Reinstatement Information: (702) 215-8130 or Sale Information: (714) 573-1965

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 215-8130 or (702) 932-6887

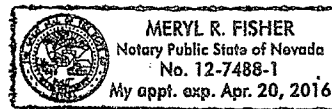


EXHIBIT 8

EXHIBIT 8

Mail and Return Tax statement to:
Saticoy Bay LLC Series 8149 Palace Monaco
900 S. Las Vegas Blvd, #810
Las Vegas, NV 89101

APN # 163-09-817-050

Inst #: 201312270002296

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$701.25 Ex: #

12/27/2013 01:52:32 PM

Receipt #: 1884823

Requestor:

RESOURCES GROUP

Recorded By: MSH Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

FORECLOSURE DEED

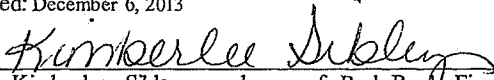
The undersigned declares:

Red Rock Financial Services, herein called agent for (Monaco Landscape Maintenance Association, Inc), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 05/20/2009 as instrument number 0002871 Book 20090520, in Clark County. The previous owner as reflected on said lien is ROBERT NARDIZZI. Red Rock Financial Services as agent for Monaco Landscape Maintenance Association, Inc does hereby grant and convey, but without warranty expressed or implied to: **Saticoy Bay LLC Series 8149 Palace Monaco** (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J which is commonly known as **8149 Palace Monaco Avenue Las Vegas, NV 89117.**

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Monaco Landscape Maintenance Association, Inc governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 07/07/2009 as instrument number 0001621 Book 20090707 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Monaco Landscape Maintenance Association, Inc at public auction on **12/3/2013**, 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 **\$17,400.00** in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

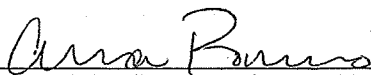
Dated: December 6, 2013

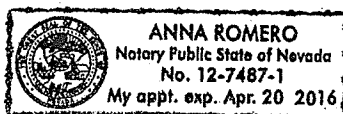

By: Kimberlee Sibley, employee of Red Rock Financial Services, agent for Monaco Landscape Maintenance Association, Inc

STATE OF NEVADA)
COUNTY OF CLARK)

On December 6, 2013, before me, personally appeared Kimberlee Sibley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


When Recorded Mail To: Saticoy Bay LLC Series 8149 Palace Monaco
900 S. Las Vegas Blvd, #810
Las Vegas, NV 89101



STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number (s)

a) 163-09-817-050
 b) _____
 c) _____
 d) _____

2. Type of Property:

a) <input type="checkbox"/>	Vacant Land	b) <input checked="" type="checkbox"/>	Single Fam Res.
c) <input type="checkbox"/>	Condo/Twnhse	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
i) <input type="checkbox"/>	Other		

FOR RECORDERS OPTIONAL USE ONLY

Notes: _____

3. Total Value/Sales Price of Property:

\$ 17,400.00
 Deed in Lieu of Foreclosure Only (value of property) \$ _____
 Transfer Tax Value: \$ 137,037.00
 Real Property Transfer Tax Due: \$ 701.25

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Kimberlee Shibley Capacity AGENT
 Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Red Rock Financial Services
 Address: 4775 West Teco Ave #140
 City: Las Vegas
 State: NV Zip: 89118

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Saticoy Bay LLC Series 8149 Palace Monaco
 Address: 900 S Las Vegas Blvd #810
 City: Las Vegas
 State: NV Zip: 89101

COMPANY/PERSON REQUESTING RECORDING

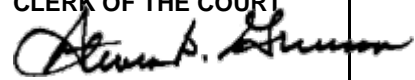
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: SATICOY BAY LLC SERIES 8149 Escrow # _____
 Address: 900 S LAS VEGAS BLVD - PALACE MONACO
 City: LV #810 State: NV Zip: 89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

EXHIBIT 9

EXHIBIT 9



ERR

WRIGHT, FINLAY & ZAK, LLP
Christopher A.J. Swift, Esq.
Nevada Bar No. 11291
Lindsay D. Robbins, Esq.
Nevada Bar No. 13474
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
lrobbins@wrightlegal.net

Attorneys for Defendant/Counter/Cross-Claimant/Third-Party Plaintiff, Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 8149 PALACE
MONACO,

Plaintiff,

vs.

ROBERT NARDIZZI a/k/a ROBERT A.
NARDIZZI, an individual; MONACO
LANDSCAPE MAINTENANCE
ASSOCIATION, a Nevada domestic non-
profit corporation; WELLS FARGO BANK,
NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE STRUCTURED ADJUSTABLE
RATE MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11, a business entity location unknown; DOE
individuals 1 through 10; and ROE business
entities 11 through 30,

Defendants.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Case No.: A-18-770245-C

Dept. No.: XXVIII

**ERRATA TO WELLS FARGO'S
ANSWER TO PLAINTIFF'S
COMPLAINT, COUNTER-CLAIMS,
CROSS-CLAIMS and THIRD PARTY
COMPLAINT**

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Counterclaimant,

vs.

SATICOY BAY LLC SERIES 8149 PALACE
MONACO,

Counter-Defendant.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Cross-Claimant,

vs.

MONACO LANDSCAPE MAINTENANCE
ASSOCIATION,

Cross-Defendant.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Third-Party Plaintiff,

vs.

RED ROCK FINANCIAL SERVICES, LLC,

Third-Party Defendant.

///
///
///

1 **ERRATA TO WELLS FARGO’S ANSWER TO PLAINTIFF’S COMPLAINT,**
2 **COUNTER-CLAIMS, CROSS-CLAIMS and THIRD PARTY COMPLAINT**

3 PLEASE TAKE NOTICE that Defendant/Counter/Cross-Claimant/Third-Party Plaintiff,
4 Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage
5 Loan Trust, Pass-Through Certificates Series 2005-11 by and through its attorneys of record,
6 Christopher A.J. Swift, Esq. and Lindsay D. Robbins, Esq., of the law firm of Wright, Finlay &
7 Zak, LLP, hereby submits this Errata to WELLS FARGO’S ANSWER TO PLAINTIFF’S
8 COMPLAINT, COUNTER-CLAIMS, CROSS-CLAIMS and THIRD PARTY COMPLAINT
9 (“Answer”), filed on October 15, 2018. The following exhibit was referenced in the Answer,
10 however, through clerical error, was excluded from the Answer:
11

- 12 1. A true and correct copy of the current HOA CC&R’s recorded as Book and
13 Instrument Number 980921.02422, and re-recorded as Book and Instrument
14 Number 980923.01097 is attached hereto as **Exhibit 9**

15 DATED this 7th day of February, 2019.

16 WRIGHT, FINLAY & ZAK, LLP

17 /s/ Lindsay D. Robbins

18 Christopher A.J. Swift, Esq.

19 Nevada Bar No. 11291

20 Lindsay D. Robbins, Esq.

21 Nevada Bar No. 13474

22 7785 W. Sahara Ave., Suite 200

23 Las Vegas, NV 89117

24 Attorneys for Defendant/Counter/Cross-
25 Claimant/Third-Party Plaintiff Wells Fargo Bank,
26 National Association, as Trustee for the Structured
27 Adjustable Rate Mortgage Loan Trust, Pass-
28 Through Certificates Series 2005-11

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 7th day of February, 2019, I did cause a true copy of **ERRATA TO WELLS FARGO'S ANSWER TO PLAINTIFF'S COMPLAINT, COUNTER-CLAIMS, CROSS-CLAIMS and THIRD PARTY COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9.

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An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT 9

EXHIBIT 9

RE-RECORDED

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Re-recorded to attach
exhibits A, A-1 and B

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
MONACO

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
MONACO

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
MONACO

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EXHIBITS:

- A - Description of Property
- A-1 - Description of Annexable Property
- B - Description of Initial Association Property

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS, AND EASEMENTS
FOR
MONACO

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS FOR MONACO ("Declaration"), executed by LEWIS HOMES - CARLYLE VENTURE, L.L.C., a Nevada limited liability company ("Declarant"), is dated September 16, 1998, for reference purposes and made with respect to the following recitals:

PREAMBLE

- A. Declarant is the (i) fee owner of certain real property in the County of Clark ("County"), State of Nevada, more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"). Declarant is also the fee owner of certain additional real property described in Exhibit "A-1" attached hereto adjacent to the Property (the "Annexable Property"). Reference to Property herein shall mean and include the land described in Exhibit "A" and those portions of the Annexable Property following annexation thereof in accordance with Article 13 of this Declaration.
- B. All of the land encompassed within the Property and the Annexable Property is generally referred to as "MONACO". Declarant intends, but is not obligated, to develop and improve all of such land of MONACO on an incremental or staged basis as a residential community containing a maximum of one thousand three hundred thirty-seven (1,337) single-family residences (the "Project") consistent with municipal governmental approvals and entitlements granted by the County.
- C. Currently, certain limited portions of the Project comprised of parkway areas are required by the County, as a condition to County's approval of the Project, to be improved by Declarant, offered for dedication to the County, and maintained by a non-profit corporation ("Association") to be established by Declarant hereunder, which parkway areas, together with any other common real property areas or improvements within the Project which Declarant may elect to improve and convey to the Association for the common use and/or benefit of the residents of the Project, are designated and described herein as the "Association Property".
- D. The development of the Project is intended to be consistent with the Monaco master development plan per Zone Change ZC-1270-97 and Tentative Subdivision Map TM 0207-97 provided Declarant is not obligated to complete any of the Project, and Declarant specifically reserves the right to modify, cancel, or add additional real property to the current plan of development, to apply for and institute other land uses on the subject lands, and to sell, lease, option, abandon, or otherwise use or neglect to use such lands.
- E. In the event the County, or any other public or quasi-public agency or district, including, without limitation, a general, local, or special improvement district, or landscape maintenance district, accepts the conveyance of, and assumes all of the Association's rights and obligations in and to, the Association Property, the

Association shall be dissolved and all covenants, conditions, and restrictions concerning the Association and/or Association Property shall cease to be of any force or effect; the remaining provisions of this Declaration shall continue to be in full force and effect. If such dedication and assumption by the County is subject to revocation by the County, then the Association shall not be dissolved but instead shall be deemed inactive and all of Association's rights and obligations hereunder and under its Articles and Bylaws, together with all covenants, conditions, and restrictions herein concerning the Association or Association Property, shall be suspended unless and until the County revokes such dedication and/or assumption.

- F. Subject to Recital E above, Declarant intends that all of the Property (and all portions of the Annexable Property annexed hereto) shall be subject to (i) this Declaration and be a part of the general plan for the development, maintenance, care, use, and management of the Property, and (ii) certain protective covenants, conditions, restrictions, reservations, limitations, easements, equitable servitudes, liens, charges, and assessment rights and obligations running with the Property as herein set forth.

NOW, THEREFORE, Declarant hereby declares that the Property (and Annexable Property if and when annexed hereunder) shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, developed, and improved subject to the following easements, reservations, restrictions, covenants, conditions, limitations, architectural controls, liens, charges, assessment rights and obligations, representational and voting rights, and equitable servitudes, all of which are for the purpose of enhancing and protecting the value, attractiveness, and desirability of the Property, establishing a uniform scheme for the orderly, harmonious, and aesthetically pleasing creation of MONACO, and protecting and guaranteeing Declarant's right to control and regulate the use, maintenance, and improvement of the Property during Declarant's development of the Project. The covenants, conditions, restrictions, reservations, limitations, easements, architectural controls, liens, charges, assessment rights and obligations, representational and voting rights, and equitable servitudes set forth herein shall (i) run with the Property and shall be binding upon all persons having any right, title, or interest in the Property, or any portion thereof, whether by fee title, leasehold, license, or otherwise, and upon their heirs, executors, administrators, legal representatives, successors, and assigns; (ii) inure to the benefit of every portion of the Property and interest therein; and (iii) inure to the benefit of and be binding upon Declarant, its successors and assigns, and each Owner or other enumerated party and his, her, or its respective successors-in-interest as aforesaid. To the extent the Project is deemed to be a common-interest community under Chapter 116 of the Nevada Revised Statutes ("NRS"), the Project shall be deemed to be a limited expense planned community under NRS Sections 116.110368 and 116.1203(1)(b) and subject only to the minimum Sections of Chapter 116 required by Section 116.1203(1)(b) unless otherwise expressly stated in this Declaration. To the fullest extent permitted by law, the Project shall cease to be a common-interest community and/or planned community upon the County's assumption of the responsibility for maintenance of the Association Property as provided in Recital E.

ARTICLE 1 DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the respective meaning herein specified:

- 1.1 **"Annexable Property"** shall mean the real property described in Exhibit "A-1" attached hereto, together with any additional real property added thereto by Declarant as permitted by NRS Chapter 116 or other applicable laws, including, without limitation, NRS Section 116.2122, all or any portion of which may from time-to-time be made subject hereto by Declarant pursuant to the provisions of Article 13 herein entitled "Annexation".
- 1.2 **"Architectural Committee"** shall mean the Architectural Committee created pursuant to Article 10 herein entitled "Architectural Control".
- 1.3 **"Area"** or **"Areas"** shall mean any portion of land within the Property that is other than a Lot, Development Tract, or Association Property (all as defined below) and may or may not be a legal lot. "Other Area" shall have the same meaning as the word "Area".
- 1.4 **"Articles"** shall mean the Articles of Incorporation of the MONACO LANDSCAPE MAINTENANCE ASSOCIATION, INC., a Nevada non-profit corporation, as filed, or to be filed, in the Office of the Secretary of State of the State of Nevada, as may be amended from time-to-time.
- 1.5 **"Assessments"** shall mean those charges levied against each Lot or Development Tract within the Property representing a portion of the total costs of owning, maintaining, improving, repairing, replacing, managing, and operating the Association and the Association Property which are to be paid by each Owner to the Association, as provided herein, and may include, without limitation, funds for capital reserve and replacement requirements of the Association, as well as funds to provide working capital and to pay the ordinary expenses of the Association. "Regular Assessments" may be collected semi-annually or on such other periodic basis as determined by the Board; "Special Assessment" may be collected as necessary to supplement the Regular Assessments; and a "Working Capital Assessment" may be collected to fund initial operating and capital requirements of the Association, all as provided in Article 8 herein.
- 1.6 **"Association"** shall mean the MONACO LANDSCAPE MAINTENANCE ASSOCIATION, INC., a Nevada non-profit corporation, composed of all the Owners
- 1.7 **"Association Property"** shall mean (i) those certain parkway and drainage areas within the Property and Improvements therein required by the County as a condition to approval of the Project, which Improvements may include, without limitation, landscaping, sidewalks, Perimeter Walls, and Project entry monumentation (ii) certain Specimen Trees and or other Entry Improvements (as defined in Section 3.13) to be installed by Declarant within certain of the Lots, and (iii) any other common real property areas within the Property or common Improvements which Declarant may elect to improve and/or convey to the Association for the common use and benefit of the Owners, all as designated on any subdivision map or plat Recorded by Declarant for the Property or any portion thereof, and/or as identified in this Declaration, in any amendment to this Declaration, or in any Declaration of Annexation Recorded pursuant to Article 13 hereof, or in any Deed to the Property, or any part thereof, executed by Declarant. After Recordation of a Declaration of Annexation for such Association Property by Declarant and conveyance of title in, or grant (or assignment) of easement (or other right of access) to such

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Association Property to the Association, the Association Property shall be maintained by the Association in accordance with this Declaration.

- 1.8 **"Association Rules"** means any rules adopted by the Board to implement the provisions of this Declaration which concern the Association or the Association Property in accordance with the Bylaws.
- 1.9 **"Beneficiary"** shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.
- 1.10 **"Board"** shall mean the Board of Directors of the Association elected in accordance with the Bylaws of the Association and this Declaration.
- 1.11 **"Builder"** shall mean a Person who is an Owner and who has acquired a Development Tract from Declarant for the purpose of constructing Residences and other amenities incidental thereto upon the Lots established, or to be established, within the Development Tract and thereafter renting, leasing, and/or selling such Residences. "Developer" shall have the same meaning as "Builder".
- 1.12 **"Bylaws"** shall mean the Bylaws of the Association as such Bylaws may be amended from time-to-time.
- 1.13 **"Common Expenses"** means expenditures made by, or financial liabilities of, the Association and incurred as required or permitted by this Declaration, the Articles, or the Bylaws, including, without limitation, the costs of owning, maintaining, managing, operating, repairing, and replacing the Association and the Association Property, together with any allocations to reserves.
- 1.14 **"Construction Activities"** mean any construction (new, renovated, or remodeled) activity, additions, alterations, grading, filling, excavations, and all other development and construction type activities as more particularly detailed in Article 10 hereof entitled "Architectural Control".
- 1.15 **"County"** shall mean the County of Clark, Nevada.
- 1.16 **"Declarant"** shall mean and refer to LEWIS HOMES - CARLYLE VENTURE, L.L.C., a Nevada limited liability company, and its successors and assigns so designated in a written instrument Recorded by Declarant expressly appointing such successors or assigns as the Declarant.
- 1.17 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations, and Easements, as the same may be amended from time to time.
- 1.18 **"Deed of Trust"** shall mean any mortgage or deed of trust or other conveyance of a Lot, Development Tract, or Other Area within the Property to secure the performance of an obligation, which conveyance will be reconveyed or released upon the completion of such performance. The term "Mortgage" when used herein shall be synonymous with the term "Deed of Trust".

- 1.19 **"Design Guidelines"** shall mean any rules, regulations, or guidelines which may be adopted by the County, Declarant, or the Architectural Committee from time to time and which provide criteria for the construction, maintenance, repair, removal, and/or modification of Improvements within the Property. Except for Design Guidelines adopted by the County, in the event of any discrepancy or conflict between the Design Guidelines and this Declaration, the provisions of this Declaration shall prevail.
- 1.20 **"Developer"** shall have the same meaning as "Builder".
- 1.21 **"Development Tract"** shall mean an area within the Property, or portion thereof, that is, or is intended to be, established as a legal subdivision composed, or to be composed, of five (5) or more Lots, and to be developed and built upon by a Builder or Developer.
- 1.22 **"Family"** shall mean (i) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (ii) a group of natural Persons not all so related who maintain a common household in a Residence on a Lot.
- 1.23 **"Governing Documents"** means this Declaration, the Articles, the Bylaws, any Association Rules, and any other documents that govern the operation of the Association.
- 1.24 **"Improvement"** shall mean all structures, buildings, and appurtenances related thereto of every type and kind, including but not limited to, buildings and structures; walkways, paths, and trails; garages and carports; decks and patio covers; roads, driveways, parking areas, sidewalks and pavement; street lights; exterior stairways and landings; pools; mail and other kiosks; trash receptacles; grading; excavation, fill or similar variance from established grade(s) of a Lot, Development Tract, or Other Area within the Property; entry monumentation and related features; fences and walls; stairs, decks, and windbreaks; landscaping of any and all types and kinds, hedges, plantings, planted trees and shrubs; sprinkler pipes and heads; drainage facilities; and all other exterior fixtures and/or equipment. Improvements shall also mean and refer to all additions and/or modifications to the exterior of an Improvement, including, but not limited to, (i) painting or staining the exterior surface of any Improvement; (ii) changing the roofing material on any Improvement; and/or (iii) building, constructing, installing, altering, or replacing, as the case may be, any of the aforesaid.
- 1.25 **"Included Property"** shall mean those portion(s) of the Annexable Property from time to time made subject to this Declaration as provided in Article 13 hereof entitled "Annexation".
- 1.26 **"Land Use Classification"** shall mean the land use or zoning classification or other related or similar designation granted by the County under its Ordinances for the Property, or any portions thereof.
- 1.27 **"Lot"** shall mean any legal, subdivided lot of land within the Property shown upon any Recorded subdivision map or parcel map intended for the development, use, and occupancy of a Residence. A Lot may contain Improvements thereon. The term "Lot" as used herein shall further be

deemed to have the same meaning as "Unit" in Chapter 116 of the Nevada Revised Statutes, Section 116.11039.

- 1.28 **"Maintenance Funds"** shall mean the accounts created for the receipt and disbursement of the funds of the Association pursuant to Article 9 hereof entitled "The Association: Use of Funds".
- 1.29 **"Manager"** shall mean any person, firm, or agent, whether an employee or independent contractor, employed or engaged by the Association pursuant to the Bylaws and this Declaration, and delegated any of the duties, powers, and/or functions of the Association as limited by this Declaration and the Bylaws.
- 1.30 **"Member"** shall mean every Owner (including Declarant and any Builder) who holds a membership in the Association pursuant to this Declaration, the Articles, and Bylaws. Member applies only to Owners of Lots or Development Tracts.
- 1.31 **"Mortgage"** shall mean any mortgage or deed of trust or other conveyance of a Lot, Development Tract, or Other Area within the Property to secure the performance of an obligation, which conveyance will be reconveyed or released upon the completion of such performance. The term "Deed of Trust" when used shall be synonymous with the term "Mortgage".
- 1.32 **"Notice and Hearing"** shall mean written notice and a hearing before the Board, or the Architectural Committee, as applicable, at which the Owner (or party) concerned shall have an opportunity to be heard in the manner provided in this Declaration or the Bylaws.
- 1.33 **"Ordinances"** shall mean the Ordinances of the County of Clark, Nevada, including all codes, regulations and other municipal enactments.
- 1.34 **"Owner"** shall mean the Person or Persons, including Declarant, holding a fee simple interest to a Lot, Development Tract, or Area which is a part of the Property, but excluding those persons holding title only as security for the performance of an obligation other than sellers under installment land sale contracts. Owner shall include a Builder or Developer.
- 1.35 **"Perimeter Walls"** shall mean walls or fences improved by Declarant and located within the parkway areas that are part of the Association Property. Except as set forth in Section 3.12 herein, the Perimeter Walls shall be maintained by the Association.
- 1.36 **"Person"** shall mean a natural individual, a corporation, partnership, trust, limited liability company, or any other legal entity as recognized by Nevada law.
- 1.37 **"Phase"** shall mean a portion of the Annexable Property made subject to this Declaration. The initial Property subject hereto shall be considered a Phase.
- 1.38 **"Project"** shall mean the Property and all portions of the Annexable Property annexed hereto, improved pursuant to the Monaco Project Plan. The Project (inclusive of the Property and all Annexable Property) may contain a maximum of one thousand three hundred thirty-seven (1,337) Lots.

- 1.39 "Project Plan" shall mean the master plan of development for the Project as set forth on the Monaco master development plan per Zone Change ZC-1270-97 and Tentative Subdivision Map No. TM 0207-97, as may be amended from time to time by Declarant.
- 1.40 "Property" shall mean all of that real property described in Exhibit "A" and any and all additions from time to time made thereto of the Annexable Property as permitted by this Declaration, including the Association Property.
- 1.41 "Record", "Recorded", "Filed", and "Recordation" shall mean, with respect to any document, the recordation or filing of such document in the Office of the Recorder of Clark County, Nevada.
- 1.42 "Residence" shall mean a dwelling located on a Lot intended for occupancy by a Family.
- 1.43 "Specimen Trees" means those certain trees which may be installed by Declarant within certain of the Lots and maintained by the Association as set forth in Section 3.13 herein.
- 1.44 "Supplemental Declaration" shall mean any declaration of covenants, conditions, restrictions, reservations, and easements or similar document supplementing this Declaration which is Recorded.
- 1.45 "Voting Power" shall mean the total number of votes that are eligible to be cast by all the Members.

ARTICLE 2
PROPERTY: DEVELOPMENT, OPERATION AND EFFECT

- 2.1 Development in General/Declarant Rights. Declarant intends that the Property, and all portions of the Annexable Property annexed hereto, shall be developed (i) consistent with the Project Plan, as the same may from time to time be modified by Declarant, in its sole discretion, with the approval of the County and any other governmental agencies having relevant jurisdiction thereof, (ii) the Design Guidelines, if adopted (iii) this Declaration, and (iv) the Ordinances of the County, and (v) any Association Rules adopted by the Board as provided in the Bylaws. Declarant intends to subdivide, improve, and develop the Property or portions thereof in stages, Phases, or increments over an extended period of time. Such actions on the part of Declarant may include, without limitation, the overall mass grading of the Property, installation of infrastructure, water, sewer, drainage, and other public improvements and utilities, improvement and landscaping of Association Property, and construction of Residences and incidental Improvements. Declarant may elect, from time to time, to contract to sell, option to sell, sell, or lease all or portions of the Property to one or more Developers or Builders for the building of Improvements respectively on portions of the Property. Without limiting the foregoing, and except as otherwise provided to the contrary herein, Declarant reserves, for its benefit, as to the Property and Annexable Property, (a) all Development Rights set forth in NRS Section 116.11034, including, without limitation, the rights set forth in Article 13 herein and the rights set forth in NRS Section 116.2122, and (b) all Special Declarant's Rights set forth in NRS Section 116.110385. Unless otherwise expressly provided herein, the time for Declarant's exercise of such

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Development Rights and Special Declarant Rights shall commence upon recordation of the Declaration and expire on the fifteenth (15th) anniversary of such Recordation. Except as otherwise expressly provided herein, Declarant may exercise such Development Rights and/or Special Declarant Rights with respect to any portion of the Property or Annexable Property and at different times; Declarant makes no assurances regarding the order in which such portions of the Property or Annexable Property will be subjected to the exercise of such rights or regarding the property boundaries of such portions of the Property or Annexable Property (except the legal descriptions thereof set forth in Exhibits A and A-1 hereto). Except as otherwise expressly provided herein, Declarant may further exercise any Development Right(s) as to any portion of the Property or Annexable Property without exercising such right(s) in all or in any other portions of the Property or Annexable Property.

- 2.2 Association Responsibilities. The sole purpose of the Association is to provide for the maintenance, repair, improvement, upkeep, replacement, preservation, and day-to-day operation of the Association Property as further set forth in Article 6. The Association Property initially includes those parkway areas, including any Perimeter Walls located therein, together with any Specimen Trees, all as identified on Exhibit "B" attached hereto. The Association Property shall thereafter include any additional parkway areas (including any Perimeter Walls located therein) within the Annexable Property as required by the County, together with any other common real property areas and/or Improvements within the Project, including, without limitation, any additional Specimen Trees, which Declarant may elect to improve, annex, and convey to the Association for the common use and/or benefit of the Owners of the Property, as provided in Section 1.7 and Article 13. The Association's responsibility to maintain any Association Property shall commence when Declarant Records a Declaration of Annexation covering such property in accordance with Article 13 and conveys title or grants (or assigns) an easement (or other right of access) to such Association Property to the Association. Until such Recordation and conveyance or grant, the Declarant shall maintain any such property at Declarant's cost and expense.
- 2.3 Effect. This Declaration is intended and shall apply to (a) all of the Property described on Exhibit "A", (b) all of the Association Property described on Exhibit "B", and (c) those portions of the Annexable Property described in Exhibit "A-1" added hereto from time to time pursuant to Article 13.

ARTICLE 3 PROPERTY: USE RESTRICTIONS AND LIMITATIONS

Subject to the exemptions of Declarant as set forth in this Declaration, the Ordinances and approvals of the County, and the limitations as set forth in Article 15 hereof entitled "Mortgagee Projection", respectively, all real property within the Property shall be held, developed, leased, rented, sold, used, occupied, and enjoyed subject to the following limitations and restrictions:

- 3.1 No Violation of Law. Nothing shall be done or kept in or on the Property which would be in violation of any law, Ordinance, or this Declaration.
- 3.2 Noxious Activity: Animals. No noxious or offensive activity or noise shall be carried on upon any Lot nor anything be done thereon which may be or may become an annoyance or nuisance to any Owners. No animals or fowl, other

than household pets, shall be kept or maintained on the Property or any portion thereof, and none shall be kept, maintained, or raised within the Property for commercial purposes.

- 3.3 **No Institutional Use.** No Residence may be used for a public boarding house, sanitarium, hospital, asylum, or institution of any kindred nature, or any use not permitted by local law.
- 3.4 **No Mining or Drilling.** No derrick or other structure designed for use in boring, mining, or quarrying for oil, natural gas, or precious metals shall ever be erected, maintained, or permitted upon the surface of any Lot, nor shall any boring, mining, quarrying or similar operations be performed within five hundred (500) feet of the surface of the Property except, however, that use by the Declarant of any geothermal energy source shall not be prohibited by this Section.
- 3.5 **No Electrical Interference.** No electronic devices which may unreasonably interfere with television or radio reception of any Owner shall be located, used, or placed on any portion of the Property.
- 3.6 **Off-Road Vehicles.** No unlicensed motor vehicles, inoperative motor vehicles, long term parked vehicles (long term means typically not moved at least once a week), or boats shall be placed or located in the driveway or front yard area of any Lot, or in any side yard area in front of that line created by extending the front of the residence footprint to the side property lines. Without limiting the foregoing, no Person shall park (other than temporarily while providing a service for a Lot), store, or keep on any street within the Property any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck).
- 3.7 **Sight-Line Limitations.** No fence, wall, hedge, or shrub planting which obstructs sightlines at elevations between two (2) and six (6) feet above the roadways within the Property shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or, in the case of a round property corner, from the intersection of the street property lines extended. The same sightline limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.
- 3.8 **Slopes.** Each Owner of a Lot agrees that he will permit free access by Owners of adjacent or adjoining Lots to slopes or drainage ways located on his Lot, which affect said adjacent or adjoining Lots, when such access is reasonably necessary for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slope or drainage way is located.
- 3.9 **Drainage.** Each Owner of a Lot agrees that he will accept the burden of, and not in any way interfere with, the established drainage pattern over his Lot or from adjoining or other Lots over his Lot, or in the event it is necessary to change the established drainage, that he will make adequate provisions for proper drainage over his Lot. No structure or other material, including a wall

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or fence, shall be placed or permitted to remain which may damage, interfere with, obstruct, or retard the flow of water through drainage channels, or which may change the direction of flow of such channels. Without limiting the foregoing, each Owner shall use his reasonable efforts to prevent surface drainage on his Lot from accumulating behind a wall or fence in order to prevent or minimize the penetration of such water through or under the wall or fence and any staining of such wall or fence. For the purposes of this Declaration, "established" drainage is defined as the drainage which occurred at the time the overall grading of the Property, including, if applicable, the landscaping of each Lot within the Property, was completed by Declarant.

- 3.9.1 If water drains toward the house or ponds against a Residence, there is a possibility for damage to the structure. Each Owner shall be responsible to maintain all grading, landscaping, and hardscaping in such a manner as to keep water away from the foundation of the Owner's Residence.
- 3.9.2 Each Owner of a Lot agrees, as a part of the acceptance of the burden of the established drainage pattern over his Lot from adjoining or other Lots, to maintain any yard drain inlet and all other drainage features and improvements located on his Lot in a clean and fully functioning state, unblocked and free of silt and debris.
- 3.9.3 Each Owner of a Lot agrees that in the event any slopes located on his Lot have been planted for stabilization of said slope or slopes and/or to comply with jurisdictional agencies' requirements, Owner shall adequately water and continuously maintain said slope or slopes.
- 3.9.4 Each Owner of a Lot agrees that in the event that any slopes or other area(s) located on said Owner's Lot or elsewhere in the Property have had rip-rap, ground cover, or any other stabilization technique installed for the purpose of stabilization of slopes and/or as part of the drainage system for the Property, the Owner shall take no action that will remove, dislocate, wash out, cover up, or in any other way disturb or interfere with the proper functioning or installation of such material. This provision includes the installation, and/or maintenance of block walls and/or wood fences, including all retaining walls. Further, Owner agrees to restore said material to its condition when originally installed if any material is damaged, dislocated, or has its functioning impaired in any other way.
- 3.9.5 In the event that an Owner of a Lot alters the grading of his Lot within five feet of its property line, and this alteration results in a slope steeper than one foot vertically to three feet horizontal, that slope must be stabilized mechanically in order to protect the adjoining Lot. However, nothing in this Section shall be construed to prevent any such alteration in any manner, with or without retaining walls, by the Declarant, in carrying out the development and improvement of the Property.

3.9.6 Each Owner agrees to comply with and assume responsibility for anything done or required to be done in compliance with the plans filed by Declarant with respect to the National Pollutant Discharge Elimination System (NPDES) and Declarant's Storm Water Pollution Prevention Plan (SWPPP). Each Owner shall assume all responsibility and liability relating to the prevention of pollutant discharge, including soil materials, from such Owner's Lot.

3.10 Landscaping. Each Owner of a Lot agrees to install landscaping within nine (9) months on his Lot and to keep and maintain it so as to prevent erosion and to present an attractive and pleasing appearance at all times.

3.11 Declarant's Access. Each Owner of a Lot agrees that he will permit free access upon such Lot by Declarant for the purpose of remedying any default under, or enforcing any provision of, this Declaration, and Declarant shall have the right, but not the obligation, to take affirmative action pursuant to this Section. Each Owner further agrees to permit Declarant, its successors or assigns, to enter onto such Owner's Lot and to add or remove earth therefrom in order to comply with grading plans approved by any authorized local agency, which plans apply to the Property or any of the Annexable Property owned by Declarant, its successors or assigns.

3.12 Walls and Fences. Subject to the terms of this Section 3.12, each Owner of a Lot upon which all or a portion of a wall and or fence may be located, agrees to maintain, paint, and repair as needed said walls and/or fences. Without limiting the foregoing, each Owner of a Lot, Development Tract, or Other Area bounded by a Perimeter Wall constructed between such Owner's property and an exterior boundary street, Association Property, or property not part of the Project, shall be responsible for maintaining the interior portion of said Perimeter Wall in good condition and state of repair, and by acceptance of a deed to such Owner's Lot, agrees to so perform such maintenance and repair. The maintenance of the exterior portion of the Perimeter Walls, together with the repair or replacement of such Perimeter Walls (except for damage caused by the Owner of the Lot adjacent to such Perimeter Wall), shall be the responsibility of the Association and shall be a Common Expense of the Association. All fences or walls located on the boundary line between a Lot and another Lot shall be deemed to be "common walls" and constructed and maintained in good condition and repair at the joint cost and expense of the respective adjacent Owners. All other fences or walls not described above and located on the boundary line of a Lot shall be maintained in good condition and repair at the sole cost and expense of the Owner of such Lot.

3.13 Entry Monumentation/Specimen Trees. Declarant reserves the right and easement, for the benefit of Declarant, Association, and their respective successors and assigns, without any obligation or duty to do so, in, over, and under the Lots, including the right of reasonable ingress and egress, to install, maintain, repair, replace and/or remove landscaping, including any Specimen Trees, and/or entry monumentation which identifies the Project, including any incidental improvements related thereto such as irrigation, drainage, or lighting improvements (collectively the "Entry Improvements"). Grantee shall not take or permit others to take, any action that would damage, change, or modify the Entry Improvements during the term of this easement and shall not modify, trim, cut, damage, remove, relocate or otherwise tamper with the

Entry Improvements, without written consent of Declarant or the Board. This easement and right shall continue unless and until the Recordation of a quitclaim deed by Declarant or Association releasing its rights under this easement, whereupon the Entry Improvements shall cease to be Association Property and the terms of this Section 3.13 (and all other provisions of this Declaration concerning the Entry Improvements), shall cease to be of any force or effect.

- 3.14 Declarant Indemnity. Each Owner shall indemnify, defend, and hold harmless Declarant from any loss, liability, or expense related to damage to any public Improvements, utility Improvements, Entry Improvements, or Association Property caused by such Owner, its agent, contractor, employees, or guests. This indemnity shall apply prior to acceptance of any Improvements by jurisdictional agencies, utilities, or the Association and release of any financial security provided by Declarant, and at any time thereafter for which Declarant may be held responsible or liable.

Each Owner is advised that Declarant is often held financially responsible for damage to such Improvements even after transfer of title to a jurisdictional agency, utility or the Association and conveyance of Lots to Owners. Also, even if not financially responsible, release of financial security provided by Declarant for such things as recordation of final maps is often held up pending repair of such Improvements. Examples of instances where this provision may apply are damage to sidewalks, drive approaches, curb and gutter, or landscape areas caused by an Owner's landscaping activity, moving vans, or swimming pool construction. If, in the determination of the Declarant in its sole discretion, such repair work is not performed in a timely manner, Declarant or its assigns may perform such repair work. Such Owner(s) shall reimburse Declarant for all expenses incurred in repairing such damage in an amount equal to the sum of such expenses plus interest at an annual rate equal to the lesser of ten percent (10%) per annum or the maximum interest rate that can be charged by law. Interest shall begin on the day on which such work is deemed by Declarant, in its sole discretion, to be complete. Such reimbursement shall be due and payable upon written demand by Declarant.

- 3.15 Damage. In the event of any damage to any wall, fence, or landscaping on or adjacent to an Owner's Lot for which it is the Owner's responsibility to repair or replace, such repair or replacement shall be done in a timely manner and shall as much as practical be similar to the original improvement and match adjoining improvements.
- 3.16 Declarant's Exemption. Without limiting the generality of the exemption provided to Declarant under Section 11.2 of this Declaration, nothing contained in this Article 3 shall be construed to prevent the construction, installation, erection, maintenance, and use by Declarant, or its duly authorized agents or contractors, of structures, Improvements, Signs, and any other devices, vehicles, and equipment when, where and as deemed by Declarant, in its sole discretion, to be necessary or convenient for the development, use, and/or sale of the Property.

ARTICLE 4
PROPERTY: EASEMENTS AND RESTRICTIONS

- 4.1 Reservation of Easements. Declarant expressly reserves for the benefit of all of the Property and the Association Property reciprocal easements for access, ingress, and egress for Declarant, all Owners, and the Association to and from their Lot, Development Tract, or Area, or to and from the Association Property, for the installation and repair of public utility services; for minor encroachments of Improvements constructed on the Property or Association Property, including, without limitation, walls and fences; for drainage of water in accordance with the established drainage (defined in Section 3.9) over, across and upon adjacent Lots, Development Tracts, or Areas, and the Association Property resulting from the normal use of the Property or Association Property; and for necessary maintenance and repair of the Association Property. Such easements may be used by Declarant, the Association, all Builders, and all other Owners, their guests, occupants, tenants, subtenants, licensees, and invitees and Mortgagees.
- 4.2 Declarant Easement. Declarant expressly reserves, for the benefit of Declarant, the right and easement to enter on and use all Lots, Development Tracts, Areas, and the Association Property to complete Declarant's development of the Property and to market the Project, including, without limitation, the right to maintain offices for sales and management, model homes on Lots, and signs and/or entry monumentation, including the Entry Improvements, on the Association Property or any Lots to advertise the Project as set forth in NRS Section 116.2115.
- 4.3 Association Property Encroachment Easement. If any portion of any Improvement to the Association Property constructed by Declarant encroaches upon any Lot or Development Tract, an appurtenant easement for the encroachment and for the maintenance of same, so long as it is maintained in useable condition, shall exist over the burdened Lot(s). In the event any such encroaching Improvement is partially or totally destroyed and then rebuilt substantially identical to the destroyed Improvement, such encroachment into the immediately adjacent Lot(s) due to such construction shall continue to be permitted and an easement for such encroachments and the maintenance thereof shall thereafter continue to exist.
- 4.4 Lot Encroachment Easement. An easement appurtenant shall exist over all adjoining Lots and the Association Property for the purpose of accommodating any encroachment of Improvements constructed by Declarant on a Lot due to engineering errors, errors in original construction, settlement, or shifting of structures, or any other cause so long as such encroachments shall exist. However, except for minor encroachments as described in Section 4.1, in no event shall an easement for encroachment exist in favor of an Owner if said encroachment occurred subsequent to the original construction by Declarant due to the negligence or willful misconduct of said Owner. In the event an Improvement on any Lot is partially or totally destroyed, and then repaired or rebuilt substantially identical to the destroyed Improvement, there shall be easements appurtenant over adjacent Lots for the construction and maintenance of said Improvements.
- 4.5 Public Record Easements. Each Lot, Development Tract, or Area is hereby declared to be subject to all the easements, dedications, and rights-of-way

granted or reserved in, on, over, and under the Project as shown on each subdivision map or parcel map subdividing the Property or otherwise contained in the public Records of the County.

- 4.6 **Power To Grant Easements.** Declarant (so long as Declarant owns any portion of the Property) shall have the power to grant and convey to any third party easements and rights-of-way in, on, over, or under any Lots, Development Tracts, Areas, and the Association Property for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, analog and/or digital communication, power, telephone, and similar purposes, public or private sewers, storm water ponds, drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities which may be reasonably necessary or beneficial to the Project. Each Owner, in accepting a deed to a Lot, Development Tract, or Area expressly consents to such easements and rights-of-way and authorizes and appoints Declarant (so long as Declarant owns any portion of the Property) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.
- 4.7 **Amendment To Eliminate Easements.** This Declaration may not be amended to modify or eliminate the easements reserved herein without the prior written approval of Declarant for so long as Declarant (or any affiliate or subsidiary of Declarant) owns any land within the Property, and any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

ARTICLE 5 THE LANDSCAPE MAINTENANCE ASSOCIATION: FORMATION AND MEMBERSHIP

- 5.1 **Organization.** The Association has been, or will be, organized under the Nevada non-profit corporation law. The Association is charged with the duties and vested with the powers prescribed and limited by the Articles, Bylaws, or this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be consistent with the provisions of this Declaration.
- 5.2 **Membership.** The Members of the Association shall be each Owner (including Declarant) of one (1) or more Lots, Development Tracts, or Areas within the entirety of the Property. Membership applies to all of the land within the Property; however, membership does not include nor apply to public or governmental agencies or instrumentalities owning title to Association Property. Membership in the Association shall be subject to this Declaration, Nevada law, the Articles, and the Bylaws. All memberships in the Association shall be appurtenant to the real property interest owned by each Member as an Owner. Membership in the Association shall not be assignable, except to a Person to whom title to an interest in the Property has been transferred. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

5.2.1 A Member who has sold his real property interest within the Property to a contract purchaser under an installment land sale contract shall be entitled to delegate to such contract purchaser his membership right in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot, Development Tract, or Area until fee title thereto is transferred. If the Owner of any Lot, Development Tract, or Area fails or refuses to transfer the membership registered in his name to the purchaser thereof upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board may levy a reasonable transfer fee against any new Member and its Lot, Development Tract, or Area (which fee shall be added to the Regular Assessment chargeable to such new Member) to reimburse the Association for the administrative costs of transferring the membership to the new Member on the records of the Association.

5.3 Notification. Upon the sale or conveyance of a Lot, Development Tract, or Other Area within the Property, the transferor thereof whether Declarant, a Builder, a Developer or other Owner, shall, within thirty (30) days of such transfer, notify in writing the Association thereof of such transferee's name and address and identification of the property so transferred. The foregoing applies to transfers from Declarant as well as transfers by any Owner, Builder or Developer.

ARTICLE 6 THE LANDSCAPE MAINTENANCE ASSOCIATION: FUNCTIONS

6.1 Limited Powers and Duties. The Association, acting by and through its Board, shall have the following limited powers and/or duties:

6.1.1 Repair and Maintenance of Association Property. The power and duty to own, plant, upkeep, restore, replace, manage, improve, maintain and/or repair, as required by the County, the Association Property and all Improvements thereon in a safe, sanitary and attractive condition and in good working order and repair, and to pay for utilities, gardening, and other necessary services therefor. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

(a) Notwithstanding the foregoing, the Association Property shall not include, and the Association shall have no responsibility to provide, the services referred to herein with respect to any parkway areas, or Improvements therein, or general common areas or Improvements overall within the Project, which are maintained by, or accepted for maintenance by, the County or any other governmental agency or entity.

- 6.1.2 Assessments. The power and duty to levy Assessments and related charges on the Owners of all of the Property in accordance with Article 8 and to enforce payment of such Assessments, including establishment and foreclosure of lien therefor, all in accordance with this Declaration and Nevada law. Declarant reserves the right, but not the obligation, to enter into an agreement with the Association to subsidize, for the period defined in the subsidy agreement, all or any portion of the costs and expenses of the Association in lieu of the Association levying Assessments hereunder to pay for such subsidized costs or expenses.
- 6.1.3 Easements and Rights-of-Way. Subject to approval by the County, the power, but not the duty, to grant and convey to any Person easements and rights-of-way in, on, over, under, or through the Association Property for the purpose of constructing, erecting, operating, or maintaining thereon, therein, and thereunder any public or quasi-public Improvements or facilities.
- 6.1.4 Manager. The power, but not the duty, to employ or contract with a professional manager or management company, in accordance with NRS 116.31139, to perform all or any part of the duties and responsibilities of the Association ("Manager"), and the power, but not the duty, to delegate its powers to the Manager, committees, officers and/or employees. Any such management agreement, or any agreement providing for management type services by Declarant to the Association, if entered into during the Declarant Control Period, shall be terminable by the Association, acting through the Board, upon not less than ninety (90) days' prior written notice, and without penalty, at any time after the Members of the Board, elected pursuant to Section 7.3.1 below take office.
- 6.1.5 Construction on Association Property. Subject to approval by the County, the power, but not the duty, by action of the Board, to construct new Improvements or additions to the Association Property or demolish existing Improvements.
- 6.1.6 Legal and Accounting Services. The power, but not the duty, if deemed appropriate by the Board or required by a governmental agency, to retain and pay for legal and/or accounting services as may be necessary or proper in the operation of the Association, or in performing any of the express duties or rights of the Association set forth in this Article 6; provided, however, the Association shall not initiate any such litigation, or incur any litigation expenses, including attorneys' fees, in connection with the initiation of such litigation, without the approval of the Declarant (during the Declarant Control Period) and a majority of the Voting Power of the Association. Such approval of the Voting Power of the Association shall not be necessary if the judicial proceedings are initiated (i) to collect any unpaid assessments levied pursuant to the Declaration, (ii) to enforce the Governing Documents, (iii) to proceed with a counterclaim, or (iv) to protect the health, safety and welfare of the Members. Notwithstanding

anything to the contrary in this Declaration or the other Governing Documents, the Association shall have no right or power to prosecute or promote any litigation in its name, or on behalf of any Members, concerning any real or personal property, or injury or damage related thereto, other than concerning the Association Property, and such litigation concerning such property other than the Association Property may not be the subject of any meetings of the Members or meetings of the Board.

6.1.7 Necessary and Incidental Power. The power, but not the duty, to perform any and all lawful acts incidental to and in furtherance of the Association's exercise of its express powers set forth in Sections 6.1.1 to 6.1.6 above which the Association deems necessary or proper.

6.2 Dissolution/Suspension of Association. The sole purpose and reason for the formation and existence of the Association is to maintain the common parkway areas and other Association Property in satisfaction of a condition imposed by the County for approval of the Project. Declarant reserves the right to petition the County or other public or quasi-public agency to accept the conveyance of and assume the obligation to maintain, in perpetuity, such Association Property and related Improvements, including, without limitation, a general, local or special improvement district, or landscape maintenance district, or by means of a Supplemental Declaration whereby the costs of such County maintenance are paid in whole or in part by the Owners. Such reservation by Declarant includes the right by Declarant to unilaterally amend the Declaration or record a Supplemental Declaration as necessary to permit such maintenance by the County or other public agency and to execute, on behalf of the Association and its Members, all documents of conveyance and such other documents as may be required by the County to effect the intent of this Section including, without limitation, all documents required by NRS Sections 278.4787 and 278.4789. Upon the conveyance of the Association Property to, and acceptance of the obligation to maintain the Association Property by, the County, or such other public agency, the Association shall be dissolved in accordance with the Articles, Bylaws, and the NRS and shall cease to have any further powers, duties, rights, or obligations under this Declaration and all covenants, conditions, restrictions, reservations, and easements herein concerning the Association or Association Property shall automatically terminate; provided that if such acceptance by the County is subject to revocation by the County, then the Association shall not be dissolved but instead shall be deemed inactive and all of Association's rights and obligations hereunder, and under the Articles and Bylaws, together with all covenants, conditions, and restrictions herein concerning the Association or Association Property, shall be suspended unless and until the County revokes such acceptance. Each Owner, by acceptance of a deed to a Lot, agrees, as and to the fullest extent required by NRS Section 116.2118 and any other applicable laws, to the foregoing dissolution of the Association and termination of such covenants, conditions, restrictions, reservations, and easements concerning the Association and the Association Property without the need for any further consent by Buyer.

6.3 Audit. Any Member, who may be accompanied by an accountant or any Mortgagee, may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association inclusive of

the examination and photocopying of all financial and other records of the Association, which records shall be made reasonably available to any such Member and his authorized agents; provided that such audit or inspection is made after a minimum of three (3) days prior written notice to the Board, during normal business hours, and without unnecessary interference with the operations of the Association or Manager of the Association.

- 5.4 Indemnity. All members of the Board and officers of the Association are fiduciaries and subject to the insulation from liability provided for directors of corporations by the laws of the State of Nevada. All members of the Board and such officers are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. In furtherance of and without limiting the foregoing, the Association shall indemnify, defend and hold harmless any member of the Board or officer of the Association as and to the fullest extent provided in Section 17.8.
- 6.5 Annual Meetings of Members. A meeting of the Members of the Association shall be noticed and held by the Board at least once each calendar year in accordance with NRS Section 116.3108, and any amendments thereto.
- 6.6 Quarterly Meetings of Board. The Bylaws shall provide for and require that the Board meet at least once every ninety (90) days in accordance with NRS Section 116.3108, and any amendments thereto.

ARTICLE 7 THE LANDSCAPE MAINTENANCE ASSOCIATION: VOTING RIGHTS AND LIMITATIONS

- 7.1 Voting Membership. Subject to the rights specifically reserved to Declarant as set forth in Section 7.2 below, the Association shall have one (1) class of voting membership. Members (who must be Owners), including Declarant, shall have a direct voting right in the Association equal to one (1) vote for each Lot owned. The vote for each Lot shall be exercised as the Owner(s) of the Lot determine(s), but in no event shall more than one (1) vote be cast with respect to any Lot. The "voting power" of the Association means all Members entitled to vote hereunder.
- 7.2 Rights Reserved to Declarant. Anything herein to the contrary notwithstanding, Declarant reserves for itself the absolute right, but not the duty, to remove, appoint, or elect (i) all members of the Board of Directors and (ii) all officers of the Association for the period (the "Declarant Control Period") from the inception of the Association through the earlier of:
- 7.2.1 Sixty (60) days after the conveyance of an aggregate of seventy-five percent (75%) of the maximum number of Lots that may be created within the Property and Annexable Property to individual Builders, Developers, or Owners other than Declarant (or an affiliate or subsidiary of Declarant); or
- 7.2.2 Five (5) years after any right to add all or any part of the Annexable Property to the Property was last exercised by Declarant; or

7.2.3 Five (5) years after Declarant has ceased to offer any of the Lots or Development Tracts for sale in the ordinary course of business.

Declarant may designate, on a non-exclusive basis, the rights above reserved to one or more other Persons. Declarant may further voluntarily surrender the rights above reserved before termination of the Declarant Control Period but in that event Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Board or the Association, as described in a Supplemental Declaration executed and Recorded by Declarant, be approved by Declarant before they become effective.

7.3 Special Rights of Owners. Subject to the foregoing, not later than sixty (60) days after the last conveyance to Owners, other than Declarant, representing an aggregate of: (a) twenty-five percent (25%) of the maximum number of Lots that may be created within the Property and Annexable Property, at least one (1) member of the Board and not less than twenty-five percent (25%) of all members of the Board must be elected by Owners other than Declarant, and (b) fifty percent (50%) of the maximum number of Lots that may be created within the Property and Annexable Property, at least one-third (1/3) of the members of the Board must be elected by Owners other than Declarant.

7.3.1 Upon termination of the Declarant Control Period under Section 7.2 above, the Owners (including Declarant) shall elect the members of the Board except a majority of those elected to the Board shall be Members elected by Owners other than Declarant. Thereafter, the Board shall elect the designated officers of the Association. Upon such election, those persons so elected shall immediately take office.

7.3.2 A two-thirds (2/3) vote of all Owners present and entitled to vote at a meeting of the Owners, if a quorum is present, may remove any member of the Board with or without cause except for a member(s) appointed by Declarant.

7.4 Quorum. Unless the Bylaws specify a larger percentage, a quorum shall be deemed present at any meeting of the Members if more than twenty percent (20%) of the Voting Power of the Members of the Association, including Declarant, are present in person or by proxy at the beginning of that meeting. A quorum shall be deemed present at any meeting of the Board if more than fifty percent (50%) of the Board are present at the beginning of that meeting.

7.5 Noncompliance/Remedy. If an Owner, or a tenant or guest of an Owner does not comply with a provision of the Governing Documents concerning the Association or the Association Property, the Board may prohibit, for a reasonable time, the Owner, or the tenant or guest of the Owner, from:

- (a) Voting on matters related to the Association.
- (b) Using the Association Property . The provisions of this Section do not prohibit the Owner, or the tenant or guest of the Owner, from using any vehicular or pedestrian ingress or egress to go to or from the Owner's Lot, including any area used for parking.

ARTICLE 8
THE LANDSCAPE MAINTENANCE ASSOCIATION: ASSESSMENTS AND LIENS

- 8.1 Types of Assessments: Personal Obligation.** Each Owner (including Declarant) of a Lot or Development Tract within the Property, by acceptance of a deed or other instrument of conveyance therefor, whether it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association such Owner's pro rata allocation of all Assessments for Common Expenses levied by the Association including (a) the Regular (annual) Assessments (collected monthly, quarterly, semi-annually or otherwise as determined by the Board) as provided in Section 8.3, (b) Special Assessments to supplement the Regular Assessments as provided in Section 8.5, (c) a Working Capital Assessment to fund initial operating and reserve requirements of the Association as provided in Section 8.6, and/or (d) other charges and levies as permitted by this Declaration; all such Assessments to be established and collected as herein provided.
- 8.1.1** Each Owner's prorata allocation of Assessments shall be determined by a fraction, the numerator of which shall be the number of Lots in the Property (including all Lots in the Annexable Property annexed hereto) owned by Owner, and the denominator of which shall be the total number of Lots in the Property (including all Lots in the Annexable Property annexed hereto).
- 8.1.2** All such Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be an obligation of each Owner and shall be a continuing lien upon each Lot or Development Tract within the Property subject hereto against which such Assessment(s) is (are) levied. The personal obligation for Assessments shall not pass to the successor-in-title of any Owner unless expressly assumed by it.
- 8.2 Purpose of Assessments: Annual Limitation.** All Assessments levied and collected by the Association shall be used and disbursed solely for payment of the Common Expenses. The annual amount of all Assessments permitted under this Declaration, exclusive of any insurance premiums paid by the Association, may not exceed \$500.00 per year or, if greater, the maximum amount permitted by NRS Section 116.1203(1)(b) and NRS Section 116.4101(2)(g). That maximum amount may be increased as and to the extent permitted by NRS Section 116.1115 and NRS Section 116.4101(g). It is the express intention of Declarant that the Project be, at all times, a limited expense liability planned community in accordance with NRS Sections 116.1203(1)(b), 116.1203(2), and 116.4101(g), and that this Declaration and the Project not be subject to any Sections of NRS Chapter 116 except those Sections expressly required by Sections 116.1203(1)(b) and 116.1203(2), unless otherwise expressly stated in this Declaration. Declarant reasonably believes in good faith that such maximum stated Assessment will be sufficient to pay the expenses of the Association. This Declaration cannot be amended to increase the maximum assessment stated in this Section during the Declarant Control Period without the consent of all Owners. Thereafter, any such amendment shall be subject to the provisions of Article 14.

8.3 Regular Assessments: Imposition. Regular Assessments shall be established on a calendar year basis which coincides with the fiscal year of the Association, but may be levied and collected as otherwise set forth herein. The first fiscal year of the Association may be less than a full calendar year.

8.3.1 The Board shall annually establish or approve a separate budget and Regular Assessment for the Lots and Development Tracts. Written notice of the amount of each annual Regular Assessment based upon such budget therefor along with a summary of the budget or copy of the budget, as approved by the Board, shall be promptly sent to every Member. A meeting of the Members to consider separate ratification of each annual budget must be held not less than fourteen (14) days nor more than thirty (30) days after such written notices. The budget shall be deemed ratified at such meeting unless a majority of the voting power of the Members rejects such applicable budget whether or not a quorum of the respective Members shall be present at such meeting. If the budget is rejected as aforesaid, the last budget therefor so ratified shall continue in effect until a new budget is adopted by the Board and ratified by the Members as aforesaid.

8.3.2 All installments of Regular Assessments shall be collected in advance on a regular basis by the Board, at such frequency (e.g. semi-annually) and on such due dates as the Board shall determine from time to time in its sole and absolute discretion. Regular Assessments may be paid by the Member to the Association in one check or in separate checks.

8.3.3 Regular Assessments as to all of the Property (and any Annexable Property after its annexation) shall, commence as to the Property (or such Annexable Property annexed) on the date the Property is annexed into the Association pursuant to Section 13.4; provided Regular Assessments as to the initial Property subject to this Declaration described in Exhibit "A" hereto shall commence on January 1, 1999. Upon the annexation of any additional Association Property, the budget and the Common Expenses shall be re-determined and recalculated to take into account the increased costs to the Association due to such annexation, and the Regular Assessments shall be accordingly recomputed by the Board. Each Owner shall be notified in writing by the Association of any such change in the amount of the Regular Assessments.

8.3.4 From time to time, the Board of Directors may determine that all excess funds remaining at the end of each calendar year, over and above the amounts used for payment of the Regular Expenses, may be retained by the Association and utilized at the discretion of the Board to (a) reduce the following year's Regular Assessment, (b) add to any reserve fund(s), (c) a combination thereof, or (d) such other use(s) as reasonably determined by the Board consistent with this Declaration.

8.3.5 Upon dissolution of the Association, whether incident to the abandonment or termination of the maintenance of the Association Property as set forth in Section 6.2 or otherwise, all assets of the Association, including any amounts remaining in any of the Maintenance Funds, shall be distributed to the County or other appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such distribution is refused acceptance by any such public agencies, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization organized and operated for such similar purpose, or upon written approval of not less than sixty-seven percent (67%) of all Members, may be granted to all of the Members by conveyance of an equal, undivided tenancy-in-common interest in such assets to each Owner of a Lot.

8.4 Regular Assessments: Allocation. Regular Assessments shall be charged to all Owners and shall be secured by the respective Owner's particular Lot or Development Tract. The Regular Assessments shall be individually allocated to each respective Lot or Development Tract, as follows:

8.4.1 The Regular Assessments shall be allocated pro rata among all of the Lots and Development Tracts of the Property then subject to Assessment in accordance with the allocation formula set forth in Section 8.1.1.

8.4.2 Any Development Tract not subdivided into Lots shall be deemed to have the number of Lots shown on any tentative map applicable to such Development Tract. As to Development Tracts having no approved tentative map, then the potential maximum number of Residences or Lots thereon allowed based upon the applicable Land Use Classification and Ordinances shall be so utilized for allocation purposes until a tentative subdivision map is approved. The Assessments herein shall be on an aggregate lump sum basis as to the Development Tract until a final map shall be recorded and individual Lot(s) created, if at all.

8.4.3 Declarant and/or any Builder is obligated to notify the Association in writing accompanied by all appropriate Recorded or approved maps, building permits, legal descriptions or the like evidencing a confirmation of a change in the number of Lots within thirty (30) days of a change or confirmation as aforesaid.

8.5 Special Assessments. The Board, with the vote of at least a majority of the Members, including Declarant, may levy, in any fiscal year, a Special Assessments for the purpose of (i) defraying, in whole or in part, the cost of any capital construction, reconstruction, repair or replacement of any Improvements upon the Association Property, (ii) for the purpose of defraying any other Common Expense incurred or to be incurred by the Association as provided in this Declaration, or (iii) to cure any deficiency of the Association which is not covered by the Regular Assessments. All Special Assessments shall be fixed and levied in the same proportion as Regular Assessments are levied as set forth in Section 8.4, et seq. above, and shall be collected in the

manner and frequency as determined by the Board. The Board shall provide written notice to all Owners of any meeting at which any Special Assessment is to be considered or action is to be taken on such Special Assessment at least twenty-one (21) days before that meeting.

- 8.6 Working Capital Assessment. Upon the acquisition of record title to a Lot by an Owner from Declarant, a Developer, or a Builder, the Owner of such Lot shall pay to the Association, or pay to Declarant if previously paid for that Lot by Declarant to the Association, an amount to be established by the Board, not to exceed \$100.00 (the "Working Capital Assessment"), to be deposited by the Association in the Maintenance Funds and apportioned between the operating fund and the reserve fund (as described in Article 9) as the Board determines is reasonably necessary; provided in no event shall such Working Capital Assessment, together with such Regular Assessments and Special Assessment levied against that Lot in any fiscal year exceed the limitations set forth in Section 8.2. The Working Capital Assessment shall not constitute an advance payment of Regular Assessments or Special Assessments and is a separate Assessment in addition to such Regular Assessments and Special Assessments.
- 8.7 Declarant Subsidy. Declarant shall have the right, but not the obligation, to pay all or any portion of the Common Expenses otherwise allocable to each Lot in excess of Developer's Assessment obligations to subsidize and reduce the amount of the Assessments paid by all other Owners during the term of the subsidy.
- 8.8 Exempt Property. The following property subject to this Declaration shall be exempt from all of the assessments herein:
- 8.8.1 Those portions of the Property owned, dedicated to and/or accepted by a local governmental agency or authority; and
- 8.8.2 Any Association Property.
- 8.9 Default Remedies. Any Assessment not paid on or before its respective due date thereof as established by the Board, shall bear interest from the due date of such Assessment at a rate not exceeding the maximum amount allocable by Nevada law. ("Default Interest Rate"). The Board may establish a uniform late charge, in addition to the Default Interest Rate as described above, to compensate the Association for loss of use of funds, increased bookkeeping, billing and other administrative costs. No such late charge on any delinquent installment of an Assessment when coupled with the aforesaid interest charge shall exceed the maximum amount of interest then allowable by Nevada law.
- 8.9.1 If any installment of any Assessment hereunder is not paid on or before its due date, the Association may further declare all of the unpaid balance of the entire Assessment levied against such Owner and such Owner's Lot or Development Tract to be immediately due and payable without further demand, and may enforce the collection of the full Assessment for such fiscal year and all charges and interest thereon in any manner authorized by law and this Declaration, including, without limitation, an action at law against the Owner personally obligated to pay the

same, or an action to file and foreclose the lien against the Owner's property interest securing same in accordance with NRS Sections 116.31162 to 116.11368, inclusive.

8.9.2 No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Association Property or abandonment of his Lot or Development Tract within the Property.

8.9.3 The Association shall, within ten (10) days after written demand by an Owner, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments on that Owner's Lot or Development Tract have been paid. A properly executed certificate of the Association as to the status of Assessments against a Lot or Development Tract shall be binding upon the Association as of the date of its issuance.

8.10 Notice of Lien. No action shall be brought to enforce any Assessment lien under Section 8.9 herein unless a Notice of Delinquent Assessments and Lien ("Notice of Lien") is deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, to the Owner of the Lot or Development Tract, or his successor in interest, at his last known address, and to the Lot (if a different address). Such Notice of Lien must state (a) the amount of the particular Assessment and default interest, late charges, costs (including attorneys' fees) and expenses, (b) a legal description of the Lot or Development Tract against which the Assessment was made, and (c) the name of the record Owner. The Notice of Lien shall be signed and acknowledged by an officer of the Association. The lien for the delinquent Assessment shall continue until fully paid or otherwise satisfied, but shall be extinguished unless proceedings to enforce the lien are instituted by the Association within three (3) years after the delinquent Assessment became due.

8.11 Foreclosure of Lien by Sale. Unless otherwise permitted by law, no sale to foreclose an Assessment lien may be conducted until (a) the Association, or its agent or attorney, has first executed and Recorded a Notice of Default and Election to Sell the Real Property Interest ("Notice of Default") to satisfy the delinquent Assessment lien, and (b) the delinquent Owner, or such Owner's successor in interest, has failed to pay the amount of the delinquent Assessment, default interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days after such Recordation. Such sixty (60) day period shall commence on the first day following the later of (i) the day upon which the Notice of Default is Recorded, or (ii) the day upon which a copy of the Notice of Default is sent by registered or certified mail, return receipt requested, to the Owner, or such Owner's successor-in-interest, at his address, if the address is known, and to the address of the Lot or Development Tract. The Notice of Default must contain the same information as the Notice of Lien but also shall describe the deficiency in payment and the name and address of the Person authorized by the Association to enforce the lien by sale. A copy of the Notice of Default shall also be mailed by the Association, by first class mail, within ten (10) days after Recordation thereof, to those Persons required by NRS Section 116.31163. The Association, or its agent or attorney, shall, after the

expiration of such sixty (60) day period and before the foreclosure sale, give notice of the time and place of the sale ("Notice of Sale") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be mailed on or before the first publication or posting, by certified or registered mail, return receipt requested, to the Owner, or such Owner's successor-in-interest, at his address if known, and otherwise to the address of the Lot or Development Tract, and to such Persons required by NRS Section 116.311635(2). Any such sale provided for above must be conducted by the Association, its agent or attorney, in accordance with NRS Section 116.31164. The Association shall have the power to credit bid on the Lot or Development Tract at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's property so sold, and the defaulting Owner shall be required to pay the reasonable rental value thereof during any period of continued occupancy by the defaulting Owner.

- 8.12 Curing of Default. Upon the timely curing of any default for which a Notice of Default was Recorded by the Association, the Association shall record an appropriate Release of Lien, upon payment by the defaulting Member of a reasonable fee, as determined by the Board, to cover the cost of preparing and Recording such release.
- 8.13 Cumulative Remedies. The Assessment liens and the rights of foreclosure and sale hereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.
- 8.14 Priority of Lien. Except as provided below, the sale or transfer of any Lot or Development Tract shall not affect the Assessment lien nor render it invalid or void. The lien of any of the Assessments, including default interest, costs, expenses and attorneys' fees as provided for herein, shall be subordinate to the lien of any First Mortgage Recorded prior to Recordation of a Notice of Default. The sale or transfer of any Lot or Development Tract pursuant to judicial or nonjudicial foreclosure of such First Mortgage recorded prior to Recordation of a Notice of Default shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer; provided, such sale or transfer shall not relieve such Lot or Development Tract from lien rights for any Assessments thereafter becoming due.

ARTICLE 9 THE ASSOCIATION: USE OF FUNDS

- 9.1 Maintenance Funds. The Board shall establish and maintain at least the following Maintenance Funds in separate bank checking, savings, and/or similar accounts into which shall be deposited all monies paid to the Association, and from which all disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration:
- 9.1.1 An operating fund for current Common Expenses of the Association based upon the budget therefor; and

- 9.1.2 A reserve fund for replacements and repairs of the major components of the Association Property, and to fund operating deficits that involve major repairs or replacements; provided the reserve fund shall not be used for daily maintenance.

Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts at federally insured banking or savings institutions taking into account the limits of such insurance and the solvency of the bank(s) or financial institution(s). To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Maintenance Funds, provided that the integrity of each individual Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately. The Board is permitted to also utilize "conservative" or low or non-risk money market and similar funds in order to obtain higher yields on held funds.

ARTICLE 10 ARCHITECTURAL CONTROL

- 10.1 Purpose: Scope of Review. Before commencing any building operations, written approval must be obtained from the Architectural Committee established herein (hereinafter referred to as "the Committee") covering building, plot and other Improvement plans for all Improvements (excepting landscaping) erected, altered, renovated, remodeled, placed, or assembled, on any Lot within the Property, including, without limitation, garages and fences (collectively "Construction Activities"), except, however, that approval of the Committee shall not be required for Construction Activities conducted by Declarant, its successors and assigns. The Committee can charge a reasonable fee (not to exceed \$50.00 per application) to cover the cost of reviewing any Construction Activities. The approval of said Committee shall include style, design, appearance, harmony of external design with Declarant's general scheme, location of the proposed Improvement with respect to topography and finish grade elevation, and as to corner Lots, the street frontage thereof, but shall not be construed as modifying, altering, or waiving any of the provisions herein set out or established by law. All Construction Activities shall be done in substantial compliance with the plans and specifications therefor approved by the Committee. Declarant and/or the Committee shall have the authority, but not the obligation, to require that an Owner take all actions as may be necessary, at that Owner's expense, to remedy any noncompliance. Any Owner who violates the provisions of this Article shall reimburse Declarant or the Committee, upon demand, for any expenses incurred by Declarant or the Committee in correcting any noncompliance.
- 10.2 Declarant Exemption/Appointment. Neither Declarant, nor the Committee, nor any member thereof, shall be held responsible, or liable in any manner whatsoever, to any Owner for any loss or damage due to design concepts, aesthetics, errors, or defects, patent or latent, shown or omitted, on any plans or specifications upon which it may pass, or any Improvements erected therefrom. Three (3) persons appointed by Declarant, acting without compensation, shall comprise the Committee until the Declarant ceases to have any ownership interest in any portion of the Property (including all Annexable Property that may have been annexed hereto) at which time their

terms shall expire and said Committee shall terminate and be dissolved unless within one hundred eighty (180) days prior to said date new members shall be elected by the Owners of a majority of the Lots in the Property, which election shall be publicly recorded as an addendum to this Declaration. In the event of such an election by Owners, terms of the elected Committee members shall be one (1) year in duration, commencing initially on the day next following such election, and subsequent elections shall be held annually thereafter. Declarant hereby appoints as initial members of said Committee, Robert E. Lewis, Leah S.W. Bryant, and Jacqueline S. Ackerman, all of whom have as their business address, 3325 Ali Baba Lane, Suite 603, Las Vegas, NV 89118, fully reserving the right of substitution during the period of Declarant's control of the Committee. In the event of death, resignation, removal, incapacity, or unwillingness to act of any member of the Committee, the remaining members shall have full authority to designate a successor, subject to approval of Declarant, which approval may be withheld in Declarant's sole discretion.

- 10.3 Approval Process. The decision of a majority of the Committee, or of a representative appointed by the majority thereof, acting in good faith in its sole discretion, upon any matters submitted to or referred to it, shall be final; provided, however, that such decision may not violate any of the provisions set out in this Declaration. It is further provided that if no approval shall have been sent by the Committee to any Owner within thirty (30) days from the date of receipt of a submittal, such inaction shall be deemed disapproval. Any decision or approval by the Committee shall not relieve an Owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation or guaranty by the Committee or any member thereof of compliance of the submitted matter with any statute, ordinance, or regulation pertaining thereto. The Committee shall further have no liability or responsibility to the applicant, the Association, or to any other Owners based upon its approval or disapproval of, or failure to approve or disapprove of, any Construction Activities proposed or constructed by any Member or Owner.

ARTICLE 11 INTERESTS AND EXEMPTION OF DECLARANT

- 11.1 Interest of Declarant. Each Owner of land which is a part of the Property acknowledges by Recordation of a deed or other instrument of conveyance thereof, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to the overall development of MONACO, and in thus assuring compliance with and enforcement of this Declaration and any amendments thereto (and any Supplemental Declaration). Notwithstanding any other provisions of this Declaration, until such time as Declarant no longer owns any of the Property (including all Annexable Property annexed hereto), the following actions, before being undertaken by the Association and/or the Members, shall first be approved in writing by Declarant:

- 11.1.1 The construction of new facilities or improvements not originally included in or on the Association Property; or
- 11.1.2 Any significant reduction of Association maintenance or other services, including any transfer of the Association's

maintenance obligations to the County, or other public agency as provided in Section 6.2.

- 11.2 Exemption of Declarant. Declarant intends to undertake the work of constructing Residences and incidental Improvements upon the Project. The completion of that work, and the sale and/or other disposal of such Residences, is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed as Declarant, in its sole discretion, deems to be in the overall best interest of the Project, nothing in this Declaration, including, without limitation, the restrictions set forth in Articles 3 or 10 of this Declaration, shall be understood or construed to limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant (i) to perform and complete excavation, grading, filling, construction, development and landscaping to and on any portion of the Property, or to alter the foregoing and its construction plans and designs, or (ii) to construct such Residences and additional Improvements as Declarant deems advisable in the course of development of MONACO until such time as Declarant shall not own any portion of the Property (including all Annexable Property annexed hereto), or (iii) to modify the Project Plan with all requisite governmental approvals. Such right shall include, but not be limited to, grading work as may be approved by any agency having jurisdiction, the storage of construction materials and construction vehicles, and erecting, constructing, and maintaining on the Property such structures, trailers, offices, signs, and displays as may be reasonably necessary for the conduct of its business of developing, leasing, selling, managing, and operating MONACO. This Declaration shall further not limit the right of Declarant, at any time, to establish on that land additional licenses, easements, reservations, and rights-of-way to itself, to utility companies, to governmental agencies or to others as may from time to time be reasonably necessary to the proper development, utilization, and disposal of the Property by Declarant.

- 11.2.1 All or any portion of the rights of Declarant hereunder and elsewhere in this Declaration may be assigned on a non-exclusive basis by Declarant to any successor-in-interest to any portion of the Property (or any portion of the Annexable Property,) by an express Recorded written assignment which specifies the rights of the assignor so assigned. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as master planner and developer of the Property, will be required before any amendment to this Article shall be effective.

- 11.2.2 The rights and reservations set forth in this Article shall terminate on the earlier of (i) the date Declarant no longer owns any land within the Property (including all Annexable Property annexed hereto), or (ii) the fifteenth (15th) anniversary after the Recordation of this Declaration.

ARTICLE 12

INSURANCE

- 12.1 Duty To Obtain Insurance. The Board shall be responsible to procure and maintain, or cause to be procured and maintained, for the Association and the Association Property, to the extent reasonably available, the insurance

required by Section 116.3113 of the Nevada Revised Statutes as outlined herein, and such other insurance as the Board deems appropriate. All such insurance shall be for the benefit and protection of the Owners, Association, Members, the Board, Architectural Committee, Declarant and holders, insurers and guarantors of Mortgages, as their interests may appear, but subject to loss payment provisions as set forth below.

12.2 Required Coverage. Subject to Section 12.1 above, the Board shall procure and maintain the following, to the extent reasonably available, at all times after the conveyance by Declarant of any Association Property to the Association as set forth in Section 2.2:

- 12.2.1** Public liability and property damage insurance (including insurance for medical payments) arising out of a single occurrence of not less than an aggregate \$1 million or such greater amounts as may be required by Chapter 116 of the Nevada Revised Statutes, the lending agencies listed in Section 12.2.6, any governmental agency having jurisdiction over the Association Property, or as reasonably determined by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Association Property. The deductible shall not exceed limits, if any, established by the foregoing lending or governmental agencies.
- 12.2.2** Property insurance on the Association Property insuring against all risks of direct physical loss commonly insured against, including, fire and casualty insurance with extended coverage, in an amount, after application of all deductibles, not less than 80% of the actual cash value of the insurable improvements, if any, situated on Association Property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
- 12.2.3** Fidelity bond coverage in such reasonable amount(s) as the Board concludes is sufficient for protection of the Association and its Members. If the Association has employees and/or will be directly handling funds and monies, then such fidelity coverage must include the directors, officers, trustees, employees, Manager and agents of the Association. If an independent Manager shall be engaged by the Association and such Manager shall be responsible for any funds and monies of the Association, then such Manager shall provide to the Association said fidelity coverage for the Manager's officers, directors, employees and agents.
- 12.2.4** Officer's and Director's liability insurance in such reasonable amount(s) as the Board concludes is sufficient for protection of any person who is or was a director, officer, employee, servant or agent of the Association to insure against liability asserted against such person or incurred by such person in any such capacity or by reason of such person's status, whether or not

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the Association would have the power to indemnify against such liability.

12.2.5 Statutory industrial insurance coverage as required by the State of Nevada in the event the Association shall have employees. If an independent Manager or agent shall be engaged by the Association, then such Manager or agent shall be required to maintain such coverage for its employees.

12.2.6 Such other or additional insurance coverage as deemed necessary or prudent by the Board, or to the extent required by the Federal Housing Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), Department of Veteran Affairs ("VA"), or Department of Housing and Urban Development/Federal Housing Authority ("HUD/FHA").

12.3 Annual Insurance Review. The Board shall, commencing with the initial conveyance by Declarant of the Association Property to the Association, and thereafter at least annually, review the insurance carried by or on behalf of the Association for the purpose of determining the types, amounts and deductibles of coverage to be so carried.

12.4 Trustee for Proceeds. All insurance proceeds under any such insurance policies as provided for in this Article shall be paid to the Board of Directors as Trustees. The Board shall have full power to receive the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property or improvements for which the insurance was carried and as otherwise required by Chapter 116 of the Nevada Revised Statutes.

12.4.1 Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Members, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation and modification of all such insurance.

12.5 Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Members. That portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association.

12.6 Policies/Certificates. Certificates of insurance evidencing the foregoing insurance shall be issued by the insurer(s) and, together with proof of payment of premiums, shall be delivered without charge by the Association to all First Mortgagees and Owners who have requested the same in writing. Any First Mortgagee or Owner may further request a copy of any insurance policy carried by the Association and such copy shall be delivered within fifteen (15) days of such request; the Board may levy a fee to cover its costs therefor.

- 12.7 Notice of Expiration Requirements. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not expire or cause to be canceled, terminated, or materially modified without at least thirty (30) days' prior written notice to (a) the Board and Declarant, and (b) those Owners and First Mortgagees who have been issued a certificate of insurance pursuant to Section 12.6 above, who have a written request with the carrier for such notice.
- 12.8 Coverage/Waiver Requirements. The policies of liability and property insurance carried by the Association as required by Sections 12.2.1 and 12.2.2 above, shall provide, if reasonably available, that:
- 12.8.1 The insurer waives its right to subrogation of claims against all Owners, their tenants, subtenants, licensees, invitees, users, or other members of the Owners' households;
- 12.8.2 The insurer waives any defense based upon coinsurance by the Owners; rather, the Association's policies shall provide primary coverage if at the time of loss under the policy there is insurance in the name of an Owner covering the same risk covered by the Association Policy;
- 12.8.3 The insurer waives any right of setoff, counterclaim, apportionment, proration, or contribution by reason of other insurance not carried by the Association;
- 12.8.4 The insurer waives any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant, subtenant, licensee, invitee, user, or occupant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors, and employees of any insured; no act or omission by any Owner, unless acting within the scope and authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.
- 12.9 Waiver of Claims. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such Persons.
- 12.10 Owners' Insurance. Each Owner may obtain insurance on his personal property and all other Improvements located on his Lot or other land within the Property and any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring on or in his individual Lot or elsewhere. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable under the Association's policies are reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

- 12.11 Insurance Not Reasonably Available. If the insurance required under Sections 12.2.1 and 12.2.2 is not reasonably available to the Association, and/or if the waivers set forth in Section 12.8 are not reasonably available to the Association, the Association shall cause written notice thereof to be hand delivered or mailed, postage prepaid, to all Owners.

ARTICLE 13
ANNEXATION

- 13.1 Annexation. Declarant (subject to the provisions of this Article) may, but shall not be required to, at any time or from time to time during the period commencing upon Recordation of this Declaration and ending on the fifteenth (15th) anniversary of such Recordation, add to the Property covered by this Declaration all or any portion of the land described on Exhibit A-1 attached here ("Annexable Property") then owned by Declarant (or successors and assigns) by Recording one or more deeds, notices, declarations, or supplements hereto (which forms of recorded instruments are each referred to herein as a "Declaration of Annexation") that identify the land to be annexed ("Annexed Property"). The Annexable Property need not be contiguous nor adjacent to the Property.

- 13.1.1 Upon the Recording of a Declaration of Annexation covering any portion of the Annexable Property and containing the provisions set forth herein all of the terms and provisions contained in this Declaration shall apply to the Annexed Property from and after the Recording of said Declaration of Annexation in the same manner as if it were originally covered in this Declaration and originally constituted a portion of the Property consistent with the provisions of Section 2.3 above. Thereafter, the rights, obligations, privileges, duties, and liabilities of the parties to this Declaration with respect to the original Property and the rights, obligations, privileges, duties, and liabilities of the Owners, tenant, users, occupants, and Mortgagees of land within the Annexed Property shall be the same as in the case of such land originally affected by this Declaration. Upon the recordation of a Declaration of Annexation, the portion of the Annexable Property so annexed shall be subject to all Assessments under Article 8 of this Declaration, including that portion of any Regular Assessments allocable to the remainder of that fiscal year of the Association.

- 13.2 Declaration of Annexation. The Declaration of Annexation referred to above shall be executed and acknowledged by Declarant and Recorded and shall contain at least the following provisions:

- 13.2.1 A reference to this Declaration, which reference shall state the date of Recordation hereof and the Instrument number or other relevant Recording data of the Clark County Recorder's Office;
- 13.2.2 A statement that the provisions of this Declaration shall fully apply to the Annexed Property;
- 13.2.3 An exact description of the Annexed Property;

13.2.4 A description or designation of whether any or all of the Annexed Property is Association Property.

13.3 VA/HUD/FHA Approval. As a condition precedent to any annexation of the Annexable Property, VA and HUD/FHA, if either of such agencies so require, shall be advised of any such annexation, and such annexation shall be in accordance with any requirements of VA and HUD/FHA.

ARTICLE 14 AMENDMENT

14.1 Procedures.

14.1.1 By Declarant. Until such time as Declarant no longer owns any portion of the Property (including any of the Annexable Property annexed hereto), no provisions of this Declaration may be amended or terminated except by Recordation of a written instrument signed by Declarant approving such amendment or termination.

- (a) Anything in this Article to the contrary notwithstanding, Declarant reserves the right, until such time as Declarant no longer owns any portion of the Property (including any of the Annexable Property annexed hereto) to unilaterally amend all or any part of this Declaration to such an extent and with such language as may be required to comply with all applicable laws, or as may be requested by governmental mortgage insurance agencies, including, without limitation, FNMA, GNMA, FHLMC, VA or HUD/FHA, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Project, or any portion thereof, or of this Declaration, or such agency's acceptance of the Association Property for maintenance by such agency, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof within the Property. Any such amendment shall be effectuated by Declarant executing and Recording an instrument of amendment therefor.
- (b) It is the desire and intent of Declarant to retain control of the Association, its activities and the Property during the anticipated period of planning, zoning, subdividing, dividing, parcelizing, development, construction, sale, and/or leasing of the Property in order to insure the comprehensive development of MONACO in accordance with the Project Plan, Design Guidelines, if any, and the entitlements granted by the County, the Ordinances and this Declaration. If any amendment requested pursuant to the provisions of this Article deletes, diminishes, alters or abrogates such control, Declarant shall have the right to

prepare, provide for, and adopt as an amendment hereto, other and different control provisions.

- 14.1.2 By Owners. Subject to Section 14.1.1 above, and Section 6.2 herein, the provisions of this Declaration may only be amended by Recordation of an amendment approved by the vote of not less than sixty-seven percent (67%) of all Owners in the Property. Any such amendment shall be evidenced by a written instrument executed and acknowledged by Declarant (if Declarant's consent is required under Section 14.1.1) and at least two (2) officers of the Association certifying that the amendment was approved by the requisite percentage of the Owners, and the instrument then Recorded.

ARTICLE 15 MORTGAGEE PROTECTION

- 15.1 Mortgagee Protection. Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust or the Mortgagee under any Mortgage upon any of the Property made in good faith and for value, and Recorded prior to the Recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or Mortgage or a deed or assignment in lieu thereof such property shall remain subject to this Declaration, as amended.
- 15.2 Special Provisions. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce FHLMC, GNMA, FNMA, VA, and/or HUD/FHA to participate in the financing of the sale of Lots within the Property, the following "special provisions" are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA, and/or HUD/FHA, conflict with any other provision(s) of this Declaration, these added "special provisions" shall control):
- 15.2.1 Each holder, insurer, and guarantor of a First Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to receive copies of the Notice of Lien, Notice of Default, and Notice of Sale from the Association with respect to any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under Article 8 of this Declaration. For purposes of this Declaration and the Bylaws, "First Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot within the Property, and "First Mortgagee" shall mean the holder of a First Mortgage.
- 15.2.2 Every Owner, including every First Mortgagee of a First Mortgage encumbering any Lot, which obtains title thereto pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by this Declaration.

15.2.3 Unless at least sixty-seven percent (67%) of the First Mortgagees of Lots (based upon one (1) vote for each Mortgage owned within the Property) have given their prior written approval, neither the Association nor the Members shall amend this Declaration, the Articles of Incorporation, or Bylaws of the Association in such a manner that the rights of any First Mortgagee will be materially and adversely affected.

15.2.4 All holders, insurers and guarantors of First Mortgages within the Property, upon written request, shall have the right to (a) examine the books and records of the Association during normal business hours, (b) require from the Association the submission of the annual budget (without expense to the holder, insurer or guarantor requesting such statement) and other financial data reasonably requested in writing from the Board, (c) designate in writing to the Board a representative to attend all meetings of Members, without the right to vote.

15.3 Assignees. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, VA, and HUD/FHA, or any similar entity, so as to allow for the purchase, guaranty, or insuring, as the case may be, by such entities of First Mortgages encumbering Lots with Residences thereon. Each Owner including Declarant hereby agrees that such action will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their respective property, if such agencies approve the Property as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot so insured or guaranteed.

ARTICLE 16 DECLARANT'S RIGHT TO CURE ALLEGED DEFECTS

It is Declarant's intent that all Improvements of every type and kind which may be installed by Declarant as part of the Project, including, but not limited to, Residences, sidewalks, driveways, streets, roads, parking areas, fences, walls, landscaping, signs, utility pipes, lines or wires, sewer and drainage systems, and grading on all of the Lots and Association Property within said Property (collectively, the "Declarant Improvements") be of a quality that is consistent with construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, all Owners and the Association, Board, and Architectural Committee shall be bound by the following claim resolution procedure:

16.1 Declarant's Right To Cure. In the event that the Association, Board, Architectural Committee, or any Owner or Owners (collectively, "Claimant") claim, contend, or allege that any portion of the Lots on said Property and/or any Declarant Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors, or subcontractors (collectively,

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"Declarant's Agents") were negligent in the planning, design, engineering, grading, construction, or other development thereof (collectively, an "Alleged Defect"). Declarant hereby reserves the right to inspect, cure, repair, and/or replace such Alleged Defect as set forth herein.

- 16.2 Notice to Declarant. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at 3325 Ali Baba Lane, Suite 603, Las Vegas, Nevada, 89118, Attention: Regional Manager, or such other address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").
- 16.3 Right To Enter, Inspect, Cure, Repair, and/or Replace. Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Lot, Development Tract, Area or the Association Property, and/or any Declarant Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing, and/or replacing such Alleged Defect. In conducting such inspection, cure, repairs, and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.
- 16.4 Legal Actions. No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect, or (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within one hundred twenty (120) days after its receipt of such Notice of Alleged Defect, either (1) failed to cure, repair, or replace such Alleged Defect or (2) if such Alleged Defect can not reasonably be cured, repaired, or replaced within such one hundred twenty (120) day period, failed to commence such cure, repair, or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair, or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair, or replacement of the Alleged Defect, Claimant shall not stop, restrict, hinder, interrupt, or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents, or independent contractors, to inspect, cure, repair, or replace any Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.
- 16.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, cure, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots and/or the Declarant Improvements constructed thereon, nor shall anything set forth in this Article constitute an express or implied representation, warranty or guarantee by Declarant concerning any Declarant Improvements, the Property, the Annexable Property, or the Project. The right of Declarant to

enter, inspect, cure, repair, and/or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of the County.

16.6 NRS Chapter 40. The terms, conditions and procedures set forth in this Article 16 are in addition to the terms, conditions and procedures set forth in NRS Chapter 40, and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and/or commencing an action under Chapter 40 for "constructional defects" as defined in Chapter 40; provided, however, the procedures set forth in this Article 16 shall not abrogate any of the requirements of Claimant under Chapter 40, inclusive of the requirement that Claimant, at the end of the foregoing 120 day period, notify Declarant in writing of any alleged constructional defects which Declarant failed to cure during that 120 day period at least 60 days prior to bringing an action under Chapter 40. Further, to the extent any provisions of this Article 16 are inconsistent with the provisions of Chapter 40, the provisions of this Article 16 shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in Section 11 of Chapter 40 until expiration of the 120 day period set forth in this Article 16. It is the express intent of Declarant to provide, by this Article 16, an initial 120 day period for Declarant to investigate and cure any constructional defects alleged by Claimant before the provisions of Chapter 40 are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Chapter 40. Each Owner, by accepting title to any portion of the Property, as evidenced by recordation of a deed to Owner describing that land, agrees to be bound by all of the provisions of this Article 16.

16.7 Arbitration of Disputes. For purposes of this Section 16.7, the following definitions shall apply:

- 16.7.1 "Declarant" shall mean the entity executing this Declaration and its respective predecessors, successors, subsidiaries, and/or affiliated corporations, parent companies, sister companies, divisions, partners, joint venturers, the general contractor for the Project, affiliates, owners, officers, directors, employees, shareholders, agents, and assigns.
- 16.7.2 "Claimant" shall include all Owners, the Association, Board and/or Architectural Committee, and their successors, heirs, assigns, subsequent Owners, and any third party claiming any right or interest in the Property through them.
- 16.7.3 "Property" shall mean the land and improvements which are the subject of this Declaration, including, without limitation, the Property (defined in Section 1.40), Annexable Property (defined in Section 1.1), and the Association Property (defined in Section 1.7).
- 16.7.4 "Project" shall mean all of the Monaco planned community.

DECLARANT AND EACH CLAIMANT, BY ACCEPTING TITLE TO OR AN INTEREST IN ANY PORTION OF THE PROPERTY OR PROJECT, AGREE THAT:

- (1) Subject to Declarant's right to cure any Alleged Defect pursuant to the provisions of this Article, the arbitration procedures described below shall be the sole, exclusive, and final means of resolving any "Dispute" between them and/or between their respective successors-in-interest. As used herein, "Dispute" shall mean any claim, cause of action (whether at law or in equity) or disagreement of any nature whatsoever ("Claim") arising from or in connection with the sale or transfer of the Property to Claimant, the sales contract and related documents, construction or installation of any improvements on the Property or Project, the grading of the Property or Project, Declarant's One-Year Limited Warranty, performance of customer service work by or on behalf of Declarant on or in connection with the Property or Project, other than a Claim made pursuant to Nevada Revised Statutes, Sections 38.300 to 38.360, including, without limitation, Claims for real and personal property damage, construction defects (whether patent or latent), bodily injury or wrongful death, nondisclosure, misrepresentation, fraud, emotional distress, monetary damages, rescission of any agreement, enforceability of this Arbitration of Disputes Provision, and/or specific performance. Declarant, in its sole discretion, shall be entitled to require that any or all contractors, subcontractors, suppliers, consultants, partners, affiliates, or agents of Declarant who may have liability in connection with the Dispute be participants in the arbitration procedure described below; provided, however, that Declarant's failure or inability to require that such contractors, subcontractors, or agents be parties to the following proceedings shall not affect the obligations and entitlements of Claimant and Declarant under this Arbitration of Disputes Provision.
- (2) With respect to any Dispute governed by Nevada Revised Statutes, Sections 40.600 to 40.695, inclusive, mediation of any Dispute is hereby waived and the mediation procedures set forth in Nevada Revised Statutes Section 40.680 shall not be utilized. In lieu of the mediation procedures set forth in Nevada Revised Statutes Section 40.680, the following procedures shall apply thereto, as well as to any other Disputes between Claimant and Declarant:
 - (a) Any dispute between Claimant and Declarant where the claim of damage is \$3,500 or less, including disputes governed by the provisions of Nevada Revised Statutes Section 40.600 to 40.695, inclusive, where the estimated cost of repair or replacement of the item(s) in dispute is \$3,500 or less, shall be within the sole jurisdiction of the Small Claims Court and neither mediation nor arbitration shall be applicable unless both Claimant and Declarant so agree in writing.
 - (b) Any Dispute between Claimant and Declarant where the claim of damage is more than \$3,500, including disputes governed by the provisions of Nevada Revised Statutes Sections 40.600 to 40.659, inclusive, where the estimated cost of repair or replacement of the item(s) in dispute is more than \$3,500, shall,

upon request by either Claimant or Declarant, be submitted to arbitration conducted in accordance with the Federal Arbitration Act, 9 U.S.C. 1, et seq., the Uniform Arbitration Act of the Nevada Revised Statutes, and the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). Arbitration shall be initiated by filing a written demand for Arbitration with the AAA, accompanied by the required filing fee, and concurrently mailing a entry of the demand to the other Party. Unless Claimant and Declarant agree otherwise, the procedures for Large, Complex Construction Cases issued by the AAA shall apply to all cases to the extent such procedures are not in conflict with the Federal Arbitration Act or the Uniform Arbitration Act.

Before any Dispute can be submitted to arbitration, the party wishing to submit the Dispute must first, at least sixty (60) days prior to filing a Demand for Arbitration, give the other party written notice of the Dispute and, with reasonable specificity, the actions that should be taken by the other party to resolve the Dispute. With respect to any Dispute regulated by Nevada Revised Statutes, Sections 40.600 to 40.695, inclusive, this sixty (60) day notice, if given by Claimant, shall comply with the requirements of Nevada Revised Statutes Section 40.645. Each party may, prior to the arbitration hearing, conduct discovery as provided in Nevada Revised Statutes Section 40.680, and Nevada Rules of Civil Procedure Section V, Rules 26 to 37, inclusive.

This Arbitration of Disputes Provision is intended to be binding upon Claimant and Declarant for all claims regulated by Nevada Revised Statutes Sections 40.600 to 40.695, inclusive, after all the requirements of Sections 40.645 to 40.675 for resolution of the dispute prior to commencement of a civil action have been satisfied or waived by Claimant and Declarant in accordance with said statutes and in place and instead of any court action described therein.

- (3) The arbitration shall take place in the office of the AAA nearest to the Property, at such time and date selected by the arbitrator. Any dispute regarding the scope of the arbitration or the procedures to be followed in the arbitration shall be resolved by the arbitrator. Only compensatory damages are recoverable and the arbitrator chosen for the arbitration shall have no authority to award damages for emotional distress, consequential, punitive, or any other nature of damages other than compensatory damages as are recognized by Nevada law. In no event shall one party's liability to the other exceed the original purchase price of the house. The combined cost (fee and expenses) of the AAA and of the arbitrator shall be apportioned equally between Claimant and Declarant. Each party shall bear its own attorneys' fees and other costs. The award rendered by the arbitrator must be accompanied by a written decision of the arbitrator that contains written findings of fact and conclusions of law and, once so rendered, shall be binding, final, and non-appealable as to all parties in the arbitration to the fullest extent permitted by Nevada law, including, without limitation, Nevada Revised Statutes Sections 38.015 to 38.205, inclusive, and Sections 40.660 to 40.695, inclusive, except that an appeal may be taken if an award is based on any deviation by the

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arbitrator from the terms of this Arbitration of Disputes Provision. In furtherance thereof, and to the fullest extent permitted by Nevada law, Claimant and Declarant waive the provisions of Nevada Revised Statutes Section 38.145. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Except as otherwise expressly set forth in this section, the arbitrator shall strictly follow Nevada law.

No notice, claim, or communication between Claimant and Declarant, whether under any written limited warranty or otherwise, shall stop the running of any statute of limitations. In addition to the Construction Industry Rules of the AAA, the following additional rules shall govern the arbitration: (a) with the exception of contractors, subcontractors, suppliers, consultants, partners, affiliates, and agents added by Declarant as provided herein, the parties to the arbitration shall be limited to Claimant and Declarant, and (b) Claimant and Declarant shall each pay one-half (1/2) of the initial fee for such arbitration.

- (4) Declarant may, in its sole discretion, consolidate the Disputes of other Claimants in the event that such Disputes are similar in nature and, if the aggregate amount of damage claimed by such Claimants exceeds \$3,500, such Disputes will be addressed in the same manner as a single Dispute where the claim of damage is more than \$3,500 as set forth in paragraph (2)(b) of this Section 16.7.
- (5) If any provision or aspect of this Arbitration of Disputes Provision is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision or aspect of this Arbitration of Disputes Provision is superseded or rendered unenforceable by any law which becomes effective after the date of this Declaration, the remainder of this Arbitration of Disputes Provision shall nevertheless remain in full force and effect and continue to be binding. If there is any conflict between this Arbitration of Disputes Provision and the other provisions of this Declaration, including the other provisions of this Article 16, the provisions of this Arbitration of Disputes Provision shall control.
- (6) Each Claimant waives any right to mediation Claimant might have under Nevada or federal law for all Disputes and, for Disputes exceeding \$3,500, agrees to have any such Dispute arising out of the matters including in the above "Arbitration of Disputes" provision decided by neutral, binding arbitration as provided in the above "Arbitration of Disputes" provision and Claimant gives up any rights Claimant might possess to have such Dispute litigated in a court or jury trial, as well as any rights Claimant may have to obtain emotional distress, consequential, punitive, or any other nature of damages other than compensatory damages recognized by Nevada law, and Claimant also gives up Claimant's judicial rights are specifically included in this "Arbitration of Disputes" provision. If Claimant refuses to submit to arbitration, Claimant may be compelled to arbitrate under Nevada law.

ARTICLE 17
GENERAL PROVISIONS

- 17.1 Term. Except as otherwise provided in this Declaration, all of the terms and provisions of this Declaration shall run with and bind the Property and each and every portion thereof, and shall inure to be the benefit of and be enforceable by Declarant (so long as Declarant owns any land within the Property), the Association (as to the Association Property only), the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, and any Mortgagee encumbering any of the Property for a term of twenty-five (25) years from the date this Declaration is Recorded after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless a Declaration of Termination meeting the requirements of an amendment to this Declaration, as set forth herein, has been Recorded.
- 17.2 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered personally, by a recognized professional courier service, or by U.S. Mail. If delivery is made by U.S. Mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, certified, return receipt requested, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence or business address of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.
- 17.3 Enforcement and Non-Waiver.
- 17.3.1 Right of Private Enforcement. Except as otherwise expressly provided herein, the Association (as to the Association Property only), and any Owner, including Declarant (so long as Declarant owns lands within the Property), shall have the right, but not the duty, to enforce any or all of the provisions of this Declaration against any property within the Property and the respective Owner, tenant, subtenant, licensee, or the like thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of this Declaration. The enforcement powers of the Association shall be limited to enforcement of any provisions of this Declaration concerning the Association Property and the Association and, except for the levy and collection of Assessments, the Association shall have no authority, right, or duty to enforce any provisions of this Declaration which concern any other portions of the Property, including the Lots, Development Tracts, and Other Areas.
- 17.3.2 Violation and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole, or in part, is hereby declared to be a nuisance and every remedy allowed by law or in equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by Declarant, an Owner, the Association (if the act or omission concerns the Association Property), or their successors-in-interest.

- 17.3.3 Violation of Law. Any violation of any federal, state or municipal law, ordinance, code or regulation with respect to any Lot, Development Tract, or Other Area within the Property by any Owner (other than Declarant) is hereby declared to be a breach of this Declaration and subject to all of the enforcement procedures set forth herein.
- 17.3.4 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien against a Lot, Development Tract, or Other Area within the Property, bring a suit at law to enforce each Assessment obligation.
- 17.3.5 Non-Waiver. The failure of the Association, the Architectural Committee, and/or Declarant to enforce any of the provisions of this Declaration which they have been given the express power to enforce, respectively, at any time, shall not constitute a waiver of this right thereafter to enforce any such provision or any other provisions hereof.
- 17.3.6 Mortgages. Any breach or amendment of this Declaration shall not affect or impair the lien or charge of any First Mortgage or First Deed of Trust made in good faith and for value on any Lot (or any Improvements respectively thereon); provided, however, that any subsequent Owner of such property shall be bound hereby whether such Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.
- 17.3.7 Attorneys' Fees. Any judgment or award rendered in any action or proceeding hereunder, including a suit to collect delinquent assessments, in favor of the prevailing party shall include sums for attorneys' fees, in such amount as the Court may deem reasonable, and court or arbitration costs, both at trial and on appeal.

17.4 Interpretation.

- 17.4.1 Restrictions Construed Together. All of the provisions of this Declaration, including all Exhibits attached hereto and which are hereby incorporated herein, shall be liberally construed together in conformity with the laws of the State of Nevada to promote and effectuate the fundamental concepts of the Property, the Project Plan and MONACO overall as set forth in this Declaration. All references to the Nevada Revised Statutes or NRS shall be deemed to include all successor statutes.
- 17.4.2 Restrictions Severable. Notwithstanding the provisions of the foregoing subsection, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

- 17.4.3 Context. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall include the masculine, feminine and neuter.
- 17.4.4 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.
- 17.5 No Public Right of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use, except as specifically set forth herein or respectively granted or dedicated therefor now or hereafter.
- 17.6 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any portion of the Property does and shall be conclusively deemed to have consented to each and every applicable limitation, restriction, easement, reservation, condition, covenant, term, and provision contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Property, or any portion thereof.
- 17.7 No Representation of Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with MONACO overall, the Project, the Property, the Annexable Property, or any portion thereof, or any existing Improvements or future Improvements thereon, the physical condition thereof, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, leasing, operation, maintenance, cost of maintenance, taxes, or regulation thereof, or timing of development thereof, except as specifically and expressly set forth in this Declaration.
- 17.8 Indemnification. Except to the extent such liability, damage, or injury is covered by insurance maintained by the Association, the Association's officers, directors, attorneys, agents, and employees, shall be indemnified, defended, and held harmless by the Owners and the Association against all claims, causes of action, suits, costs, expenses, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon any of them in connection with any proceeding to which any of them may be a party, and court or arbitration costs, or in which any of them may become involved, by reason of their being or having been an officer, director, attorney, employee, or agent of the Association, or any settlement thereof, whether or not they are an officer, director, attorney, employee, or agent at the time such expenses and liabilities are incurred, except in such cases wherein such person is adjudged to have committed fraud, willful or wanton misfeasance, or gross negligence in the performance of his duties. Notwithstanding the foregoing, in the event of a settlement, this indemnification shall apply only when the Board of Directors of the Association determines that such settlement and reimbursement is in the best interest of the Association.
- 17.9 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or Bylaws, the terms and provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 21st day
of September, 1998.

LEWIS HOMES - CARLYLE VENTURE,
L.L.C., a Nevada limited liability company

By: Lewis Homes Management Corp.,
a California corporation
Its Manager

By: Robert E. Lewis
Authorized Agent
ROBERT E. LEWIS

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RETURN TO:

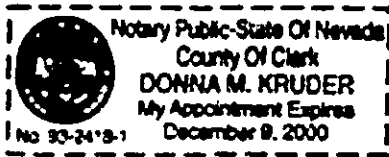
Lewis Homes of Nevada
3525 W. Ali Baba Lane, Suite 111
Las Vegas, NV 89118
~~89118~~

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STATE OF NEVADA)
COUNTY OF CLARK) SS.

This instrument was acknowledged before me on SEPTEMBER 21, 1998 date),
by ROBERT E. LEWIS (name(s)) as
AUTHORIZED AGENT (title) of LEWIS HOMES
MANAGEMENT CORP name of company or individual represented).



Donna M. Kruder
Signature of Notarial officer)

(Title and rank (optional))
Presiding Manager
(My commission expires 12-09-00)

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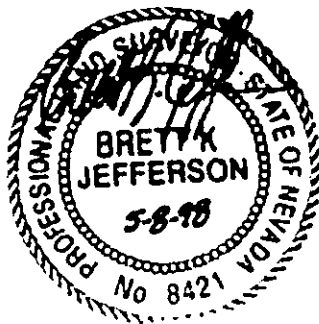
EXHIBIT "A"

[Description of Property]



PENTACORE

Civil Engineering
Land Surveying
Global Positioning
Land Planning - GIS
Construction
Administration
ADA Consulting
Landscape
Architecture
Measurement
Technologies
Water Ventures
International



980923 01097
0030.1800

FILE: M1-A.DOC
APRIL 14, 1998
BY: C.L.M.
CKD: M.J.J.
PAGE 1 OF 4

EXPLANATION

THIS LAND DESCRIPTION DESCRIBES A PARCEL OF LAND GENERALLY LOCATED NORTH OF DESERT INN ROAD AND WEST OF BUFFALO DRIVE FOR RESTRICTION CLARIFICATION PURPOSES.

LAND DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THAT CERTAIN PLAT KNOWN AS "MONACO NO. 1" ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 AT PAGE 50;

EXCEPTING THEREFROM:

LOTS 71-80, INCLUSIVE, BLOCK X OF SAID "MONACO NO. 1";

ALSO EXCEPTING THEREFROM:

LOTS 82-92, INCLUSIVE, BLOCK H, OF SAID "MONACO NO. 1" AS SHOWN ON THE EXHIBIT TO ACCOMPANY LAND DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

END OF DESCRIPTION.

6763 West Charleston Boulevard • Las Vegas, Nevada 89102

ENGINEERING
Tel. 702.258.0115 • Fax 258.4956

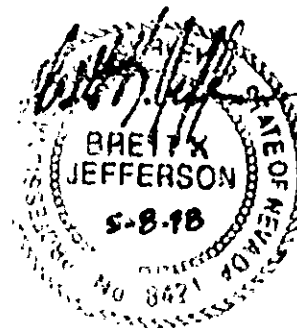
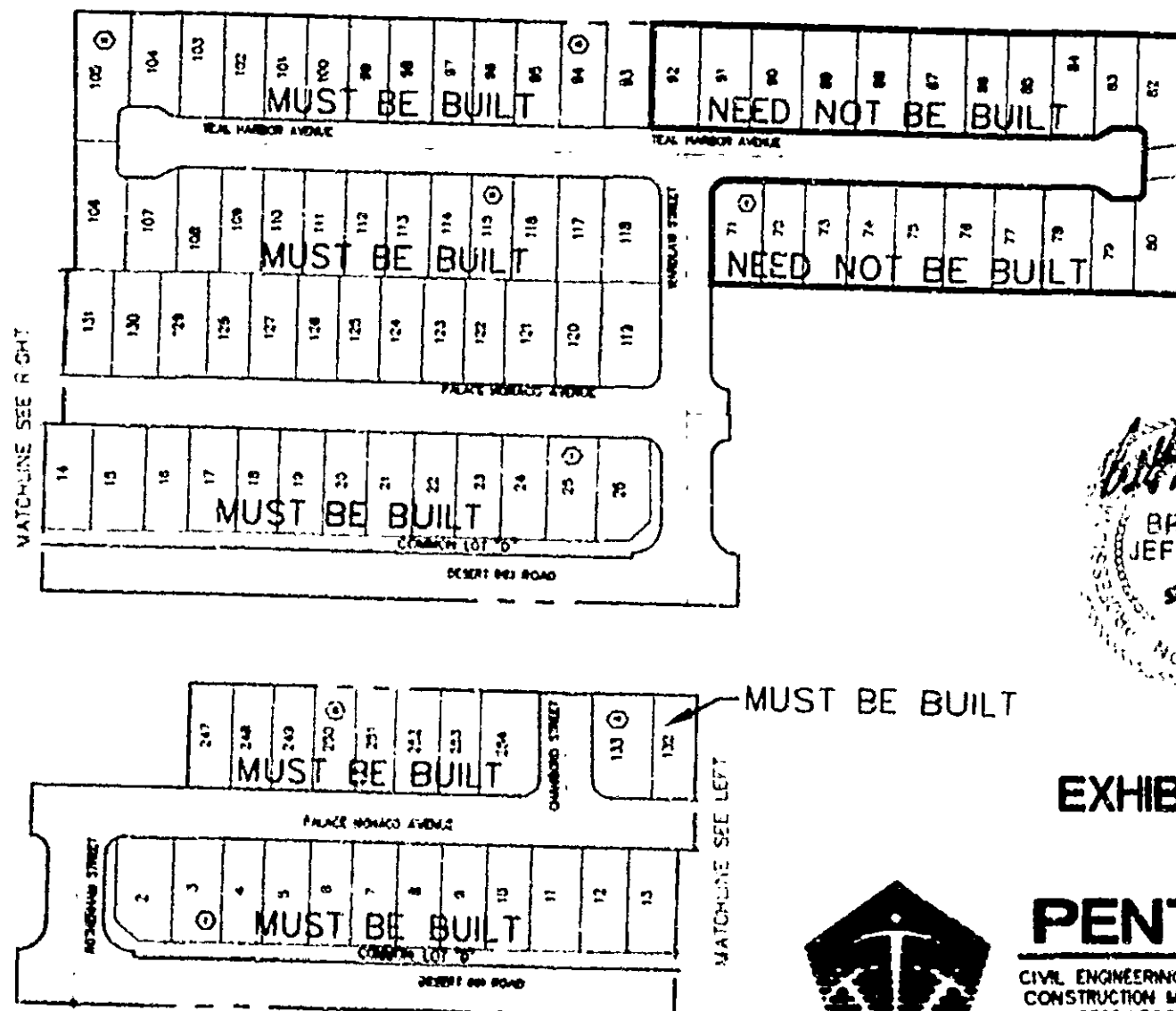
SURVEYING
Tel. 702.258.4110 • Fax 258.4790

ADA CONSULTING
Tel. 702.258.0115 • Fax 258.8528



MONACO NO. 1

A COMMON INTEREST COMMUNITY
A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9,
TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA



MUST BE BUILT

EXHIBIT "A"

PAGE 2 OF 4

PENTACORE

CIVIL ENGINEERING • LAND SURVEYING • PLANNING
CONSTRUCTION MANAGEMENT • ADA CONSULTING
6763 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89102 (702)258-0115

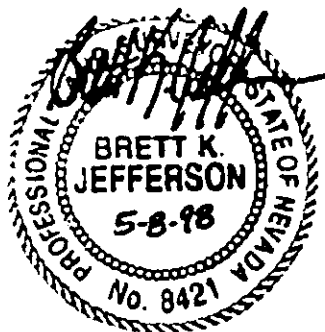


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PENTACORE

Civil Engineering
Land Surveying
Global Positioning
Land Planning - GIS
Construction
Administration
ADA Consulting
Landscape
Architecture
Measurement
Technologies
Water Ventures
International



980923.01097

FILE: M2-A.DOC

APRIL 14, 1998

BY: C.L.M.

CKD: M.J.J.

REVISED: MAY 8, 1998

PAGE 3 OF 4

EXPLANATION

THIS LAND DESCRIPTION DESCRIBES A PARCEL OF LAND GENERALLY LOCATED NORTH OF DESERT INN ROAD AND WEST OF BUFFALO DRIVE FOR RESTRICTION CLARIFICATION PURPOSES.

LAND DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THAT CERTAIN PLAT KNOWN AS "MONACO NO. 2" ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 AT PAGE 49;

EXCEPTING THEREFROM:

LOTS 350-361, INCLUSIVE, BLOCK H OF SAID "MONACO NO. 2";

ALSO EXCEPTING THEREFROM:

LOTS 546 AND 547, BLOCK B OF SAID "MONACO NO. 2";

ALSO EXCEPTING THEREFROM:

LOTS 383-390, INCLUSIVE, BLOCK C, OF SAID "MONACO NO. 2";

ALSO EXCEPTING THEREFROM:

LOTS 548-553, INCLUSIVE, LOTS 682-687, INCLUSIVE AND COMMON LOT "ZZ", BLOCK B, OF SAID "MONACO NO. 2", AS SHOWN ON THE EXHIBIT TO ACCOMPANY LAND DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

END OF DESCRIPTION.

6763 West Charleston Boulevard - Las Vegas, Nevada 89102

ENGINEERING
Tel. 702.258.0115 • Fax 258.4956

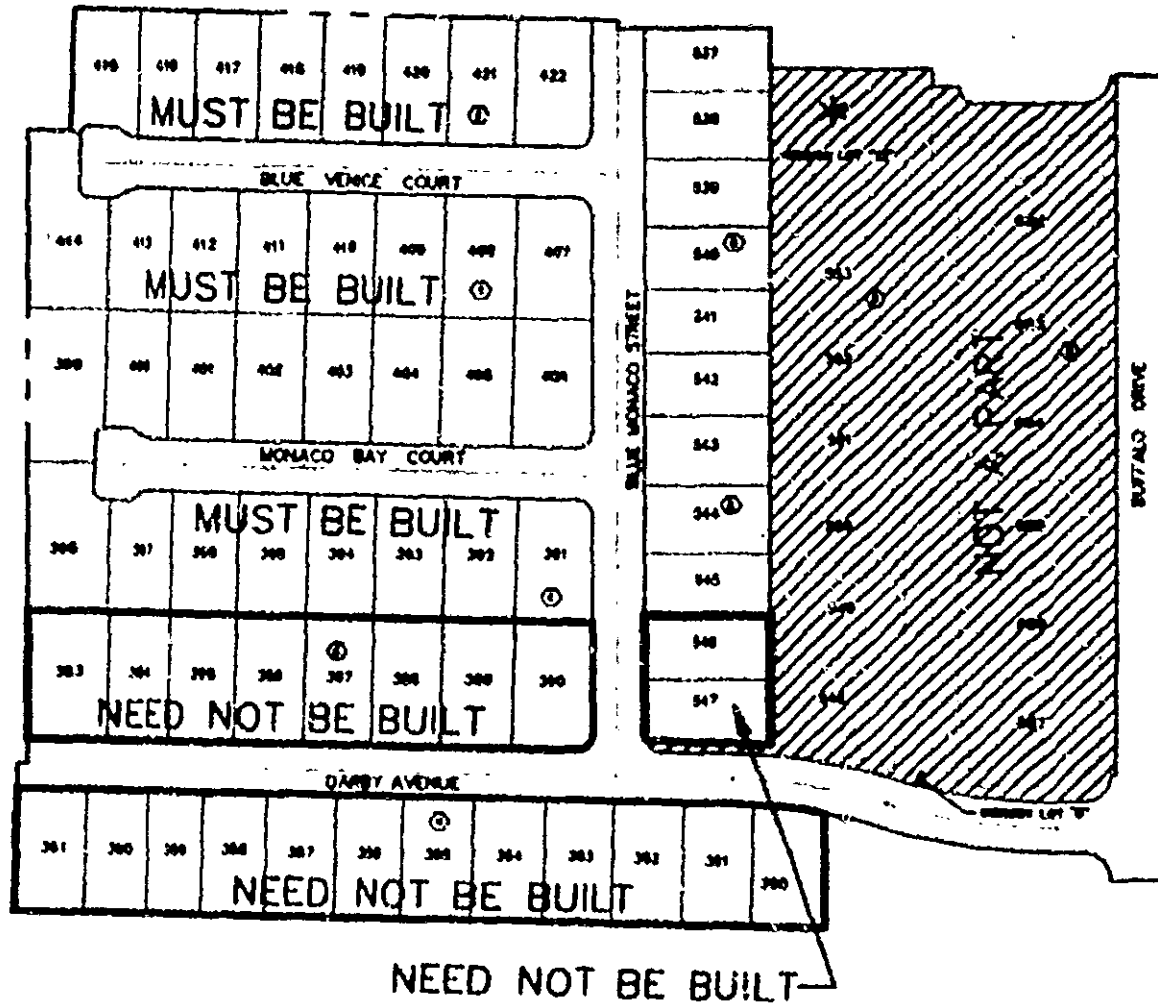
SURVEYING
Tel. 702.258.4110 • Fax 258.4790

ADA CONSULTING
Tel. 702.258.0115 • Fax 258.8528

980923.01097

MONACO NO. 2

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9,
TOWNSHIP 21 SOUTH, RANGE 80 EAST, MOUNT DIBLO MERIDIAN, CLARK COUNTY, NEVADA



* SHOWN AS COMMON LOT ZZ
ON FINAL MAP TO BE
REVERTED TO 2 RESIDENTIAL
LOTS IN THE FUTURE

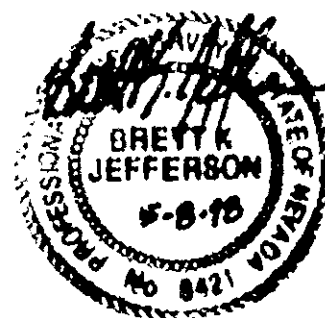


EXHIBIT "A"

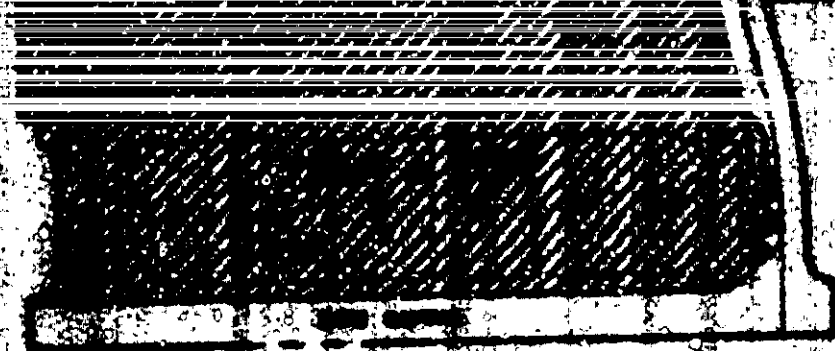


PENTACORE

CIVIL ENGINEERING • LAND SURVEYING • PLANNING
CONSTRUCTION MANAGEMENT • AEA CONSULTING
6783 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89102 (702)298-0115

MEMO NO. 1 DE 1961

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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MEMO NO. 1 DE 1961



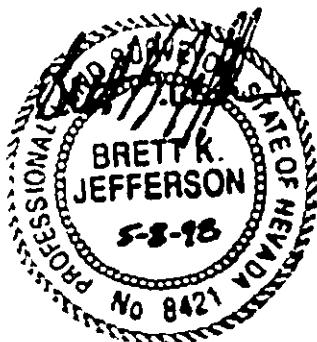
980921.02422
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EXHIBIT "A-1"
[Description of Annexable Property]



PENTACORE

Civil Engineering
 Land Surveying
 Global Positioning
 Land Planning - GIS
 Construction Administration
 ADA Consulting
 Landscape Architecture
 Environmental Technology
 Water/Wastewater



980923 01097

FILE: ANNEX.DOC
 APRIL 14, 1998
 BY: C.L.M./P.D.
 CKD: M.J.J.
 REVISED: MAY 8, 1998
 PAGE 1 OF 5

EXPLANATION

THIS LAND DESCRIPTION DESCRIBES A PARCEL OF LAND GENERALLY LOCATED NORTH OF DESERT INN ROAD AND WEST OF BUFFALO DRIVE FOR RESTRICTION CLARIFICATION PURPOSES.

LAND DESCRIPTION

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT Diablo MEXIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 9, MARKED BY A BRASS CAP IN WELL MONUMENT STAMPED "PLS 706"; THENCE NORTH $88^{\circ}37'20''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 9, A DISTANCE OF 123.55 FEET TO THE EAST SIXTEENTH CORNER COMMON TO SECTIONS 9 AND 15, MARKED BY A BRASS CAP IN CONCRETE STAMPED "PLS 6009"; THENCE NORTH $88^{\circ}38'24''$ WEST CONTINUING ALONG SAID SOUTH LINE, 1725.61 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS 9 AND 16, MARKED BY A BRASS CAP IN WELL MONUMENT STAMPED "DE LUNA INC. PLS 6009"; THENCE NORTH $88^{\circ}36'12''$ WEST CONTINUING ALONG SAID SOUTH LINE, 548.18 FEET; THENCE NORTH $60^{\circ}04'46''$ WEST DEPARTING SAID SOUTH LINE, 208.00 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1223.00 FEET; THENCE NORTHEASTERLY 608.85 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $28^{\circ}31'25''$; THENCE NORTH $28^{\circ}26'38''$ EAST, 132.66 FEET; THENCE NORTH $88^{\circ}32'36''$ WEST, 912.13 FEET; THENCE SOUTH $00^{\circ}04'48''$ EAST, 61.12 FEET; THENCE NORTH $88^{\circ}32'36''$ WEST, 690.56 FEET; THENCE NORTH $00^{\circ}14'06''$ WEST, 1786.79 FEET TO THE NORTH LINE OF THE SOUTH HALF (S 1/2) OF SAID SECTION 9; THENCE SOUTH $88^{\circ}32'36''$ EAST ALONG SAID NORTH LINE, 614.95 FEET TO THE WEST SIXTEENTH CENTER CORNER OF SAID SECTION 9, MARKED BY AN ALUMINUM CAP STAMPED "PLS 12139"; THENCE SOUTH $88^{\circ}36'45''$ EAST CONTINUING ALONG SAID NORTH LINE, 2658.72 FEET TO THE EAST SIXTEENTH CENTER CORNER OF SAID SECTION 9, MARKED BY AN ALUMINUM CAP STAMPED "PLS 12139"; THENCE SOUTH $88^{\circ}35'43''$ EAST CONTINUING ALONG SAID NORTH LINE, 1327.31 FEET TO THE QUARTER CORNER COMMON TO SECTIONS 9 AND 10, MARKED BY A BRASS CAP IN WELL MONUMENT STAMPED "PLS 7004"; THENCE SOUTH $00^{\circ}01'40''$ WEST DEPARTING SAID NORTH LINE AND ALONG THE EAST LINE OF SAID SECTION 9, A DISTANCE OF 1319.98 FEET TO THE SOUTH SIXTEENTH CORNER COMMON TO SAID SECTIONS 9 AND 10, MARKED BY A BRASS STEM WITH PUNCH MARK; THENCE SOUTH $00^{\circ}01'43''$ WEST CONTINUING ALONG SAID EAST LINE, 1319.44 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM:

6783 West Charleston Boulevard • Las Vegas, Nevada 89102

ENGINEERING
 Tel. 702.258.0115 • Fax 258.4956

SURVEYING
 Tel. 702.258.4110 • Fax 258.4790

ADA CONSULTING
 Tel. 702.258.0115 • Fax 258.8528

LOTS 247-254, INCLUSIVE, BLOCK G, AS SHOWN ON THAT CERTAIN MAP KNOWN AS "MONACO NO. 1" ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS AT PAGE 50;

ALSO EXCEPTING THEREFROM:

LOTS 93-133, INCLUSIVE, BLOCK H OF SAID "MONACO NO. 1";

ALSO EXCEPTING THEREFROM:

LOTS 2-26, INCLUSIVE, BLOCK I OF SAID "MONACO NO. 1";

ALSO EXCEPTING THEREFROM:

LOTS 537-545, INCLUSIVE, BLOCK B, AS SHOWN ON THAT CERTAIN MAP KNOWN AS "MONACO NO. 2" ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS AT PAGE 49;

ALSO EXCEPTING THEREFROM:

LOTS 391-422, INCLUSIVE, BLOCK C OF SAID "MONACO NO. 2";

ALSO EXCEPTING THEREFROM:

COMMON LOT "D" OF SAID "MONACO NO. 1";

ALSO EXCEPTING THEREFROM:

COMMON LOT "C"

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9, MARKED BY A BRASS CAP IN WELL MONUMENT, STAMPED "PLS 7004", SAME BEING THE CENTERLINE INTERSECTION OF BUFFALO DRIVE (90 FEET WIDE) AND DESERT INN ROAD (95 FEET WIDE); THENCE NORTH 88°37'20" WEST ALONG THE SOUTH LINE OF SAID SECTION 9, COINCIDENT WITH THE CENTERLINE OF SAID DESERT INN ROAD, 103.26 FEET; THENCE NORTH 02°22'22" EAST DEPARTING SAID SOUTH LINE AND SAID CENTERLINE, 49.52 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID DESERT INN ROAD AS DEDICATED PER BOOK 980311, INSTRUMENT 00924, SAME BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES: (1.) NORTH 87°37'38" WEST, 200.83 FEET; (2.) NORTH 88°37'20" WEST, 70.00 FEET; (3.) SOUTH 89°44'41" WEST, 280.73 FEET; (4.) NORTH 88°37'20" WEST, 74.26 FEET TO THE EASTERLY LINE OF THAT CERTAIN PLAT KNOWN AS MONACO NO. 1, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS, AT PAGE 50; THENCE DEPARTING SAID NORTH RIGHT-OF-WAY LINE AND ALONG SAID EASTERLY LINE, THE FOLLOWING FOUR (4) COURSES: (1.) NORTH 01°22'40" EAST ALONG A RADIAL LINE, 4.99 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 26.50 FEET; (3.) NORTHWESTERLY 41.00 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF

88°39'03"; (3.) NORTH 00°01'43" EAST, 67.25 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 16.50 FEET; (4.) NORTHEASTERLY 19.24 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 66°48'01"; THENCE SOUTH 00°01'43" WEST DEPARTING SAID EASTERLY LINE, 78.54 FEET; THENCE SOUTH 44°17'49" EAST, 28.62 FEET; THENCE SOUTH 88°37'20" EAST, 55.24 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 1124.00 FEET; THENCE EASTERLY 32.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°38'18"; THENCE NORTH 89°44'22" EAST, 251.07 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 876.00 FEET; THENCE EASTERLY 25.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°38'12"; THENCE SOUTH 88°37'26" EAST, 70.00 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 876.00 FEET; THENCE EASTERLY 15.21 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°59'42"; THENCE SOUTH 87°37'44" EAST, 214.03 FEET; THENCE NORTH 46°10'30" EAST, 27.71 FEET; THENCE NORTH 00°01'43" EAST, 86.91 FEET; THENCE SOUTH 88°37'20" EAST, 10.00 FEET; THENCE SOUTH 89°58'17" EAST, 5.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE AS DEDICATED PER BOOK 980311, INSTRUMENT 00924; THENCE SOUTH 00°01'43" WEST ALONG SAID EAST RIGHT-OF-WAY LINE, 66.06 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 54.00 FEET; THENCE SOUTHWESTERLY 87.03 FEET DEPARTING SAID EAST RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92°20'39" TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM:

COMMON LOT "N"

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9, MARKED BY A BRASS CAP IN WELL MONUMENT, STAMPED "PLS 7004", SAME BEING THE CENTERLINE INTERSECTION OF BUFFALO DRIVE (90 FEET WIDE) AND DESERT INN ROAD (95 FEET WIDE); THENCE NORTH 60°01'43" EAST ALONG THE EAST LINE OF SAID SECTION 9, COINCIDENT WITH THE CENTERLINE OF SAID BUFFALO DRIVE, 210.90 FEET; THENCE NORTH 87°37'44" WEST DEPARTING SAID EAST LINE AND SAID CENTERLINE, 45.04 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE AS DEDICATED PER BOOK 980311, INSTRUMENT 00924, SAME BEING THE POINT OF BEGINNING;

THENCE NORTH 87°37'44" WEST DEPARTING SAID EAST RIGHT-OF-WAY LINE, 15.01 FEET; THENCE NORTH 00°01'43" EAST, 387.31 FEET; THENCE NORTH 44°58'19" WEST, 35.36 FEET; THENCE NORTH 89°58'20" WEST, 15.00 FEET; THENCE SOUTH 45°01'43" WEST ALONG A RADIAL LINE, 2.47 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 8.50 FEET; THENCE NORTHWESTERLY 6.68 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00"; THENCE NORTH 89°58'17" WEST, 51.00 FEET; THENCE NORTH 44°58'17" WEST, 14.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 534.00 FEET, A BEARING LINE TO SAID BEGINNING BEARS SOUTH 13°00'48" EAST; THENCE NORTHWESTERLY 43.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°37'38" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 466.00 FEET, A BEARING LINE TO SAID BEGINNING BEARS NORTH 17°38'26" EAST; THENCE NORTHWESTERLY 48.00 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF

05°54'08"; THENCE NORTH 00°01'43" EAST, 10.21 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN PLAT KNOWN AS MONACO NO. 2, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS, AT PAGE 49, SAME BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 476.00 FEET, A BEARING TO SAID BEGINNING BEARS NORTH 11°29'20" EAST; THENCE ALONG SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES: (1.) SOUTHEASTERLY 51.11 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°09'06" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 524.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 17°38'26" WEST; (2.) SOUTHEASTERLY 161.63 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°36'46"; (3.) SOUTH 89°58'20" EAST TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 26.50 FEET; (4.) SOUTHEASTERLY 41.63 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'03"; (5.) SOUTH 89°58'17" EAST, 5.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE; THENCE SOUTH 00°01'43" WEST DEPARTING SAID SOUTHERLY LINE AND ALONG SAID EAST RIGHT-OF-WAY LINE, 396.42 FEET TO THE POINT OF BEGINNING.

NOTE: THIS LAND DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

BASIS OF BEARINGS

NORTH 88°37'32" WEST, BEING THE BEARING OF THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, AS SHOWN ON THAT CERTAIN MAP ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, IN FILE 87 OF SURVEYS, AT PAGE 91.

END OF DESCRIPTION.

00000

MONACO

COMMON INTEREST COMMUNITY

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 9,
TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA

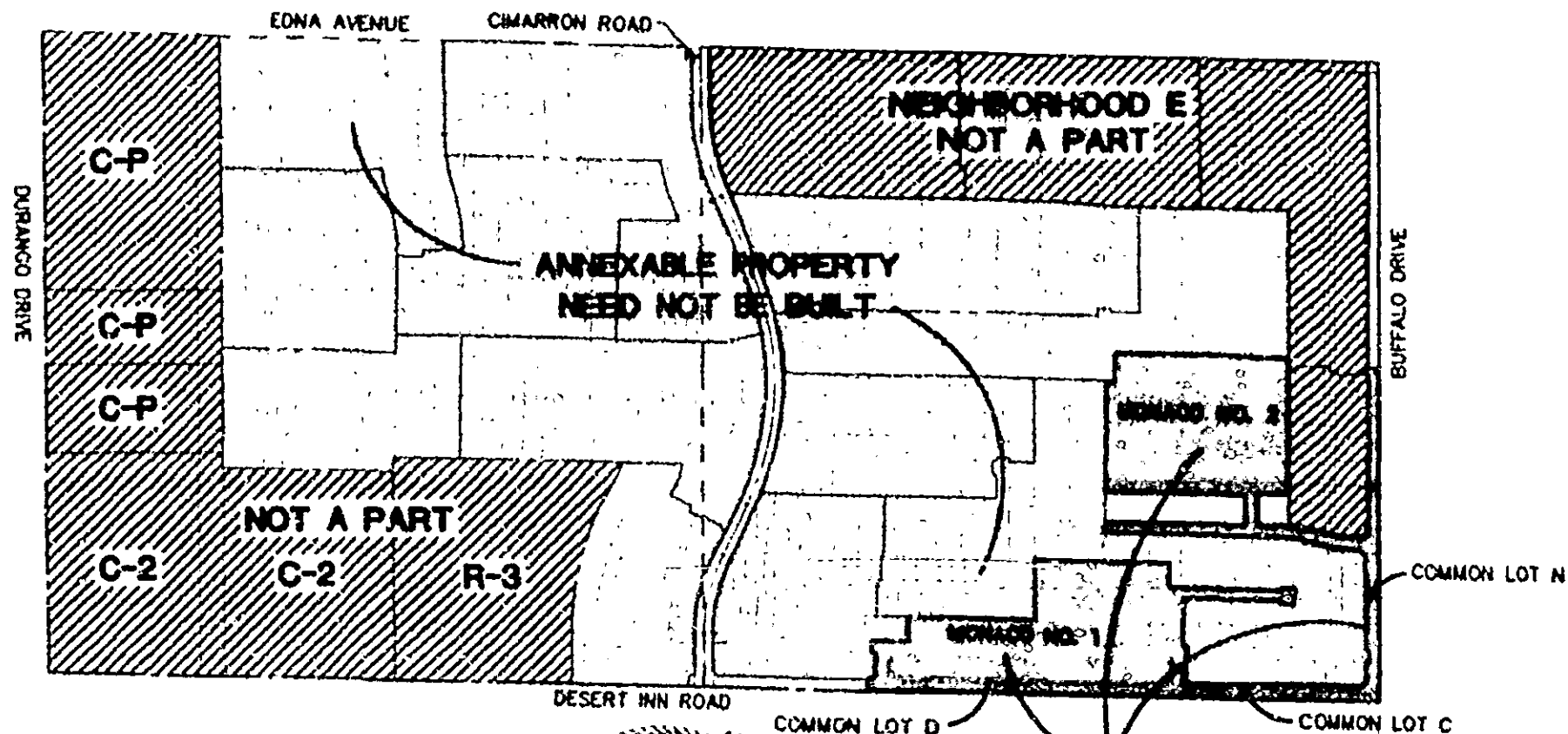
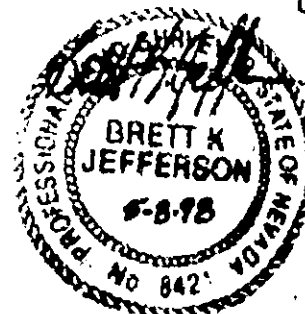


EXHIBIT "A-1"



PAGE 5 OF 5

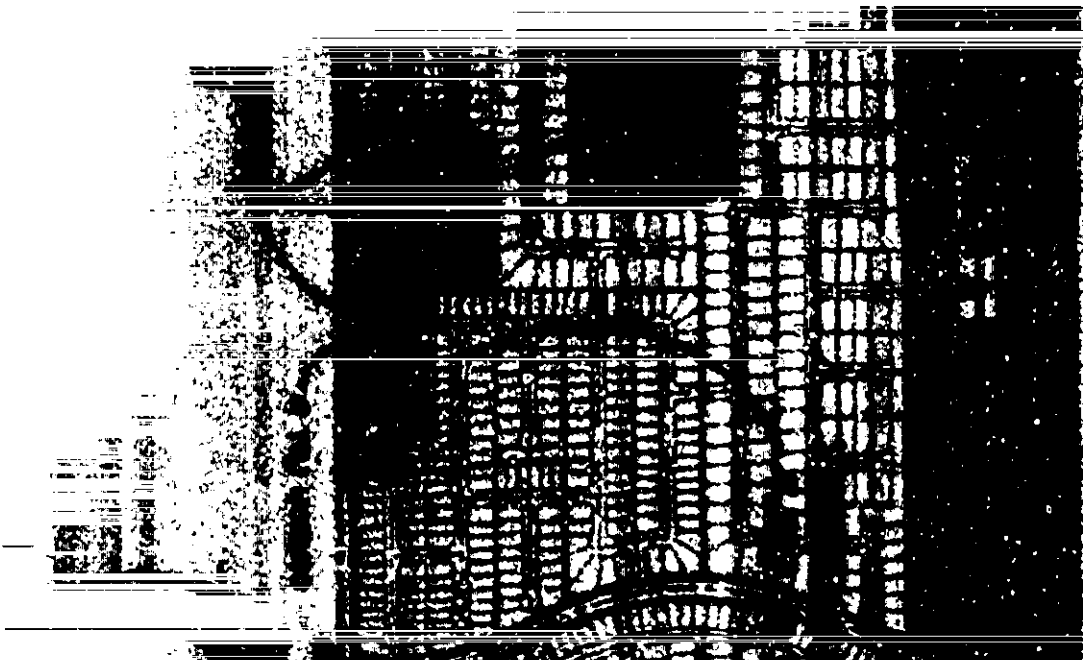
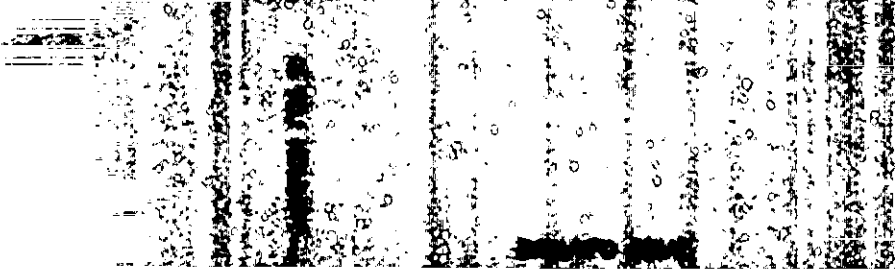


INITIAL PROPERTY
EXHIBIT TO ACCOMPANY
LAND DESCRIPTION

PENTACORE

CIVIL ENGINEERING • LAND SURVEYING • PLANNING
CONSTRUCTION MANAGEMENT • ADA CONSULTING
8763 WEST CHARLSTON BOULEVARD
LAS VEGAS, NEVADA 89102 (702)258-0115

T.B.D. APRIL 28, 1998
2:100.0/11800/LJH/MT/PTAL2/LNG



980921.021102

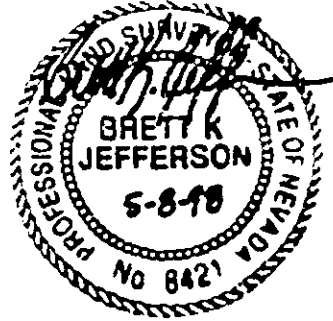
EXHIBIT "B"
[Description of Initial Association Property]

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LEWIS HOMES OF NEVADA
09-21-98 16:03 CDO 54
BOOK: 980921 INST. 02422
FEE: 60.00 RPTT: .00



PENTACORE

Civil Engineering
 Land Surveying
 Global Positioning
 Land Planning - GIS
 Construction
 Administration
 ADA Consulting
 Landscape
 Architecture
 Measurement
 Technology
 Water Ventures
 International



0030.1800
 FILE: COMMON.DOC
 APRIL 16, 1998
 BY: P.D.
 CKD: MJJ
 PAGE 1 OF 5

EXPLANATION

THIS LAND DESCRIPTION DESCRIBES A PARCEL OF LAND GENERALLY LOCATED NORTH OF DESERT INN ROAD AND WEST OF BUFFALO DRIVE FOR RESTRICTION CLARIFICATION PURPOSES.

LAND DESCRIPTION

COMMON LOT "D"

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING COMMON LOT "D" AS SHOWN ON THAT CERTAIN PLAT KNOWN AS "MONACO NO. 1" ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 AT PAGE 50, AS SHOWN ON THE EXHIBIT TO ACCOMPANY LAND DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER WITH:

COMMON LOT "C"

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9, MARKED BY A BRASS CAP IN WELL MONUMENT, STAMPED "PLS 7004", SAME BEING THE CENTERLINE INTERSECTION OF BUFFALO DRIVE (90 FEET WIDE) AND DESERT INN ROAD (95 FEET WIDE); THENCE NORTH 88°37'20" WEST ALONG THE SOUTH LINE OF SAID SECTION 9, COINCIDENT WITH THE CENTERLINE OF SAID DESERT INN ROAD, 103.26 FEET; THENCE NORTH 02°22'22" EAST DEPARTING SAID SOUTH LINE AND SAID CENTERLINE, 49.52 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID DESERT INN ROAD AS DEDICATED PER BOOK 980311, INSTRUMENT 00924, SAME BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES: (1.) NORTH 87°37'38" WEST, 200.83 FEET; (2.) NORTH 88°37'20" WEST, 70.00 FEET; (3.) SOUTH 89°44'41" WEST, 280.73 FEET; (4.) NORTH 88°37'20" WEST, 74.26 FEET TO THE EASTERLY LINE OF THAT CERTAIN PLAT KNOWN AS MONACO NO. 1, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS, AT PAGE 50; THENCE DEPARTING SAID NORTH RIGHT-OF-WAY LINE AND ALONG SAID EASTERLY LINE, THE FOLLOWING FOUR (4) COURSES: (1.) NORTH 01°22'40" EAST ALONG A RADIAL LINE, 4.99 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 26.50 FEET; (3.)

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 Tel. 702.258.0115 • Fax 258.8528

NORTHWESTERLY 41.00 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°39'03"; (3.) NORTH 00°01'43" EAST, 67.25 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 16.50 FEET; (4.) NORTHEASTERLY 19.24 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 66°48'01"; THENCE SOUTH 00°01'43" WEST DEPARTING SAID EASTERLY LINE, 78.54 FEET; THENCE SOUTH 44°17'49" EAST, 28.62 FEET; THENCE SOUTH 88°37'20" EAST, 55.24 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 1124.00 FEET; THENCE EASTERLY 32.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°38'18"; THENCE NORTH 89°44'22" EAST, 251.07 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 876.00 FEET; THENCE EASTERLY 25.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°38'12"; THENCE SOUTH 88°37'26" EAST, 70.00 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 876.00 FEET; THENCE EASTERLY 15.21 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°59'42"; THENCE SOUTH 87°37'44" EAST, 214.03 FEET; THENCE NORTH 46°10'30" EAST, 27.71 FEET; THENCE NORTH 00°01'43" EAST, 86.91 FEET; THENCE SOUTH 88°37'20" EAST, 10.00 FEET; THENCE SOUTH 89°58'17" EAST, 5.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE AS DEDICATED PER BOOK 980311, INSTRUMENT 00924; THENCE SOUTH 00°01'43" WEST ALONG SAID EAST RIGHT-OF-WAY LINE, 66.06 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 54.00 FEET; THENCE SOUTHWESTERLY 87.03 FEET DEPARTING SAID EAST RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92°20'39" TO THE POINT OF BEGINNING AS SHOWN ON THE EXHIBIT TO ACCOMPANY LAND DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF;

TOGETHER WITH:

COMMON LOT "N"

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9, MARKED BY A BRASS CAP IN WELL MONUMENT, STAMPED "PLS 7004", SAME BEING THE CENTERLINE INTERSECTION OF BUFFALO DRIVE (90 FEET WIDE) AND DESERT INN ROAD (95 FEET WIDE); THENCE NORTH 00°01'43" EAST ALONG THE EAST LINE OF SAID SECTION 9, COINCIDENT WITH THE CENTERLINE OF SAID BUFFALO DRIVE, 210.90 FEET; THENCE NORTH 87°37'41" WEST DEPARTING SAID EAST LINE AND SAID CENTERLINE, 45.04 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE AS DEDICATED PER BOOK 980311, INSTRUMENT 00924, SAME BEING THE POINT OF BEGINNING;

THENCE NORTH 87°37'44" WEST DEPARTING SAID EAST RIGHT-OF-WAY LINE, 15.01 FEET; THENCE NORTH 00°01'43" EAST, 387.31 FEET; THENCE NORTH 44°58'19" WEST, 35.36 FEET; THENCE NORTH 89°58'20" WEST, 15.00 FEET; THENCE SOUTH 45°01'43" WEST ALONG A RADIAL LINE, 2.47 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 8.50 FEET; THENCE NORTHWESTERLY 6.68 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00"; THENCE NORTH 89°58'17" WEST, 51.00 FEET; THENCE NORTH 44°58'17" WEST, 14.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 534.00 FEET, A BEARING LINE TO SAID BEGINNING BEARS SOUTH 13°00'48" EAST; THENCE NORTHWESTERLY 43.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°37'35" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 466.00 FEET, A BEARING LINE TO SAID BEGINNING BEARS NORTH 17°38'26" EAST; THENCE NORTHWESTERLY 48.00 FEET

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $05^{\circ}54'08''$; THENCE NORTH $00^{\circ}01'43''$ EAST, 10.21 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN PLAT KNOWN AS MONACO NO. 2, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE IN BOOK 83 OF PLATS, AT PAGE 49, SAME BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 476.00 FEET, A BEARING TO SAID BEGINNING BEARS NORTH $11^{\circ}29'20''$ EAST; THENCE ALONG SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES: (1.) SOUTHEASTERLY 51.11 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $06^{\circ}09'06''$ TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 524.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH $17^{\circ}38'26''$ WEST; (2.) SOUTHEASTERLY 161.08 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $17^{\circ}36'46''$; (3.) SOUTH $89^{\circ}58'20''$ EAST TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 26.50 FEET; (4.) SOUTHEASTERLY 41.63 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $90^{\circ}00'03''$; (5.) SOUTH $89^{\circ}58'17''$ EAST, 5.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID BUFFALO DRIVE; THENCE SOUTH $00^{\circ}01'43''$ WEST DEPARTING SAID SOUTHERLY LINE AND ALONG SAID EAST RIGHT-OF-WAY LINE, 396.42 FEET TO THE POINT OF BEGINNING AS SHOWN ON THE EXHIBIT TO ACCOMPANY LAND DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 39,839 SQUARE FEET, AS DETERMINED BY COMPUTER METHODS.

NOTE: THIS LAND DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

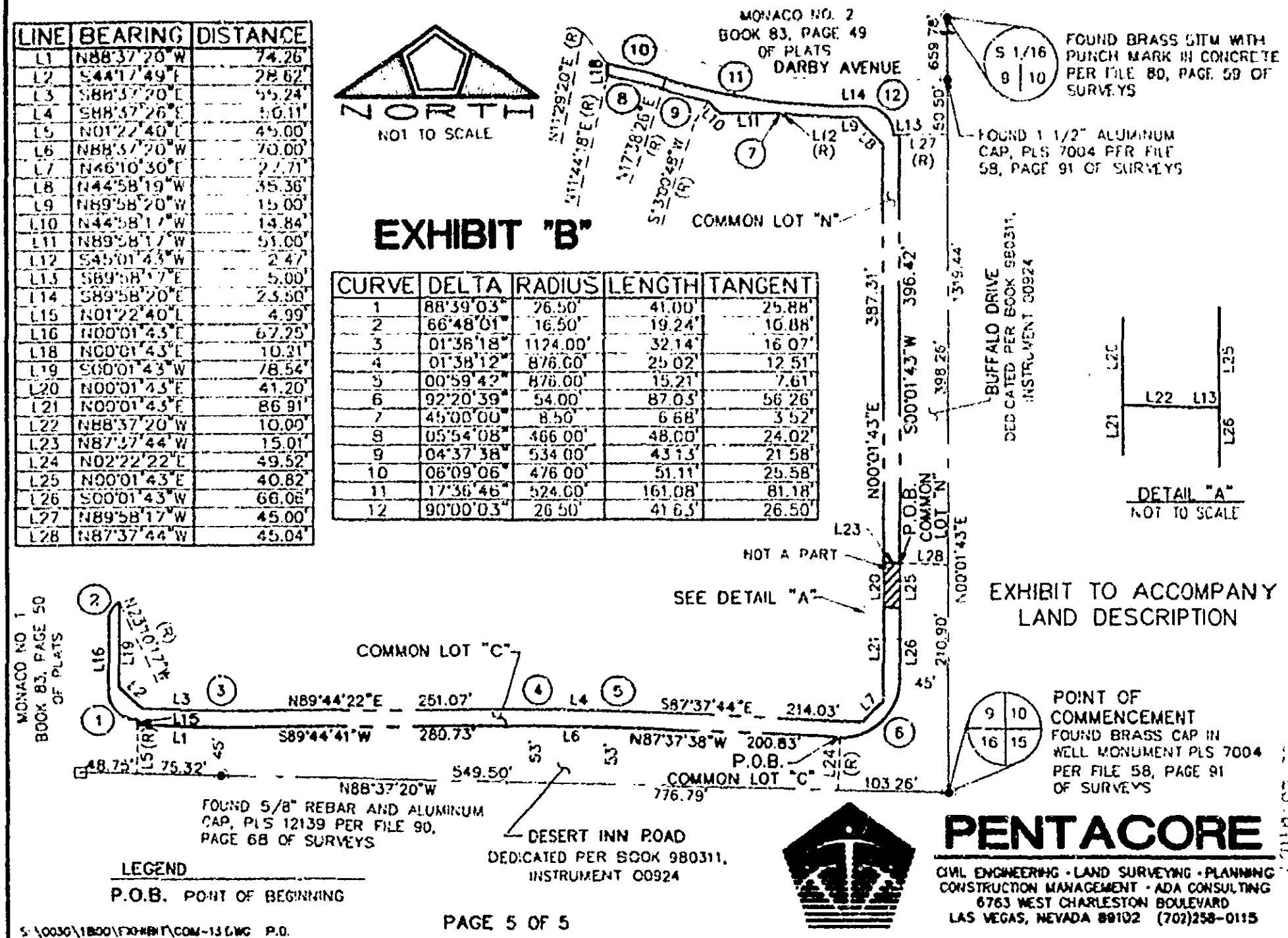
BASIS OF BEARINGS

NORTH $83^{\circ}37'32''$ WEST, BEING THE BEARING OF THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, AS SHOWN ON THAT CERTAIN MAP ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, IN FILE 87 OF SURVEYS, AT PAGE 91.

END OF DESCRIPTION.

LINE	BEARING	DISTANCE
L1	N88°37'20"W	74.26
L2	S44°17'49"E	28.62
L3	S88°37'20"E	55.24
L4	S88°37'26"E	10.11
L5	N01°22'40"E	45.00
L6	N88°37'20"W	70.00
L7	N46°10'30"E	27.71
L8	N44°58'19"W	35.36
L9	N89°58'20"W	15.00
L10	N44°58'17"W	13.84
L11	N89°58'17"W	51.00
L12	S45°01'43"W	2.47
L13	S89°58'17"E	5.00
L14	S89°58'20"E	23.50
L15	N01°22'40"E	4.99
L16	N00°01'43"E	67.25
L18	N00°01'43"E	10.21
L19	S00°01'43"W	78.54
L20	N00°01'43"E	41.20
L21	N00°01'43"E	86.91
L22	N88°37'20"W	10.00
L23	N87°37'44"W	15.01
L24	N02°22'22"E	49.52
L25	N00°01'43"E	40.82
L26	S00°01'43"W	66.06
L27	N89°58'17"W	45.00
L28	N87°37'44"W	45.04

CURVE	DELTA	RADIUS	LENGTH	TANGENT
1	88°39'03"	76.50'	41.00'	25.88'
2	66°48'01"	16.50'	19.24'	16.88'
3	01°38'18"	1124.00'	32.14'	16.07'
4	01°38'12"	876.00'	25.02'	12.51'
5	00°59'42"	876.00'	15.21'	7.61'
6	92°20'39"	54.00'	87.03'	56.28'
7	45°00'00"	8.50'	6.68'	3.52'
8	05°54'08"	466.00'	48.00'	24.02'
9	04°37'38"	534.00'	43.13'	21.58'
10	06°09'06"	476.00'	51.11'	25.58'
11	17°36'46"	524.00'	161.08'	81.18'
12	90°00'03"	26.50'	41.65'	26.50'



1. IN ORDER TO
 2. BE ABLE TO
 3. IDENTIFY THE
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 6. WHICH ARE
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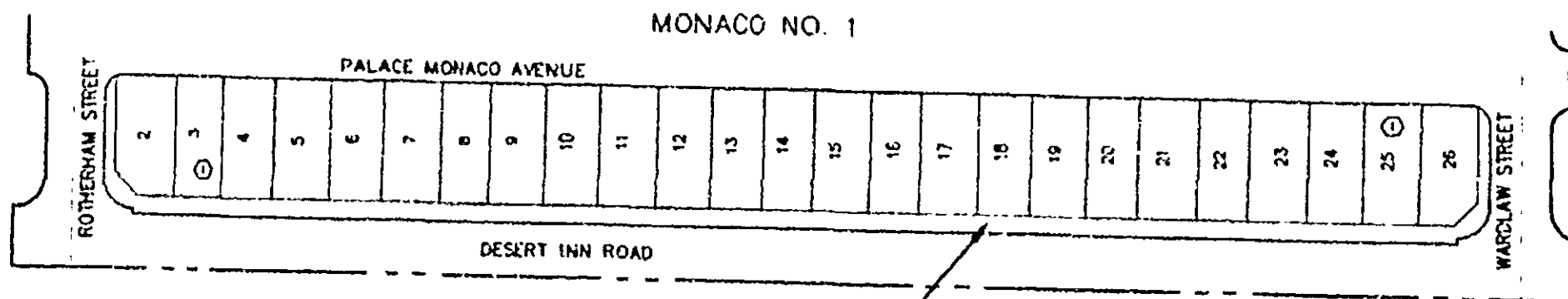


MONACO NO. 1

COMMON INTEREST COMMUNITY

A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9,
TOWNSHIP 21 SOUTH, RANGE 60 EAST, MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA

EXHIBIT "B"



COMMON LOT "D"
18,169. SF.

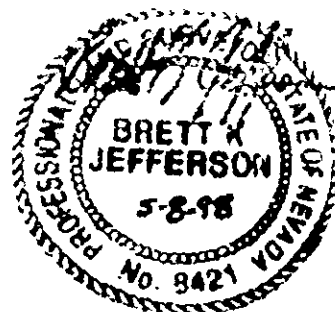


EXHIBIT TO ACCOMPANY
LAND DESCRIPTION

PENTACORE

CIVIL ENGINEERING • LAND SURVEYING • PLANNING
CONSTRUCTION MANAGEMENT • ADA CONSULTING
8783 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89102 (702)258-0115



C.L.M. MAY 8, 1998
S:\0030\1800\COMMIT\COM\LOT.DWG

PAGE 4 OF 5

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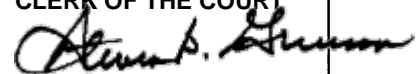
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RE-RECORDED

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

LEWIS HOMES OF NEVADA

09-23-98 14:41 NEL 70
OFFICIAL RECORDS
BOOK: 980923 INST: 01097
FEE: 76.00 APTT: .00



1 **SAO**
2 **WRIGHT, FINLAY & ZAK, LLP**
3 **Natalie C. Lehman, Esq.**
4 **Nevada Bar No. 12995**
5 **7785 W. Sahara Ave., Suite 200**
6 **Las Vegas, NV 89117**
7 **(702) 475-7964; Fax: (702) 946-1345**
8 **nlehman@wrightlegal.net**

9 *Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured*
10 *Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **SATICOY BAY LLC SERIES 8149 PALACE**
14 **MONACO,**

15 **Plaintiff,**

16 **vs.**

17 **ROBERT NARDIZZI a/k/a ROBERT A.**
18 **NARDIZZI, an individual; MONACO**
19 **LANDSCAPE MAINTENANCE**
20 **ASSOCIATION, a Nevada domestic non-profit**
21 **corporation; WELLS FARGO BANK,**
22 **NATIONAL ASSOCIATION, AS TRUSTEE**
23 **FOR THE STRUCTURED ADJUSTABLE**
24 **RATE MORTGAGE LOAN TRUST, PASS-**
25 **THROUGH CERTIFICATES SERIES 2005-**
26 **11, a business entity location unknown; DOE**
27 **individuals 1 through 10; and ROE business**
entities 11 through 30,

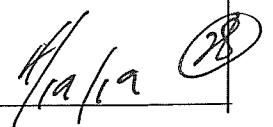
Defendants.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Counterclaimant,

Case No.: A-18-770245-C
Dept. No.: XXVIII

**STIPULATION AND ORDER TO
DISMISS CLAIMS BETWEEN RED
ROCK FINANCIAL SERVICES, LLC
AND WELLS FARGO WITH
PREJUDICE**



1 vs.

2 SATICOY BAY LLC SERIES 8149 PALACE
3 MONACO; MONACO LANDSCAPE
4 MAINTENANCE ASSOCIATION; and RED
5 ROCK FINANCIAL SERVICES, LLC,

6 Counterdefendants.

7 **STIPULATION AND ORDER TO DISMISS CLAIMS BETWEEN RED ROCK**
8 **FINANCIAL SERVICES, LLC AND WELLS FARGO WITH PREJUDICE**

9 IT IS HEREBY STIPULATED AND AGREED, by and between
10 Defendant/Counterclaimant, Wells Fargo Bank, National Association, as Trustee for the
11 Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates Series
12 2005-11 (hereinafter "Wells Fargo"), by and through its attorneys of record, Natalie C. Lehman,
13 Esq. of the law firm of Wright, Finlay & Zak, LLP, and Counterclaimant, Red Rock Financial
14 Services, LLC (hereinafter "RRFS"), by and through its counsel of record, Steven B. Scow, Esq.
15 of Koch & Scow, LLC and hereby stipulate and agree as follows:

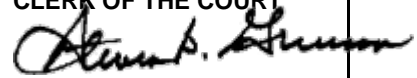
16 **IT IS STIPULATED AND AGREED** that the above-referenced matter, including all
17 claims by Wells Fargo against RRFS shall be dismissed with prejudice with respect to the
18 Property at 8149 Palace Monaco Ave., Las Vegas, NV 89117 ("Property"), as contained in Wells
19 Fargo's Answer to Plaintiff's Complaint, Counter-claims, Cross-claims and Third Party
20 Complaint, filed on October 15, 2018.

21 **IT IS FURTHER STIPULATED AND AGREED** that RRFS will cooperate with a
22 subpoena for production of documents and will make a witness available for deposition and trial.

23 **IT IS FURTHER STIPULATED AND AGREED** that nothing in this Stipulation and
24 Order is intended to be, or will be, construed as an admission of the claims or defenses of the
25 parties.

26 ///

27 ///



1 **NTSO**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Natalie C. Lehman, Esq.

4 Nevada Bar No. 12995

5 7785 W. Sahara Ave., Suite 200

6 Las Vegas, NV 89117

(702) 475-7964; Fax: (702) 946-1345

7 nlehman@wrightlegal.net

8 *Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured*
9 *Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 SATICOY BAY LLC SERIES 8149 PALACE
13 MONACO,

14 Plaintiff,

15 vs.

16 ROBERT NARDIZZI a/k/a ROBERT A.
17 NARDIZZI, an individual; MONACO
18 LANDSCAPE MAINTENANCE
19 ASSOCIATION, a Nevada domestic non-profit
20 corporation; WELLS FARGO BANK,
21 NATIONAL ASSOCIATION, AS TRUSTEE
22 FOR THE STRUCTURED ADJUSTABLE
23 RATE MORTGAGE LOAN TRUST, PASS-
24 THROUGH CERTIFICATES SERIES 2005-
25 11, a business entity location unknown; DOE
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WELLS FARGO BANK, NATIONAL
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STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Counterclaimant,

vs.

Case No.: A-18-770245-C

Dept. No.: XXVIII

**NOTICE OF ENTRY OF STIPULATION
AND ORDER**

1 SATICOY BAY LLC SERIES 8149 PALACE
2 MONACO; MONACO LANDSCAPE
3 MAINTENANCE ASSOCIATION; and RED
4 ROCK FINANCIAL SERVICES, LLC,

Counterdefendants.

6 **NOTICE OF ENTRY OF STIPULATION AND ORDER**

7 PLEASE TAKE NOTICE that a STIPULATION AND ORDER TO DISMISS CLAIMS
8 BETWEEN RED ROCK FINANCIAL SERVICES, LLC AND WELLS FARGO WITH
9 PREJUDICE was entered in the above-entitled Court on the 24th day of April, 2019. A copy of
10 which is attached hereto.

11 DATED this 25th day of April, 2019.

13 WRIGHT, FINLAY & ZAK, LLP

14 /s/ Natalie C. Lehman, Esq.

15 Natalie C. Lehman, Esq.

16 Nevada Bar No. 12995

17 7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

18 *Attorneys for Defendant Wells Fargo Bank,*

National Association, as Trustee for the Structured

19 *Adjustable Rate Mortgage Loan Trust, Pass-*

Through Certificates Series 2005-11

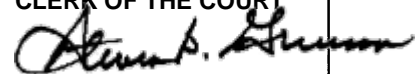
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 25th day of April, 2019, I did cause a true copy of **NOTICE OF ENTRY**
4 **OF STIPULATION AND ORDER** to be e-filed and e-served through the Eighth Judicial
5 District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United
6 States Mail, at Las Vegas, Nevada, addressed as follows:

7 Michael F. Bohn	mbohn@bohnlawfirm.com
8 E-Service Bohnlawfirm	office@bohnlawfirm.com
Douglas Cohen	dcohen@wrslawyers.com
9 Gregory Kerr	gkerr@wrslawyers.com
Teresa McCracken	tmccracken@wrslawyers.com
10 Nina Miller	nmiller@wrslawyers.com
11 Christie Rehfeld	crehfeld@wrslawyers.com
J. William Egert	bebert@ipsonneilson.com
12 Julie Funai	jfunai@lipsonneilson.com
13 Debra Marquez	dmarquez@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com

14
15
16 /s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP
17
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28



1 **SAO**
2 **WRIGHT, FINLAY & ZAK, LLP**
3 **Natalie C. Lehman, Esq.**
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8 **nlehman@wrightlegal.net**

9 *Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured*
10 *Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **SATICOY BAY LLC SERIES 8149 PALACE**
14 **MONACO,**

15 **Plaintiff,**

16 **vs.**

17 **ROBERT NARDIZZI a/k/a ROBERT A.**
18 **NARDIZZI, an individual; MONACO**
19 **LANDSCAPE MAINTENANCE**
20 **ASSOCIATION, a Nevada domestic non-profit**
21 **corporation; WELLS FARGO BANK,**
22 **NATIONAL ASSOCIATION, AS TRUSTEE**
23 **FOR THE STRUCTURED ADJUSTABLE**
24 **RATE MORTGAGE LOAN TRUST, PASS-**
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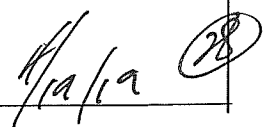
Defendants.

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THROUGH CERTIFICATES SERIES 2005-
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Counterclaimant,

Case No.: A-18-770245-C
Dept. No.: XXVIII

**STIPULATION AND ORDER TO
DISMISS CLAIMS BETWEEN RED
ROCK FINANCIAL SERVICES, LLC
AND WELLS FARGO WITH
PREJUDICE**



1 vs.

2 SATICOY BAY LLC SERIES 8149 PALACE
3 MONACO; MONACO LANDSCAPE
4 MAINTENANCE ASSOCIATION; and RED
5 ROCK FINANCIAL SERVICES, LLC,

6 Counterdefendants.

7 **STIPULATION AND ORDER TO DISMISS CLAIMS BETWEEN RED ROCK**
8 **FINANCIAL SERVICES, LLC AND WELLS FARGO WITH PREJUDICE**

9 IT IS HEREBY STIPULATED AND AGREED, by and between
10 Defendant/Counterclaimant, Wells Fargo Bank, National Association, as Trustee for the
11 Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates Series
12 2005-11 (hereinafter "Wells Fargo"), by and through its attorneys of record, Natalie C. Lehman,
13 Esq. of the law firm of Wright, Finlay & Zak, LLP, and Counterclaimant, Red Rock Financial
14 Services, LLC (hereinafter "RRFS"), by and through its counsel of record, Steven B. Scow, Esq.
15 of Koch & Scow, LLC and hereby stipulate and agree as follows:

16 **IT IS STIPULATED AND AGREED** that the above-referenced matter, including all
17 claims by Wells Fargo against RRFS shall be dismissed with prejudice with respect to the
18 Property at 8149 Palace Monaco Ave., Las Vegas, NV 89117 ("Property"), as contained in Wells
19 Fargo's Answer to Plaintiff's Complaint, Counter-claims, Cross-claims and Third Party
20 Complaint, filed on October 15, 2018.

21 **IT IS FURTHER STIPULATED AND AGREED** that RRFS will cooperate with a
22 subpoena for production of documents and will make a witness available for deposition and trial.

23 **IT IS FURTHER STIPULATED AND AGREED** that nothing in this Stipulation and
24 Order is intended to be, or will be, construed as an admission of the claims or defenses of the
25 parties.

26 ///

27 ///

IT IS FURTHER STIPULATED AND AGREED that this Stipulation and Order will not affect the claims or causes of action that either RRFS or Wells Fargo currently have with any other party to this case; and

IT IS FURTHER STIPULATED AND AGREED that each party shall bear its own attorney's fees and costs;

IT IS SO STIPULATED.

DATED this 19th day of April, 2019.

DATED this 16 day of April, 2019.

WRIGHT, FINLAY & ZAK, LLP

KOCH & SCOW, LLC

Natalie C. Lehman, Esq.
Nevada Bar No.: 12995
7785 W. Sahara Ave., Ste. 200
Las Vegas, Nevada 89117
*Attorneys for Defendant, Wells Fargo Bank,
National Association, as Trustee for the
Structured Adjustable Rate Mortgage Loan
Trust, Pass-Through Certificates Series
2005-11*

Steven B. Scow, Esq.
Nevada Bar No.: 9906
Brody B. Wright, Esq.
Nevada Bar No.: 13615
11500 S. Eastern Ave., Ste. 210
Henderson, Nevada 89052
*Attorneys for Third Party Defendant, Red
Rock Financial Services, LLC*

ORDER

IT IS SO ORDERED.

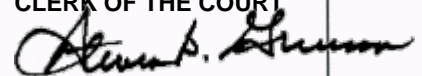
Dated this 27 day of April, 2019.

DISTRICT COURT JUDGE

RONALD J. ISRAEL

Respectfully Submitted by:
WRIGHT, FINLAY & ZAK, LLP

Natalie C. Lehman, Esq. (NV Bar 12995)
Attorneys for Defendant, Wells Fargo Bank,
National Association, as Trustee for the Structured
Adjustable Rate Mortgage Loan Trust, Pass-Through
Certificates Series 2005-11



FFCO

1 WRIGHT, FINLAY & ZAK, LLP
2 Aaron D. Lancaster, Esq.
3 Nevada Bar No. 10115
4 7785 W. Sahara Ave., Suite 200
5 Las Vegas, NV 89117
6 (702) 475-7964 - Fax (702) 946-1345
7 alancaster@wrightlegal.net

Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

**DISTRICT COURT
CLARK COUNTY, NEVADA**

9 SATICOY BAY LLC SERIES 8149 PALACE
10 MONACO,

Plaintiff,

11 vs.

12 ROBERT NARDIZZI a/k/a ROBERT A.
13 NARDIZZI, an individual; MONACO
14 LANDSCAPE MAINTENANCE
15 ASSOCIATION, a Nevada domestic non-profit
16 corporation; WELLS FARGO BANK,
17 NATIONAL ASSOCIATION, AS TRUSTEE
18 FOR THE STRUCTURED ADJUSTABLE
19 RATE MORTGAGE LOAN TRUST,
20 PASSTHROUGH CERTIFICATES SERIES
21 2005-11, a business entity location unknown;
22 DOE individuals 1 through 10; and ROE
23 business entities 11 through 30,

Defendants.

22 WELLS FARGO BANK, NATIONAL
23 ASSOCIATION, AS TRUSTEE FOR THE
24 STRUCTURED ADJUSTABLE RATE
25 MORTGAGE LOAN TRUST,
26 PASSTHROUGH CERTIFICATES SERIES
27 2005-11,

Counterclaimant,

26 vs.

27 SATICOY BAY LLC SERIES 8149 PALACE
28 MONACO; MONACO LANDSCAPE
MAINTENANCE ASSOCIATION; and RED

Case No.: A-18-770245-C
Dept. No.: XXVIII

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

1 ROCK FINANCIAL SERVICES, LLC,
2 Counter-defendant.

3 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

4 On October 28, 2019, Plaintiff/Counter-Defendant, Saticoy Bay LLC Series 8149 Palace
5 Monaco ("Saticoy Bay") filed its Motion for Summary Judgment ("Saticoy MSJ");
6 Defendant/Counter-Claimant, Wells Fargo Bank, National Association, as Trustee for the
7 Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11
8 ("Wells Fargo") filed its Motion for Summary Judgment ("Wells Fargo MSJ"); and Defendant,
9 Monaco Landscape Maintenance Association ("HOA") filed its Motion for Partial Summary
10 Judgment ("HOA MSJ"). On November 18, 2019, Saticoy Bay filed its Counter-Motion for
11 Leave to Amend Complaint ("Motion to Amend Complaint"). The matter being fully briefed,
12 oral argument having been held on December 17, 2019 and the Court, having considered the
13 competing motions and all briefs and supplements in support and opposition to the motions and
14 being fully advised in the premises, finds as follows:

15 **FINDINGS OF FACT**

16 1. This action involves real property located at 8149 Palace Monaco Avenue, Las
17 Vegas, NV, 89117, APN 163-09-817-050 (the "Property") in the Monaco homeowners
18 association and governed by the Declaration of Covenants, Conditions, Restrictions and
19 Easements for Monaco ("CC&Rs").

20 2. On or about February 3, 2003, Robert Nardizzi ("Nardizzi", "Borrower" or
21 "Homeowner") purchased the Property.

22 3. On March 7, 2005, a Deed of Trust was executed by Nardizzi that identified
23 IndyMac Bank, F.S. B., as the Lender, and Mortgage Electronic Registration Systems, Inc.
24 ("MERS"), as the beneficiary, and secured a loan in the amount of \$185,700.00 ("Deed of
25 Trust").

26 4. On April 3, 2006, a second Deed of Trust was executed by Nardizzi that identified
27 Wells Fargo Bank, N.A., as the beneficiary, and secured a loan in the amount of \$100,000.00
28 ("Second Deed of Trust").

1 5. On May 20, 2009, a Lien for Delinquent Assessment ("Notice of Lien") was
2 recorded against the Property on behalf of Monaco Landscape Maintenance Association, Inc.
3 ("HOA") by Red Rock Financial Services ("HOA Trustee" or "Red Rock").

4 6. The delinquent assessments as of the execution of the Notice of Lien totaled
5 \$114.00.

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9 initial Notice of Lien to re-establish a new superpriority lien.

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12 10. Neither the HOA nor HOA Trustee mailed a copy of the Notice of Default to
13 MERS, despite MERS being identified as the beneficiary of the Deed of Trust.

14 11. The HOA Trustee was provided with a trustee sale guarantee that identified
15 MERS as the beneficiary and IndyMac Bank F.S. B. as the lender of the Deed of Trust. The
16 trustee sale guarantee also identifies Wells Fargo Bank as the beneficiary of the second position
17 deed of trust.

18 12. On September 17, 2009, HOA Trustee provided letters to Indymac Bank, F.S.B.,
19 ("Lender") and Wells Fargo Bank, N.A., that stated, "[t]he Association's Lien for Delinquent
20 Assessments is Junior only to the Senior Lender/Mortgage Holder." ("HOA Trustee Letters".)

21 13. On October 22, 2010, the HOA Trustee advised the HOA that "[i]f the HOA
22 chooses to move forward with the foreclosure and the property reverts back to the Association,
23 the Association is still subject to the 1st mortgage (the HOA's lien wipes the 2nd mortgage and
24 any junior liens except the 1st mortgage"

25 14. On April 8, 2013, a Notice of Sale was recorded against the Property ("Notice of
26 Sale").

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28 MERS, despite MERS being identified as the beneficiary in the Deed of Trust.

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2 agreed to pay cert amounts owed, and which contained the following clause:

3 The Association has agreed to establish a 24 month Payment Agreement ONLY
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Foreclosure Sale has been postponed until December 3, 2013. Failure to remit
payments on time may result in the FULL balance being due and payable.

7 17. Nardizzi tendered the following payments to the HOA Trustee:

- 8 a. May 30, 2013, in the amount of \$404.00, which the HOA Trustee allocated
9 \$114.00 to the January 1, 2009 semi-annual assessment and \$15.00 to the July 1,
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11 b. June 21, 2013, in the amount of \$169.00, which the HOA Trustee allocated
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16 d. August 23, 2013, in the amount of \$168.00, which the HOA Trustee allocated
17 \$60.00 to the July 1, 2010 semi-annual assessment and \$108.00 to the January 1,
18 2011 semi-annual assessment.

19 18. Nardizzi's payments totaled \$909.00, \$559 of which was remitted to the HOA and
20 credited toward unpaid assessments, and the remaining \$350 was allocated by the HOA Trustee
21 to collection costs.

22 19. The HOA Trustee allocated Nardizzi's payments to the oldest outstanding
23 assessments of the HOA.

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25 HOA's lien prior to the HOA Sale date of December 3, 2013. Nardizzi only made a portion of
26 his payments under the Payment Agreement through August 23, 2013 and failed to make the
27 remaining payments resulting in the foreclosure sale going forward.
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21. On December 27, 2013, a Foreclosure Deed Upon Sale was recorded ("Foreclosure Deed"). That document provides that a non-judicial foreclosure sale occurred on December 3, 2013 (hereinafter the "HOA Sale"), whereby HOA conveyed its interest in the Property, if any, to Saticoy Bay for the sum of \$17,400.

22. On January 26, 2017, a Corporate Assignment of Deed of Trust was recorded evidencing the assignment of the beneficial interest of the Deed of Trust to Plaintiff (“Assignment”).

CONCLUSIONS OF LAW

1. The primary purpose of a summary judgment procedure is to secure a “just, speedy, and inexpensive determination of any action.” *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964);¹ accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, summary proceedings promote judicial economy and reduce litigation expenses associated with actions clearly lacking in merit. *Id.* “Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)). The plain language of Rule 56(c) “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986) (adopted by *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)). In such a situation, there can be

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1 “no genuine issue as to any material fact” because a complete failure of proof concerning an
2 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.
3 *Id.*

4 2. The Nevada Supreme Court clarified in *Saticoy Bay LLC Series 2141 Golden Hill*
5 *v. JPMorgan Chase Bank, N.A.* (“*Golden Hill*”) that the superpriority lien was comprised of the
6 assessment for common expenses due as of the filing of the Notice of Lien, up to a maximum of
7 9 months, citing NRS 116.3116(2)(2012) (“describing the superpriority component of an HOA’s
8 lien as ‘the assessments for common expenses . . . which would have become due in the absence
9 of acceleration *during the 9 months immediately preceding institution of an action to enforce the*
10 *lien*’ (emphasis in *Golden Hill*)): *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan*
11 *Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226, 231 (2017) (“recognizing under the pre-
12 2015 version of NRS 116.3116 that serving a notice of delinquent assessments constitutes
13 institution of an action to enforce the lien”); *cf. Property Plus Invs., LLC v. Mortgage Elec.*
14 *Registration Sys., Inc.*, 133 Nev. Adv. Op. 62, 401 P.3d 728, 731-32 (2017) (“observing that an
15 HOA must restart the foreclosure process in order to enforce a second superpriority lien”).

16 3. At the time of the Notice of Lien was recorded, May 20, 2009, the superpriority
17 lien was \$114 for the Property.

18 4. Borrower made partial payments on May 30, 2013 of \$404.00, which the HOA
19 Trustee allocated \$114.00 to the January 1, 2009 semi-annual assessment and \$15.00 to the July
20 1, 2009 semi-annual assessment; June 21, 2013 of \$169.00, which the HOA allocated \$94.00 to
21 the July 1, 2009 semi-annual assessment; July 22, 2013 of \$168.00, which the HOA allocated
22 \$114.00 to the January 1, 2010 semi-annual assessment and \$54.00 to the July 1, 2010 semi-
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24 1, 2010 semi-annual assessment and \$108.00 to the January 1, 2011 semi-annual assessment,
25 totaling \$909, \$559 of which was remitted to the HOA and credited toward unpaid assessments,
26 and the remaining \$350 was allocated by the HOA Trustee to collection costs.

27 5. Borrower’s payments were applied by the HOA Trustee to the oldest outstanding
28 assessments.

1 6. The Nevada Supreme Court in *Golden Hill* held that “[t]he record contains
2 undisputed evidence that the former homeowner made payments sufficient to satisfy the
3 superpriority component of the HOA’s lien and that the HOA applied those payments to the
4 superpriority component of the former homeowner’s outstanding balance.” The Court continued
5 “[t]hus, the district court correctly determined that that at the time of the foreclosure sale, there
6 was no superpriority component of the HOA’s lien that could have extinguished respondent’s
7 deed of trust.” *Id.* Here, the fact pattern mirrors that of *Golden Hill*.

8 7. In *Golden Hill* the court made clear: “[a]lthough appellant correctly points out
9 that there were new unpaid monthly assessments at the time of the sale, these new unpaid
10 monthly assessments could not have comprised a new superpriority lien **absent a new notice of**
11 **delinquent assessments.**” *Id.* at 1-2, citing *Property Plus Invs., LLC*, 401 P.3d at 731-32.
12 (Emphasis Added).

13 8. In this matter, the HOA did not issue a new Notice of Lien after Borrower
14 satisfied the superpriority portion of the assessment lien.

15 9. Borrower made payments after the Notice of Lien that were more than sufficient
16 to cover the superpriority portion of the HOA’s lien, and those payments were applied by the
17 HOA Trustee to the oldest outstanding assessments.

18 10. The superpriority lien is deemed satisfied and extinguished prior to the HOA Sale.
19 As a result, the HOA proceeded to sale on its sub-priority portion of the lien and the Deed of
20 Trust was not extinguished by the HOA Sale.

21 11. The Nevada Supreme Court, when addressing the issue of “bona fide” purchaser,
22 held that “[a]lthough appellant argues it was a bona fide purchaser, appellant has not explained
23 how its putative BFP status could have revived the already-satisfied superpriority component of
24 the HOA’s lien.” *Id.* at fn 1.

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JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED Wells Fargo's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment shall be entered in favor of Wells Fargo and against Saticoy Bay on Wells Fargo's counterclaim for Quiet Title/Declaratory Relief.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's Deed of Trust was not extinguished by the HOA Sale conducted on December 3, 2013, and the interest conveyed to Saticoy Bay is subject to Wells Fargo's Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's Deed of Trust remains an enforceable lien on title to the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo (or any of its authorized agents, investors, affiliates, predecessors, successors, and assigns) has the right to pursue any and all remedies as defined in the Deed of Trust and/or Note, including the right to judicially or non-judicially foreclose or otherwise enforce the Deed of Trust against the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's counterclaims for injunctive relief and unjust enrichment are dismissed as moot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Monaco Landscape Maintenance Association's Motion for Partial Summary Judgment is **DENIED** due to disputed issues of material fact.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo (or any of its authorized agents, investors, affiliates, predecessors, successors, and assigns) may record these Findings and Conclusions.

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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Saticoy Bay's
2 Motion to Amend Complaint is **DENIED**.

3 **IT IS SO ORDERED.**

4 Dated this 3 day of June, 2020.

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7 
DISTRICT COURT JUDGE

8 RONALD J. ISRAEL

9 Reviewed by:

10 Respectfully submitted by:

11 WRIGHT, FINLAY & ZAK, LLP

12 /s/ Aaron D. Lancaster

13 Aaron D. Lancaster, Esq.

14 Nevada Bar No. 10115

15 7785 W. Sahara Ave., Suite 200

16 Las Vegas, Nevada 89117

17 Attorney for Defendant/Counter-Claimant,

18 Wells Fargo Bank, National Association, as

19 Trustee for the Structured Adjustable Rate

20 Mortgage Loan Trust, Pass-Through

21 Certificates Series 2005-11

22 Refused to Sign

23 Michael F Bohn, Esq.

24 Nevada Bar No. 1641

25 Adam R. Trippiedi, Esq.

26 Nevada Bar No. 12294

27 2260 Corporate Circle, Ste. 480

28 Henderson, NV 89074

Attorneys for Saticoy Bay LLC Series 8149

Palace Monaco

Reviewed by:

LIPSON NEILSON P.C.

Refused to Sign

J. William Ebert, Esq.

Nevada Bar No. 2697

Janeen V. Isaacson, Esq.

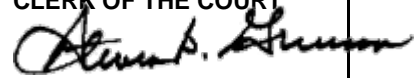
Nevada Bar No. 6429

9900 Covington Cross Drive, Ste. 120

Las Vegas, NV 89144

Attorneys for Monaco Landscape

Maintenance Association



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WRIGHT, FINLAY & ZAK, LLP

Robert A. Reither, Esq.

Nevada Bar No. 12076

Aaron D. Lancaster, Esq.

Nevada Bar No. 10115

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

(702) 475-7964; Fax: (702) 946-1345

alancaster@wrightlegal.net

Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE
MONACO,

Plaintiff,

vs.

ROBERT NARDIZZI a/k/a ROBERT A.
NARDIZZI, an individual; MONACO
LANDSCAPE MAINTENANCE
ASSOCIATION, a Nevada domestic non-profit
corporation; WELLS FARGO BANK,
NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE STRUCTURED ADJUSTABLE
RATE MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11, a business entity location unknown; DOE
individuals 1 through 10; and ROE business
entities 11 through 30,

Defendants.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
STRUCTURED ADJUSTABLE RATE
MORTGAGE LOAN TRUST, PASS-
THROUGH CERTIFICATES SERIES 2005-
11,

Counterclaimant,

Case No.: A-18-770245-C

Dept. No.: XXVIII

NOTICE OF ENTRY OF ORDER

1 vs.

2 SATICOY BAY LLC SERIES 8149 PALACE
3 MONACO; MONACO LANDSCAPE
4 MAINTENANCE ASSOCIATION; and RED
5 ROCK FINANCIAL SERVICES, LLC,

6 Counterdefendants.

7
8 **NOTICE OF ENTRY OF ORDER**

9 PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law and Order was
10 entered in the above-entitled Court on the 4th day of June, 2020. A copy of which is attached
11 hereto.

12 DATED this 4th day of June, 2020.

13 WRIGHT, FINLAY & ZAK, LLP

14 /s/ Aaron D. Lancaster, Esq.

15 Aaron D. Lancaster, Esq.

16 Nevada Bar No. 10115

17 7785 W. Sahara Ave., Suite 200

18 Las Vegas, NV 89117

19 *Attorneys for Defendant Wells Fargo Bank,*

20 *National Association, as Trustee for the Structured*

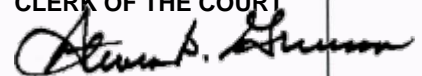
21 *Adjustable Rate Mortgage Loan Trust, Pass-*

22 *Through Certificates Series 2005-11*

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SATICOY BAY LLC SERIES 8149 PALACE
MONACO; MONACO LANDSCAPE
MAINTENANCE ASSOCIATION; and RED

Case No.: A-18-770245-C
Dept. No.: XXVIII

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

1 ROCK FINANCIAL SERVICES, LLC,
2 Counter-defendant.

3 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

4 On October 28, 2019, Plaintiff/Counter-Defendant, Saticoy Bay LLC Series 8149 Palace
5 Monaco ("Saticoy Bay") filed its Motion for Summary Judgment ("Saticoy MSJ");
6 Defendant/Counter-Claimant, Wells Fargo Bank, National Association, as Trustee for the
7 Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11
8 ("Wells Fargo") filed its Motion for Summary Judgment ("Wells Fargo MSJ"); and Defendant,
9 Monaco Landscape Maintenance Association ("HOA") filed its Motion for Partial Summary
10 Judgment ("HOA MSJ"). On November 18, 2019, Saticoy Bay filed its Counter-Motion for
11 Leave to Amend Complaint ("Motion to Amend Complaint"). The matter being fully briefed,
12 oral argument having been held on December 17, 2019 and the Court, having considered the
13 competing motions and all briefs and supplements in support and opposition to the motions and
14 being fully advised in the premises, finds as follows:

15 **FINDINGS OF FACT**

16 1. This action involves real property located at 8149 Palace Monaco Avenue, Las
17 Vegas, NV, 89117, APN 163-09-817-050 (the "Property") in the Monaco homeowners
18 association and governed by the Declaration of Covenants, Conditions, Restrictions and
19 Easements for Monaco ("CC&Rs").

20 2. On or about February 3, 2003, Robert Nardizzi ("Nardizzi", "Borrower" or
21 "Homeowner") purchased the Property.

22 3. On March 7, 2005, a Deed of Trust was executed by Nardizzi that identified
23 IndyMac Bank, F.S. B., as the Lender, and Mortgage Electronic Registration Systems, Inc.
24 ("MERS"), as the beneficiary, and secured a loan in the amount of \$185,700.00 ("Deed of
25 Trust").

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CONCLUSIONS OF LAW

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3 *Id.*

4 2. The Nevada Supreme Court clarified in *Saticoy Bay LLC Series 2141 Golden Hill*
5 *v. JPMorgan Chase Bank, N.A.* (“*Golden Hill*”) that the superpriority lien was comprised of the
6 assessment for common expenses due as of the filing of the Notice of Lien, up to a maximum of
7 9 months, citing NRS 116.3116(2)(2012) (“describing the superpriority component of an HOA’s
8 lien as ‘the assessments for common expenses . . . which would have become due in the absence
9 of acceleration *during the 9 months immediately preceding institution of an action to enforce the*
10 *lien*’ (emphasis in *Golden Hill*)): *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan*
11 *Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226, 231 (2017) (“recognizing under the pre-
12 2015 version of NRS 116.3116 that serving a notice of delinquent assessments constitutes
13 institution of an action to enforce the lien”); *cf. Property Plus Invs., LLC v. Mortgage Elec.*
14 *Registration Sys., Inc.*, 133 Nev. Adv. Op. 62, 401 P.3d 728, 731-32 (2017) (“observing that an
15 HOA must restart the foreclosure process in order to enforce a second superpriority lien”).

16 3. At the time of the Notice of Lien was recorded, May 20, 2009, the superpriority
17 lien was \$114 for the Property.

18 4. Borrower made partial payments on May 30, 2013 of \$404.00, which the HOA
19 Trustee allocated \$114.00 to the January 1, 2009 semi-annual assessment and \$15.00 to the July
20 1, 2009 semi-annual assessment; June 21, 2013 of \$169.00, which the HOA allocated \$94.00 to
21 the July 1, 2009 semi-annual assessment; July 22, 2013 of \$168.00, which the HOA allocated
22 \$114.00 to the January 1, 2010 semi-annual assessment and \$54.00 to the July 1, 2010 semi-
23 annual assessment; and August 23, 2013 of \$168.00, which the HOA allocated \$60.00 to the July
24 1, 2010 semi-annual assessment and \$108.00 to the January 1, 2011 semi-annual assessment,
25 totaling \$909, \$559 of which was remitted to the HOA and credited toward unpaid assessments,
26 and the remaining \$350 was allocated by the HOA Trustee to collection costs.

27 5. Borrower’s payments were applied by the HOA Trustee to the oldest outstanding
28 assessments.

1 6. The Nevada Supreme Court in *Golden Hill* held that “[t]he record contains
2 undisputed evidence that the former homeowner made payments sufficient to satisfy the
3 superpriority component of the HOA’s lien and that the HOA applied those payments to the
4 superpriority component of the former homeowner’s outstanding balance.” The Court continued
5 “[t]hus, the district court correctly determined that that at the time of the foreclosure sale, there
6 was no superpriority component of the HOA’s lien that could have extinguished respondent’s
7 deed of trust.” *Id.* Here, the fact pattern mirrors that of *Golden Hill*.

8 7. In *Golden Hill* the court made clear: “[a]lthough appellant correctly points out
9 that there were new unpaid monthly assessments at the time of the sale, these new unpaid
10 monthly assessments could not have comprised a new superpriority lien **absent a new notice of**
11 **delinquent assessments.**” *Id.* at 1-2, citing *Property Plus Invs., LLC*, 401 P.3d at 731-32.
12 (Emphasis Added).

13 8. In this matter, the HOA did not issue a new Notice of Lien after Borrower
14 satisfied the superpriority portion of the assessment lien.

15 9. Borrower made payments after the Notice of Lien that were more than sufficient
16 to cover the superpriority portion of the HOA’s lien, and those payments were applied by the
17 HOA Trustee to the oldest outstanding assessments.

18 10. The superpriority lien is deemed satisfied and extinguished prior to the HOA Sale.
19 As a result, the HOA proceeded to sale on its sub-priority portion of the lien and the Deed of
20 Trust was not extinguished by the HOA Sale.

21 11. The Nevada Supreme Court, when addressing the issue of “bona fide” purchaser,
22 held that “[a]lthough appellant argues it was a bona fide purchaser, appellant has not explained
23 how its putative BFP status could have revived the already-satisfied superpriority component of
24 the HOA’s lien.” *Id.* at fn 1.

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JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED Wells Fargo's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment shall be entered in favor of Wells Fargo and against Saticoy Bay on Wells Fargo's counterclaim for Quiet Title/Declaratory Relief.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's Deed of Trust was not extinguished by the HOA Sale conducted on December 3, 2013, and the interest conveyed to Saticoy Bay is subject to Wells Fargo's Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's Deed of Trust remains an enforceable lien on title to the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo (or any of its authorized agents, investors, affiliates, predecessors, successors, and assigns) has the right to pursue any and all remedies as defined in the Deed of Trust and/or Note, including the right to judicially or non-judicially foreclose or otherwise enforce the Deed of Trust against the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo's counterclaims for injunctive relief and unjust enrichment are dismissed as moot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Monaco Landscape Maintenance Association's Motion for Partial Summary Judgment is **DENIED** due to disputed issues of material fact.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wells Fargo (or any of its authorized agents, investors, affiliates, predecessors, successors, and assigns) may record these Findings and Conclusions.

\\
\\

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Saticoy Bay's
2 Motion to Amend Complaint is **DENIED**.

3 **IT IS SO ORDERED.**

4 Dated this 3 day of June, 2020.

5
6
7 
DISTRICT COURT JUDGE

8 RONALD J. ISRAEL

9 Reviewed by:

10 Respectfully submitted by:

11 WRIGHT, FINLAY & ZAK, LLP

12 /s/ Aaron D. Lancaster

13 Aaron D. Lancaster, Esq.
14 Nevada Bar No. 10115
15 7785 W. Sahara Ave., Suite 200
16 Las Vegas, Nevada 89117
17 Attorney for Defendant/Counter-Claimant,
18 Wells Fargo Bank, National Association, as
19 Trustee for the Structured Adjustable Rate
20 Mortgage Loan Trust, Pass-Through
21 Certificates Series 2005-11

22 Refused to Sign

23 Michael F Bohn, Esq.
24 Nevada Bar No. 1641
25 Adam R. Trippiedi, Esq.
26 Nevada Bar No. 12294
27 2260 Corporate Circle, Ste. 480
28 Henderson, NV 89074
Attorneys for Saticoy Bay LLC Series 8149
Palace Monaco

Reviewed by:

LIPSON NEILSON P.C.

Refused to Sign

J. William Ebert, Esq.
Nevada Bar No. 2697
Janeen V. Isaacson, Esq.
Nevada Bar No. 6429
9900 Covington Cross Drive, Ste. 120
Las Vegas, NV 89144
Attorneys for Monaco Landscape
Maintenance Association

1 **SAO**

2 **MICHAEL F. BOHN, ESQ.**

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 **LAW OFFICES OF**

6 **MICHAEL F. BOHN, ESQ., LTD.**

7 2260 Corporate Circle, Suite 480

8 Henderson, NV 89074

9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorneys for Plaintiff/Counterdefendant

11 Saticoy Bay LLC Series 8149 Palace Monaco

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

14 **SATICOY BAY LLC SERIES 8149 PALACE**
15 **MONACO, a Nevada limited liability company,**

16 **Plaintiff,**

17 **vs.**

18 **ROBERT NARDIZZI a/k/a ROBERT A. NARDIZZI;**
19 **MONACO LANDSCAPE MAINTENANCE**
20 **ASSOCIATION, INC.; WELLS FARGO BANK,**
21 **NATIONAL ASSOCIATION, AS TRUSTEE FOR THE**
22 **STRUCTURED ADJUSTABLE RATE MORTGAGE**
23 **LOAN TRUST, MORTGAGE PASS THROUGH**
24 **CERTIFICATES SERIES 2005-11,**

25 **Defendants**

26 **WELLS FARGO BANK, NATIONAL ASSOCIATION,**
27 **AS TRUSTEE FOR THE STRUCTURED**
28 **ADJUSTABLE RATE MORTGAGE LOAN TRUST,**
29 **PASSTHROUGH CERTIFICATES SERIES 2005-11,**

30 **Counterclaimant,**

31 **vs.**

32 **SATICOY BAY LLC SERIES 8149 PALACE**
33 **MONACO; MONACO LANDSCAPE MAINTENANCE**
34 **ASSOCIATION; and RED ROCK FINANCIAL**
35 **SERVICES, LLC,**

36 **Counterdefendants.**

CASE NO.: A-18-770245-C

DEPT NO.: XXVIII

STIPULATION AND ORDER FOR
NRCP 54(b) CERTIFICATION

1 Plaintiff Saticoy Bay LLC Series 8149 Palace Monaco by and through its attorneys of record,
2 Law Offices of Michael F. Bohn, Esq., Ltd. and defendant, Wells Fargo Bank, National Association,
3 as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through
4 Certificates Series 2005-11 (hereinafter "Wells Fargo"), by and through its attorneys of record, the
5 law firm of Wright, Finlay & Zak, LLP hereby stipulate and agree as follows:
6

7 WHEREAS the plaintiff Saticoy Bay LLC Series 8149 Palace Monaco filed this case on
8 February 27, 2018 seeking quiet title after an HOA foreclosure; and

9 WHEREAS the plaintiffs complaint named Wells Fargo, the Monaco Landscape Maintenance
10 Association, Inc., and Robert Nardizzi as defendants; and

11 WHEREAS Wells Fargo filed its answer and counterclaim on October 15, 2018; and

12 WHEREAS Wells Fargo named the Monaco Landscape Maintenance Association and Red
13 Rock Financial Services in its counterclaim; and

14 WHEREAS the court entered its findings of fact, conclusions of law and judgment on June 4,
15 2020, wherein the court granted summary judgment in favor of Wells Fargo and against Saticoy Bay
16 LLC; and

17 WHEREAS, the claims against the Monaco Landscape Maintenance Association and Red
18 Rock Financial Services are still outstanding; and

19 WHEREAS, on July 6, 2020, Saticoy Bay LLC filed a notice of appeal; and

20 WHEREAS, the appeal is premature because of the outstanding claims against parties before
21 the district court.

22 NOW WHEREFORE, based on the foregoing,

23 IT IS STIPULATED AND AGREED that there is no just reason for delay concerning Saticoy
24 Bay LLC's appeal of the judgment in favor of Wells Fargo.
25

1 IT IS FURTHER AGREED that NRCP 54(b) certification of the June 4, 2020 judgment is
2 appropriate, and that the judgment is certified to be a final and appealable judgment pursuant to
3 NRCP 54(b).

4 DATED this 29th day of September, 2020September, 2020.

6 WRIGHT, FINLAY & ZAK, LLP

LAW OFFICES OF MICHAEL F. BOHN, ESQ.,
LTD.

8 By: /s/ Aaron D. Lancaster, Esq.

By: /s/ Michael F. Bohn, Esq.

9 R. Samuel Ehlers, Esq.

MICHAEL F. BOHN, ESQ.

Aaron D. Lancaster, Esq.

Nevada Bar No. 1641

10 7785 W. Sahara Ave, Suite 200

2260 Corporate Circle, Suite 480

Las Vegas, NV 89117

Henderson, NV 89074

11 Attorney for Wells Fargo

Attorney for Saticoy Bay LLC Series 8149 Palace
Monaco

13 **ORDER**

14 Based on the above stipulation of the parties, and for good cause appearing;

15 IT IS HEREBY ORDERED that this court makes an express determination that there is no
16 just reason for delay of Saticoy Bay LLC's appeal.

17 IT IS FURTHER ORDERED that the findings of fact, conclusions of law and judgment filed
18 on June 4, 2020 are final and appealable orders pursuant to NRCP 54(b).

19 Dated this 29th day of September, 2020
20 Dated this ____ day of September, 2020 September 29, 2020

21 
22 DISTRICT COURT JUDGE

23 Respectfully submitted by:

SC

24 By: /s/ Michael F. Bohn, Esq.

03B D42 E755 A6E0

Ronald J. Israel

25 MICHAEL F. BOHN, ESQ.

A-18-770245-C

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Nevada Bar No. 1641

26 2260 Corporate Circle, Suite 480

Henderson, NV 89074

27 Attorney for Plaintiff

From: Michael Bohn
Sent: Tuesday, September 29, 2020 11:51 AM
To: Marc Sameroff
Subject: FW: Saticoy v. Nardizzi A770245

Palace Monaco SAO 54b

MICKEY BOHN, ESQ.
Law Office of Michael F. Bohn, Esq.
2260 Corporate Circle
Suite 480
Henderson, NV 89074
(702) 642-3113
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From: Aaron D. Lancaster [mailto:alancaster@wrightlegal.net]
Sent: Tuesday, September 29, 2020 10:52 AM
To: Michael Bohn
Subject: RE: Saticoy v. Nardizzi A770245

Approved. Thanks,

Aaron D. Lancaster, Esq.
Attorney
Licensed in Nevada and Utah



2975 W. Executive
Parkway
Mailbox 155
Utah
84043
893-4901 –
Direct
7964 - Fax

Suite 233 /
Lehi,

(801)

(702) 946-

From: Michael Bohn [<mailto:mbohn@bohnlawfirm.com>]
Sent: Tuesday, September 29, 2020 10:25 AM
To: Aaron D. Lancaster
Subject: RE: Saticoy v. Nardizzi A770245

Aaron

Please advise by email if I may submit this to the court

Thank you

MICKEY BOHN, ESQ.
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Henderson, NV 89074
(702) 642-3113
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From: Aaron D. Lancaster [<mailto:alancaster@wrightlegal.net>]
Sent: Tuesday, September 29, 2020 7:34 AM
To: Michael Bohn
Subject: RE: Saticoy v. Nardizzi A770245

I am agreeable to stipulating to a 54(b) certification. I am working with the HOA on a tolling agreement and dismissal without prejudice pending the appeal but don't know when that will be finalized. Please send over the stipulation for my review.

Thanks,

Aaron D. Lancaster, Esq.
Attorney
Licensed in Nevada and Utah



2975 W. Executive
Parkway
Mailbox 155
Utah
84043
893-4901 –

Suite 233 /
Lehi,
(801)

From: Michael Bohn [<mailto:mbohn@bohnlawfirm.com>]
Sent: Monday, September 28, 2020 5:37 PM
To: R. Samuel Ehlers; Aaron D. Lancaster
Subject: Saticoy v. Nardizzi A770245

Counsel

Can we stipulate to a 54(b) cert on this, or do you plan on dismissing your claims against the HOA and Red Rock anytime soon?

Please advise

MICKEY BOHN, ESQ.
Law Office of Michael F. Bohn, Esq.
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[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Saticoy Bay LLC Series 8149
7 Palace Monaco, Plaintiff(s)

CASE NO: A-18-770245-C

8 vs.

DEPT. NO. Department 28

9 Robert Nardizzi, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/29/2020

16 David Koch

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20 Michael Bohn

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22 Susana Nutt

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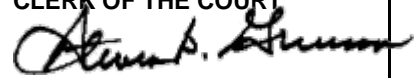
26 Aaron Lancaster

alancaster@wrightlegal.net

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1 **NEO**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 ADAM R. TRIPPIEDI, ESQ.
6 Nevada Bar No.: 12294
7 atrippiedi@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.
10 2260 Corporate Circle, Suite 480
11 Henderson, Nevada 89074
12 (702) 642-3113/ (702) 642-9766 FAX
13 Attorney for plaintiff Saticoy Bay LLC
14 Series 8149 Palace Monaco
15

10 DISTRICT COURT
11 CLARK COUNTY NEVADA

13 SATICOY BAY LLC SERIES 8149 PALACE
14 MONACO, a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 ROBERT NARDIZZI a/k/a ROBERT A. NARDIZZI;
18 MONACO LANDSCAPE MAINTENANCE
19 ASSOCIATION, INC.; WELLS FARGO BANK,
20 NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
21 STRUCTURED ADJUSTABLE RATE MORTGAGE
22 LOAN TRUST, MORTGAGE PASS THROUGH
23 CERTIFICATES SERIES 2005-11,

24 Defendants.

22 WELLS FARGO BANK, NATIONAL
23 ASSOCIATION, AS TRUSTEE FOR THE
24 STRUCTURED ADJUSTABLE RATE MORTGAGE
25 LOAN TRUST, PASSTHROUGH CERTIFICATES
26 SERIES 2005-11,

27 Counterclaimant,

28 vs.

26 SATICOY BAY LLC SERIES 8149 PALACE
27 MONACO; MONACO LANDSCAPE
28 MAINTENANCE ASSOCIATION; and RED ROCK
FINANCIAL SERVICES, LLC,

Counterdefendants.

CASE NO.: A-18-770245-C
DEPT. NO.: XXVIII

NOTICE OF ENTRY OF ORDER

1 TO: Parties above-named; and

2 TO: Their Attorney of Record

3 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **STIPULATION AND**
4 **ORDER FOR NRCP 54(b) CERTIFICATION** has been entered on the 29th day of September, 2020,
5 in the above captioned matter, a copy of which is attached hereto.

6 Dated this 29th day of September, 2020.

7
8 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

9
10 By: /s/ /Michael F. Bohn, Esq./
MICHAEL F. BOHN, ESQ.
11 2260 Corporate Circle, Suite 480
Henderson, NV 89074
12 Attorney for plaintiff

13
14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
16 Offices of Michael F. Bohn., Esq., and on the 29th day of September, 2020, an electronic copy of the
17 **NOTICE OF ENTRY OF ORDER** was served on opposing counsel via the Court's electronic service
18 system to the following counsel of record:
19

20
21 R. Samuel Ehlers, Esq.
Aaron D. Lancaster, Esq.
22 WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Ave, Suite 200
23 Las Vegas, NV 89117
24 Attorney for Wells Fargo

J. William Ebert, Esq.
Janeen V. Isaacson, Esq.
LIPSON NEILSON P.C.
9900 Covington Cross Dr, Suite 120
Las Vegas, NV 89144
Attorney for Monaco Landscape
Maintenance Association

25
26
27 By: /s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
28 MICHAEL F. BOHN, ESQ.

1 **SAO**

2 **MICHAEL F. BOHN, ESQ.**

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 **LAW OFFICES OF**

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8 Henderson, NV 89074

9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorneys for Plaintiff/Counterdefendant

11 Saticoy Bay LLC Series 8149 Palace Monaco

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

14 **SATICOY BAY LLC SERIES 8149 PALACE**
15 **MONACO, a Nevada limited liability company,**

16 **Plaintiff,**

17 **vs.**

18 **ROBERT NARDIZZI a/k/a ROBERT A. NARDIZZI;**
19 **MONACO LANDSCAPE MAINTENANCE**
20 **ASSOCIATION, INC.; WELLS FARGO BANK,**
21 **NATIONAL ASSOCIATION, AS TRUSTEE FOR THE**
22 **STRUCTURED ADJUSTABLE RATE MORTGAGE**
23 **LOAN TRUST, MORTGAGE PASS THROUGH**
24 **CERTIFICATES SERIES 2005-11,**

25 **Defendants**

26 **WELLS FARGO BANK, NATIONAL ASSOCIATION,**
27 **AS TRUSTEE FOR THE STRUCTURED**
28 **ADJUSTABLE RATE MORTGAGE LOAN TRUST,**
29 **PASSTHROUGH CERTIFICATES SERIES 2005-11,**

30 **Counterclaimant,**

31 **vs.**

32 **SATICOY BAY LLC SERIES 8149 PALACE**
33 **MONACO; MONACO LANDSCAPE MAINTENANCE**
34 **ASSOCIATION; and RED ROCK FINANCIAL**
35 **SERVICES, LLC,**

36 **Counterdefendants.**

CASE NO.: A-18-770245-C

DEPT NO.: XXVIII

STIPULATION AND ORDER FOR
NRCP 54(b) CERTIFICATION

1 Plaintiff Saticoy Bay LLC Series 8149 Palace Monaco by and through its attorneys of record,
2 Law Offices of Michael F. Bohn, Esq., Ltd. and defendant, Wells Fargo Bank, National Association,
3 as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through
4 Certificates Series 2005-11 (hereinafter "Wells Fargo"), by and through its attorneys of record, the
5 law firm of Wright, Finlay & Zak, LLP hereby stipulate and agree as follows:
6

7 WHEREAS the plaintiff Saticoy Bay LLC Series 8149 Palace Monaco filed this case on
8 February 27, 2018 seeking quiet title after an HOA foreclosure; and

9 WHEREAS the plaintiffs complaint named Wells Fargo, the Monaco Landscape Maintenance
10 Association, Inc., and Robert Nardizzi as defendants; and

11 WHEREAS Wells Fargo filed its answer and counterclaim on October 15, 2018; and

12 WHEREAS Wells Fargo named the Monaco Landscape Maintenance Association and Red
13 Rock Financial Services in its counterclaim; and

14 WHEREAS the court entered its findings of fact, conclusions of law and judgment on June 4,
15 2020, wherein the court granted summary judgment in favor of Wells Fargo and against Saticoy Bay
16 LLC; and

17 WHEREAS, the claims against the Monaco Landscape Maintenance Association and Red
18 Rock Financial Services are still outstanding; and

19 WHEREAS, on July 6, 2020, Saticoy Bay LLC filed a notice of appeal; and

20 WHEREAS, the appeal is premature because of the outstanding claims against parties before
21 the district court.

22 NOW WHEREFORE, based on the foregoing,

23 IT IS STIPULATED AND AGREED that there is no just reason for delay concerning Saticoy
24 Bay LLC's appeal of the judgment in favor of Wells Fargo.
25

1 IT IS FURTHER AGREED that NRCP 54(b) certification of the June 4, 2020 judgment is
2 appropriate, and that the judgment is certified to be a final and appealable judgment pursuant to
3 NRCP 54(b).

4 DATED this 29th day of September, 2020September, 2020.

6 WRIGHT, FINLAY & ZAK, LLP

LAW OFFICES OF MICHAEL F. BOHN, ESQ.,
LTD.

8 By: /s/ Aaron D. Lancaster, Esq.

By: /s/ Michael F. Bohn, Esq.

9 R. Samuel Ehlers, Esq.

MICHAEL F. BOHN, ESQ.

Aaron D. Lancaster, Esq.

Nevada Bar No. 1641

10 7785 W. Sahara Ave, Suite 200

2260 Corporate Circle, Suite 480

Las Vegas, NV 89117

Henderson, NV 89074

11 Attorney for Wells Fargo

Attorney for Saticoy Bay LLC Series 8149 Palace
Monaco

13 **ORDER**

14 Based on the above stipulation of the parties, and for good cause appearing;

15 IT IS HEREBY ORDERED that this court makes an express determination that there is no
16 just reason for delay of Saticoy Bay LLC's appeal.

17 IT IS FURTHER ORDERED that the findings of fact, conclusions of law and judgment filed
18 on June 4, 2020 are final and appealable orders pursuant to NRCP 54(b).

19 Dated this 29th day of September, 2020
20 Dated this ____ day of September, 2020 September 29, 2020

21 
22 DISTRICT COURT JUDGE

23 Respectfully submitted by:

SC

24 By: /s/ Michael F. Bohn, Esq.

03B D42 E755 A6E0

Ronald J. Israel

25 MICHAEL F. BOHN, ESQ.

A-18-770245-C

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Nevada Bar No. 1641

26 2260 Corporate Circle, Suite 480

Henderson, NV 89074

27 Attorney for Plaintiff

From: Michael Bohn
Sent: Tuesday, September 29, 2020 11:51 AM
To: Marc Sameroff
Subject: FW: Saticoy v. Nardizzi A770245

Palace Monaco SAO 54b

MICKEY BOHN, ESQ.
Law Office of Michael F. Bohn, Esq.
2260 Corporate Circle
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Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com

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From: Aaron D. Lancaster [mailto:alancaster@wrightlegal.net]
Sent: Tuesday, September 29, 2020 10:52 AM
To: Michael Bohn
Subject: RE: Saticoy v. Nardizzi A770245

Approved. Thanks,

Aaron D. Lancaster, Esq.
Attorney
Licensed in Nevada and Utah



2975 W. Executive
Parkway
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(702) 946-

From: Michael Bohn [<mailto:mbohn@bohnlawfirm.com>]
Sent: Tuesday, September 29, 2020 10:25 AM
To: Aaron D. Lancaster
Subject: RE: Saticoy v. Nardizzi A770245

Aaron

Please advise by email if I may submit this to the court

Thank you

MICKEY BOHN, ESQ.
Law Office of Michael F. Bohn, Esq.
2260 Corporate Circle
Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com

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From: Aaron D. Lancaster [<mailto:alancaster@wrightlegal.net>]
Sent: Tuesday, September 29, 2020 7:34 AM
To: Michael Bohn
Subject: RE: Saticoy v. Nardizzi A770245

I am agreeable to stipulating to a 54(b) certification. I am working with the HOA on a tolling agreement and dismissal without prejudice pending the appeal but don't know when that will be finalized. Please send over the stipulation for my review.

Thanks,

Aaron D. Lancaster, Esq.
Attorney
Licensed in Nevada and Utah



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84043
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Suite 233 /
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(801)

From: Michael Bohn [<mailto:mbohn@bohnlawfirm.com>]
Sent: Monday, September 28, 2020 5:37 PM
To: R. Samuel Ehlers; Aaron D. Lancaster
Subject: Saticoy v. Nardizzi A770245

Counsel

Can we stipulate to a 54(b) cert on this, or do you plan on dismissing your claims against the HOA and Red Rock anytime soon?

Please advise

MICKEY BOHN, ESQ.
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1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Saticoy Bay LLC Series 8149
7 Palace Monaco, Plaintiff(s)

CASE NO: A-18-770245-C

8 vs.

DEPT. NO. Department 28

9 Robert Nardizzi, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/29/2020

16 David Koch

dkoch@kochscow.com

17 Steven Scow

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18 Brody Wight

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20 Michael Bohn

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