IN THE SUPREME COURT OF THE STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, A FOREIGN LIMITED LIABILITY COMPANY,
Appellant,
vs.
CHERSUS HOLDINGS, LLC, A DOMESTIC LIMITED LIABILITY COMPANY; AND SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, A DOMESTIC NON-PROFIT CORPORATION,
Respondents.

SUPREME COURT NO.: 82680
District Court Case No. A696357

DOCKETING STATEMENT CIVIL APPEALS

1. **Judicial District**: Eighth **Department**: IV

   County: Clark **Judge**: Hon. Kerry Earley &

   Judge: Hon. Nadia Krall

   District Ct. Case No. A-14-696357-C

2. **Attorney filing this Docketing Statement**:

Attorney: Aaron D. Lancaster, Esq.
Telephone: (702) 475-7964
Firm Address: Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Client: Ocwen Loan Servicing, LLC

3. **Attorneys Representing Respondents**:

Attorney: Vernon A. Nelson, Jr., Esq.
Telephone: (702) 476-2500

Firm Address:	The Law Office of Vernon Nelson 6787 W. Tropicana Ave., Suite 103 Las Vegas, NV 89103
Client:	Chersus Holdings, LLC
Attorney:	Ashlie L. Surur, Esq.
Telephone:	(702) 909-0838
Firm Address:	Surur Law Group, LLC 561 Ivy Spring St. Las Vegas, NV 89138
Client:	Southern Terrace Homeowners Association

4. **Nature of Disposition Below**:

Summary judgment.

5. **Does this Appeal Raise Issues Concerning Any of the Following?**

Child Custody – NO

Venue – NO

Termination of Parental Rights – NO

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:

Ocwen Loan Servicing, LLC v. Chersus Holdings, LLC; And Southern Terrace Homeowners Association, No. 80781

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.

On May 25, 2013, a homeowner's association non-judicial foreclosure sale occurred against the subject property. At the time of the foreclosure sale, Ocwen Loan Servicing, LLC ("Ocwen") was the current titleholder pursuant to a foreclosure under the first Deed of Trust. On February 19, 2014, Ocwen initiated a quiet title action against Chersus Holdings, LLC ("Chersus"), among others, seeking a judicial determination that the first Deed of Trust was not extinguished by the HOA foreclosure sale. Chersus filed its Answer and Counter-Claim asserting the following causes of action: (1) Wrongful Foreclosure; (2) Quiet Title; (3) Declaratory Relief; (4) Conversion; (5) Unjust Enrichment; and (6) Slander of Title.

On May 6, 2019, after discovery and dispositive motion practice, the district court entered Findings of Fact, Conclusions of Law and Order granting summary judgment in favor of Chersus and Southern Terrace Homeowners Association (the "HOA") ("May 6th Order"). Ocwen filed a Motion to Alter or Amend Judgment and for Reconsideration of the May 6th Order, arguing that the HOA Sale was commercially unreasonable, not because of the existence of a "factoring agreement," but because the sale price was intentionally suppressed, among other arguments. The district court granted reconsideration, but denied Ocwen's motion to alter or amend judgment.

On March 22, 2021, after a prove-up hearing, the district court entered an Order Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC ("March 22nd Order").

Ocwen appealed the May 6th Order and denial of the motion to alter or amend judgment and the March 22nd Order.

9. Issues on Appeal.

- Whether the district court erred when it granted Chersus and HOA's Motions for Summary Judgment and denied Ocwen's Motion for Summary Judgment when there were questions of fact concerning whether the HOA Sale was commercially reasonable or conducted in good faith, given a sales price at a fraction of the market value for the property and given evidence presented that the sale was commercially unreasonable and there was fraud, oppression or unfairness where the sale price was intentionally suppressed.
- Whether the district court erred as a matter of law when it granted Chersus's Motion for Summary Judgment and denied Ocwen's Motion for Summary Judgment when Red Rock had a policy of refusing to provide lienholders with superpriority lien payoffs, and rejecting tenders of superpriority amounts and any attempt at tender of any superpriority lien would have been an exercise in futility.

- Whether the district court erred as a matter of law when it denied Ocwen's Motion to Alter or Amend Judgment based upon a necessity to correct manifest errors of law or fact upon which the May 6th Order and order denying Ocwen's Motion to Alter or Amend Judgment entered February 20, 2020 were based.
- Whether the district court erred in calculating damages after the prove-up hearing.
- Whether the district court improperly allowed testimony from an undisclosed expert witness at the prove-up hearing after the close of discovery.

10. Pending Proceedings in this Court Raising the Same or Similar Issues.

None.

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.

Not Applicable.

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

___ Reversal of well-settled Nevada precedent

___ An issue arising under the U.S. and/or Nevada Constitutions

_X_ 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:

In *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (June 2018) ("*West Sunset*"), the factoring agreement, "the sale of accounts receivable of a firm to a factor at a discounted price," was an approved financing arrangement. But, there, this Court approved the arrangement because the factoring agreement obliged the HOA, through its agent, to continue its collection efforts on the past-due assessments, and instructed the agent to remit all payments directly to First 100, whereas, here, the HOA **completely** relinquished its right to foreclose to First 100. Furthermore, *West Sunset* is a case about the homeowners' association's standing to foreclose, not about the commercial unreasonableness of the HOA Sale.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

The matter should be retained by the Nevada Supreme Court because it raises as a principal issue a question of first impression concerning the effect of an HOA sale when an HOA completely relinquishes its right to foreclose to a third party and the commercial unreasonableness of the resulting HOA sale, pursuant to NRAP

17(a)(11).

14.Trial.

N/A.

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

No.

TIMELINESS OF NOTICE OF APPEAL

16.Date of Entry of Written Judgment or Order Appealed from:

Findings of Fact, Conclusions of Law and Order, entered May 6, 2019 and the Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60, entered February 20, 2020.

Order Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC, entered March 22, 2021.

17.Date Written Notice of Entry of Judgment or Order was Served:

Notice of Entry of Order for Findings of Fact, Conclusions of Law and Order was filed and electronically served on May 14, 2019.

Notice of Entry of Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 was filed and electronically served on February 20, 2020.

Notice of Entry of Order Granting Judgment in Favor of Counterclaimant

Chersus Holdings, LLC was filed and electronically served on March 22, 2021.

Was service by:

___ Delivery

__X__ Mail/electronic/fax

18. Was the Time for Filing the Notice of Appeal Tolled by Post-Judgment Motion?

No.

19. Date Notice of Appeal Filed:

March 23, 2021. No other party has appealed from the judgment or order.

20. Specify Statute or Rule Governing Time Limit for Filing Notice of Appeal:

NRAP 4(a) and NRAP 26(a).

SUBSTANTIVE APPEALABILITY

21. Specify the Statute or other Authority Granting Jurisdiction to Review Judgment or Order Appealed from:

(a) NRAP 3A(b)(1).

(b) Explain how each authority provides a basis for appeal from the judgment or order:

On May 6, 2019, summary judgment was entered in favor of Chersus as to its claims against Ocwen. Ocwen moved for reconsideration of the order granting

summary judgment in favor of Chersus, which was granted on January 27, 2020. The district court entered its Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment on February 20, 2020. On March 22, 2021, an order was entered in favor of Chersus as to its Motion for: (1) Judgment or Prove-UP Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Order for Specific Performance.

Ocwen now appeals from the orders granting Chersus summary judgment, denying Ocwen summary judgment, denying Ocwen's motion to alter or amend judgment, and granting Chersus's motion for: (1) Judgment or Prove-UP Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings LLC; and (3) Order for Specific Performance. This resolved all issues in the case, constituting final judgment. NRAP 3A(b)(1) specifically allows for an appeal after final judgment has been entered.

22. List All Parties Involved in the Action or Consolidated Actions in the district court:

(a) Parties:

Plaintiff/Counter-Defendant: Ocwen Loan Servicing, LLC.

Defendant/Counterclaimant: Cherus Holdings, LLC.

Defendants: Southern Terrace Homeowners Association, First 100, LLC, Red Rock Financial Services, LLC, United Legal Services, Inc.

(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:

Stipulation and Order to Dismiss Defendant United Legal Services Inc. Without Prejudice was entered by the district court on February 2, 2018. Stipulation and Order to Dismiss Defendant Red Rock Financial Services, LLC Without Prejudice was entered by the district court on October 17, 2018.

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.

Ocwen – Quiet Title/Declaratory Relief (against Chersus and First 100): resolved by summary judgment upon reconsideration on February 20, 2020; Preliminary and Permanent Injunction (against Chersus, HOA, Red Rock and United) resolved by summary judgment May 6, 2020; Wrongful Foreclosure (against HOA, Red Rock and United) resolved by summary judgment upon reconsideration on February 20, 2020; Negligence (against HOA, Red Rock and United) resolved by summary judgment on May 6, 2019; Negligence Per Se (against HOA, Red Rock and United) resolved by summary judgment on May 6, 2019; Breach of Contract (against HOA, Red Rock and United) resolved by summary judgment on May 6, 2019; Misrepresentation (against HOA) resolved by summary judgment on May 6, 2019;

Unjust Enrichment (against Chersus, HOA, Red Rock and United) resolved by summary judgment May 6, 2019; Tortious Interference with Contract (against Chersus, HOA, Red Rock and United) resolved by summary judgment on May 6, 2019.

Chersus – Wrongful Foreclosure, resolved by summary judgment upon reconsideration on February 20, 2020; Quiet Title, resolved by summary judgment upon reconsideration on February 20, 2020; Declaratory Relief resolved by summary judgment upon reconsideration on February 20, 2020; Conversion resolved by partial summary judgment on May 6, 2019; Unjust Enrichment resolved by partial summary judgment on May 6, 2019; Slander of Title has not been resolved.

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.

25. If You Answered "No" to Question 24, Complete the Following:

N/A.

26. If You Answered "No to Any Part of Question 25, Explain the Basis for Seeking Appellate Review:

N/A.

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 N.R.C.P. 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.

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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.

Dated and executed this 30th day of April, 2021, in Clark County, Nevada.

WRIGHT, FINLAY & ZAK, LLP

/s/ Aaron D. Lancaster

Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave, Suite 200
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Attorneys for Appellant Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 30th day of April, 2021, the foregoing **DOCKETING STATEMENT CIVIL APPEALS** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

Service via electronic notification will be sent to the following:

Vernon A. Nelson, Jr.
Ashlie L. Surur

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Lisa Cox
An Employee of WRIGHT, FINLAY & ZAK, LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

SECOND AMENDED COMPLAINT

AUTOMATIC EXEMPTION FROM ARBITRATION

Action concerns title to Real Estate

Plaintiff/Counter-Defendant, OCWEN LOAN SERVICING, LLC, by and through its attorneys of record, Dana Jonathon Nitz, Esq., Paterno C. Jurani, Esq., and Natalie C. Lehman, Esq. of the law firm of Wright, Finlay & Zak, LLP, and hereby complains and alleges as follows:

INTRODUCTION

1. Plaintiff is authorized to bring this action in the State of Nevada by NRS 40.430.

2. The real property at issue is known as 5946 Lingering Breeze Street, Las Vegas, NV 89148, APN: 163-31-611-022 (hereinafter the "Property).

JURISDICTION AND VENUE

3. Venue and jurisdiction are proper in this judicial district because Defendants conduct business in this district; a substantial part of the events or omissions giving rise to U.S. Bank's claims occurred in this district; and the property that is the subject of this action is situated in this district, in Las Vegas, Clark County, Nevada.

PARTIES

4. At all relevant times herein Plaintiff, OCWEN LOAN SERVICING, LLC (hereinafter "Ocwen" or "Plaintiff"), is a foreign limited liability company and is qualified to do business in the State of Nevada.

5. At all relevant times herein, Defendant, CHERSUS HOLDINGS, LLC (hereinafter "Chersus" or "Buyer"), was and is a limited liability corporation organized under the laws of the State of Nevada.

6. Upon information and belief, Defendant, FIRST 100, LLC (hereinafter "First 100"), is a Nevada limited liability company, licensed to do business in the State of Nevada.

7. Upon information and belief, Defendant, SOUTHERN TERRACE HOMEOWNERS ASSOCIATION (hereinafter "HOA"), is a Nevada non-profit corporation, licensed to do business in the State of Nevada.

8. Upon information and belief, Defendant, RED ROCK FINANCIAL SERVICES, LLC (hereinafter "Red Rock" or "HOA Trustee"), is a foreign limited liability company and at all times relevant was doing business in the State of Nevada.

9. Upon information and belief, Defendant, UNITED LEGAL SERVICES, INC. (hereinafter "United"), is a domestic corporation and at all times relevant was doing business in the State of Nevada.

10. The names given to the defendants sued herein as DOES I through X and ROE CORPORATIONS XI through XX, inclusive, are fictitious names. Said defendants may have an interest in the subject property, may have acted in concert with defendant, or may have otherwise caused Plaintiffs to incur damages as pled herein. Plaintiff prays that if and when the true names of said defendants, or anyone of them, and the nature of their alleged actions is ascertained, that they may be inserted herein by proper amendment. Plaintiff has no knowledge of the addresses or places of residence of the fictitious defendants.

GENERAL ALLEGATIONS

11. Plaintiff is the owner and current titleholder of the real property located at 5946 Lingering Breeze Street, Las Vegas, NV 89148, APN No. 163-31-611-022 (the "Lingering Breeze Property"). The legal description of the Lingering Breeze Property is:

PARCEL I:

LOT ONE HUNDRED THIRTY-ONE (131) IN BLOCK FIVE (5) OF RUSSELL/FORT APACHE-UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 101, OF PLATS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT AND PUBLIC UTILITY PURPOSES ON, OVER AND ACROSS THE PRIVATE STREETS AND COMMON AREAS ON THE MAP REFERENCED HEREINABOVE, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

12. Plaintiff obtained its ownership interest in the Lingering Breeze Property by being the highest bidder at a foreclosure sale conducted December 20, 2013.

13. The foreclosure sale was conducted pursuant to a first position deed of trust recorded March 31, 2009 (the "Deed of Trust"). [1]

14. The Trustee's Deed Upon Sale conveying the Lingering Breeze Property to Plaintiff was recorded January 7, 2014.[2]

15. Public records show that on December 8, 2011, a Lien for Delinquent Assessments was recorded against the Property by Red Rock, on behalf of HOA.[3]

16. Public records show that on February 2, 2012, a Notice of Default and Election to Sell Pursuant to Lien for Delinquent Assessments was recorded against the Property by Red Rock, on behalf of HOA.[4]

17. Public records show that on May 2, 2013, a Notice of Foreclosure Sale was recorded against the Property by United, on behalf of HOA.[5]

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[1] A true and correct copy of the Deed of Trust recorded in the Clark County Recorder's Office as Book and Instrument Number 20090331-0004948 is attached hereto as **Exhibit 1**. All other recordings stated hereafter are recorded in the same manner.

[2] A true and correct copy of the Trustee's Deed Upon Sale recorded in the Clark County Recorder's Office as Book and Instrument Number 201401070000775 is attached hereto as **Exhibit 2**.

[3] A true and correct copy of the Lien for Delinquent Assessments recorded as Book and Instrument Number 201112080002960 is attached hereto as **Exhibit 3.**

[4] A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument Number 201202020000465 is attached hereto as **Exhibit 4.**

18. On May 29, 2013, a Foreclosure Deed Upon Sale was recorded by United conveying the Lingering Breeze Property to First 100. According to this deed, the property was sold to First 100 at public auction on May 25, 2013 pursuant to a homeowners association lien governed by NRS Chapter 116.[6]

19. Any interest First 100 may have obtained in the Lingering Breeze Property was subject to the Deed of Trust.

20. The subsequent foreclosure on December 20, 2013 pursuant to the Deed of Trust extinguished First 100's interest in the Lingering Breeze Property.

21. On January 13, 2014, a Deed of Sale was recorded whereby First 100 conveyed its interest in the Lingering Breeze Property to Chersus.[7]

22. Any interest that Chersus may have obtained in the Lingering Breeze Property pursuant to the Deed of Sale was extinguished by the foreclosure on December 20, 2013 pursuant to the Deed of Trust.

23. A homeowner's association sale conducted pursuant to NRS Chapter 116 must comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168.

24. A lender or holder of a beneficial interest in a senior deed of trust, such as U.S. Bank and its predecessors-in-interest in the Deed of Trust, has a right to cure a delinquent homeowner's association lien in order to protect its interest.

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[5] A true and correct copy of the Notice of Sale (HOA) recorded as Book and Instrument Number 201305020000105 is attached hereto as **Exhibit 5.**

[6] A true and correct copy of the Foreclosure Deed Upon Sale recorded in the Clark County Recorder's Office as Book and Instrument Number 201305290002514 is attached hereto as **Exhibit 6**.

[7] A true and correct copy of the Deed of Sale recorded in the Clark County Recorder's Office as Book and Instrument Number 201401130001734 is attached hereto as **Exhibit 7**.

25. Upon information and belief, the HOA and its agents, Red Rock and United, did not comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

26. A recorded notice of default must "describe the deficiency in payment."

27. The HOA Sale occurred without adequate notice to Plaintiff.

28. The HOA Sale occurred without notice to Plaintiff what portion of the lien, if any, that HOA and HOA Trustee claimed constituted a "super-priority" lien.

29. The HOA Sale occurred without notice to Plaintiff whether HOA was foreclosing on the "super-priority" portion of its lien, if any, or under the non-super-priority portion of the lien.

30. The HOA Sale occurred without notice to Plaintiff of a right to cure the delinquent assessment and the super-priority lien, if any.

31. The HOA Sale violated Plaintiff's rights to due process because Plaintiff was not given proper, adequate notice and the opportunity to cure the deficiency or default in the payment of the HOA's assessments and the super-priority lien, if any.

32. The HOA Sale was an invalid sale and could not have extinguished Plaintiff's secured interest because of defects in the notices given to Plaintiff.

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

34. A homeowner's association may only collect as a part of the super priority lien (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b) nine months of common assessments which became due prior to the institution of an action to enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of

not less than six months).

35. Upon information and belief, the HOA Foreclosure Notices included improper fees and costs in the amount required to cure, thus invalidating the lien.

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

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

38. The HOA Sale is unlawful and void under NRS 116.3102 et seq.

39. The HOA Sale deprived Plaintiff of its right to due process because the foreclosure notices failed to identify the super-priority amount, or to adequately describe the deficiency in payment, to provide Plaintiff notice of the correct super-priority amount, or to provide a reasonable opportunity for Plaintiff to protect its priority by payment to satisfy that amount.

40. A homeowner's association sale must be done in a commercially reasonable manner.

41. At the time of the HOA Sale, the amount owed on the Borrower Loan exceeded $225,000.00.

42. Upon information and belief, at the time of the HOA Sale, the fair market value of the Property greatly exceeded the purchase price.

43. The HOA Sale was not commercially reasonable, and not done in good faith, in light of the sales price, the market value of the property, and the errors alleged above.

44. The HOA Sale by which First 100 took its interest was commercially unreasonable if it extinguished Plaintiff's Deed of Trust.

45. In the alternative, the HOA Sale was an invalid sale and could not have extinguished Plaintiff's secured interest because it was not a commercially reasonable sale.

46. Without providing Plaintiff notice of the correct super-priority amount and a reasonable opportunity to tender payment to satisfy that amount, including the failure to set out the super-priority amount and the failure to adequately describe the deficiency in payment as required by Nevada law, the HOA Sale is commercially unreasonable and deprived Plaintiff of its right to due process.

47. The CC&Rs for the HOA provide in Sections 7.8 and 7.9 that the HOA's lien was subordinate to Plaintiff's Deed of Trust.[8]

48. Because the CC&Rs contained a Mortgagee Protection Clause in Section 7.8, and because Plaintiff was not given proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing, Plaintiff did not know that it had to attend the HOA Sale to protect its security interest.

49. Because the 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.

50. Buyer, First 100, HOA, Red Rock, and United knew that Plaintiff would rely on the Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that Plaintiff would not know that HOA was foreclosing on super-priority amounts because of the failure of

[8] A true and correct copy of the HOA CC&R's is attached hereto as **Exhibit 8.**

HOA, Red Rock, and United to provide such notice. Plaintiff's absence from the HOA Sale allowed First 100 to appear at the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale commercially unreasonable.

51. Buyer, First 100, HOA, Red Rock, and United knew that prospective bidders would be less likely to attend the HOA Sale because the public at large believed that Plaintiff 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 HOA was foreclosing on a super-priority portion of its lien because HOA, Red Rock, and United improperly failed to provide such notice. The general public's belief therefore was that a buyer at the HOA Sale would take title to the Property subject to Plaintiff's Deed of Trust. This general belief resulted in the absence of prospective bidders at the HOA Sale, which allowed Buyer to appear at the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale commercially unreasonable.

52. The circumstances of the HOA Sale of the Property breached the HOA's and the HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a commercially reasonable manner.

53. Plaintiff is informed and believes that First 100 and Buyer were professional foreclosure sale property purchasers.

54. The circumstances of the HOA Sale of the Property and their status as professional property purchasers preclude First 100 or Buyer from being deemed bona fide purchasers for value.

55. Upon information and belief, First 100 and Buyer had actual, constructive or inquiry notice of Plaintiff's first Deed of Trust, which prevents First 100 or Buyer from being

deemed a bona fide purchaser or encumbrancer for value.

56. In the event Plaintiff's interest in the Property is not reaffirmed nor restored, Plaintiff suffered damages in the amount of the fair market value of the Property or the unpaid balance of the Borrower Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater, as a proximate result of Defendant's acts and omissions.

FIRST CAUSE OF ACTION
(Quiet Title/Declaratory Relief versus Buyer, First 100, and all fictitious Defendants)

57. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

58. Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and authority to declare Plaintiff's rights and interests in the Property and to resolve Defendants' adverse claims in the Property.

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

60. Upon information and belief, Chersus Holdings, LLC claims an interest in the Lingering Breeze Property pursuant to the Deed of Sale recorded January 13, 2014.

61. Chersus Holdings, LLC's claim is adverse to Plaintiff's ownership interest.

62. Upon information and belief, the HOA, the HOA Trustee and the fictitious Defendants failed to provide proper, adequate and sufficient notices required by Nevada statutes and the CC&Rs to assure due process to Plaintiff, and therefore the HOA Sale is void and should be set aside or rescinded.

63. Based on the adverse claims being asserted by the parties, Plaintiff is entitled to a judicial determination regarding the rights and interests of the respective parties to the case.

64. Pursuant to NRS 41.010, Plaintiff is entitled to a determination from this Court quieting Chersus Holdings, LLC's claim to title of the Lingering Breeze Property.

65. In the alternative, if it is found under state law that Plaintiff's interest could have been extinguished by the HOA sale, for all the reasons set forth above and in the General Allegations, Plaintiff is entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that the HOA Sale is unlawful and void and conveyed no legitimate interest to Buyer.

66. Plaintiff has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

SECOND CAUSE OF ACTION
(Preliminary and Permanent Injunctions versus Buyer, HOA, Red Rock, United, and fictitious Defendants)

67. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

68. As set forth above, Buyer may claim an ownership interest in the Property that is adverse to Plaintiff.

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

70. Plaintiff has a reasonable probability of success on the merits of the Complaint, for which compensatory damages will not compensate Plaintiff for the irreparable harm of the loss of title to a bona fide purchaser.

71. Plaintiff has no adequate remedy at law due to the uniqueness of the Property involved in the case.

72. Plaintiff is entitled to a preliminary and permanent injunction prohibiting Buyer, their successors, assigns, and agents from conducting a sale, transfer or encumbrance of the Property.

73. Plaintiff is entitled to a preliminary injunction requiring Buyer to segregate and deposit all rents with the Court or a Court-approved trust account over which Buyer has no control during the pendency of this action.

74. Plaintiff is entitled to a mandatory injunction that the HOA, Red Rock, and United be compelled to deliver to the Clerk of the Court and deposit all funds collected at the HOA Sale pending determination by the Court of the validity of the sale and the respective rights of the parties to the sale proceeds.

75. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

THIRD CAUSE OF ACTION

(Wrongful Foreclosure versus the HOA, Red Rock, United, and fictitious Defendants)

76. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

77. Upon information and belief, the HOA, Red Rock, United, and all fictitious Defendants did not comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

78. The HOA, Red Rock, United, and all fictitious Defendants failed to provide notice pursuant to the CC&Rs.

79. 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 Plaintiff's first Deed

of Trust and delivered free and clear title to the Property to First 100 and Buyer.

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

81. Because the HOA, Red Rock, United, and fictitious Defendants did not give Plaintiff, or its agents, servicers or predecessors in interest, the proper, adequate notice and the opportunity to cure the deficiency or default in the payment of the HOA's assessments required by Nevada statutes, the CC&Rs and due process, the HOA Sale was wrongfully conducted and should be set aside.

82. As a proximate result of HOA, Red Rock, United, and fictitious Defendants' wrongful foreclosure of the Property by the HOA Sale, as more particularly set forth above and in the General Allegations, Plaintiff has suffered general and special damages in an amount not presently known. Plaintiff will seek leave of court to assert said amounts when they are determined.

83. If it is determined that Plaintiff's Deed of Trust has been extinguished by the HOA Sale, as a proximate result of HOA, Red Rock, United, and fictitious Defendants' wrongful foreclosure of the Property by the HOA Sale, Plaintiff has suffered special damages in the amount equal to the fair market value of the Property or the unpaid balance of the Harrison Loan, plus interest, at the time of the HOA Sale, whichever is greater, in an amount not presently known. Plaintiff will seek leave of court to assert said amounts when they are determined.

84. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

FOURTH CAUSE OF ACTION

(Negligence versus HOA, Red Rock, United, and the fictitious Defendants)

85. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein

86. The HOA, Red Rock, United, and fictitious Defendants owed a duty to Plaintiff and subordinate lienholders to conduct the HOA foreclosure sale at issue in this case properly and in a manner that would fairly allow them an opportunity to protect their interest and cure the

super-priority lien threatening their security interests.

87. The HOA, Red Rock, United, and fictitious Defendants 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 that Plaintiff and subordinate lienholders had an opportunity to cure.

88. As a proximate result of the HOA, Red Rock, United, and fictitious Defendants' breaches of their duties, Plaintiff was unable to cure by tendering a pay-off of the super-priority lien threatening its security interest.

89. As a proximate result of the HOA, Red Rock, United, and fictitious Defendants' breaches of their duties, Plaintiff has incurred general and special damages in an amount in excess of $10,000.00.

90. If Plaintiff is found to have lost its first secured interest in the Property, it was the proximate result of the HOA, Red Rock, United, and fictitious Defendants' breaches of their duties, and Plaintiff have thereby suffered general and special damages in an amount in excess of $10,000.00.

91. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

FIFTH CAUSE OF ACTION

(Negligence Per Se versus HOA, Red Rock, United, and the fictitious Defendants)

92. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

93. NRS Chapter 116 imposes a duty on HOAs to conduct HOA foreclosure sales in a manner that is consistent with its provisions and, by reference, the provisions of NRS 107.090.

94. HOA, Red Rock, United, and fictitious Defendants breached the statutory duties imposed by NRS Chapter 116 concerning notice.

95. HOA, Red Rock, United, and fictitious Defendants violated NRS 116.31162(1)(b)(1) by failing to describe the deficiency in payment of a super-priority lien.

96. Plaintiff is a member of the class of persons whom NRS Chapter 116 is intended to protect.

97. The injury that Plaintiff faces—extinguishment of its first-position Deed of Trust—is the type against which NRS Chapter 116 is intended to protect.

98. As a proximate result of HOA's, Red Rock's, United's, and the fictitious Defendants' breaches of their statutory duties, Plaintiff was unable to cure by tendering a pay-off of the super-priority lien threatening its security interest.

99. As a proximate result of HOA's, Red Rock's, United's, and the fictitious Defendants' breaches of their duties, Plaintiff has incurred general and special damages in an amount in excess of $10,000.00.

100. If Plaintiff is found to have lost its first secured interest in the Property, it was the proximate result of HOA's, Red Rock's, United's, and the fictitious Defendants' breaches of their statutory duties, and Plaintiff has thereby suffered general and special damages in an amount in excess of $10,000.00.

101. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

SIXTH CAUSE OF ACTION

(Breach of Contract versus the HOA, Red Rock, and United)

102. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

103. Plaintiff was an intended beneficiary of the HOA's CC&Rs.

104. The HOA, Red Rock, United, and fictitious Defendants breached the obligations, promises, covenants and conditions of the CC&Rs owed to Plaintiff by the circumstances under which they conducted the HOA Sale of the Property.

105. The HOA, Red Rock, United, and fictitious Defendants' breaches of the obligations, promises, covenants and conditions of the CC&Rs proximately caused Plaintiff general and special damages in an amount in excess of $10,000.00.

106. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

SEVENTH CAUSE OF ACTION
(Misrepresentation versus the HOA)

107. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

108. Plaintiff is within the class or persons or entities the HOA intended or had reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

109. Plaintiff, and its predecessors in interest, justifiably relied upon the provisions of the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust, and the Harrison Loan it secures, and the HOA intended or had reason to expect their conduct would be influenced.

110. The HOA's representations in the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false.

111. The HOA had knowledge or a belief that the representations in the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false or it had an insufficient basis for making the representations.

112. The HOA had a pecuniary interest in having Plaintiff and its predecessors in interest rely on the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

113. The HOA failed to exercise reasonable care or competence in communicating the information within the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, which was false or it had an insufficient basis for making.

114. The HOA, the HOA Trustee and fictitious Defendants acted in contravention to the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, when it conducted the HOA Sale in a manner that could extinguish Plaintiff's Deed of Trust.

115. Plaintiff suffered general and special damages in an amount in excess of $10,000.00 as a proximate result of its reliance.

116. Plaintiff 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

(Unjust Enrichment versus Buyer, the HOA, Red Rock, United, and fictitious defendants)

117. Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

118. Plaintiff, or its predecessor, has been deprived of the benefit of its secured deed of trust by the actions of Buyer, the HOA, Red Rock, United, and fictitious defendants.

119. Buyer, the HOA, Red Rock, United, and fictitious defendants have benefitted from the unlawful HOA Sale and nature of the real property.

120. Buyer, the HOA, Red Rock, United, and fictitious defendants benefitted from Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

121. Should Plaintiff's Complaint be successful in quieting title against Buyer, the HOA, and the HOA Trustee and setting aside the HOA Sale, Buyer, the HOA, Red Rock, United, and fictitious defendants will have been unjustly enriched by the HOA Sale and usage of the Property.

122. Plaintiff will have suffered damages if Buyer, the HOA, Red Rock, United, and fictitious defendants are allowed to retain their interests in the Property and the funds received from the HOA Sale.

123. Plaintiff will have suffered damages if Buyer, the HOA, Red Rock, United, and fictitious defendants are allowed to retain their interests in the Property and Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

124. Plaintiff is entitled to general and special damages in excess of $10,000.00.

125. Plaintiff has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

NINTH CAUSE OF ACTION

(Tortious Interference with Contract versus Buyer, the HOA, Red Rock, United, and fictitious defendants)

126. Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

127. At all times mentioned, Plaintiff had a valid and existing contract with the Harrisons (the Borrowers), and the contract terms included the power of sale in the Deed of Trust.

128. The Deed of Trust evidencing the contract was and is a matter of public record, and therefore known to Buyer, the HOA, Red Rock, United, and fictitious defendants.

129. Buyer, the HOA, Red Rock, United, and fictitious defendants engaged in acts intended or designed to disrupt the contractual relationship between Plaintiff and the Borrower by ostensibly electing to enforce the "super priority" rights of the Association through a power of sale, notwithstanding: (i) the covenants contained in the CC&R's; (ii) no notice to Plaintiff or its predecessors in interest of the intent to do so; (iii) no notice to Plaintiff or its predecessors in interest of the foreclosure proceedings; and (iv) failing to provide an opportunity to cure to Plaintiff before the sale.

130. At all times Buyer, the HOA, Red Rock, United, and fictitious defendants could have elected to honor the covenant in its CC&R's evidenced by the Mortgagee Protection Clause and chosen not to enforce the super priority portion of the lien, or to do so only after ensuring Plaintiff had notice and was prepared to waive its rights to foreclose under the Deed of Trust.

131. Plaintiff's contractual rights to enforce the power of sale have been disrupted and frustrated through Counter- Defendants' actions.

132. As an actual and proximate result of the Counter- Defendants' actions and inactions, Plaintiff has sustained damages in excess of Ten Thousand Dollars ($10,000).

133. As an actual and proximate results of the Counter- Defendants' actions and inactions, Plaintiff 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.

PRAYER

Wherefore, Plaintiff prays for judgment against the Counter- Defendants, jointly and severally, as follows:

1. For a declaration and determination that the HOA Sale was invalid to the extent it purports to convey the Property free and clear to Buyer;
2. For a declaration and determination that Plaintiff's interest still encumbers the Property, and that Plaintiff's first Deed of Trust was not extinguished by the HOA Sale;
3. For a declaration and determination that Plaintiff's interest is superior to the interest of Buyer and all other parties;
4. In the alternative, for a declaration and determination that the HOA Sale was invalid and conveyed no legitimate interest to Buyer;
5. For a preliminary and permanent injunction that Buyer, its successors, assigns, and agents are prohibited from conducting any sale, transfer or encumbrance of the Property that is claimed to be superior to Plaintiff's Deed of Trust or not subject to that Deed of Trust;
6. For a preliminary injunction that Buyer, its successors, assigns, and agents be required to pay all taxes, insurance and homeowner's association dues during the pendency of this action.
7. If it is determined that Plaintiff'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 Harrison Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater;
8. For general and special damages in excess of $10,000.00;

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9. For attorney's fees;

10. For costs incurred herein, including post-judgment costs;

DATED this 23rd day of January, 2018.

WRIGHT, FINLAY & ZAK, LLP

/s/ Paterno C. Jurani, Esq.
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Paterno C. Jurani, Esq.
Nevada Bar No. 8136
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 23rd day of January, 2018, I did cause a true copy **SECOND AMENDED COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

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/s/ Faith Harris
An Employee of WRIGHT, FINLAY & ZAK, LLP

Exhibit 1

Exhibit 1

Exhibit 1

~~Recording Requested By:~~ 163-31-611-022
DIRECT EQUITY MORTGAGE, LLC

Return To:
DIRECT EQUITY MORTGAGE, LLC

3285 NORTH FORT APACHE ROAD
LAS VEGAS, NEVADA 89129

Prepared By:

DIRECT EQUITY MORTGAGE, LLC

3285 NORTH FORT APACHE ROAD
LAS VEGAS, NEVADA 89129

TITLE NO.: 09030356SPR
ESCROW NO.: 09030356SPR
LOAN NO.: 4680
Assessor's Parcel Number: **163-31-611-022**

20090331-0004948
Fee: $22.00 RPTT: $0.00
N/C Fee: $25.00
03/31/2009 15:09:00
T20090110401
Requestor:
NEVADA TITLE LAS VEGAS
Debbie Conway MSH
Clark County Recorder Pgs: 9

09-03-0356-SPR [Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No.
332-4848778-703 - 203(b)

MIN **100521800000037987**

THIS DEED OF TRUST ("Security Instrument") is made on **MARCH 26, 2009** .
The Grantor is
JOSEPH F HARRISON AND BONNIE L HARRISON, HUSBAND AND WIFE, AS JOINT TENANTS

("Borrower"). The trustee is
NEVADA TITLE COMPANY
("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). 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.
DIRECT EQUITY MORTGAGE, LLC, A NEVADA CORPORATION
("Lender") is organized and existing under the laws of **NEVADA** , and has an address of
3285 NORTH FORT APACHE ROAD; LAS VEGAS, NEVADA 89129
. Borrower owes Lender the principal sum of
TWO HUNDRED THIRTY FOUR THOUSAND SEVEN HUNDRED THIRTY NINE AND 00/100----------
Dollars (U.S. $ **234,739.00**).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument

Initials: _____ _____

("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **APRIL 01 , 2039** . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in

CLARK County, Nevada:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

which has the address of **5946 LINGERING BREEZE STREET** [Street]
LAS VEGAS [City], Nevada **89148** [Zip Code]
("Property Address");

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

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

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

LOAN NO.: 4680 Initials: _____

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or

abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

LOAN NO.: 4680 **Initials:** _____ _____ _____ _____

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

LOAN NO.: 4680

Initials: _____ _____ _____ _____

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, 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.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. 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 and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. 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.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ **TO BE DETERMINED AT TIME OF REQUEST.**

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider ☐ Adjustable Rate Rider ☐ Growing Equity Rider
☐ Planned Unit Development Rider ☐ Graduated Payment Rider ☐ Other [Specify]

LOAN NO.: 4680
4N(NV) (0307).01
DOCPREP SERVICES, INC. FORM - MDOTNVG-3229

Initials: _____ _____ _____ _____

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

_____ _____(Seal)
Joseph F. Harrison -Borrower
JOSEPH F HARRISON

_____ _____(Seal)
-Borrower
BONNIE L HARRISON

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

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

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

STATE OF NEVADA COUNTY OF Clark

This instrument was acknowledged before me on March 26, 2009 by
JOSEPH F HARRISON AND BONNIE L HARRISON

Sandra L. Clark

NOTARY PUBLIC
SANDRA L. CLARK
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. FEB. 6, 2013
No: 88-1652-1

Sandra L Clark

Feb 6, 2013
No 88-1652-1

Mail Tax Statements To:
JOSEPH F HARRISON AND BONNIE L HARRISON

5946 LINGERING BREEZE STREET
LAS VEGAS, NEVADA 89148

LOAN NO.: 4680
4N(NV) (0307).01
DOCPREP SERVICES, INC. FORM - MDOTNVG-3229 Page 8 of 8
ORIGINAL

Escrow No.: 09-03-0356-SPR

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL I:

LOT ONE HUNDRED THIRTY-ONE (131) IN BLOCK FIVE (5) OF RUSSELL/FORT APACHE-UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 101, OF PLATS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT AND PUBLIC UTILITY PURPOSES ON, OVER AND ACROSS THE PRIVATE STREETS AND COMMON AREAS ON THE MAP REFERENCED HEREINABOVE, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

Exhibit 2

Exhibit 2

Exhibit 2

Inst #: 201401070000775
Fees: $19.00 N/C Fee: $0.00
RPTT: $879.75 Ex: #
01/07/2014 08:18:28 AM
Receipt #: 1893423
Requestor:
THE CASTLE LAW GROUP, LLC.
Recorded By: ECM Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N.: **163-31-611-022**
Requested and Prepared by:
Cooper Castle Law Firm, LLP

When Recorded Mail To:
Cooper Castle Law Firm, LLP
5275 S. Durango Drive
Las Vegas, NV 89113

Forward Tax Statements to
the address given below

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. NO.: **12-05-42957-NV**
TITLE ORDER # **6734622**

TRUSTEE'S DEED UPON SALE

A.P.N.: **163-31-611-022** TRANSFER TAX: $879.75

The Grantee Herein **Was** the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was **$227,324.19, plus any Accrued Interest, Late Charges, Escrow Shortages, and other Collection Costs pursuant to the Promissory Note/Deed of Trust/Loan Modification Agreement.**
The Amount Paid by the Grantee Was **$172,200.00**
Said Property is in the City of **Las Vegas**, County of **Clark**

Cooper Castle Law Firm, LLP, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

Ocwen Loan Servicing LLC

(herein called Grantee), whose legal address is **110 Virginia Drive, Fort Washington PA 19034** but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **Clark**, State of Nevada, described as follows:

SEE EXHIBIT A HERE TO AND INCORPORATED HEREIN BY REFERENCE

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **Joseph F Harrison and Bonnie L Harrison,** as Trustors, dated **March 26, 2009** of the Official Records in the office of the Recorder of **Clark** County, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on **March 31, 2009**, 20090331-0004948 of Official records. The Trustee has complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid, to each person entitled to notice in compliance with Nevada Revised Statutes Chapter 107.

TRUSTEE'S DEED UPON SALE

T.S. NO.: **12-05-42957-NV**
TITLE ORDER # **6734622**

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **December 20, 2013**. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid, being **$172,200.00**, in lawful money of the United States, receipt thereof is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, Cooper Castle Law Firm, LLP as Trustee, has this day, caused its name to be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws.

Date: 1/3/14

THE COOPER CASTLE LAW FIRM, LLP

By: _____
Justin Gourley
Attorney at Law

State of Nevada } SS.
County of Clark }

On 1-3-14 before me, the undersigned, Amelia Santini, Notary Public, personally appeared Justin Gourley 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(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
AMELIA SANTINI
Appt. No. 13-11068-1
My Appt. Expires June 14, 2017

EXHIBIT A

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

PARCEL I:

LOT ONE HUNDRED THIRTY-ONE (131) IN BLOCK FIVE (5) OF RUSSELL/FORT APACHE-UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 101, OF PLATS,PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT AND PUBLIC UTILITY PURPOSES ON, OVER AND ACROSS THE PRIVATE STREETS AND COMMON AREAS ON THE MAP REFERENCED HEREINABOVE, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 163-31-611-022
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☒ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 172,200.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 172,500.00
d. Real Property Transfer Tax Due $ 879.75

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 parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Attorney At Law

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		**BUYER (GRANTEE) INFORMATION (REQUIRED)**	
Print Name:	Cooper Castle Law Firm	Print Name:	Ocwen Loan Servicing LLC
Address:	5275 S. Durango Drive	Address:	110 Virginia Drive
City:	Las Vegas	City:	Fort Washington
State:	NV Zip: 89113	State:	PA Zip: 19034

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name:	Cooper Castle Law Firm	Escrow #	
Address:	5275 S. Durango Drive		
City:	Las Vegas	State: NV	Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 3

Exhibit 3

Exhibit 3

Inst #: 201112080002960
Fees: $17.00
N/C Fee: $0.00
12/08/2011 09:26:38 AM
Receipt #: 1002082
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: KGP Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-31-611-022
File Number: R98668

Accommodation

LIEN FOR DELINQUENT ASSESSMENTS

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Southern Terrace Homeowners Association, herein also called the Association, in accordance with Nevada Revised Statues 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 08/09/2001, in Book Number 20010809, as Instrument Number 01455 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:
5946 Lingering Breeze St, Las Vegas, NV 89148
RUSSELL FORT APACHE-UNIT 3 PLAT BOOK 101 PAGE 45 LOT 131 BLOCK 5, in the County of Clark
Current Owner(s) of Record:
JOSEPH F. HARRISON, BONNIE L. HARRISON
The amount owing as of the date of preparation of this lien is **$737.04.
This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.
** The said amount may increase or decrease as assessments, late fees, interest, fines/violations, collection fees, costs or partial payments are applied to the account.

Dated: December 1, 2011

Rebecca Tom

Prepared By Rebecca Tom, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA)
COUNTY OF CLARK)
On December 1, 2011, before me, personally appeared Rebecca Tom, 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.

Theresa Solis

THERESA SOLIS
Notary Public, State of Nevada
Appointment No. 01-70500-1
My Appt. Expires June 3, 2013

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

Exhibit 4

Exhibit 4

Exhibit 4

Inst #: 201202020000465
Fees: $17.00
N/C Fee: $0.00
02/02/2012 10:26:14 AM
Receipt #: 1054640
Requestor:
AMERICAN LOT BOOK
Recorded By: LEX Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-31-611-022
File Number: R98668
Property Address: 5946 Lingering Breeze St
Las Vegas, NV 89148
Title Order Number: 36904

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 Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 12/08/2011, in Book Number 20111208, as Instrument Number 0002960, reflecting JOSEPH F. HARRISON, BONNIE L. HARRISON as the owner(s) of record on said lien, land legally described as RUSSELL FORT APACHE-UNIT 3 PLAT BOOK 101 PAGE 45 LOT 131 BLOCK 5, 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 08/09/2001, in Book Number 20010809, as Instrument Number 01455, has been breached. As of 09/01/2011 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of January 27, 2012, the amount owed is $ 1,870.61. This amount will continue to increase until paid in full.

Joshua Wood

Dated: January 27, 2012

Prepared By Joshua Wood, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA)
COUNTY OF CLARK)

On January 27, 2012, before me, personally appeared Joshua Wood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Julia Thompson

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

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

Exhibit 5

Exhibit 5

Exhibit 5

Inst #: 201305020000105
Fees: $17.00
N/C Fee: $0.00
05/02/2013 08:01:15 AM
Receipt #: 1598818
Requestor:
UNITED LEGAL SERVICES INC.
Recorded By: ECM Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 163-31-611-022
ULS#: NV-SO3-04

When recorded mail to:
United Legal Services Inc.
A Nevada Law Firm
9484 South Eastern Ave. #163
Las Vegas, NV 89123
Phone: (702) 617-3263

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

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 UNITED LEGAL SERVICES INC. AT (702) 617-3263. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907.

YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS, notice of which was recorded on December 8, 2011 as instrument 201112080002960 in the Official Records of the Recorder of Clark County, Nevada ("Official Records"), by the Southern Terrace Homeowners Association. The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on February 2, 2012 as instrument 201202020000465 in the Official Records. The property owner(s) of record is/are: **Joseph F and Bonnie L Harrison**. The total amount necessary to satisfy the lien as of the proposed sale date is $4,197.60.

UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT WILL BE SOLD AT PUBLIC SALE. United Legal Services Inc. ("ULS") has the collections file on this account. Any payments to satisfy the lien must be in cash, cashier's check, or wire transfer, and must be actually received by ULS prior to the sale. If payment in full is not received prior to the date/time below, the property will be auctioned. All auction sales are final and late payments will be returned. If you need an explanation of this notice or its contents, you should contact an attorney.

NOTICE IS HEREBY GIVEN THAT on **May 25, 2013** at **9:00 AM** at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123, United Legal Services Inc., as duly authorized agent for sale pursuant to NRS 116, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the property commonly known as: **5946 Lingering Breeze St, Las Vegas, Nevada 89148**. Payment by the winning bidder must be made at the conclusion of the auction and in cash or a cashier's check drawn on a bank or credit union authorized to do business in the State of Nevada. The sale will be made without covenant or warranty, expressed or implied, regarding, but not limited to, title, possession, encumbrances, or obligations to satisfy any secured or unsecured liens.

Date: May 1, 2013

By: Mia Fregeau
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Southern Terrace Homeowners Association

Exhibit 6

Exhibit 6

Exhibit 6

Inst #: 201305290002514
Fees: $18.00 N/C Fee: $0.00
RPTT: $691.05 Ex: #
05/29/2013 12:22:37 PM
Receipt #: 1633728
Requestor:
UNITED LEGAL SERVICES INC.
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 163-31-611-022

Return document and mail tax statements to:

First 100, LLC
10620 Southern Highlands Pkwy, Ste. 110-485
Las Vegas NV 89141

FORECLOSURE DEED UPON SALE

Foreclosing lienholder **SOUTHERN TERRACE HOMEOWNERS ASSOCIATION**, under power of sale pursuant to NRS Chapter 116, does hereby sell, without warranty, expressed or implied, to:

FIRST 100, LLC

the real property situated in Clark County, Nevada legally described as:

SEE EXHIBIT A ATTACHED FOR LEGAL DESCRIPTION

and commonly known as 5946 LINGERING BREEZE ST, LAS VEGAS NV 89148.

This conveyance is made pursuant to the powers conferred upon Agent by NRS Chapter 116, the foreclosing Association's governing documents (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded on December 8, 2011 as instrument 201112080002960 in the Official Records of the Recorder of Clark County, Nevada. Default occurred as set forth in the Notice of Default and Election to Sell, recorded on February 2, 2012 as instrument 201202020000465 in the Official Records of the Recorder of Clark County, Nevada. All requirements of law have been complied with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing, posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164, sold the property at public auction on May 25, 2013.

By: Robert Opdyke, Esq.
United Legal Services Inc.
As authorized agent for, and on behalf of, foreclosing Association

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on May 28, 2013, by: Robert Opdyke.

NOTARY PUBLIC

MIA FREGEAU
Notary Public-State of Nevada
APPT. NO. 13-10009-1
My App. Expires January 23, 2017

EXHIBIT A

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

PARCEL ONE (1):
Lot 131 in Block 5 of RUSSELL FORT APACHE - UNIT 3, as shown by map thereof on file in Book 101 of Plats, Page 45 in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non-exclusive easement for ingress, egress, use and enjoyment and public utility purposes on, over and across the Private Streets and Common Areas on the map referenced hereinabove, which easement is appurtenant to Parcel One (1).

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 163-31-611-022
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 135,500.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 135,500.00
d. Real Property Transfer Tax Due $ 691.05

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 parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Seller's Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: United Legal Services Inc.*	Print Name: First 100, LLC
Address: 9484 S. Eastern Ave. #163	Address: 10620 Southern Highland 110-485
City: Las Vegas	City: Las Vegas
State: NV Zip: 89123	State: NV Zip: 89141

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: United Legal Services Inc.	Escrow #
Address: 9484 S. Eastern Ave. #163	
City: Las Vegas	State: NV Zip: 89123

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

*As agent for Southern Terrace Homeowners Association

Exhibit 7

Exhibit 7

Exhibit 7

Inst #: 201401130001734
Fees: $18.00 N/C Fee: $0.00
RPTT: $889.95 Ex: #
01/13/2014 03:17:13 PM
Receipt #: 1900145
Requestor:
CHERUS HOLDINGS LLC
Recorded By: SCA Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 163-31-611-022

Return document and mail tax statements to:

Chersus Holdings, LLC
1354 Opal Valley St
Henderson NV 89052

DEED OF SALE

THIS INDENTURE WITNESSETH: That first party

FIRST 100, LLC

for valuable consideration, the receipt of which is hereby acknowledged, does hereby convey without warranty, express or implied, to grantee:

CHERSUS HOLDINGS, LLC

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

*** SEE EXHIBIT A ATTACHED FOR LEGAL DESCRIPTION ***

and commonly known as 5946 LINGERING BREEZE ST, LAS VEGAS NV 89148.

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

Subject to: (i) Property taxes; (ii) conditions, covenants, restrictions, reservations, rights, rights of way, and easements now of record, if any; and (iii) liens, deeds of trust, and other encumbrances now in force, if any.

By: _____
Authorized Signatory, First 100 LLC

Print Name: Carlos Cardenas
Carlos Cardenas

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on October 23rd 2013,

by : Carlos Cardenas.
(print name of above signatory)

_____
NOTARY PUBLIC

HANNAH HARVEY
NOTARY PUBLIC, STATE OF NEVADA
My Commission Expires: 07-30-16
Certificate No: 12-8331-1
Exp. 07-30-16

EXHIBIT A

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

PARCEL ONE (1):

Lot 131 in Block 5 of RUSSELL FORT APACHE - UNIT 3, as shown by map thereof on file in Book 101 of Plats, Page 45 in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non-exclusive easement for ingress, egress, use and enjoyment and public utility purposes on, over and across the Private Streets and Common Areas on the map referenced hereinabove, which easement is appurtenant to Parcel One (1).

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 163-31-611-022
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 174,083.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 174,083.00
d. Real Property Transfer Tax Due $ 889.95

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

5. Partial Interest: Percentage being transferred: 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 parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Seller (Grantor) Representative

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: First 100, LLC	Print Name: Chersus Holdings, LLC
Address: 11920 Southern Highlands Ste 200	Address: 1354 Opal Valley St
City: Las Vegas	City: Henderson
State: Nevada Zip: 89141	State: Nevada Zip: 89052

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: First 100, LLC	Escrow #
Address: 11920 Southern Highlands Ste 200	
City: Las Vegas	State: Nevada Zip: 89141

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 8

Exhibit 8

Exhibit 8

20310809
.01455

APN: pin of: 163-31-501-010; 163-31-501-013;
163-31-501-014; 163-31-501-021

84

WHEN RECORDED, RETURN TO

WILBUR M. ROADHOUSE, ESQ.
Goold Patterson DeVore Ales & Roadhouse
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

(Space Above Line for Recorder's Use Only)

MASTER DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

SOUTHERN TERRACE

(a Nevada Residential Common-Interest Planned Community)
CLARK COUNTY, NEVADA

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MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOUTHERN TERRACE

THIS MASTER DECLARATION ("Declaration"), made as of the 8th day of August, 2001, by PERMA-BILT, a Nevada corporation ("Declarant"),

W I T N E S S E T H :

WHEREAS:

A. Declarant owns certain real property located in Clark County, Nevada, on which Declarant intends to subdivide, develop, construct, market and sell a single family detached residential common-interest planned community, to be known generally as "SOUTHERN TERRACE"; and

B. A portion of said property, as more particularly described in Exhibit "A" attached hereto, shall constitute the property initially covered by this Declaration ("Original Property"); and

C. Declarant intends that, upon Recordation of this Declaration, the Original Property shall be a Nevada Common-Interest Community, as defined in NRS § 116.110323, and a Nevada Planned Community, as defined in NRS § 116.110368 ("Community"); and

D The name of the Community shall be SOUTHERN TERRACE, and the name of the Nevada nonprofit corporation organized in connection therewith shall be SOUTHERN TERRACE HOMEOWNERS ASSOCIATION ("Association"); and

E Declarant further reserves the right from time to time to add all or any portion of certain other real property, more particularly described in Exhibit "B" hereto ("Annexable Area"); and

F The total maximum number of Units that may (but need not) be created in the Community is one thousand two hundred (1,200) aggregate Units ("Units That May Be Created"); and

G Declarant intends to develop and convey all of the Original Property, and any Annexable Area which may be annexed from time to time thereto ("Annexed Property"), pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

H Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant will cause or has caused, the Association to be formed for the purpose of exercising such functions; and

I. This Declaration is intended to set forth a dynamic and flexible plan of governance of the Community, for the overall development, administration, maintenance and preservation of a master residential community in which the Owners enjoy a quality life style as "good neighbors".

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexed Property (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article 1 hereof), in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale and lease of the Properties or any portion thereof. The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner, and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved, and limited exclusively to single Family residential use.

ARTICLE 1
DEFINITIONS

Section 1.1 "Annexable Area" shall mean the real property described in Exhibit "B" hereto, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed hereto pursuant to Article 15 hereof.

Section 1.2 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.3 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.4 "Articles" shall mean the Articles of Incorporation of the Association as filed in the office of the Secretary of State of Nevada, as such Articles may be amended from time to time.

Section 1.5 "Assessments" shall refer collectively to Annual Assessments, Capital Assessments, and any applicable Special Assessments (and, if applicable with regard to a particular Neighborhood, Neighborhood Assessments).

Section 1.6 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic installments (monthly, quarterly, or annually, as determined from time to time by the Board), commencing as of the Assessment Commencement Date, by each Owner to the Association in the manner and proportions provided herein.

Section 1.7 "Assessment, Capital" shall mean a charge against each Owner and his Unit, representing a portion of the costs to the Association for installation, construction or reconstruction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.8 "Assessment, Special" shall mean a charge against a particular Owner and his Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty

assessed by the Association, plus interest and other charges on such Special Assessments as provided for herein.

Section 1.9 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.10 "Association" shall mean SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns.

Section 1.11 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.12 "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.

Section 1.13 "Board" or "Board of Directors" shall mean the Board of Directors of the Association. The Board of Directors is an "Executive Board" as defined by NRS § 116.110345.

Section 1.14 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved pursuant to the provisions of this Declaration, including, but not limited to, Section 6.4 below.

Section 1.15 "Bylaws" shall mean the Bylaws of the Association which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.16 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser

Section 1.17 "Common Elements" shall mean all real property or interests therein (including, but not necessarily limited to, those easements over portions of certain Lots, designated on the Plat as pedestrian access corridor easements, landscape easements, drainage easements, and certain other easements) owned or leased by the Association, and includes entry monumentation, private entry gates for the Properties, Common Recreational Area, Private Streets and public utility easements shown on the Plat, street lights, street signs, curbs and gutters, certain drainage and sewer easements, certain water and power easements, Common Element landscaping, access and ingress/egress easements (including, but not necessarily limited to, those areas respectively designated "Private Drive and P.U.E.", and any areas designated as "Private Drainage Easement," "Water Easement," "Power Easement," "Sewer Easement," "Access Easement," "Ingress/Egress Easement," and/or other similar easements on the Plat) but otherwise, shall exclude Units. Portions of Perimeter Walls, pursuant to Section 9.6 below, are located on and constitute portions of Lots, and are not Common Elements. The Common Elements shall constitute Common Elements as to the Properties, as provided in NRS § 116.110318.

Section 1.18 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and insurance of the Common Elements; painting over or removing graffiti on the exterior side of perimeter walls; unpaid Special Assessments or Capital Assessments; costs of any commonly metered utilities and other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefiting the Common Elements; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Common Elements or Properties or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, any Managers, or any other Person handling the funds of the Association; any statutorily required "ombudsman" fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or portions thereof; costs of any other

item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.19 "Common Recreational Area" shall mean a common recreational area for the Community, and the building and other improvements on such area which shall be a part of the Common Elements.

Section 1.20 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.110323, and a Planned Community, as defined in NRS § 116.110368.

Section 1.21 "County" shall mean the county in which the Properties are located (i.e., Clark County, Nevada).

Section 1.22 "Declarant" shall mean PERMA-BILT, a Nevada corporation, its successors and any Person to which it shall have assigned any rights hereunder by an express written and Recorded assignment (but specifically excluding Purchasers as defined in NRS §116.110375).

Section 1.23 "Declarant Control Period" shall have the meaning set forth in Section 3.7, below.

Section 1.24 "Declaration" shall mean this instrument, as may be amended from time to time.

Section 1.25 "Deed of Trust" shall mean a Recorded mortgage or a deed of trust, as the case may be, pursuant to Section 1.42, below.

Section 1.26 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.27 "Dwelling" shall mean a residential building located on a Unit designed and intended for use and occupancy as a residence by a single Family.

Section 1.28 "Eligible Holder" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering any Unit, which has filed with the Board a written request for notification as to relevant specified matters.

Section 1.29 "Exterior Wall(s)" shall mean the exterior only face of Perimeter Walls (visible from public streets or other areas outside of and generally abutting the exterior boundary of the Properties).

Section 1.30 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable County ordinances.

Section 1.31 "FHA" shall mean the Federal Housing Administration.

Section 1.32 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.33 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.34 "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Section 1.35 "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.36 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and the Rules and Regulations together with, if applicable, any Supplemental Declaration (and, if applicable, any Neighborhood Rules and Regulations or other Neighborhood governing documents, collectively referred to as "Neighborhood Governing Documents", which are specific with regard to a particular Neighborhood). Any inconsistency among the Governing Documents shall be governed pursuant to Section 19.10, below.

Section 1.37 "Identifying Number", pursuant to NRS § 116.110348, shall mean the number which identifies a Unit on the Plat.

Section 1.38 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Properties, including but not limited to Dwellings and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, hardscape, Private Streets, streetlights, curbs, gutters, walls, perimeter walls, party walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 1.39 "Lot" shall mean the residential real property of any residential lot to be owned separately by an Owner, as shown on the Plat (subject to Common Element easements over Lots as shown on the Plat, including, but not limited to, any Private Street easements). Notwithstanding the foregoing, in the event that certain Lots, shown as such on the Plat, are expressly designated by Declarant, in its sole and absolute discretion, by separate Recorded instrument to constitute Common Elements, pursuant to Declarant's reserved rights as set forth in Article 14 below, then such specifically designated Lots shall not be Lots for purposes of this Declaration and the other Governing Documents, but shall be conclusively deemed a portion of the Common Elements.

Section 1.40 "Manager" shall mean the Person, if any, whether an employee or independent contractor, appointed by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.41 "Member," "Membership." "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.42 "Mortgage," "Mortgagee," "Mortgagor." "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor," and "Beneficiary" shall be synonymous with "Mortgagee."

Section 1.43 "Neighborhood" shall have the meaning set forth in Section 17.1, below.

Section 1.44 "Neighborhood Assessments" shall have the meaning set forth in Section 17.1, below.

Section 1.45 "Neighborhood Common Area" shall have the meaning set forth in Section 17.1, below.

Section 1.46 "Neighborhood Expenses" shall have the meaning set forth in Section 17.1, below.

Section 1.47 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.48 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.49 "Original Property" shall mean that real property described on Exhibit "A," attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.50 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

Section 1.51 "Perimeter Walls" shall mean the walls, initially constructed by Declarant, and located generally around the exterior perimeter of the Properties.

Section 1.52 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.53 "Plat" shall mean the final plat maps of SOUTHERN TERRACE, as the same from time to time are Recorded, including the final map of _____, (Recorded on _____, 2001, in Book _____ of Plats, Page _____), and any other final plat maps of the Properties, as all of the same from time to time may be amended or supplemented.

Section 1.54 "Private Streets" shall mean all private streets, rights of way, street scapes, and vehicular ingress and egress easements, in the Properties, shown as such on the Plat.

Section 1.55 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit "B" hereto, as hereafter from time to time may be annexed thereto pursuant to Article 15 of this Declaration.

Section 1.56 "Purchaser" shall have that meaning as provided in NRS § 116.110375.

Section 1.57 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.58 "Resident" shall mean any Owner, tenant, or other person who is physically residing in a Unit.

Section 1.59 "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.60 "Sight Visibility Restriction Area" shall mean those areas, portions of which are or may be located on portions of Common Elements and/or Lots, identified on the Plat as "Sight Visibility Restriction Easements," in which the height of landscaping and other sight restricting improvements (other than official traffic control devices) is restricted to a maximum height as set forth on the Plat.

Section 1.61 "Supplemental Declaration" shall mean an instrument Recorded by Declarant or with the express prior written consent of Declarant, in its sole discretion, which shall be supplemental to this

Declaration, as set forth in further detail in Section 18.1, below. Any purported Supplemental Declaration Recorded without the express prior written consent of Declarant shall be null and void.

Section 1.62 "Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat), and shall include a Lot and all Improvements thereon (which, with regard to certain Units, shall specifically include the portion of Perimeter Walls located on or within the Unit's boundaries, pursuant to Section 9.6 below). Subject to the foregoing, and subject to Section 9.5, below, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.63 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 1,200 Units).

Section 1.64 "VA" shall mean the U.S. Department of Veterans Affairs.

Any capitalized term not separately defined in this Declaration shall have the meaning ascribed thereto in applicable provision of NRS Chapter 116.

ARTICLE 2
OWNERS' PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Each Owner shall have a nonexclusive right and easement of ingress and egress and of use and enjoyment in, to and over the Common Elements, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the following:

(a) the right of the Association to reasonably limit the number of guests and tenants an Owner or his tenant may authorize to use the Common Elements;

(b) the right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Elements;

(c) the right of the Association, in accordance with the Declaration, Articles and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and in aid thereof, and further subject to the Mortgagee protection provisions of Article 13 of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

(d) subject to the provisions of Article 13 of this Declaration, and subject further to the voting requirements set forth in subsection 2.1(c) above, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members;

(e) subject to the provisions of Article 14 hereof, the right of Declarant and its sales agents, representatives and prospective Purchasers, to the nonexclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s) until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) the other easements and rights and reservations of Declarant as set forth in Article 14 and elsewhere in this Declaration.

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote or written consent of a majority of the voting power of the Board, and the approval of the Eligible Holders of fifty-one percent (51%) of the first Mortgages on Units in the Properties.

(h) the right of the Association, acting through the Board, to replace destroyed trees or other vegetation and to plant trees, shrubs and other ground cover upon any portion of the Common Elements.

(i) the right of the Association, acting through the Board, to place and maintain upon the Common Elements such signs as the Board reasonably may deem appropriate for the identification, marketing, advertisement, sale, use and/or regulation of the Properties, or any portion thereof, or any other project of Declarant.

(j) the right of the Association, acting through the Board, to reasonably restrict access to and use of portions of the Common Elements,

(k) the right of the Association, acting through the Board, to reasonably suspend voting rights and to impose fines as Special Assessments, and to suspend the right of an Owner or Resident to use Common Elements, for nonpayment of any regular or special Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents.

(l) the obligations and covenants of Owners as set forth in Article 9 and elsewhere in this Declaration.

(m) the use restrictions set forth in Article 10 and elsewhere in this Declaration;

(n) the easements reserved in Sections 2.2 through 2.7, inclusive, Section 2.13, Article 14, Article 15, Article 17, and/or any other provision of this Declaration; and

(o) the rights of any other easement holders.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Section 10.19 below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations by all means lawful for such enforcement on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

Section 2.3 Easements for Vehicular and Pedestrian Traffic. In addition to the general easements for use of the Common Elements reserved herein, there shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, nonexclusive, appurtenant easements for vehicular and pedestrian traffic over private main entry gate areas and all Private Streets, and any walkways within the Common Elements, subject to parking, vehicular, and/or use provisions set forth in Section 2.2 above and Section 10.19, below.

Section 2.4 Easement Right of Declarant Incident to Construction and/or Marketing and Sales Activities. An easement is reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including Common Elements (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof); provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) below. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties, Declarant reserves the right to control entry gate(s) to the Properties and/or to Neighborhoods, and neither the Association nor any one or more of the Owners shall at any time, without the prior written approval of Declarant in its discretion, cause any entry gate in the Properties to be closed during regular marketing, sales, and/or construction hours (including weekend and/or holiday sales or construction hours) of Declarant, or shall in any other way impede or hinder Declarant's marketing, sales and/or construction activities.

Section 2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement of any fire hydrants on portions of certain Lots and/or Common Elements, and other purposes regularly or normally related thereto; and (b) County, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents, to enter upon any part of the Common Elements or any Lot, for the purpose of carrying out their official duties.

Section 2.6 Easements for Water, Sewage, Utility, and Irrigation Purposes. In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for purposes of public and private utilities, power, telephone, cable TV, water, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Properties, including portions of Lots, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any), provided that said easement shall not extend beyond, across, over, or under any structure located on any Unit. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any property in the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof Properties. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, maintenance, repair and replacement of water and/or sewage lines and systems for watering or irrigation of any landscaping on, and/or sewage disposal from or related to, Common Elements. In the event that any utility exceeds the scope of this

or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

Section 2.7 Additional Reservation of Easements. Declarant hereby expressly reserves for the benefit of each Owner and his Unit, reciprocal, nonexclusive easements over the adjoining Unit(s), for the control, maintenance and repair of the utilities serving such Owner's Unit. Declarant further expressly reserves, for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, nonexclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties, (which may be located on portions of Lots, pursuant to the Plat), for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the use, maintenance, repair and replacement of Private Streets and/or Perimeter Walls (subject to Section 9.6 below), and for any required customer service work and/or maintenance and repair of any Dwelling or other Improvement, wherever located in the Properties, and for compliance with Sight Visibility Restriction Area maximum permitted height requirements. In the event that any utility or governmental body exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or damaged Owner or Resident shall pursue any and all resultant claims against the offending utility, and not against Declarant or the Association. In the event of any minor encroachment upon the Common Elements or Unit(s), as a result of initial construction or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant, and each Owner of a Unit, on which there is constructed a Dwelling along or adjacent to the property line, shall have an easement appurtenant to such property, over such property line, to and over the adjacent Unit and/or adjacent Common Elements, for the purposes of accommodating any natural movement or settling of such Improvement, any encroachment of such Improvement due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of such Improvement. Declarant further reserves (a) a nonexclusive easement, on or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of Declarant and its agents and/or contractors, for any required warranty repairs, and (b) a nonexclusive easement on and over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of the Association, and its agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other improvements located on the Common Elements and/or Units.

Section 2.8 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or any facilities thereon or by abandonment of his Unit or any other property in the Properties.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by the Plat is the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his Unit reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his interest in any of the Common Elements, except in conjunction with conveyance of his Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

Section 2.13 Telecommunications System. In cooperation with one or more telecommunication service provider(s) selected by Declarant ("Provider"), Declarant may, but is not required to, develop an integrated broadband network, linking homes, offices, schools, health care and public facilities to provide the necessary transport platform for network-based services such as integrated voice, messaging, data, CATV, and interactive multimedia applications. Declarant's technology vision ultimately is to provide capability for high speed data connectivity, video teleconferencing, video transport, and interactive multimedia services such as movies on demand, distance learning, remote diagnostic health care, and energy information services to help address the needs of an interactive community, where home, office, retail and commercial needs are met through cooperative and centrally managed network strategies. In addition, Declarant contemplates that a community server platform will create an "intranet" of electronic connections between all homes, offices, schools and other facilities. In connection with the foregoing: (a) Declarant may pre-wire each Dwelling in accordance with specifications furnished to Declarant by a Provider selected by Declarant, (b) each Owner, by acceptance of a deed to a Lot (whether or not so expressed in such deed), shall be deemed to acknowledge and agree that such system, including all components thereof as so installed on the Lot, shall be the sole property of Declarant, or, at the option of Declarant, of Provider; (c) Declarant hereby expressly reserves ownership of the portion of such system located on Lots or otherwise within the Properties; and (d) Declarant further expressly reserves a non-exclusive easement in gross on, over, under or across each lot and the other portions of the Properties for purposes of installation and maintenance of such system and for the benefit of Declarant and/or Provider.

ARTICLE 3
SOUTHERN TERRACE HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association. The Association is or shall be incorporated under the name of SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation under NRS §§81.410 through 81.540, inclusive. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with applicable Nevada law.

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers as a non-profit corporation, generally to do any and all things that a corporation organized under the laws of the State of Nevada may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, including any applicable powers set forth in NRS § 116.3102, subject to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any expressly applicable provision of NRS Chapter 116. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Unit, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents, and all other books, records, and financial statements of the Association.

Section 3.3 Membership. Each Owner, upon acquiring title to a Lot, shall automatically become a Member and shall remain a Member until such time as his ownership of the Unit ceases, at which time his membership in the Association shall automatically cease. Memberships shall not be assignable, except to the Person to which title to the Unit has been transferred, and each Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. 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 Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit, pursuant to Section 4.6, below. The Association may levy a reasonable transfer fee against a new Owner and his Unit (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or Manager, and will be required to pay any costs necessary to obtain entry gate keys and/or remote controls, if not obtained from the prior Owner at Close of Escrow.

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws shall provide:

(a) the number of Directors (subject to Section 3.6 below) and the titles of the Officers;

(b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;

(c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;

(d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager;

(e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;

(f) procedural rules for conducting meetings of the Association; and

(g) a method for amending the Bylaws.

Section 3.6 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than seven (7) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. The number of Directors may be increased to five (5) or seven (7) by Declarant (during the Declarant Control Period), or by resolution of the Board, and otherwise may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number of Directors from time to time required by applicable Nevada law. The Board may act in

all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person, and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

(b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held at the Annual Meeting, as set forth in Section 4.3 below.

(c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

Section 3.7 Declarant's Control of the Board. During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

(a) Not later than sixty (60) days after conveyance from Declarant to Purchasers of twenty-five percent (25%) of the Units That May Be Created, at least one Director and not less than twenty-five percent (25%) of the total Directors must be elected by Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance from Declarant to Purchasers of fifty percent (50%) of the Units That May Be Created, not less than one-third of the total Directors must be elected by Owners other than Declarant.

(c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Units That May Be Created; (ii) five years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) five years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 15 hereof.

Section 3.8 Control of Board by Owners. Subject to and following the Declarant Control Period: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within thirty (30) days of his appointment or election, certify

in writing that he is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 3.9 Election of Directors. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The election of any Director must be conducted by secret written ballot. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, with the vote publicly counted (which may be done as the meeting progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution), and (2) speak to the Association or Board, unless the Board is meeting in Executive Session.

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.3 below); (3) the actual revenues and expenses for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116 3108 5

Section 3 11 Attendance by Owners at Board Meetings; Executive Sessions Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting Owners may not attend or speak at an Executive Session, unless the Board specifically so permits An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

(a) consulting with an attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS §§ 49 035 to 49 115, inclusive; or

(b) discussing Association personnel matters of a sensitive nature, or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by an Owner ("Involved Owner") (provided that the Involved Owner shall be entitled to request in writing that such hearing be conducted by the Board in open meeting, and provided further that the Involved Owner may attend such hearing and testify concerning the Alleged Violation, but may be excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation)

No other matter may be discussed in Executive Session. Any matter discussed in Executive Session must be generally described in the minutes of the Board meeting, provided that the Board shall maintain detailed minutes of the discussion of any Alleged Violation, and, upon request, shall provide a copy of said detailed minutes to the Involved Owner or his designated representative.

ARTICLE 4
VOTING RIGHTS

Section 4 1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to Section 4 6 below, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled Such co-owners may from time to time all designate in writing one of their number to vote Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The nonvoting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that Annual Assessments or any Special Assessment levied against such Owner are delinquent

Section 4 2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the appurtenant Membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the

transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

Section 4.4 Meeting Notices; Agendas; Minutes. Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within Clark County as may be designated in the notice of the meeting.

(a) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution; and speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

(i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and

(ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Agenda Items"), and

(iii) a period devoted to comments by Owners and discussion of such comments; provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Agenda Item. If the matter is not an Agenda Item, it shall be tabled at the current meeting, and specifically included as an Agenda Item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(b), above, Members may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 19.1, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or

a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy

Section 4.5 Record Date The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

Section 4 6 Proxies Every Member entitled to attend, vote at, or exercise consents with respect to, any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable A Member may give a proxy only to a member of his immediate Family, a Resident tenant, or another Member No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed Such powers of designation and revocation may be exercised by the legal guardian of any Member or by his conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if: (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be casting votes and the voting instructions received for each proxy If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director

Section 4 7 Quorums The presence at any meeting of Members who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership as set forth in this Declaration

Section 4.8 Actions If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by applicable law or by this Declaration.

Section 4.9 Action by Meeting, and Written Approval of Absentee Owners. The proceedings and transactions of any meeting of Members, either regular or special, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members not present in person or by proxy signs a written waiver of notice, a consent to the holding of such meeting or an approval of the minutes thereof. Neither the business to be transacted at, nor the purpose of any regular or special meeting of Members, need be specified in any written waiver of notice. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting.

Section 4.10 Action By Written Consent, Without Meeting. Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members were present and voted, and filed with the Association Secretary; provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon its receipt by the Association Secretary. Unless the consents of all Members have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members who have not consented in writing, of the taking of any Association action approved by Members without a meeting. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

(a) approval of any reorganization of the Association;

(b) a proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest; or

(c) approval required by law for the indemnification of any person.

Section 4.11 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in this Section 4.11. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members may transact any business that might have been transacted at the original meeting.

ARTICLE 5
FUNCTIONS OF ASSOCIATION

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units; until commencement of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

(a) Assessments. The power and duty to levy assessments against the Owners of Units, and to enforce payment of such assessments in accordance with the provisions of Article 6 hereof.

(b) Repair and Maintenance of Common Elements. The power and duty to paint, plant, maintain and repair in a neat and attractive condition, in accordance with standards adopted by the ARC, all Common Elements and all Improvements thereon, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any Improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that respectively of the applicable agency or public entity.

(c) Removal of Graffiti. The power and duty to remove or paint over any graffiti from or on Exterior Walls, pursuant and subject to Section 9.6, below.

(d) Taxes. The power and duty to pay all taxes and assessments levied upon the Common Elements and all taxes and assessments payable by the Association.

(e) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, any necessary commonly metered water, gas, and/or electric services, (or other similar services) and/or refuse collection, and the power but not the duty to provide for all refuse collection and cable or master television service, if any, for all or portions of the Properties.

(f) Easements and Rights-of-Way. The power but not the duty to grant and convey to any Person, (i) easements, licenses and rights-of-way in, on, over or under the Common Elements, and (ii) with the consent of seventy-five percent (75%) of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) roads, streets, walks, driveways, and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public Improvements or facilities.

(g) Manager. The power, subject to Section 5.5, below, but not the duty, to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association, and the power but not the duty to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon ninety (90) days written notice.

(h) Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing (except in the event of emergency which poses an imminent threat to health or substantial damage to property, in which event, Notice and Hearing shall not be required), to enter upon any area of a Unit, without

being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment pursuant to Article 7, below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3, below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(i) Other Services. The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(j) Employees, Agents and Consultants. The power but not the duty, if deemed appropriate by the Board, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(k) Acquiring Property and Construction on Common Elements. The power but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The power but not the duty, by action of the Board, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance or repairs to existing Improvements).

(l) Contracts. The power, but not the duty, to enter into contracts with Owners to provide services or to maintain and repair Improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(m) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) pro forma operating statements (Budgets), Reserve Budgets and Reserve Studies, shall be distributed pursuant to Section 6.4, below;

(ii) audited or reviewed Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year), and a statement of cash flow for the Fiscal Year, shall be distributed within one hundred twenty (120) days after the close of each Fiscal Year.

(n) Maintenance of Other Areas. The power but not the duty to maintain and repair slopes, parkways, entry structures and Community signs identifying the Properties, other than the Common Elements, to the extent deemed to be reasonable and prudent by the Board.

(o) Use Restrictions. The power and the duty to enforce use restrictions pertaining to the Properties.

(p) Insurances. The power and the duty to cause to be obtained and maintained the insurance coverages pursuant to Article 12, below.

(q) Licenses and Permits. The power and the duty to obtain from applicable governmental authority any and all licenses and permits reasonably necessary to carry out Association functions hereunder.

Section 5.2 Rules and Regulations. The Board shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member and also kept on file with the Association. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

(i) reasonably related to the purpose for which adopted;

(ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;

(iii) adopted without intent to evade any obligation of the Association;

(iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners, provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

Section 5.3 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars ($10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board.

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars ($5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars ($5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said $5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

(2) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft

of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Section 6.3, below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements

of this Section 5 3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthonzed institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (ii) this Section 5 3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total power of the Board of Directors; and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void

Section 5 4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration.

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Section 5.5 Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant and subject to the provisions of NRS Chapter 645 and/or NRS § 116 31139 3, or duly exempted pursuant to NRS § 116.31139 4). Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee of the Manager may be a Director or Officer of the Association

(d) As a condition precedent to the employ of, or agreement with, a Manager, the Manager (or any replacement Manager) first shall be required, at its expense, to review the Governing Documents, Plat, and any and all Association Reserve Studies and inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division, and (4) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed)

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed by qualified Person designated by the Board, of the books and records of the Association, to verify assets

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.6 Inspection of Books and Records

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association, and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law)

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term

of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6 3 below, and audited annual reports, as required in Section 5 1(m), above Such notices and information shall be delivered to Declarant at its most recently designated address

Section 5 8 Compliance with Applicable Laws The Association shall comply with all applicable laws, including, but not limited to applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or City or County ordinance Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed automatically amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law

ARTICLE 6
COVENANT FOR ASSESSMENTS

Section 6 1 Personal Obligation of Assessments Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments, such assessments to be established and collected as provided in this Declaration. All assessments, together with interest thereon, late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such succeessors.

Section 6 2 Association Funds. The Board shall establish at least the following separate accounts ("Association Funds"), into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration The Association Funds shall be established as trust accounts at a federally or state insured banking or savings institution and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements as set forth in Section 6.3 below, and (3) any other funds which the Board may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds, (other than the Reserve Fund, which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate trust savings or trust checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration The Manager shall not be authorized to make withdrawals from the Reserve Fund Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer) The President, Treasurer, and Secretary all must be Directors and (after the Declarant Control Period) must also all be Owners

Section 6.3 Reserve Fund; Reserve Studies

(a) Any other provision herein notwithstanding (i) the Association shall establish a **separate** reserve fund ("**Reserve Fund**"),(ii) the Reserve Fund shall be kept in a **segregated account**, withdrawals from which shall **only** be made upon specific approval of the Board subject to the following, (iii) the Reserve Fund shall be used **only** for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements; (iv) **in no event whatsoever** shall the Reserve Fund be used to pay operating expenses or for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding; (v) funds in the Reserve Fund may **not** be withdrawn without the signatures of **both** the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or Treasurer, if either is not reasonably available); (vi) **under no circumstances** shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund; and (vii) **under no circumstances** shall the Manager divert or be authorized to divert funds allocated to the Reserve Fund (including, but not necessarily limited to, use of such funds to pay operating expenses), and any such diversion by the Manager of funds allocated to the Reserve Fund shall constitute a material breach by the Manager of its obligations to the Association.

(b) The Board shall periodically retain the services of a qualified reserve study analyst, with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a **Reserve Study** at such times as the Board deems reasonable and prudent, but in any event **initially within one (1) year** after the Close of Escrow for the first Unit within the Properties, and thereafter at least **once every five (5) years** (or at such other intervals as may be required from time to time by applicable Nevada law). The Board shall review the results of the most current Reserve Study **at least annually** to determine if those reserves are sufficient, and shall make such **adjustments** as the Board deems reasonable and prudent to maintain the required reserves from time to time (i.e., by increasing Assessments). It shall be an obligation of the Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (i) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore, (ii) an identification of the Major Components which have a remaining useful life of less than 30 years; (iii) an estimate of the remaining useful life of each Major Component so identified; (iv) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life, and (v) an estimate of the total annual assessment that may be required to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study).

(e) The Reserve Study shall be conducted in accordance with any applicable regulations adopted by the Nevada Real Estate Division. Unless and until otherwise provided by applicable regulation or law, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method for and in connection with preparation of a Reserve Study shall be deemed reasonable and prudent, and/or (ii) utilization, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to reserves (provided that there shall be no assumption of such future increases in excess of 10% per year), with corresponding increases in Assessments, shall be deemed reasonable and prudent for and in connection with preparation of a Reserve Study.

Section 6.4 Budget, Reserve Budget.

(a) The Board shall adopt a proposed annual Budget (which shall include a Reserve Budget) at least forty-five (45) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of

the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days, nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

(b) Notwithstanding the foregoing, except as otherwise provided in subsection (c) below, the Board shall, not less than 30 days or more than 60 days before the beginning of each Fiscal Year, prepare and distribute to each Owner a copy of:

(1) the Budget (which must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the Reserve Fund); and

(2) The Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements ("Major Component");

(B) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the Major Components;

(C) a statement as to whether the Board has determined or anticipates that the levy of one or more Capital Assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves for that purpose; and

(D) a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (B) above, including, without limitation, the qualifications of the person responsible for the preparation of the Reserve Study.

(c) In lieu of distributing copies of the Budget and Reserve Budget, the Board may distribute to each Owner a summary of those budgets, accompanied by a written notice that the budgets are available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request.

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification in like manner as provided in Section 6.4 above.

Section 6.6 Initial Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, the Purchaser of such Unit shall be required to pay a capital contribution to the Association, in an amount equal to two (2) full monthly installments of the greater of the initial or then-applicable Annual Assessment, notwithstanding Section 6.7 below. Such capital contribution is in addition to, and is not to be considered an advance payment of, the Annual Assessment for such Unit, and may be applied to initial working capital needs and/or Reserve Fund of the Association.

Section 6.7 Assessment Commencement Date The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units in the Original Property, the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Original Property; and (b) with respect to each Unit within Annexed Property, that date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, its sole discretion, a later Assessment Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law

Section 6.8 Capital Assessments. The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto, provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 6.9 Uniform Rate of Assessment. Annual Assessments, and Capital Assessments shall be assessed at an equal and uniform rate against all Owners and their Units. Each Owner's share of such assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property) Neighborhood Assessments, if any, may vary by Neighborhood, pursuant to Article 17, below, but shall be assessed at an equal and uniform rate against all Owners and their Units within a given Neighborhood

Section 6.10 Exempt Property The following property subject to this Declaration shall be exempt from the assessments herein.

(a) all portions, if any, of the Properties dedicated to and accepted by, the United States, the State of Nevada, Clark County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) the Common Elements owned by the Association in fee.

Section 6.11 Special Assessments. The Association may, subject to the provisions of Section 9.3 and Section 11.1 (b) hereof, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent assessments, pursuant to Article 7, below.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment, shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of two (2) percentage points per annum above the prime rate charged from time to time by Bank of America N.T. & S.A. (or, if such rate is no longer published, then a reasonable replacement rate), but in any event not greater than the maximum rate permitted by applicable Nevada law, as well as a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandonment of his Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Board to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS § 107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.311635.

Section 7.5 Limitation on Foreclosure Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents, unless the violation is of a type that substantially and imminently threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for Annual Assessments, or Capital Assessments, or any portion respectively thereof, pursuant to this Article 7

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder 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 or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value, provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an assessment lien However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his successors and assigns

ARTICLE 8
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members, provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until such time as Declarant no longer owns any property in, or has any power to annex, the Annexable Area or any portion thereof, provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, redecoration or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the ARC. Until changed by the Board, the address for submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholesomeness and attractiveness of the Common Elements or the enjoyment thereof by the Members; (4) the construction will not unreasonably interfere with existing views from other Units; and (5) the upkeep and maintenance will not become a burden on the Association.

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon such changes therein as the ARC may deem appropriate or necessary, which may, but need not necessarily include any one or more or all of the following conditions: (1) agreement by the Applicant to furnish to the ARC a cash deposit, bond or other security acceptable to the ARC in an amount reasonably sufficient to (i) assure the completion of such Improvement or the availability of funds adequate to remedy any damage, or any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (2) such changes therein as the ARC deems appropriate; (3) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement; (4) agreement of the Applicant to reimburse the Association for the costs of maintenance; (5) agreement of the Applicant to replace such removed trees as may be designated by the ARC; (6) agreement of the applicant to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvements in detail as actually constructed upon completion of the Improvement; (7) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; (8) payment, by Applicant, of the professional fees of a licensed architect or engineer

to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (9) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans and specifications submitted for approval. Any application submitted pursuant to this Section 8.2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials. The ARC will condition any approval required in this Article 8 upon, among other things, compliance with Declarant's (a) design criteria as may be established from time to time, (b) Improvement standards and (c) development standards, as amended from time to time, all of which are incorporated herein by this reference

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggrieving the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall normally extend only to the external appearance or "aesthetics" of any Improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Lots.

Section 8.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8.8 below. In the absence of such designation, the vote of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 8.4 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent

Section 8.5 Compensation of Members. Subject to the provisions of Section 8.2(b) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC

Section 8 6 Correction by Owner of Nonconforming Items Subject in all instances to compliance by Owner with all applicable requirements of governmental authorities, with jurisdiction, ARC inspection (which shall be limited to inspection of the visible appearance of the size, color, location and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows:

(a) The ARC or its duly appointed representative shall have the right to inspect any Improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of Improvement has been completed. If, as a result of such inspection, the ARC finds that such Improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 8 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the Improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(c) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with ARC requirements (but, of course, shall remain subject to compliance by Owner with all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within one hundred eighty (180) days of the date on which the work commenced.

Section 8 7 Scope of Review The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 8 2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to County) requirements.

Section 8 8 Variances When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height, size, and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any such variance by ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations and requirements affecting the use of his or her Unit, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by the County, or any municipal or other public authority with jurisdiction The granting of a variance by the ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance

Section 8 9 Non-Liability for Approval of Plans The ARC's approval of proposals or plans and specifications shall not constitute a representation warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or plans or specifications Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings

Section 8 10 Declarant Exemption The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a Purchaser, to Units owned by Declarant This Article 8 shall not be amended without Declarant's written consent set forth on the amendment

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

Section 9 1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring ARC approval, to maintain, repair, replace and restore all Improvements located on his Unit, the Unit itself, and any "Limited Common Element" (as said term is defined by NRS § 116 110355) allocated to his Unit, and the Unit itself, in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe or unsightly, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

The foregoing notwithstanding: (a) the Association shall have an easement for the maintenance, repair and replacement of any easement on a portion of a Lot which constitutes a Common Element and any Improvements constructed by Declarant or the Association thereon, and (b) each Owner (other than

Declarant, by acceptance of a deed to a Unit, whether or not so expressed in such deed, is deemed to covenant and agree not to place or install any Improvement on a Common Element, and not to hinder, obstruct, modify, change, add to or remove, partition, or seek partition of, any Common Element or any Improvement installed by Declarant or the Association thereon.

Section 9.2 Maintenance Obligations of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to the provisions of Sections 9.3 and 11.1(b) hereof, upon the Assessment Commencement Date, the Association shall provide for the maintenance, repair, and replacement of the Common Elements. The Common Elements shall be maintained in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements. The Association shall also ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for the maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. 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.

Section 9.3 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the willful or negligent act of an Owner, his tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 11.1(b) hereof.

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Unit.

Section 9.5 Party Walls. Each wall which is built as a part of the original construction by Declarant and placed approximately on the property line between Units shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, the party wall shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore the wall to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection, repair or replacement. The right of any Owner to contribution from any other Owner under this Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner shall

alter, add to, or remove any party wall constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party wall, which consent shall not be unreasonably withheld, and the prior written approval of the ARC In the event of any dispute arising concerning a party wall under the provisions of this Section 9 5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration

Section 9 6 Perimeter Walls. Portions of Perimeter Walls, constructed or to be constructed by Declarant, abutting or located on individual Lots, are Improvements all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Units. By acceptance of a deed to his Unit, each Owner on whose Unit a portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to the portion of the Perimeter Wall ("Unit Wall") located or deemed located on his Unit to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without limitation, temporary alterations, such as removal for construction of a swimming pool or other improvement) shall be made to any perimeter wall, or any portion thereof, without the prior written approval of the ARC (and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC pursuant to Section 8.2(b) above). The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment (without any obligation to make such judgment) of the ARC would adversely affect surface water, drainage, or other flood control considerations or requirements If any Owner shall fail to insure, or to maintain, repair or replace his Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure, or to maintain, repair or replace such Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration The foregoing notwithstanding, the Association, at its sole expense, shall be responsible for removing or painting over any graffiti from or on Exterior Walls

Section 9.7 Installed Landscaping

(a) Declarant shall have the option, in its sole and absolute discretion, to install landscaping on the front yards and other portions of Lots ("Declarant Installed Landscaping"). Subject to the foregoing and to Section 9 9 below, and subject further to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have, following the close of escrow on his Lot: (a) sixty (60) days in which to complete front yard landscaping (provided that front yard landscaping shall be completed on any Custom Lot within sixty (60) days after issuance of an occupancy permit for the Dwelling thereon), and (b) six (6) months within which to commence and thereafter diligently prosecute and complete installation of all other landscaping on the Lot (all, collectively, "Homeowner Installed Landscaping"). Declarant Installed Landscaping and Homeowner Installed Landscaping shall collectively be referred to herein as "Installed Landscaping."

(b) Subject to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have an aggregate period, following the Close of Escrow on his or her Lot, of (i) not more than six (6) months (with regard to front yard landscaping other than Declarant Installed Landscaping), and one (1) year (with regard to rear yard landscaping), in which to apply for and obtain approval of plans for landscaping and to commence and complete, in accordance with such approved plans, installation of such landscaping on the Lot ("Homeowner Installed Landscaping") Each Owner shall be responsible, at his sole expense, for (1) maintenance, repair, replacement, and watering of all landscaping on his Unit (whether initially installed by Declarant or an Owner) in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, subject to subsections (c) through (f), below.

(c) Each Owner covenants to pay promptly when due all water bills for his or her Unit, and (subject to bona-fide force majeure events) to not initiate or continue any act or omission which would have the effect of water being shut off to the Unit. In the event that all or any portion of landscaping and/or related systems is or are damaged because of any Owner's act or omission, then such Owner shall be solely liable for the costs of repairing such damage, and any and all costs reasonably related thereto, and the Association may, in its discretion, perform or cause to be performed such repair, and to assess all related costs against such Owner as a Special Assessment, and the Association, and its employees, agents and contractors, shall have an easement over Lots to perform such function.

(d) In the event that any plants (including, but not necessarily limited to, trees, shrubs, bushes, lawn, flowers, and ground cover) on a Unit require replacement, then the cost of such replacement, and costs reasonably related thereto, shall be the responsibility of the Owner of the Unit.

(e) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not cause or permit irrigation water or sprinkler water on his Unit to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three (3) feet of any such foundation or wall located on or immediately adjacent to the Owner's Unit; and (2) only non-irrigated desert landscaping is located on the Owner's Unit within three feet of any such foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall).

(f) Absent prior written approval of the ARC, in its sole discretion, no Owner may add to, delete, modify, or change, any landscaping or related system.

Section 9.8 Maintenance of Security Lighting. Each Owner shall maintain in good and operating condition the exterior security landscape lighting (if any) installed on the exterior and/or front yard or rear yard area of the Dwelling. Such maintenance shall include, but not be limited to, the replacement of light bulbs and photoelectric cells, the provision of electrical power to such lights, and timely payment of electrical service, as applicable. Absent prior written approval of the ARC, in its sole discretion, no Owner may delete, modify, or change any photoelectric cell as initially installed by Declarant, or any lighting activated thereby (including, without limitation, disconnecting lighting from such photoelectric cell and/or connecting such lighting to a timer device). If any Owner shall fail to so maintain such exterior lighting, or permit such lighting to fall into disrepair, or delete or modify such lighting without prior approval of the ARC, the Association shall have the right to correct such condition. If any such condition is corrected by the Association, the Association shall be fully reimbursed by the Lot Owner for all costs incurred.

Section 9.9 Modification of Improvements. Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on a Common Element is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not: add to, remove, delete, modify, change, obstruct, or landscape, all or any portion of the Common Elements, or Site Visibility Restriction Area, or Perimeter Wall, and/or any other wall or fence constructed by Declarant on such Owner's Lot, without prior written approval of the ARC, in its sole discretion.

ARTICLE 10
USE RESTRICTIONS

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective directors, officers, members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering" destructive testing, or any other nonresidential purposes; provided that Declarant may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no such lease shall be for a term of less than six (6) months.

Section 10.2 No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or all or any portion of the Common Elements may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to the Governing Documents. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. No two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Units.

Section 10.3 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, the Board shall have no power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, birds or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable City or County ordinance or any other provision of the Declaration, and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The

Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar structure pertaining to animals shall be placed or permitted in any Lot, unless approved by the Board in advance and in writing (and, in any event, any such "dog run" or similar Improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the reasonable judgment of the Board), and (b) all Owners shall comply fully in all respects with all applicable County and City ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 10.5 Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings, and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purposes. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before or after scheduled trash collection hours). No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security, or fire protection purposes), noisy or smokey vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents or any equipment or item which may unreasonably interfere with television or radio reception within any Unit, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No unusually loud motorcycles, dirt bikes or similar mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. The Board shall have the right to reasonably determine if any noise, odor, activity, or circumstance, constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, which is the responsibility of such Owner or Resident to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter

upon such Owner's Unit, for the purpose of so doing, and such Owner and/or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of Article 7, above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 10.7 Drainage By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above. Without limiting the generality of the foregoing, any request by an Owner for ARC approval of alteration of established drainage pattern shall be subject to payment, by the Owner, of the professional fees of a licensed engineer to review the plans and specifications on behalf of the ARC, pursuant to Section 8.2(b)(8) above, which shall be required in all such cases, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.7, above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the ARC.

Section 10.8 Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, County health department, and any applicable utility and governmental authorities having jurisdiction, and has been approved in advance and in writing by the ARC.

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, Common Elements. Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except within a barbecue and contained within a receptacle commercially designed therefor, while attended and in use for cooking purposes, or except within a fireplace designed to prevent the dispersal of burning embers, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

Section 10.10 No Unsightly Articles. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. Without limiting the foregoing or any other provision herein, all refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to view of the public, or neighboring Units, only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

Section 10.11 No Temporary Structures. Unless required by Declarant during the initial construction of Dwellings and other Improvements, or unless approved in writing by the Board in connection with the construction of authorized Improvements, no outbuilding, tent, shack, shed or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties. No garage, carport, trailer, camper, motor home, recreational vehicle, or other vehicle, or any Improvement other than a Dwelling, shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.12 No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon,

in, or below any Unit or the Common Elements, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick of other structure designed for use in boring for water, oil, geothermal heat, or natural gas, or other mineral or depleting asset shall be erected

Section 10.13 Alterations There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties (other than minor repairs or rebuilding pursuant to Section 10.6 above) without the prior approval of the ARC pursuant to Article 8 hereof. There shall be no violation of the setback, side yard or other requirements of local governmental authorities, notwithstanding any approval of the ARC. This Section 10 13 shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition

Section 10.14 Signs Subject to the reserved rights of Declarant contained in Article 14 hereof, no flag, flag pole, balloon, beacon, banner, sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the ARC, except: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent; or (b) traffic and other signs installed by Declarant as part of the original construction of the Properties; or (c) signs regulated to the maximum extent permitted by applicable law. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances

Section 10 15 Improvements.

(a) Unless otherwise designated in the Declaration (or unless an ancillary guest house or "casita" is originally constructed on a Lot by Declarant, in its sole and absolute discretion, without obligation to do so, subject to the proviso that any such "casita" shall be subject to all applicable County ordinances, shall be ancillary and appurtenant to a Unit, and shall not separately comprise another Unit), no Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling, provided that one additional small permanent building (e.g., a small "pool house" or "hobby house") may (but need not necessarily) be authorized on a Lot by the ARC, subject to the following. (1) full compliance with the requirements of Article 8, above; (2) the ARC, in its sole discretion, must determine that the Lot is large enough and otherwise suitable to accommodate such proposed Improvement; (3) such Improvement in all regards must comply with the Governing Documents, and all applicable governmental ordinances and laws; and (4) such Improvement may not and shall not be used for any commercial purpose whatsoever, pursuant to Section 10.1 above. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No permanent or attached basketball backboard, jungle gym, play equipment, or other sports apparatus shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. A portable basketball hoop or other portable sports apparatus shall be permitted on a Lot, provided that such item: (i) is not placed in any street, (ii) is used only daylight hours, (iii) during non-daylight hours, is stored on the Lot so as to be out of sight of any street, and (iv) does not otherwise constitute a nuisance in the reasonable judgment of the Board. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), unless the prior written approval of the ARC is obtained, subject to Section 10.16, below

(b) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(c) No fence or wall shall be erected or altered without prior written approval of the ARC. All alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the ARC, in its discretion (and the ARC may, but need not necessarily, require written consent of the Owners of all adjacent Lots as a prerequisite thereto)

(d) Garages shall be used only for the their ordinary and normal purposes. Unless constructed or installed by Declarant as part of its original construction, no Owner or Resident may convert the garage on his or her Unit into living space or otherwise use or modify a garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant may convert a garage located in any Unit owned by Declarant into a sales office or related purposes.

Section 10.16 Antennas and Satellite Dishes. Expressly subject to the Declarant exemption set forth in Section 10.23, below, no exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (i) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is:

(a) located in the attic, crawl space, garage, or other interior space of the Dwelling, or within another approved structure on the Unit, so as not to be visible from outside the Dwelling or other structure, or, if such location is not reasonably practicable, then,

(b) located in the rear yard of the Unit (i.e., the area between the plane formed by the front facade of the Dwelling and the rear lot line) and set back from all lot lines at least such distance as may be established in the Rules and Regulations and/or by the Board; or, if such location is not reasonably practicable, then,

(c) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna; or, if such location is not reasonably practicable, then,

(d) attached to or mounted on the rear wall of the Dwelling so as to extend no higher than the eaves of the Dwelling at a point directly above the position where attached or mounted to the wall; provided that,

(e) if an Owner reasonably determines that a Permitted Device cannot be located in compliance with the foregoing portions of this Section 10.16 without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Unit where an acceptable quality signal can be obtained; provided that,

(f) Permitted Devices shall be reasonably screened from view from the street or any other portion of the Properties, and shall be subject to Rules and Regulations adopted by the Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant may grant easements for installation, maintenance, repair and/or replacement of any such master or cable television service.

Section 10.17 Landscaping. Subject to the provisions of Articles 8 and 9 (including, but not limited to, Section 9.7 above), each Owner shall install and shall thereafter maintain the landscaping on his Unit in a neat and attractive condition. No plants or seeds infected with insects or plant diseases shall be brought

upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with the Governing Documents, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists a bona-fide unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon the exterior portion of such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment enforceable in the manner set forth in Article 7, above. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Lot, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping

Section 10.18 Prohibited Plant Types. Without limiting the generality of any other provision herein, the following plant types are hereby specifically declared to be nuisances, and shall not be permitted anywhere within the Properties. (a) Olea europaea ("olive") (other than "fruitless olive," which shall be permitted), (b) Morus alba or nigra ("mulberry"), or (c) Cynodon dactylon ("bermuda grass"), (d) Amaranthus palmeri ("careless weed"), (e) Salsola kali ("Russian thistle"), and/or (f) Franseria dumosa ("desert ragweed"). Declarant may, from time to time and at any time, add or delete any plant species to the foregoing list of prohibited plants. If Declarant adds a plant species to the foregoing list of prohibited plants, each Owner shall refrain from planting or placing such plant species on the Properties, provided, however, that Owners shall not be obligated to unearth landscaping existing at such time to remove such newly prohibited plant species from the Properties

Section 10.19 Parking and Vehicular Restrictions. No Person shall park, store or keep anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle, including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, bus, aircraft, or any vehicular equipment, mobile or otherwise, except wholly within the Owner's garage as originally constructed by Declarant ("Garage") and only with the Garage door closed. Any boat, trailer, camper, motor home, and similar recreational vehicle (collectively and individually, "RV"), shall be parked only (i) wholly within a Garage, with the Garage door completely closed, or (ii) wholly between the building lines (i.e., wholly behind the front building lines and wholly in front of the rear building lines) of the homes on both immediately adjacent Lots (or, if there is only one immediately adjacent Lot, then the building lines of the home on such adjacent Lot, provided that the Board shall have the power and authority, in its sole discretion, to entirely disapprove and/or prohibit parking of an RV on any Lot with only one other Lot immediately adjacent thereto) if such parking reasonably may be deemed to constitute a nuisance, and appropriately screened from view from all streets as determined by the Board in its reasonable discretion, and no variance from this requirement shall be authorized or permitted. The foregoing shall not be deemed to prohibit a pickup or camper truck or similar vehicle up to and including one (1) ton when used for daily transportation of the Owner or Resident, or the Family respectively thereof, which vehicle shall be permitted, subject to the Garage, nuisance, and parking provisions herein. No Person shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Properties or on any street abutting the Properties. However, repair and/or restoration of one (1) such item only shall be permitted within the Garage so long as the Garage door remains closed, provided, however, that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner or of a resident of such Owner's Dwelling shall be parked in the Garage to the extent of the space available therein. All garages shall be kept neat and free of stored materials so as to permit the parking of at least one (1) standard sized American sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not reasonably required for immediate ingress and egress. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for ordinary and reasonable guest parking, subject to parking regulations established by the Board Notwithstanding the

foregoing, these restrictions shall not be interpreted in such a manner as to permit any parking or other activity which would be contrary to any County ordinance, or which is determined by the Board, in its reasonable discretion to constitute a bona-fide nuisance.

Section 10.20 Sight Visibility Restriction Areas. The maximum height of any and all sight restricting improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, shall be restricted to a maximum height not to exceed twenty-four (24) inches, or such other height set forth in the Plat ("Maximum Permitted Height"). In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the Maximum Permitted Height, the Association shall have the power and easement to enter upon such Unit and to bring such Improvement into compliance, and the Owner shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration

Section 10.21 Prohibited Direct Access. Any other provision herein notwithstanding, there shall be no vehicular access from any Lot directly onto such streets as designated on the Plat, and no vehicular access from said streets directly onto any abutting Lot, all of which direct vehicular access is hereby prohibited.

Section 10.22 No Waiver The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

Section 10.23 Declarant Exemption. Units owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, and marketing efforts, shall be exempt from the provisions of this Article 10 This Article 10 may not be amended without Declarant's prior written consent

ARTICLE 11
DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS

Section 11.1 Damage or Destruction Damage to, or destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner

(a) Repair of Damage. Any portion of this Community, for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Community is terminated, in which case the provisions of NRS § 116.2118, 116.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations

(b) Damage by Owner To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons deriving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

Section 11.2 Condemnation If at any time, all or any portion of the Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the operating fund No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members. Immediately upon having knowledge of any taking by eminent domain of Common Elements, or any portion thereof, or any threat thereof, the Board shall promptly notify all Owners and all Eligible Holders.

Section 11.3 Condemnation Involving a Unit For purposes of NRS § 116.1107(2)(a), if part of a Unit is required by eminent domain, the award shall compensate the Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 12
INSURANCE

Section 12.1 Casualty Insurance. The Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all of the Association's insurable improvements on the Common Elements, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance, and shall obtain insurance against such other hazards and casualties as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property whether real or personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association

The Association, acting through the Board, shall be the named insureds under policies of insurance purchased and maintained by the Association All insurance proceeds under any policies shall be paid to the Board as trustee. The Board shall have full power to receive and receipt for the proceeds and to deal therewith as deemed necessary and appropriate Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties with 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. Duplicate originals or certificates of all policies of insurance maintained by the Association and of all the renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Eligible Holders who have expressly requested the same in writing.

Section 12.2 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable (but in no event less than $1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12.3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof. If reasonably feasible, the amount of such coverage shall be at least $1,000,000.00, and said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period. The Association shall require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds), or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable.

Section 12.4 Other Insurance Provisions. The Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction, except to the extent such coverage is not available or has been waived in writing by the applicable agency.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Unit, at his sole expense to have obtained, and to have furnished his Mortgagee (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be 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. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

Section 12.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association, (3) 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 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, (4) any rights of the insurer to repair, rebuild or replace, and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 12.7 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his Family; (c) no act or omission by any Owner or member of his Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 13
MORTGAGEE PROTECTION CLAUSE

In order to induce any FHA, VA, FHLMC, GNMA and FNMA and any other governmental agency or other Mortgagees to participate in the financing of the sale of Units within the Properties, the following

provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control)

(a) Each Eligible Holder, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such 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 the Governing Documents.

(c) Except as provided in NRS § 116.3116(2), each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee

(d) Unless at least sixty-seven percent (67%) of first Eligible Holders (based upon one (1) vote for each first Mortgage owned) or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(i) subject to Nevada nonprofit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Elements and the Improvements thereon which are owned by the Association; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause.

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the maintenance of the Exterior Walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) fail to maintain Fire and Extended Coverage on any insurable Common Elements on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

(v) except as provided by any provision of NRS Chapter 116 applicable hereto, use hazard insurance proceeds for losses to any Common Elements property for other than the repair, replacement or reconstruction of such property; or

(vi) amend those provisions of this Declaration or the Articles of Incorporation or Bylaws which provide for rights or remedies of first Mortgagees.

(e) Eligible Holders, upon written request, shall have the right to: (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer, or guarantor requesting

such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) All Beneficiaries, insurers, and guarantors of first Mortgages, who have filed a written request for such notice with the Board, shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; (2) the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws; and (3) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given immediate notice: (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars ($10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Elements property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(h) The Reserve Fund described in Article 6 above must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary assessments.

(i) The Board shall require that any Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

(j) When professional management has been previously required by a Beneficiary, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and of the Board respectively, and the Beneficiaries of at least fifty-one percent (51%) of the Eligible Holders.

(k) So long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then, pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); dedication, conveyance, or mortgage of the Common Elements; or amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document which may have been previously approved by the VA; provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the express applicable requirements of FHA, VA, FNMA or GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision 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 Unit.

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ARTICLE 14
DECLARANT'S RESERVED RIGHTS

Section 14.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS § 116.2105(1)(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of the Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of ten (10) years thereafter.

(b) Exercise of Developmental Rights. Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for as long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for so long as Declarant owns or leases any Unit.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board during the Declarant Control Period, as set forth in Section 3.7 hereof.

(e) Designation of Neighborhoods and Neighborhood Common Areas. Declarant reserves the right to designate Neighborhoods and Neighborhood Common Areas, as set forth in Article 17, below, until the later of such time as Declarant no longer owns any property in the Properties, or no longer has the power to exercise any developmental right pursuant to this Declaration.

(f) Supplemental Declarations. Declarant reserves the right to Record (or to cause to be subject to prior written approval of Declarant, in its sole discretion), all Supplemental Declarations from time to time, as set forth in detail in Article 18, below, until the later of such time as Declarant no longer owns any property in the Properties, or no longer has the power to exercise any developmental right pursuant to this Declaration

(g) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 19.5, below, and any other provision of this Declaration, during the time periods set forth therein

(h) Appointment and Removal of ARC Declarant reserves the right to appoint and remove the ARC, for the time period set forth in Section 8.1, above.

(i) Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

(j) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control all entry gates, and to keep all entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities

(k) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties

(l) Marketing Names Declarant reserves the right, for so long as Declarant owns or has any interest in any of the Annexable Area, to market and/or advertise different portions of the Properties under different marketing names

(m) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, Article 17 below, and, to the maximum extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all Development Rights and Special Declarant Rights as set forth or referenced therein).

Section 14.2 Exemption of Declarant Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 14.1(c), above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity. Any garages which have converted into sales offices by Declarant shall be converted back to garages at the time of sale to a Purchaser of such Unit.

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

Section 14.3 Limitations on Amendments. In recognition of the fact that the provisions of this Article 14 operate in part to benefit the Declarant, no amendment to this Article 14, and no amendment in derogation of any other provisions of this Declaration benefitting the Declarant, may be made without the written approval

of the Declarant, and any purported amendment of Article 14, or any portion thereof, or the effect respectively thereof, without such express prior written approval, shall be void, provided that the foregoing shall not apply to amendments made by Declarant.

ARTICLE 15
ANNEXATION

Section 15 1 Annexation of Property. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion if the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property").

Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter (and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns) to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15.2 Annexation Amendment Each Annexation Amendment shall conform to the requirements of NRS § 116.211, and shall include:

(a) the written and acknowledged consent of Declarant,

(b) a reference to this Declaration, which reference shall state the date of Recordation hereof and the County, book and instrument number, and any other relevant Recording data;

(c) a statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein,

(d) a sufficient description of the Annexed Property,

(e) assignment of an Identifying Number to each new Unit created;

(f) a reallocation of the allocated interests among all Units; and

(g) a description of any Common Elements created by the annexation of the Annexed Property

Section 15 3 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Properties with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided,

however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.4 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area, or any portion thereof.

Section 15.5 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2 above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and any other owner of such property.

Section 15.6 Contraction of Annexable Area. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property, and declaring that such real property shall thereafter be deleted from the Annexable Area. Such real property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any other Person, except as provided herein.

ARTICLE 16
ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES

Section 16.1 Additional Disclosures and Disclaimers of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, each Owner (for purposes of this Section 16.1, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Properties, each Resident (for purposes of this Article 16, the term "Resident" shall include each Resident, and the Resident's family and guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) that there are or may be major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) presently and from time to time located within, adjacent to, or nearby the Properties (including, but not limited to, the Common Elements and/or the Unit), which generate certain electric and magnetic fields ("EMF") around them, and that Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF;

(b) that the Unit and the other portions of the Properties are or from time to time may be located within or nearby: (1) airplane flight patterns or clear zones, and subject to significant levels of airplane noise, and (2) major roadways, and subject to significant levels of noise, dust, and other nuisance resulting from proximity to major roadways and/or vehicles. Also, each Unit is located in proximity to streets and other Dwellings in the Community, and subject to substantial levels of sound and noise. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to such airplane flight patterns or clear zones and/or roadways or vehicles or noise;

(c) that there are presently and may in the future be a water reservoir site and/or other additional water retention facilities located nearby or adjacent to, or within the Community, and the Community is located adjacent to or nearby major water and drainage channels, major washes, and a major water detention basin (all of the foregoing, collectively, "Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not within Declarant's control, and over which Declarant has no jurisdiction or authority, and, in connection therewith: (1) the Facilities may be an attractive nuisance; (2) maintenance and use of the Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by

Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours, and (3) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Facilities, as the result of nonfunction, malfunction, or overtaxing of the Facilities or any other reason, and (4) any or all of the foregoing may cause inconvenience and disturbance to Purchaser and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property;

(d) that, additionally, there is a channel located on or over an easement through the Properties with related improvements (all of the foregoing, collectively, "Channel"), intended to help route flood waters through the Properties; it is presently contemplated that the Channel will constitute a Common Element, to be owned, maintained, repaired and/or replaced by the Association as a Common Expense; the disclosures and disclaimers set forth in the foregoing subsections (c)(1) through (4), inclusive, modified only to apply to the Channel, are incorporated herein by this reference;

(e) that the Properties are or may be located within designated flood plain areas, and the mortgage-holder(s), if any, of Purchaser (and/or subsequent Owners) will or may require flood insurance coverage for the dwelling and any other structures located on the Unit, until such time, if any, as the Properties may be removed from the designated flood plain area; and Declarant specifically disclaims any and all representations and warranties, express or implied, with regard to or pertaining to flood plains, floods, water damage, and/or flood insurance;

(f) that certain governmental officials in Clark County, Nevada, have indicated that Clark County may construct a water detention basin ("Detention Basin") generally to the northwest of the Properties; if and when the Detention Basin is constructed by Clark County and is fully operational, it is possible that the Association and/or Owners may petition to have the Channel vacated and the Properties, or portion(s) thereof, removed from designated flood plain area, Declarant makes no representation whatsoever whether the Detention Basin ever may be constructed or operational, and, if the Detention Basin is constructed and operational, what its effect may be, and whether the Channel may be vacated or the Properties removed from designated flood plain area;

(g) that the Unit and other portions of the Properties are or may be nearby major regional underground natural gas transmission pipelines. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to gas transmission pipelines;

(h) that the Las Vegas Valley contains a number of earthquake faults, and the Unit and other portions of the Properties may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquake or seismic activities;

(i) that construction or installation of Improvements by Declarant, other Owners, or third parties, and/or installation or growth of trees or other plants, may impair or eliminate the view, if any, of or from a Unit. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to the impairment or elimination of any existing or future view;

(j) that residential subdivision and new home construction is an industry inherently subject to variations and imperfections. Purchaser acknowledges and agrees that items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration, shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading, touch-up painting; minor flaws or corrective work; and like items) and are not constructional defects. Purchaser acknowledges that, (1) the finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to expected minor flaws; and (2) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards;

(k) that indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on;

(l) that indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on;

(m) that installation and maintenance of a gated community and/or any security device shall not create any presumption or duty whatsoever of Declarant or Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of person or property within or adjacent to the Properties;

(n) that gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry,

(o) that the Unit and other portions of the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard;

(p) that the Unit and other portions of the Properties from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, or other insect or pest problems (collectively, "pests"), and that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Properties,

(q) that there is a high degree of alkalinity in soils and/or water in the Las Vegas Valley; that such alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and erosion or deterioration of concrete walls and other Improvements ("alkaline effect"); that the Unit and other portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and that the Governing Documents require Owners other than Declarant to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar Improvement,

(r) that Purchaser acknowledges having received from Declarant information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to gaming uses Purchaser is hereby advised that the master plan and zoning ordinances are subject to change from time to time If Purchaser desires additional or more current information concerning these zoning and gaming designations, Purchaser should contact the City of Las Vegas or Clark County Planning Department. Purchaser acknowledges and agrees that its decision to purchase is based solely upon Purchaser's own investigation and not upon any information provided by any sales agent;

(s) that Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Unit. The Purchaser or Owner of a Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been

advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. A Purchaser or Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions;

(t) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out;

(u) that Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new homes and/or Lots;

(v) that model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to Purchaser unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement;

(w) that the Unit and other portions of the Properties are or may be located adjacent to or nearby a school, and school bus drop off/pickup areas, and subject to levels of noise, dust, and other nuisance resulting from or related to proximity to such school and/or school bus stops;

(x) that some, but not all, Units, are large enough to accommodate parking of a recreational vehicle ("RV") on the side yard area of the Unit, subject to all restrictions set forth in the Declaration. If a Purchaser desires to purchase a Unit suitable for accommodating parking of an RV on the Unit, it is solely the Purchaser's responsibility and obligation to specifically confirm and verify with Declarant in a written addendum to the Purchase Agreement, whether the Unit being purchased may legitimately accommodate parking of an RV, subject to all use and other restrictions set forth in the Declaration;

(y) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control all entry gates, and to keep all entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities;

(z) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities, provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties;

(aa) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.110385);

(ab) that Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration; and

(ac) that each Purchaser understands, acknowledges, and agrees that Declarant has reserved certain rights in the Declaration, which may limit certain rights of Purchaser and Owners other than Declarant

Section 16.2 Disclaimers and Releases. As an additional material inducement to Declarant to sell the Unit to Purchaser, and without limiting any other provision in the Purchase Agreement, Purchaser (for itself and all persons claiming under or through Purchaser) acknowledges and agrees: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) fully and unconditionally releases Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

ARTICLE 17
ADDITIONAL PROVISIONS PERTAINING TO NEIGHBORHOODS

Section 17.1 Designation of Neighborhoods and Neighborhood Common Areas. Declarant additionally reserves the right, in its sole discretion to designate Neighborhoods (and to unilaterally redesignate Neighborhood names, designations, and/or boundaries) and Neighborhood Common Areas, as set forth below until the later of such time as Declarant no longer owns any property in the Properties, or no longer has the power to exercise any developmental right pursuant to this Declaration. Each Unit shall be located within a Neighborhood

(a) "Neighborhood" shall mean a group of particular Units designated by Declarant as a specific neighborhood for purposes of sharing Neighborhood Common Area (and/or receiving other benefits or services which are not provided to other Units within the Community but outside of such Neighborhood), subject to sharing by Units within the Neighborhood of Neighborhood Expenses through supplemental periodic Neighborhood Assessments, if any, as established by the Board from time to time. Any and all Neighborhoods shall be subject to the Governing Documents, provided that a Neighborhood may (in Declarant's sole discretion), but need not necessarily, also be subject to a Supplemental Declaration or within the jurisdiction of a Sub-Association. In such case, in the event of any irreconcilable conflict, the Governing Documents shall prevail, and the Board shall have the power and right, but not the obligation, to veto any action taken or contemplated to be taken by any such Sub-Association or Owner (other than Declarant, whose rights and actions shall not be subject to any such Board veto) or group of Owners which the Board determines, in its reasonable business judgment, to be inconsistent with Community-wide standards or incompatible with the best interests of the Association as a whole.

(b) "Neighborhood Assessments" shall mean those periodic assessments, which shall be supplemental to all Community Assessments, levied by the Board (or Board of directors of a Sub-Association, if permitted by Declarant in its sole discretion) uniformly upon the Units within a particular Neighborhood to pay for the Neighborhood Expenses within such Neighborhood.

(c) "Neighborhood Common Area" shall mean a portion of the Common Elements which shall constitute Limited Common Elements allocated for the use and benefit of one or more Neighborhood(s) (but less than the entire Community), as designated by Declarant in its sole discretion. Neighborhood Common Area is available for the use and enjoyment of only the Owners (subject to the Sub-Association, if any) within such Neighborhood. Neighborhood Common Area may vary by Neighborhood. Without limiting the preceding sentence, certain Neighborhoods may be gated, and other Neighborhoods may not be gated, in Declarant's sole discretion. The level of maintenance of Neighborhood Common Area shall be determined from time to time by the Board, provided that the Owners of Units within a Neighborhood may request the Board to enhance the level of maintenance in such Neighborhood (at the sole cost of such Neighborhood and the

Owners thereof), pursuant to Rules and Regulations governing same which may be established and/or revised by the Board from time to time in its reasonable business judgment.

(d) "Neighborhood Expenses" shall mean the expenditures made by, or financial liabilities of, the Association (or Sub-Association, if applicable), together with any allocations to reserves, for maintenance, management, operation, repair, replacement and insurance of Neighborhood Common Area, or for the particular benefit of Owners of Units within a particular Neighborhood, as may be authorized pursuant to this Declaration or in any applicable Supplemental Declaration.

(e) Initially, Declarant contemplates that there will be four Neighborhoods: Autumn Hills, Monterey, Somerset, and Ridgemont; however, Declarant reserves the right from time to time to designate fewer, different, and/or additional Neighborhoods.

Section 17.2 Neighborhood Common Areas. Certain portions of the Common Elements from time to time may be designated by Declarant, in its sole discretion, as Neighborhood Common Area, which shall constitute Limited Common Elements allocated and reserved for the exclusive use or primary benefit of Owners and Residents within a particular Neighborhood. By way of illustration and not limitation, Neighborhood Common Area may, but need not necessarily, include Neighborhood entry features, entry gates, Private Streets, landscaping, and other Limited Common Elements within a particular Neighborhood. Certain Neighborhoods may be gated, and other Neighborhoods may be non-gated, in Declarant's sole discretion. All costs associated with maintenance, management, operation, repair, replacement, and insurance of Neighborhood Common Area shall be a Neighborhood Expense, allocated uniformly and levied as Neighborhood Assessments among the Owners in the Neighborhood to which the Neighborhood Common Area is allocated.

Section 17.3 Designation of Neighborhood Common Areas. Any Neighborhood Common Area initially shall be designated as such from time to time in: (a) a separate instrument Recorded by Declarant in its sole discretion, or (b) in the deed conveying such Neighborhood Common Area to the Association (or, if applicable, to a Sub-Association for the Neighborhood); or (c) on the relevant Recorded subdivision plat; provided, however, that any such designation shall not preclude Declarant from later assigning use of the same Neighborhood Common Area to additional Units and/or Neighborhood(s), so long as Declarant has a right to subject additional property to this Declaration pursuant to Article 15, above. Thereafter, allocation of Neighborhood Common Area may be reassigned upon written approval of the Board and the affirmative vote of a majority of the votes within the Neighborhood(s) affected by the proposed reallocation. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Article 15 above, any such allocation or reallocation shall also require Declarant's prior written consent, in its sole discretion.

Section 17.4 Use of Neighborhood Common Area. Subject to all of the other provisions of this Declaration (including, without limitation, the easements, use restrictions, maintenance and repair obligations, and architectural and landscaping control provisions), Neighborhood Common Area (which, by way of illustration and not limitation, may but need not necessarily include separate Neighborhood entry gates and Private Streets within the Neighborhood) is exclusively allocated to and reserved for the exclusive use of Owners and Residents of Units within the Neighborhood to which the Neighborhood Common Area is allocated.

Section 17.5 Maintenance, Repair, and Replacement of Neighborhood Common Area. Costs of management, operation, maintenance, repair, replacement and insurance of Neighborhood Common Area shall be a Neighborhood Expense assessed as Neighborhood Assessments to the Owners of Units in the Neighborhood(s) to which the Neighborhood Common Areas are allocated.

Section 17.6 Allocation and Budgeting of Neighborhood Expenses. As part of the annual Budget process set forth in, and, subject to the provisions of Section 6.4 above, the Board shall cause to be prepared and delivered, to each Owner of a Unit in a Neighborhood, a supplemental budget covering the estimated Neighborhood Expenses for a Neighborhood (which shall also include a reasonably prudent allocation for

reserves for capital repairs and replacement of Neighborhood Common Area). The Association is hereby authorized to levy Neighborhood Assessments uniformly against all Units in the Neighborhood subject to assessment, to fund Neighborhood Expenses. Such Neighborhood budget and Neighborhood Assessments promulgated by the Association shall become effective unless disapproved by Owners of seventy-five percent (75%) of the affected Units in the Neighborhood; however, there shall be no obligation to call a special meeting of the Owners of Units in such Neighborhood. If the proposed budget for a Neighborhood is disapproved, or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board may revise the budget for any Neighborhood, and the amount of any Neighborhood Assessment from time to time during the year, subject to notice and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above. Notwithstanding the foregoing, if a Supplemental Declaration has been duly Recorded, and a Sub-Association has been duly created, with respect to such Neighborhood, then, subject to express delegation set forth in said Supplemental Declaration or separate Recorded delegation by Declarant, the Sub-Association shall be obligated to prepare, notice, and administer a Neighborhood budget in like manner as set forth in Section 6.4 above.

ARTICLE 18
SUPPLEMENTAL DECLARATIONS; SUB-ASSOCIATIONS

Section 18.1 Supplemental Declarations. Supplemental Declaration(s) may be Recorded from time to time by Declarant, in its sole discretion. A Supplemental Declaration shall be supplemental to this Declaration, and may but need not necessarily create a Sub-Association and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular Neighborhood or other land described in such instrument. This Declaration and any Supplemental Declaration shall be construed to be consistent with each other to the greatest extent reasonably possible; however, in the event of any irreconcilable conflict, the provisions of this Declaration shall prevail. Any purported Supplemental Declaration Recorded by a Person other than Declarant, without the express prior written consent of Declarant, shall be null and void.

Section 18.2 Sub-Associations. No Sub-Association may be validly organized except pursuant to the authority and jurisdiction of a Supplemental Declaration as set forth in Section 18.1, above, and approval of Declarant in its sole discretion. Subject to the foregoing, a duly created Sub-Association shall be a supplemental Neighborhood homeowners association organized pursuant to the authority and jurisdiction of a Supplemental Declaration with concurrent and supplemental jurisdiction (subject to this Declaration and the other Community Governing Documents) with the Association with respect to a particular Neighborhood. A Sub-Association shall have the power to establish standards and conduct activities for the property under its responsibility, subject to the Community Governing Documents and the Neighborhood Governing Documents. Notwithstanding the foregoing, the Association shall have the power and authority to veto any action taken or contemplated to be taken by any Sub-Association which the Board reasonably determines to be in violation of the Community Governing Documents, or adverse or detrimental to the best interests of the Association, or its Members. The Association also shall have the power to reasonably require specific action to be taken by any Sub-Association in connection with the Sub-Association's obligations and responsibilities (for example, without limitation, requiring specific maintenance or repairs, or requiring that a proposed Neighborhood budget include certain items and that expenditures be made therefor). A Sub-Association shall take appropriate action required by the Association by written notice, within the reasonable time frame set forth in such notice. If the Sub-Association fails to so comply, the Association shall have the power and authority to effectuate such action on behalf of the Sub-Association and to levy Special Assessments to cover the reasonable costs thereof.

ARTICLE 19
GENERAL PROVISIONS

Section 19.1 Enforcement. Subject to Section 5.3 above, the Governing Documents may be enforced by the Association as follows:

(a) Breach of any of the provisions contained in the Declaration or Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material, unreasonable, and continuing failure by the Association to comply with the material and substantial provisions of this Declaration, or of the Articles or Bylaws.

(b) The Association further shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use Common Elements (other than ingress and egress, by the most reasonably direct route, to the Unit), subject to the following:

(1) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in any Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(2) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after actual notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(3) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his Unit by the most reasonably direct route over and across the relevant streets;

(4) no fine imposed under this Section may exceed the maximum amount(s) permitted from time to time by applicable provision of NRS Chapter 116 for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to any limitations set forth in this Declaration or applicable law);

(5) subject to this Section 19.1(b), if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid or reasonably disputed in writing delivered to the Board by such Owner or Resident (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above; and

(6) subject to Section 5.3 above, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(c) Responsibility for Violations. Should any Resident violate any material provision of the Rules and Regulations or Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion or informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator), in a "good neighbor" manner. Fines or suspension of voting privileges shall be utilized only after reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

(d) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(e) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(f) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(g) If any Owner, his Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and, if any such Special Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner, and such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Special Assessment or suspension.

Section 19.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 19.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until duly terminated in accordance with NRS § 116.2118.

Section 19.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 19.5 Amendment. Except as otherwise provided by this Declaration, and except in cases of amendments that may be executed by a Declarant, this Declaration, including the Plat, may only be amended by both: (a) the vote and agreement of Owners constituting at least sixty-seven percent (67%) of the voting power of the Association, and (b) the written assent or vote of at least a majority of the total voting power of the Board. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by the Eligible Holders of at least two-thirds (2/3)

of the first Mortgages on all of the Units in the Properties at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers, and guarantors of first Mortgages as provided in Articles 7, 11, 12, 13, 14 and 19 hereof.

(b) Any amendment which would necessitate a Mortgagee, after it has acquired a Unit through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article 12 hereof, or to the application of insurance proceeds as set out in Article 12 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit, in any manner inconsistent with the provisions of this Declaration.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Unit is proposed to be sold, transferred or otherwise conveyed.

(g) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding; or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §§ 116.31133 & 116.31135.

A copy of each amendment (other than any amendment which may be accomplished unilaterally by Declarant) shall be certified by at least two (2) Officers, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) Officers, that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Eligible Beneficiaries of first Mortgages shall include a certification that the requisite approval of such first Eligible Beneficiaries has been obtained. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

Notwithstanding all of the foregoing, for so long as Declarant owns a Lot or Unit, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify

any ambiguous provision, to modify or supplement the Exhibits hereto, to make and process through appropriate governmental authority, minor revisions to the Plat deemed appropriate by Declarant in its discretion, and otherwise to ensure that the Declaration conforms with requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B") hereto, in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.2110 and in Article 15 above, and to make and process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion, and each and every Owner, by acceptance of a deed to his Unit, covenants to sign such further documents and to take such further actions as to reasonably implement and consummate the foregoing

Section 19.6 Notice of Change to Governing Documents. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the changes made.

Section 19.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 19.8 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 19.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, 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 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.

Section 19.10 Priorities and Inconsistencies. The Governing Documents shall be construed to be consistent with one another to the extent reasonably possible. If there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that the Declaration fails to comply with any applicable provision of NRS Chapter 116 or other applicable law). In the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail. In the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail. In the event of any inconsistency between any Community Governing Document and any other Governing Document which is specific to a particular Neighborhood, the former shall prevail. Any inconsistency between any Neighborhood-specific Governing Document shall be resolved in like manner as set forth above.

Section 19.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, Association, and/or ARC, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 19 12 Indemnity. Each Owner shall, to the maximum extent not prohibited by law, indemnify and hold free and harmless each and every one of Declarant, the Association, and their respective partners, members, divisions, subsidiaries and affiliated companies (if any), and their and their respective employees, officers, directors, members, shareholders, agents, committee members, attorneys, professional consultants and representatives, and all of their respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with: (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Lot, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Lot, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Lot or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design, construction, engineering or other work with respect to the Lot or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Lot or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or wilful misconduct of Owner or its agents, employees, licensees, invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents, and/or the Master Association Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section 19.12 and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section 19.12 is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

Section 19.13 Business of Declarant. Except to the extent expressly provided herein or as required by any applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 19.14 Compliance With NRS Chapter 116. It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116. In the event any provision of this Declaration is found to irreconcilably conflict with or violate any such applicable provision of NRS Chapter 116, such offending Declaration provision shall be automatically deemed modified or severed herefrom to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of Senate Bill 451 (1999) should, in the future, be removed or made

less burdensome (from the perspective of Declarant), as a matter of law, then the future change in such provision shall automatically be deemed to have been made and reflected in this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first written above.

DECLARANT:

PERMA-BILT,
a Nevada corporation

By: _____
Daniel Schwartz, President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on this 8th day of August, 2001, by DANIEL SCHWARTZ, as President of PERMA-BILT, a Nevada corporation.

_____
NOTARY PUBLIC
(SEAL)

My Commission Expires:

9-19-2004

Notary Public State of Nevada
COUNTY OF CLARK
RENA C. WINTERS
My Appointment Expires
September 19, 2004
No. 00-63572-1

EXHIBIT "A"

ORIGINAL PROPERTY

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS

Lots One Hundred Seven through **One Hundred Nine (107 - 109),** inclusive, of **Block Three (3), of Russell/Fort Apache - Unit 2**, as shown by map thereof on file in **Book 101 of Plats, Page 3**, in the Office of the County Recorder of Clark County, Nevada;

TOGETHER WITH a non-exclusive easement of ingress and egress over and across the entry area and private streets therein, and a non-exclusive easement of use and enjoyment of the other Common Elements thereof (subject to and as set forth in the foregoing Declaration, as the same from time to time may be amended and/or supplemented by instrument recorded in the Office of the County Recorder of Clark County, Nevada).

EXHIBIT "B"

RUSSELL / FORT APACHE – UNIT 1

BEING A PORTION OF THE NORTH HALF (N 1/2) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 31, SAME BEING THE CENTERLINE INTERSECTION OF FORT APACHE ROAD AND OQUENDO ROAD; THENCE SOUTH 00°51'26" WEST ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER (SE 1/4), COINCIDENT WITH THE CENTERLINE OF FORT APACHE ROAD, 56.54 FEET; THENCE NORTH 89°08'34" WEST, DEPARTING SAID EAST LINE AND SAID CENTERLINE, 50.00 FEET RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY, 39.78 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 91°09'52", THENCE NORTH 89°41'34" WEST, 577 37 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 15 00 FEET: THENCE SOUTHWESTERLY, 23.56 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", THENCE SOUTH 89°41'34" WEST, 70.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 15.00 FEET, THENCE NORTHWESTERLY, 23 56 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTH 89°41'34" WEST, 940.92 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 570.00 FEET, THENCE SOUTHWESTERLY, 346 87 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°52'02" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 35°10'28" WEST; THENCE SOUTHWESTERLY, 24.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 95°10'08"; THENCE SOUTH 49°39'24" WEST, 35 00 FEET, THENCE NORTH 40°20'36" WEST, 1.91 FEET; THENCE SOUTH 49°39'24" WEST, 35.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 15.00 FEET; THENCE WESTERLY, 23.22 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°41'37" TO THE BEGINNING OF A REVESE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 630.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 39°02'13" EAST; THENCE SOUTHWESTERLY, 438.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 39°53'09"; THENCE NORTH 89°09'05" WEST, 183.24 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 20.00 FEET, THENCE SOUTHWESTERLY, 34.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 97°45'54"; THENCE SOUTH 83°05'01" WEST, 40.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1000.00 FEET, THENCE NORTHWESTERLY, 10.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°36'41"; THENCE SOUTH 83°41'42" WEST, 40.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 20 00 FEET, THENCE NORTHWESTERLY, 28.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°50'46"; THENCE NORTH 00°50'55" EAST, 35.00 FEET; THENCE NORTH 89°09'05" WEST, 8.02 FEET; THENCE NORTH 00°50'55" EAST, 35.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 20.00 FEET; THENCE NORTHEASTERLY, 31.83 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 91°11'22" TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1040.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 89°39'33" WEST.

RUSSELL / FORT APACHE – UNIT 1
CONTINUED

THENCE NORTHERLY, 229 94 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°40'04" TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 960 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 77°40'23" EAST, THENCE NORTHERLY, 192.32 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°28'42"; THENCE NORTH 00°50'55" EAST, 86.61 FEET; THENCE NORTH 89°47'31" EAST, 310 36 FEET, THENCE SOUTH 87°22'43" EAST, 182.33 FEET; THENCE NORTH 89°47'31" EAST, 97.89 FEET; THENCE SOUTH 49°50'38" EAST, 68.20 FEET; THENCE SOUTH 40°09'22" WEST, 25.94 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHERLY, 28.10 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 80°29'58"; THENCE SOUTH 40°20'36" EAST, 13.22 FEET, THENCE SOUTH 49°39'24" WEST, 39.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 20.00 FEET; THENCE WESTERLY, 34 73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 99°30'02"; THENCE SOUTH 40°09'22" WEST, 67 25 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHERLY, 29.08 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 83°19'07" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 319 50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 46°50'15" EAST; THENCE SOUTHEASTERLY, 15 72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°49'09", THENCE SOUTH 40°20'36" EAST, 33.12 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 100 00 FEET; THENCE SOUTHEASTERLY, 32 55 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°38'53" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 31°00'31" EAST, THENCE SOUTHEASTERLY, 32.55 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°38'53", THENCE SOUTH 40°20'36" EAST, 76.62 FEET; THENCE NORTH 49°39'24" EAST, 5.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 15.00 FEET; THENCE EASTERLY, 22 40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°33'14" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 630 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 35°53'50" WEST; THENCE NORTHEASTERLY, 391 33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°35'24", THENCE NORTH 89°41'34" EAST, 0.59 FEET; THENCE SOUTH 00°49'12" WEST, 30 01 FEET TO THE CENTERLINE OF SAID OQUENDO ROAD; THENCE NORTH 89°41'34" EAST, ALONG SAID CENTERLINE, 677 73 FEET; THENCE NORTH 00°48'22" EAST, DEPARTING SAID CENTERLINE, 30 01 FEET; THENCE NORTH 89°41'34" EAST, 262.61 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 15 00 FEET; THENCE NORTHEASTERLY, 23.56 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE NORTH 89°41'34" EAST, 70.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 15 00 FEET, THENCE SOUTHEASTERLY, 23.56 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE NORTH 89°41'34" EAST, 315.18 FEET; THENCE SOUTH 00°47'52" WEST, 30 01 FEET; THENCE NORTH 89°41'34" EAST, 338 90 FEET TO THE POINT OF BEGINNING

RUSSELL / FORT APACHE – UNIT 1
CONTINUED

CONTAINING 10.78 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

BASIS OF BEARINGS

SOUTH 89°41'34" WEST – BEING THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVEDA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY, RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11.

RUSSELL / FORT APACHE – UNIT 2

BEING A PORTION OF THE NORTH HALF (N 1/2) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M , CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT THE NORTHWESTERLY CORNER COMMON ELEMENT LOT 1B OF THAT SUBDIVISION KNOWN AS "RUSSELL / FORT APACHE – UNIT 1" ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN BOOK 99, OF PLATS AT PAGE 54, SAME BEING ON THE EASTERLY RIGHT-OF-WAY OF GRAND CANYON PARKWAY; THENCE NORTH 00°50'55" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY, 419 98 FEET; THENCE NORTH 89°47'31" EAST, DEPARTING SAID EASTERLY RIGHT-OF-WAY, 1314.81 FEET, THENCE SOUTH 00°48'37" WEST, 340 03 FEET; THENCE SOUTH 89°44'33" WEST, 338 77 FEET, THENCE SOUTH 00°49'12" WEST, 310.32 FEET TO THE NORTHERLY RIGHT-OF-WAY OF OQUENDO ROAD, THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY AS FOLLOWS SOUTH 89°41'34" WEST, 0 59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 630.00 FEET; THENCE SOUTHWESTERLY, 391.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°35'24" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 35°53'50" EAST; THENCE WESTERLY, 22 40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°33'14" TO THE NORTHEASTERLY RIGHT-OF-WAY OF SWEET JASMINE DRIVE; THENCE FOLLOWING ALONG SAID NORTHEASTERLY RIGHT-OF-WAY AS FOLLOWS SOUTH 49°39'24" WEST, 5.00 FEET, THENCE NORTH 40°20'36" WEST, 76.62 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100.00 FEET; THENCE NORTHWESTERLY 32 55 FEET ALONG SAID CURVE THRCUGH A CENTRAL ANGLE OF 18°38'53" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 100 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 31°00'31" WEST; THENCE NORTHWESTERLY, 32 55 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°38'53", THENCE NORTH 40°20'36" WEST, 33.12 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 319.50 FEET, THENCE NORTHWESTERLY, 15.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°49'09" TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 20 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 46°50'15" WEST, THENCE NORTHWESTERLY, 29.08 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 83°19'07" TO THE SOUTHEASTERLY RIGHT-OF-WAY OF WISPY WINDS STREET, THENCE NORTH 40°09'22" EAST, 67.25 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 20 00 FEET; THENCE 34.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 99°30'02"; THENCE NORTH 49°39'24" EAST, 39 00 FEET TO THE NORTHEASTERLY RIGHT-OF-WAY OF STRAIT FIELD PLACE; THENCE NORTH 40°20'36" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY, 13.22 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY, 28.10 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 80°29'58" TO THE SOUTHEASTERLY RIGHT-OF-WAY OF SAID WISPY WINDS STREET, THENCE NORTH 40°09'22" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, 25.94 FEET THENCE NORTH 49°50'38" WEST, DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY, 68 20 FEET, TO THE NORTHERLY BOUNDARY OF SAID "RUSSELL / FORT APACHE – UNIT 1", THENCE ALONG SAID NORTHERLY BOUNDARY, SOUTH 89°47'31" WEST, 97.89 FEET, THENCE NORTH 87°22'43" WEST, 182.33 FEET; THENCE SOUTH 89°47'31" WEST, 230 35 FEET TO THE **POINT OF BEGINNING**

RUSSELL / FORT APACHE – UNIT 2
CONTINUED

CONTAINING 15.10 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

BASIS OF BEARINGS

SOUTH 89°41'34" WEST – BEING THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVEDA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY, RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11.

RUSSELL / FORT APACHE – UNIT 3

BEING A PORTION OF THE SOUTH HALF (S 1/2) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M , CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST SIXTEENTH SECTION CORNER OF SAID SECTION 31, BEING ON THE CENTERLINE OF OQUENDO ROAD; THENCE NORTH 89°41'34" EAST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID NORTHEAST QUARTER (NE 1/4) COINCIDENT WITH THE CENTERLINE OF SAID OQUENDO ROAD 452 09 FEET, THENCE SOUTH 00°18'26" EAST, 30 00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID OQUENDO ROAD SAME BEING THE **POINT OF BEGINNING**,

THENCE CONTINUING SOUTH 00°18'26" EAST, 170 00 FEET, THENCE SOUTH 89°41'34" WEST, 18 32 FEET, THENCE SOUTH 00°18'26" EAST, 389 58 FEET; THENCE SOUTH 89°41'34" WEST, 721 80 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 50 00 FEET, THENCE WESTERLY, 23 07 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°26 15" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 100 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 26°07'49" EAST THENCE WESTERLY, 66 27 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°58'15 TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 280 50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 11°50'25" EAST, THENCE SOUTHWESTERLY, 14 07 ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°52'30", THENCE NORTH 14°42'55" WEST, 39 00 FEET, THENCE NORTH 00°18'26" WEST, 174 21 FEET, THENCE SOUTH 60o12'51" WEST 228 01 FEET, THENCE SOUTH 89°32'50" WEST, 152 72 FEET, THENCE SOUTH 12°49 01" EAST, 21 38 FEET, THENCE SOUTH 77°10'59" WEST, 112 15 FEET, THENCE SOUTH 70°55'12" WEST, 39 00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 319 50 FEET, THENCE NORTHWESTERLY, 17 93 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°12 53" THENCE SOUTH 81°20'09" WEST, 123 52 FEET, THENCE NORTH 08 39'51" WEST, 212 30 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID OQUENDO ROAD, SAME BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 630.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 08°19'28" EAST, THENCE NORTHEASTERLY, 337 70 FEET ALONG THE SOUTHEASTERLY RIGHT-OF-WAY OF SAID OQUENDO ROAD AND SAID CURVE THROUGH A CENTRAL ANGLE OF 30°42'45" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 39°02'13" WEST, THENCE EASTERLY, 23.22 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°41'37"; THENCE NORTH 49°39'24" EAST, 35 00 FEET TO THE CENTERLINE OF SWEET JASMINE DRIVE, THENCE SOUTH 40°20'36" EAST, ALONG SAID CENTERLINE, 1 91 FEET, THENCE NORTH 49°39'24" EAST, 35.00 FEET, RADIALLY TO THE BEGINNING OF NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 15 00 FEET, THENCE NORTHERLY, 24.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 95°10'08" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 570 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 35°10'28" WEST; THENCE NORTHEASTERLY, 346 87 FEET CONTINUING ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 34°52'02", THENCE NORTH 89°41'34" EAST, ALONG THE SOUTHERLY RIGHT-OF-WAY OF SAID OQUENDO ROAD, 790 92 FEET TO THE **POINT OF BEGINNING**

RUSSELL / FORT APACHE – UNIT 3
CONTINUED

CONTAINING 15.17 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

BASIS OF BEARINGS

SOUTH 89°41'34" WEST – BEING THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVEDA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY, RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11.

RUSSELL / FORT APACHE – UNIT 4

BEING A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 31, SAME BEING THE CENTERLINE INTERSECTION OF PATRICK LANE AND GRAND CANYON DRIVE, THENCE SOUTH 89°33'42" WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 31 COINCIDENT WITH THE CENTERLINE OF SAID PATRICK LANE, 63 56 FEET, THENCE NORTH 00°26 18" WEST, DEPARTING SAID SOUTH LINE AND SAID CENTERLINE, 40.00 FEET TO THE NORTHERLY RIGHT OF WAY OF SAID PATRICK LANE, SAME BEING THE **POINT OF BEGINNING**. THENCE SOUTH 89°33'42" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 954 06 FEET, THENCE NORTH 00°53'34" EAST, DEPARTING SAID NORTH RIGHT-OF-WAY LINE, 611 93 FEET, THENCE NORTH 89°33'42" EAST, 76.74 FEET; THENCE SOUTH 00°26'18" EAST 10.00 FEET, THENCE NORTH 89°33'42" EAST, 70 00 FEET, THENCE SOUTH 00°26 18" EAST, 5 00 FEET, THENCE NORTH 89°33'42" EAST, 70.00 FEET, THENCE SOUTH 00°26'18" EAST, 10 00 FEET, THENCE NORTH 89°33'42" EAST, 70 00 FEET, THENCE SOUTH 00°26'18" EAST, 5.00 FEET; THENCE NORTH 89°33'42" EAST, 70 00 FEET, THENCE SOUTH 00°26'18" EAST, 5.00 FEET, THENCE NORTH 89°33'42" EAST, 189 00 FEET, THENCE SOUTH 00°26'18" EAST, 105.77 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY, 31 42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00 00" THENCE SOUTH 00°26'18" EAST, 39 00 FEET, THENCE SOUTH 89°33'42" WEST, 7.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 20 00 FEET, THENCE SOUTHWESTERLY, 27 07 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 77°33'47" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 319.50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 78°00'05" EAST; THENCE SOUTHWESTERLY, 66.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°56'14" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 280 50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 66°03'51 WEST; THENCE SOUTHWESTERLY, 44 96 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09o11 01", THENCE NORTH 89°33'42" EAST, 479 33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1040 00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 80°58'43" WEST; THENCE SOUTHWESTERLY, 148 35 FEET ALONG SAID CURVE AND SAID WESTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 08°10'22"; THENCE SOUTH 00°50'55" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY, 119 02 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHWESTERLY, 38 71 FEET ALONG SAID CURVE, DEPARTING WESTERLY RIGHT-OF-WAY OF SAID GRAND CANYON DRIVE THROUGH A CENTRAL ANGLE OF 88°42'47" TO THE NORTHERLY RIGHT-OF-WAY OF SAID PATRICK LANE, BEING THE **POINT OF BEGINNING**

CONTAINING 10 27 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

BASIS OF BEARINGS

SOUTH 89°41'34" WEST – BEING THE NORTH LINE OF THE SOUTHEAST (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M., CLARK COUNTY, NEVADA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11

RUSSELL / FORT APACHE – UNIT 5

BEING A SUBDIVISION OF GOVERNMENT LOTS 15 AND 18 AND A PORTION GOVERNMENT LOTS 14 AND LOT 19, WITHIN SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M , CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 31, SAME BEING THE SOUTHWEST CORNER OF GOVERNMENT LOT 17 OF SAID SECTION 31, THENCE NORTH 89°31'58" EAST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER (SW 1/4), COINCIDENT WITH THE SOUTH BOUNDARY OF SAID GOVERNMENT LOT 17, AND THE CENTERLINE OF PATRICK LANE, A DISTANCE OF 227 80 FEET TO THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 18, SAME BEING THE **POINT OF BEGINNING:**

THENCE NORTH 00°51'50" EAST, DEPARTING SAID CENTERLINE AND ALONG THE EAST BOUNDARY OF SAID GOVERNMENT LOT 17, COINCIDENT WITH THE WEST BOUNDARY OF SAID GOVERNMENT LOT 18, A DISTANCE OF 685 41 FEET TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 18, SAME BEING THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 15; THENCE CONTINUING NORTH 00°51'50" EAST, ALONG THE WEST BOUNDARY OF SAID GOVERNMENT LOT 15, A DISTANCE OF 685 41 FEET TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 15, THENCE NORTH 89°42'59" EAST, ALONG THE NORTH BOUNDARY OF SAID GOVERNMENT LOT 15, A DISTANCE OF 340 09 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 15, SAME BEING THE NORTHWEST OF SAID GOVERNMENT LOT 14, THENCE CONTINUING NORTH 89°42'59" EAST, ALONG THE NORTH BOUNDARY OF SAID GOVERNMENT LOT 14, A DISTANCE OF 224 92' FEET, THENCE SOUTH 00°28'02" WEST, DEPARTING THE NORTH BOUNDARY OF SAID GOVERNMENT LOT 14, A DISTANCE OF 121 20 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 280.50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 02°25'26" EAST; THENCE NORTHEASTERLY, 43 73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°55'55", THENCE SOUTH 11°21'21" EAST, 155 63 FEET, THENCE SOUTH 68°00'54" WEST, 58 02 FEET, THENCE SOUTH 33°19'55" EAST, 167 53 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 780 50 FEET, THENCE SOUTHWESTERLY, 48.61 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°34'06" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE EASTERLY HAVING A RADIUS OF 20.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 36°54'01" WEST, THENCE SOUTHERLY, 32 46 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92°59'38", THENCE SOUTH 50°07'21" WEST, 39.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 20 00 FEET, THENCE WESTERLY, 32.46 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92°58'38" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 780 50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 42°51'18" WEST, THENCE SOUTHWESTERLY, 400 97 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°26'05" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20 00 FEET, A RADIALLY LINE TO SAID BEGINNING BEARS NORTH 72°17'23" WEST, THENCE SOUTHEASTERLY, 35 17 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 100°45'59", THENCE SOUTH 06°56'38" WEST, 39.00 FEET, RADIALLY TO THE BEGINNING OF NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 280 50 FEET,

RUSSELL / FORT APACHE – UNIT 5
CONTINUED

THENCE WESTERLY 11 62 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°22'23" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 20.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 04°34 15" EAST, THENCE SOUTHWESTERLY, 28 93 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°53'13" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE EASTERLY HAVING A RADIUS OF 780 50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 78°18'58" WEST, THENCE SOUTHERLY, 165.52 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'04", THENCE SOUTH 00°28'02" EAST, 58 11 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20 00 FEET, THENCE SOUTHEASTERLY, 35.26 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 101°01'27", THENCE SOUTH 11°29'29" EAST, 39 00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 319 50 FEET, THENCE SOUTHWESTERLY, 0 80 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°08'34", THENCE SOUTH 00°28'02" EAST, 75 74 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 30 00 FEET, THENCE SOUTHEASTERLY, 31 42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°00'00" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 30.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 59°31'58" WEST, THENCE SOUTHEASTERLY, 31 42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°00'00", THENCE SOUTH 00°28'02" EAST, 60.00 FEET TO THE SOUTH BOUNDARY OF SAID GOVERNMENT LOT 19, SAME BEING THE CENTERLINE OF SAID PATRICK LANE, THENCE SOUTH 89°31'58" WEST, ALONG THE SOUTH BOUNDARY OF SAID GOVERNMENT LOT 19, AND ALONG SAID CENTERLINE, 93 75 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 18, THENCE CONTINUING SOUTH 89°31'58" WEST, ALONG THE SOUTH BOUNDARY OF SAID GOVERNMENT LOT 18 AND ALONG SAID CENTERLINE, A DISTANCE OF 338.36 FEET TO THE **POINT OF BEGINNING**

CONTAINING 15 25 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS

BASIS OF BEARINGS

SOUTH 89 41 34" WEST – BEING THE NORTH LINE OF THE SOUTHEAST (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M D M , CLARK COUNTY, NEVADA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11

RUSSELL / FORT APACHE – UNIT 6

BEING A SUBDIVISION OF PORTIONS OF GOVERNMENT LOTS 14, 19 AND 20, WITHIN SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT THE WEST SIXTEENTH CENTER SECTION CORNER OF SAID SECTION 31, SAME BEING THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 20 AND THE CENTERLINE INTERSECTION OF CONQUISTDOR STREET AND PATRICK LANE, THENCE SOUTH 89°31'58" WEST, ALONG THE CENTERLINE OF SAID PATRICK LANE, 582.97 FEET, THENCE NORTH 00°28'02" WEST, DEPARTING THE CENTERLINE OF SAID PATRICK LANE, 60.00 FEET, RADIALLY TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 30.00 FEET; THENCE NORTHWESTERLY, 31.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°00'00" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 30.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 59°31'58" EAST, THENCE NORTHWESTERLY, 31.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°00'00"; THENCE NORTH 00°28'02" WEST, 75.74 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CLIFTON FORGE STREET, SAME BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 319.50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 11°20'55" WEST, THENCE EASTERLY, 0.80 FEET ALONG SAID CURVE AND THE SOUTHERLY RIGHT-OF-WAY OF SAID CLIFTON FORGE STREET THROUGH A CENTRAL ANGLE OF 00°08'34", THENCE NORTH 11°29'29" WEST, DEPARTING SAID SOUTHERLY RIGHT-OF-WAY, 39.00 FEET, RADIALLY TO THE NORTHERLY RIGHT-OF-WAY OF SAID CLIFTON FORGE STREET, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.00 FEET, THENCE SOUTHWESTERLY, 35.26 FEET ALONG SAID CURVE, DEPARTING SAID NORTHERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 101°01'27" TO THE EASTERLY RIGHT-OF-WAY OF OQUENDO ROAD; THENCE NORTH 00°28'02" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY, 58.11 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 780.50 FEET; THENCE NORTHERLY, 165.52 FEET ALONG SAID CURVE AND SAID EASTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 12°09'04" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 20.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 78°18'58" WEST, THENCE NORTHEASTERLY, 28.93 FEET ALONG SAID CURVE AND DEPARTING SAID EASTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 82°53'13" TO THE SOUTHERLY RIGHT-OF-WAY OF FLOKTON STREET BEING THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 280.50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 04°34'15" EAST, THENCE EASTERLY, 11.62 FEET ALONG SAID CURVE AND SOUTHERLY RIGHT-OF-WAY OF SAID FLOKTON STREET THROUGH A CENTRAL ANGLE OF 02°22'23"; THENCE NORTH 06°56'38" EAST, DEPARTING THE SOUTHERLY RIGHT-OF-WAY OF SAID FLOKTON STREET, 39.00 FEET, RADIALLY TO THE NORTHERLY RIGHT-OF-WAY OF SAID FLOKTON STREET, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.00 FEET; THENCE NORTHWESTERLY, 35.17 FEET ALONG SAID CURVE, DEPARTING THE NORTHERLY RIGHT-OF-WAY OF SAID FLOKTON STREET THROUGH A CENTRAL ANGLE OF 100°45'59" TO THE EASTERLY RIGHT-OF-WAY OF SAID OQUENDO ROAD, BEING THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 780.50 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 72°17'23" WEST;

RUSSELL / FORT APACHE – UNIT 6
CONTINUED

THENCE NORTHEASTERLY, 400.97 FEET ALONG SAID CURVE AND SAID EASTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 29°26'05" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 20.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 42°51'18" WEST; THENCE NORTHEASTERLY, 32.46 FEET ALONG SAID CURVE, DEPARTING SAID EASTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 92°58'38" TO THE SOUTHWESTERLY RIGHT-OF-WAY OF WONDERFUL DAY AVENUE; THENCE SOUTH 39°52'39" EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY, 55.45 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 219.50 FEET; THENCE SOUTHEASTERLY, 33.87 FEET ALONG SAID CURVE AND SAID SOUTHWESTERLY RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 08°50'29"; THENCE SOUTH 39°21'25" WEST, DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY, 217.22 FEET; THENCE SOUTH 82°58'49" EAST, 69.68 FEET; THENCE NORTH 89°31'58" EAST, 408.27 FEET TO THE EASTERLY BOUNDARY LINE OF SAID GOVERNMENT LOT 20, SAME BEING THE CENTERLINE OF SAID CONQUISTADOR STREET; THENCE SOUTH 00°54'26" WEST ALONG SAID EASTERLY BOUNDARY LINE AND CENTERLINE OF SAID CONQUISTADOR STREET, 613.34 FEET TO THE **POINT OF BEGINNING**

CONTAINING 9.76 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS

BASIS OF BEARINGS

SOUTH 89°31'58" WEST – BEING THE SOUTH LINE OF THE SOUTHWEST (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 31, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, AS SHOWN BY THAT RECORD OF SURVEY ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 101 OF SURVEYS, AT PAGE 11

20010809
01455

EXHIBIT "B"

ANNEXABLE AREA

[ALL, OR ANY PORTIONS OF WHICH, FROM TIME TO TIME MAY, BUT NEED NOT NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]

CERTAIN REAL PROPERTY PRESENTLY OWNED OR TO BE ACQUIRED FROM TIME TO TIME BY DECLARANT AND GENERALLY BOUNDED BY RUSSELL ROAD (TO THE NORTH), FORT APACHE (TO THE EAST), PATRICK LANE (TO THE SOUTH), AND HUALAPAI (TO THE WEST), CLARK COUNTY, NEVADA. SAID PROPERTY TO BE FURTHER DESCRIBED FROM TIME TO TIME BY INSTRUMENT(S) RECORDED BY DECLARANT IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, INCLUDING, BUT NOT LIMITED TO:

1 All of the real property in **RUSSELL/FORT APACHE - UNIT 1**, as shown by map final map thereof, on file in **Book 99** of Plats, **Page 54**, in the Office of the County Recorder of Clark County, Nevada;

2 All of the real property in **RUSSELL/FORT APACHE - UNIT 2**, as shown by map final map thereof, on file in **Book 101** of Plats, **Page 3**, in the Office of the County Recorder of Clark County, Nevada; EXCEPTING THEREFROM the Original Property described on the foregoing Exhibit "A"

[ADDITIONAL SUBDIVISION MAP DESCRIPTIONS TO BE SUPPLIED FOLLOWING RECORDATION FROM TIME TO TIME OF RELEVANT FINAL MAPS].

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY ADD TO AND/OR MODIFY OF RECORD ALL OR ANY PARTS OF THE FOREGOING DESCRIPTIONS]

When Recorded, Return To:

WILBUR M. ROADHOUSE, ESQ.
Goold Patterson DeVore Ales & Roadhouse
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

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

GOOLD PATTERSON ET AL

08-09-2001 13:23 JTB 84
OFFICIAL RECORDS
BOOK: 20010809 INST: 01455

FEE: 90.00 RPTT. .00

SAO
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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Case No.: A-14-696357-C
Dept. No.: IV

STIPULATION AND ORDER TO DISMISS DEFENDANT, UNITED LEGAL SERVICES INC. WITHOUT PREJUDICE

Counter-Defendants.

Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC and Defendant, United Legal Services Inc., by and through their respective attorneys of record, hereby stipulate and agree as follows:

IT IS HEREBY STIPULATED AND AGREED that Defendant, United Legal Services Inc. is hereby dismissed, without prejudice, each party to bear their own fees and costs in this matter.

IT IS FURTHER STIPULATED AND AGREED that the hearing currently scheduled for February 21, 2018 shall be vacated, and the pending Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Causes of Action [Wrongful Foreclosure and Tortious Interference with Contract] shall be denied as moot.

IT IS SO STIPULATED AND AGREED.

Dated this 24 day of January, 2018.

WRIGHT, FINLAY & ZAK, LLP

Paterno C. Jurani, Esq.
Nevada Bar No. 8136
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorney for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

Dated this 16 day of January, 2018.

ATKINSON LAW ASSOCIATES LTD.

Robert E. Atkinson, Esq.
Nevada Bar No. 9958
8965 S. Eastern Ave., Suite 260
Las Vegas, Nevada 89123
Attorney for Defendant, United Legal Services, Inc.

STIPULATION AND ORDER TO DISMISS DEFENDANT, UNITED LEGAL SERVICES INC. WITHOUT PREJUDICE

ORDER

IT IS HEREBY ORDERED that all of Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC's claims against Defendant, United Legal Services Inc. are hereby dismissed, without prejudice.

IT IS FURTHER ORDERED that each party shall bear their own fees and costs.

IT IS FURTHER ORDERED that the hearing currently scheduled for February 21, 2018 shall be vacated, and the pending Motion for Summary Judgment on Ocwen Loan Servicing's Third and Ninth Causes of Action [Wrongful Foreclosure and Tortious Interference with Contract] shall be denied as moot.

DATED: January 26, 2018

DISTRICT COURT JUDGE

Respectfully submitted,

WRIGHT FINLAY & ZAK, LLP

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Las Vegas, Nevada 89117
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

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Attorneys for Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant, CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant	Case No.: A-14-696357-C Dept No.: IV **ANSWER TO SECOND AMENDED COMPLAINT AND COUNTERCLAIM AGAINST PLAINTIFF**

Defendant, CHERSUS HOLDINGS, LLC ("Defendant"), by and through its attorneys of record, the Law Firm of Vernon Nelson, and hereby files this Answer to Plaintiff OCWEN LOAN SERVICING, LLC ("Plaintiff") Second Amended Complaint by admitting, denying, and alleging as follows:

///

///

INTRODUCTION

1. Answering Paragraph 1 of Plaintiff's Second Amended Complaint, the allegations contained therein are legal conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraph.

2. Answering Paragraph 2 of Plaintiff's Second Amended Complaint, Defendant admits the allegations contained therein.

JURISDICTION AND VENUE

3. Answering Paragraph 3 of Plaintiff's Second Amended Complaint, Defendant admits the allegations contained therein.

PARTIES

4. Answering Paragraphs 4, 6, 7, 8 and 9 of Plaintiff's Second Amended Complaint, Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained in said Paragraphs, and, therefore, denies the same.

5. Answering Paragraph 5 of Plaintiff's Second Amended Complaint, Defendant admits the allegations contained therein.

6. Answering Paragraph 10 of Plaintiff's Second Amended Complaint, said Paragraph pertains to fictitious parties and Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained in said Paragraph, and, therefore, denies the same.

GENERAL ALLEGATIONS

7. Answering Paragraphs 11, 13, 19, 20, 22, 25, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 42, 43, 54, 55, and 56 of Plaintiff's Second Amended Complaint, Defendant denies the allegations contained in said Paragraphs.

8. Answering Paragraphs 12, 26, 41, 48, 50, 51, and 53 of Plaintiff's Second Amended Complaint, Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained in said Paragraphs and, therefore, denies the same.

9. Answering Paragraphs 14, 15, 16, 17, 18, and 21 of Plaintiff's Second Amended Complaint, Defendant contends the allegations are improper and no response is required, as the documents

speak for themselves. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

10. Answering Paragraphs 23, 24, 33, 34, 40, 44, 45, 46, 47, 49, and 52 of Plaintiff's Second Amended Complaint, the allegations contained therein are legal conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

FIRST CAUSE OF ACTION

(Quite Title/Declaratory Relief versus Buyer, First 100, and all fictitious Defendants)

11. Answering Paragraph 57 of Plaintiff's Second Amended Complaint, Defendant repeats and re-alleges its Answers to Paragraphs 1 through 56 as though fully set forth herein.

12. Answering Paragraphs 58 and 59 of Plaintiff's Second Amended Complaint, the allegations contained therein are legal conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

13. Answering Paragraphs 60 and 61 of Plaintiff's Second Amended Complaint, Defendant admits the allegations contained therein.

14. Answering Paragraphs 62, 63, 64, 65, and 66 of Plaintiff's Second Amended Complaint, Defendant denies the allegations contained in said Paragraphs.

SECOND CAUSE OF ACTION

(Preliminary and Permanent Injunctions versus Buyer, HOA, Red Rock, United, and fictitious Defendants)

15. Answering Paragraph 67 of Plaintiff's Second Amended Complaint, Defendant repeats and re-alleges its answers to Paragraphs 1 through 66 as though fully set forth herein.

16. Answering Paragraph 68 of Plaintiff's Second Amended Complaint, Defendant admits the allegations contained therein.

17. Answering Paragraphs 69, 70, 71, 72, 73, 74, and 75 of Plaintiff's Second Amended Complaint, Defendant denies the allegations contained in said Paragraphs.

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THIRD CAUSE OF ACTION

(Wrongful Foreclosure versus the HOA, Red Rock, United, and fictitious Defendants)

18. Answering Paragraphs 76 through 84 of Plaintiff's Second Amended Complaint, said Paragraphs do not pertain to Defendant, therefore, no response is required, To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

FOURTH CAUSE OF ACTION

(Negligence versus HOA, Red Rock, United, and the fictitious Defendants)

19. Answering Paragraphs 85 through 91 of Plaintiff's Second Amended Complaint, said Paragraphs do not pertain to Defendant and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

FIFTH CAUSE OF ACTION

(Negligence Per Se versus HOA, Red Rock, United, and the fictitious Defendants)

20. Answering Paragraphs 92 through 101 of Plaintiff's Second Amended Complaint, said Paragraphs do not pertain to Defendant and therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

SIXTH CAUSE OF ACTION

(Breach of Contract versus the HOA, Red Rock, and United)

21. Answering Paragraphs 102 through 106 of Plaintiff's Second Amended Complaint, said Paragraphs do not pertain to Defendant and therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

SEVENTH CAUSE OF ACTION

(Misrepresentation versus the HOA)

22. Answering Paragraphs 107 through 116 of Plaintiff's Second Amended Complaint, said Paragraphs do not pertain to Defendant and therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

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EIGHTH CAUSE OF ACTION

(Unjust Enrichment versus Buyer, the HOA, Red Rock, United, and fictitious Defendants)

23. Answering Paragraph 117 of Plaintiff's Second Amended Complaint, Defendant repeats and re-alleges its Answers to Paragraphs 1 through 116 as though fully set forth herein.

24. Answering Paragraphs 118, 119, 120, 121, 122, 123, 124, and 125 of Plaintiff's Second Amended Complaint, Defendant denies the allegations contained in said Paragraphs.

NINTH CAUSE OF ACTION

(Tortious Interference with Contract versus Buyer, the HOA, Red Rock, United, and the fictitious Defendants)

25. Answering Paragraph 126 of Plaintiff's Second Amended Complaint, Defendant repeats and re-alleges its Answers to Paragraphs 1 through 125 as though fully set forth herein.

26. Answering Paragraph 127 of Plaintiff's Second Amended Complaint, Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained in said Paragraph and therefore, denies the same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

2. Plaintiff's claims are barred by the doctrine of unclean hands.

Third Affirmative Defense

3. Plaintiff's claims are barred by the doctrine of laches.

Fourth Affirmative Defense

4. Plaintiff lacks standing to bring the claims contained its Second Amended Complaint.

Fifth Affirmative Defense

5. Without admitting that Plaintiff is entitled to any damages whatsoever, any award to Plaintiff should be reduced or precluded by reason of Plaintiff's bad faith.

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Sixth Affirmative Defense

6. Plaintiff's Second Amended Complaint, and each cause of action or claim for relief asserted therein, is barred by the equitable doctrines of waiver, estoppel, duress and/or abandonment.

Seventh Affirmative Defense

7. Plaintiff's claims have been waived as a result of Plaintiff's acts and conduct.

Eighth Affirmative Defense

8. Plaintiff's claims are barred by reason of its own misrepresentations, fraud, and deceitful actions with Defendant.

Ninth Affirmative Defense

9. Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of court to amend this answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of its Second Amended Complaint;
2. That Plaintiff's Second Amended Complaint can be dismissed with prejudice;
3. For costs incurred in the defense of this action;
4. For reasonable attorney's fees incurred in defending this action; and
5. For such other relief as the court deems just and proper.

COUNTER-CLAIM

COMES NOW Counter-claimant, CHERSUS HOLDINGS, LLC ("Counter-claimant"), by and through its attorneys of record, the LAW FIRM OF VERNON NELSON, and hereby files its Counter-claim against Counter-defendant OCWEN LOAN SERVICING, LLC ("Counter-defendant"), upon information and belief, as follows:

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GENERAL ALLEGATIONS

1. Counter-claimant Chersus Holdings, LLC is a Nevada limited liability company doing business in Clark County, Nevada.
2. Upon information and belief, Counter-Defendant Ocwen Loan Servicing, LLC is a foreign limited liability company doing business in Clark County, Nevada.
3. On May 28, 2013, a Foreclosure Deed upon Sale was executed conveying the real property located at 5946 Lingering Breeze St., Las Vegas, Nevada 89148 (APN 163-31-611-022) (the "Property") to First 100, LLC pursuant to a sale held under NRS 116 foreclosing on Southern Terrace Homeowners Association's Lien for Delinquent Assessments.
4. On or about October 23, 2013, First 100, LLC sold the Property to Counter-claimant. Counter-claimant recorded its deed on January 13, 2014 as instrument number 201401130001734.
5. On November 13, 2014, First 100, LLC put Counter-defendant and its agent on actual notice that the homeowners association's lien for delinquent assessment had been foreclosed on and accordingly, the first deed of trust had been extinguished.
6. Despite being on constructive and actual notice of the May 28, 2013, foreclosure sale, on information and belief, Counter-defendant proceeded to purport to foreclose on its now-extinguished first deed of trust.
7. Upon information and belief, Counter-defendant purported to sell and purchase the Property at a foreclosure sale on or about December 20, 2013 and recorded its deed on or about January 7, 2014.

FIRST CAUSE OF ACTION

(Wrongful Foreclosure)

8. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.
9. Counter-defendant was on constructive and actual notice that its first deed of trust was extinguished at the HOA foreclosure sale held on or about May 28, 2013.
10. Counter-defendant nonetheless knowingly held a foreclosure sale on December 20, 2013.

11. Because the first deed of trust was extinguished at the HOA foreclosure sale, Counter-defendant had no rights in the Property allowing for foreclosure or any other sale.

12. Counter-claimant and Counter-Defendant have no contractual privity and as such, Counter-claimant was never in default of any agreement that would have given Counter-defendant the right to foreclose on the Property.

13. As a result of Counter-defendant's wrongful conduct, Counter-claimant has suffered damages in excess of $10,000 to be proven at trial.

14. As a result of Counter-defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under Nevada law, Counter-claimant is entitled to recover their attorney's fees and costs incurred herein.

SECOND CAUSE OF ACTION

(Quiet Title)

15. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.

16. Counter-claimant is the rightful owner of the Property via chain of title starting with First 100's purchase of the Property at the HOA foreclosure sale and reflected in the deed recorded May 29, 2013.

17. Counter-defendant was on actual and constructive notice of First 100's superior claim to the Property.

18. Upon information and belief, Counter-defendant claims an interest in the Property.

19. Counter-defendant's claim to the Property is adverse to Counter-claimant's claim.

20. Counter-claimant is entitled to a determination from this Court for quieting Counter-defendant's claim to title of the Property.

21. As a result of Counter-defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under the Nevada law, Counter-claimant is entitled to recover their attorney's fees and costs incurred herein.

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THIRD CAUSE OF ACTION

(Declaratory Relief)

22. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.
23. A dispute has arisen between Counter-claimant and Counter-defendant that is ripe for adjudication, specifically, concerning the ownership of the Property and interpretation of NRS of 116.3116 et. seq.
24. Pursuant to NRS 30.030 and 30.040, Counter-claimant is entitled to declaratory relief concerning the proper interpretation and enforcement of the Nevada statute.
25. As a result of Counter-defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under Nevada law, Counter-claimant is entitled to recover their attorney's fees and costs incurred herein.

FOURTH CAUSE OF ACTION

(Conversion)

26. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.
27. Counter-defendant wrongfully committed distinct acts of dominion over Counter-claimant's property by purporting to sell/purchase the Property despite Plaintiff's ownership rights over such Property.
28. The act was in denial of, or inconsistent with, Counter-claimant's title or right therein.
29. The act was in derogation, exclusion, or defiance of the Counter-claimant's title or right therein.
30. As a result of Counter-defendant's wrongful conduct, Counter-claimant has suffered damages in an amount to be proven at trial.
31. As a result of Counter-Defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under Nevada law, Counter-claimant is entitled to recover their attorney's fees and costs incurred herein.

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FIFTH CAUSE OF ACTION

(Unjust Enrichment)

32. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.

33. Counter-defendant has been unjustly enriched by retaining and asserting dominion over the Property.

34. The principles of justice, equity, and good conscience require that such Property be returned to Plaintiff.

35. As a result of Counter-defendant's wrongful conduct, Counter-claimant has suffered damages in an amount in excess of $10,000.00, to be proven at trial.

36. As a result of Counter-defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under Nevada law, Counter-claimant is entitled to recover its attorney's fees and costs incurred herein.

SIXTH CAUSE OF ACTION

(Slander of Title)

37. Counter-claimant incorporates the foregoing allegations as if the same were fully set forth herein.

38. Counter-defendant made false and malicious communications disparaging Counter-claimant's title in the Property, specifically, knowingly holding itself out to have an interest in the Property when it had actual and constructive notice that its interest, if any, had been extinguished or void by virtue of the foreclosure sale.

39. Counter-claimant sustained special damages as a result of the Counter-defendant's communication and actions in purporting to sell Property despite its knowledge it held no right to sell the Property.

40. As a result of Counter-defendant's wrongful conduct, Counter-claimant has suffered damages in an amount in excess of $10,000.00, to be proven at trial.

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41. As a result of Counter-defendant's wrongful conduct, Counter-claimant has been forced to retain the services of an attorney to prosecute this action; therefore, under Nevada law, Counter-claimant to recover its attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Counter-claimant prays to this Court for the relief as follows:

1. For general, special, and consequential damages;
2. For costs and attorney's fees associated with bringing this action;
3. For declaratory relief as requested herein;
4. For injunctive relief, including but not limited to, an injunction prohibiting Counter-defendant from taking any action inconsistent with Counter-claimant's right to own and possess the Property;
5. For pre and post-judgment interest; and
6. For such other and additional relief as the Court may deem just, equitable, and proper.

DATED this 9th day of March, 2018

THE LAW OFFICE OF VERNON NELSON

By: */s/ Vernon Nelson*

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PROOF OF SERVICE
v.
Case No.: A-14-696357-C

Pursuant to NRCP 5(b), I Danielle Alvarado certify that I am an employee of THE LAW OFFICE OF VERNON NELSON, and that on the 9th day of March, 2018, I did cause a true copy of **ANSWER TO SECOND AMENDED COMPLAINT AND COUNTERCLAIM AGAINST PLAINTIFF** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

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/s/ Danielle Alvarado
An Employee of
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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

DEFAULT – FIRST 100, LLC

It appearing from the files and records in the above entitles action that First 100, LLC, Defendant herein, being duly served with a copy of Plaintiff's Second Amended Complaint on the 9th day of March, 2018; that more than 20 days, exclusive of the day of service, having expired since service upon the Defendant; that no answer or other appearance having been filed and no further time having been granted, the default of the above-named Defendant for failing to answer or otherwise plead to Plaintiff's Second Amended Complaint is hereby entered.

STEVEN D. GRIERSON
CLERK OF COURT

By: _____ 10/16/2018
Deputy Clerk Date
A-14-696357-C
Michelle McCarthy

Respectfully submitted by:

WRIGHT, FINLAY & ZAK, LLP

_____
Paterno C. Jurani, Esq.
Attorneys for Plaintiff/Counter-Defendant

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DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Case No.: A-14-696357-C
Dept. No.: IV

STIPULATION AND ORDER TO DISMISS DEFENDANT, RED ROCK FINANCIAL SERVICES, LLC

Counter-Defendants.

Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC (hereinafter "Ocwen"), and Defendant, Red Rock Financial Services, LLC (hereinafter "Red Rock") (collectively, the "Parties"), by and through their attorneys of record, hereby stipulate and agree as follows:

IT IS HEREBY STIPULATED AND AGREED that Defendant, Red Rock Financial Services, LLC is hereby dismissed, without prejudice, each party to bear their own fees and costs in this matter.

IT IS FURTHER STIPULATED AND AGREED that the hearing currently scheduled for October 16, 2018 shall be vacated, and Red Rock's pending Motion to Dismiss Ocwen Loan Servicing, LLC's Second Amended Complaint ("Motion to Dismiss") filed on June 6, 2018 shall be denied as moot.

IT IS SO STIPULATED AND AGREED.

DATED this 15th day of October, 2018.

WRIGHT, FINLAY & ZAK, LLP

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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DATED this 15 day of October, 2018.

KOCH & SCOW, LLC

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Attorneys for Cross-Defendant, Red Rock Financial Services, LLC

STIPULATION AND ORDER TO DISMISS DEFENDANT, RED ROCK FINANCIAL SERVICES, LLC

Case No.: A-14-696357-C

ORDER

Based upon the foregoing Stipulation by and between the parties, and good cause appearing, **IT IS SO ORDERED.**

DATED this 10-15-2018

DISTRICT COURT JUDGE

Respectfully Submitted by:

WRIGHT, FINLAY & ZAK, LLP

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DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant, CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Counter-Defendants.	Case No.: A-14-696357-C Dept No.: IV **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Plaintiff/Counter-Defendant, Ocwen Loan Servicing LLC, ("Plaintiff" or "Ocwen"), Defendant/Counter-Claimant, Chersus Holdings, LLC ("Chersus" or "Defendant Chersus"), and Defendant Southern Terrace Homeowner's (hereinafter "the HOA") filed competing Motions for Summary Judgment (the "Competing MSJ Motions"). The Court scheduled a hearing on January 22, 2019 to consider the Competing MSJ Motions, and the parties' respective oppositions to the Competing MSJ Motions (the "MSJ Hearing"). Ocwen appeared through its counsel of record, Dana Nitz, Esq. of the law firm of Wright, Finlay, & Zak, LLP. Defendant Chersus appeared through its counsel of record, Vernon Nelson of the Law Offices of Vernon Nelson, PLLC. The HOA appeared through its counsel of record, Ashlie Surur, Esq. of the law firm of Hall, Jaffe & Clayton, LLP. Having duly considered all arguments and evidence presented by the parties including the arguments made by counsel at the MSJ Hearing, and finding good cause therefore, the Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

A. FACTUAL BACKGROUND

1. Prior to Litigation

a. Harrison Loan Documents.

1. On or about March 13, 2008, Joseph F. Harrison and Bonnie L. Harrison (hereinafter the "Harrisons") purchased the property located at 5946 Lingering Breeze St, Las Vegas, NV 89148 (APN 163-31-611-022) (hereinafter the "Property").

2. The Deed of Trust executed by the Harrisons (hereinafter the "Deed of Trust") identified Direct Equity Mortgage, LLC as the Lender and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary acting solely as a nominee for Lender and Lender's successors and assigns, Nevada Title Company as Trustee, and secured a loan in the amount of $234,739.00 (hereinafter the "Harrison Loan").

3. On July 23, 2012, an Assignment of Deed of Trust was recorded, reflecting that MERS assigned the Deed of Trust to GMAC Mortgage, LLC.

b. HOA Lien Documents.

4. The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Southern Terrace (the "CC&Rs"), which were recorded on August 9, 2001.

5. On December 8, 2011, a Lien for Delinquent Assessments (the "HOA Lien") was recorded against the Property by Red Rock Financial Services ("Red Rock") on behalf of the HOA. The HOA Lien was recorded as Instrument Number 201112080002960. The HOA Lien provides that Red Rock was officially assigned as agent by the HOA, in accordance with NRS 116, as outlined in the HOA's CC&Rs, and that Red Rock notified Mr. and Mrs. Harrison that the HOA imposed the HOA Lien on the Property.

6. On February 2, 2012, a Notice of Default and Election to Sell Pursuant to the HOA Lien was recorded against the Property by Red Rock, on behalf of the HOA, as Instrument Number 201202020000465. The Notice of Default and Election to Sell shows Red Rock notified Mr. and Mrs. Harrison that it had recorded a Notice that made it known that their obligation under the CC&Rs had been breached; and therefore, the HOA was declaring any and all amounts secured, due and payable, and electing the Property to be sold to satisfy the HOA Lien.

7. On May 2, 2013, a Notice of Foreclosure Sale was recorded against the Property by a new Trustee, United Legal Services, Inc. ("ULS"), as Instrument Number 01305020000105. The Notice of Foreclosure Sale shows that Mr. and Mrs. Harrison were notified and warned: (a) the sale of their property was imminent; (b) they had to pay the specified amount or risk losing their home; (c) if they continued to be in Default under the HOA Lien their home could be sold at auction, and (d) the auction was scheduled to be held on May 25, 2013 at 9:00AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123.

8. On or around May 28, 2013, a Foreclosure Deed upon Sale (the "First 100 Foreclosure Deed") was executed conveying Property to First 100, LLC ("First 100") pursuant to a sale (the "HOA Foreclosure" or the "HOA Sale") held under NRS Chapter 116 foreclosing on the HOA Lien. First 100 subsequently recorded the First 100 Foreclosure Deed on May 29, 2013 as Instrument number 201305290002514.

9. The first page of the First 100 Foreclosure Deed includes the following recitals:

This conveyance is made pursuant to the powers conferred upon Agent by NRS Chapter 116, the foreclosing Association's governing documents (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded on December 8, 2011 as instrument 201112080002960 in the Official Records of the Recorder of Clark County, Nevada. Default occurred as set forth in the Notice of Default and Election to Sell, recorded on February 2, 2012 as instrument 201202020000465 in the Official Records of the Recorder of Clark County, Nevada. All requirements of law have been complied with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing, posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164, sold the property at public auction on May 25, 2013.

c. Subsequent Transfers of the Property.

10. On August 24, 2012, a Substitution of Trustee was recorded, reflecting that Cooper Castle Law Firm ("Cooper Castle") was substituted as Trustee under the Deed of Trust.

11. On March 6, 2013, a Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust was recorded by Cooper Castle.

12. On October 23, 2013, First 100 sold the Subject Property to Defendant Chersus which recorded its deed on January 13, 2014 as instrument number 201401130001734.

13. On or around December 20, 2013, GMAC Mortgage, LLC purported to foreclose on the Property pursuant to its Deed of Trust. Plaintiff purportedly purchased the Property at the resulting foreclosure sale (the "Deed of Trust Foreclosure" or the "Trustee Sale").

14. Plaintiff recorded its Trustee's Deed Upon Sale on January 7, 2014 (the "Ocwen Deed") as instrument Number 201401070000775.

2. The Litigation

a. Litigation Related to Ocwen's Initial Complaint

15. Ocwen filed its initial Complaint commencing this action on February 19, 2014. Chersus was the sole Defendant in the Complaint. In its Complaint, Ocwen alleged it is the owner of the Property. Ocwen alleged it obtained its ownership interest in the Property via the Deed of Trust Foreclosure. Ocwen alleged that any interest First 100 may have obtained in the Property was subject to the Deed of Trust and that the Deed of Trust Foreclosure extinguished First 100's interest

in the Property; and any interest Chersus may have acquired in the Property. Ocwen asserted claims for quiet title, and declaratory relief.

16. Chersus filed its Answer and Counterclaim on March 28, 2014. Chersus denied the material allegations in the Complaint. In its Counterclaim, Chersus alleged that on November 13, 2014, First 100 put GMAC and Ocwen on actual notice that the HOA Lien had been foreclosed upon and the Deed of Trust had been extinguished. Chersus alleged Ocwen was on constructive and actual notice of the HOA Foreclosure. Yet, despite such notice Plaintiff wrongfully proceeded to acquire the Property vial the Deed of Trust Foreclosure. Chersus asserted claims for wrongful foreclosure, quiet title, declaratory relief, and conversion.

17. Plaintiff filed a Motion for Summary Judgment in April 2014. Defendant filed its Opposition and a Countermotion for Summary Judgment (the "First MSJ Motions").

b. The SFR Decision.

18. During the pendency of the First MSJ Motions, the NV Supreme Court decided *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) (the "SFR Decision").

c. Plaintiff Files Amended Complaint.

19. Due to the SFR Decision, Plaintiff moved for leave to amend its complaint.

20. The Court granted Plaintiff's motion and it First Amended Complaint on June 24, 2016. In its First Amended Complaint, Plaintiff restated its allegations against First 100; and it added several defendants including, the HOA, Red Rock Financial Services LLC, ("Red Rock") and United Legal Services, Inc. ("United").

d. Allegations Included In First Amended Complaint Against Chersus

(1) The Deed of Trust Priority Allegations.

21. Plaintiff alleged: (a) any interest First 100 may have obtained in the Property was subject to the Deed of Trust; (b) the Deed of Trust Foreclosure extinguished any interest that First 100 or Chersus had in the Property; and (c) the HOA sale was invalid if it extinguished the Deed of Trust (the "Deed of Trust Priority Allegations").

(2) The Defective Notice Allegations

22. Plaintiff also alleged: (a) an HOA sale conducted pursuant to chapter NRS 116 must comply with NRS 116.31162 through NRS 116.31168; (b) a lender/holder of a beneficial interest in a senior deed of trust has a right to cure a delinquent HOA Lien to protect its interest; (c) Red Rock and ULS did not comply with all mailing and noticing requirements of NRS 116.31162-NRS 116.31168; (d) a recorded notice of default must describe the deficiency in payment; (e) the HOA Sale occurred without adequate notice to Plaintiff; (f) the HOA Sale occurred without notice to Plaintiff as to what portion of the HOA Lien, if any, that HOA and HOA trustee claimed constituted a superpriority lien; (g) the HOA Sale occurred without notice to Plaintiff whether the HOA was foreclosing on the superpriority portion of the lien, if any, or under the "non-superpriority" portion of the HOA Lien; (h) the HOA Sale occurred without notice to Plaintiff of the right to cure the delinquent assessment and the superpriority lien, if any; (i) the HOA sale was an invalid sale and cannot extinguish Plaintiff's secured interest because of the defective notices; (j) the HOA foreclosure notices included improper fees and costs in the amount required to cure, thus invalidating the HOA Lien (the "Defective Notice Allegations").

(3) The Statutory Allegations

23. Plaintiff also alleged: (a) per NRS Chapter 116, a lien under NRS 116.3116 (1) can only include costs and fees that are specifically enumerated in the statute; (b) a HOA may only collect as part of the superpriority lien nuisance abatement charges and nine months of common assessments (unless Fannie Mae and Freddie Mac regulations require a shorter period of not less than six months); (c) the attorney's fees and costs of collecting an HOA Lien cannot be included in the lien or superpriority lien; (d) upon information and belief the HOA Lien is unlawful and void under NRS 116.3102 et seq. (the "Statutory Allegations").

(4) The Constitutional Allegations

24. Plaintiff alleged that the HOA Sale and NRS Chapter 116 were unconstitutional (the "Constitutional Allegations").

(5) The CC&R Allegations

25. Plaintiff alleged: (a) the CC&Rs for the HOA provided the HOA Lien was subordinate to the Plaintiff's Deed of Trust; (b) the CC&Rs had a mortgagee protection clause; (c) due to the mortgagee protection clause, and the lack of notice, Plaintiff did not know it had to attend the HOA Sale to protect its Deed of Trust (the "CC&R Allegations").

(6) The Commercially Unreasonable Allegations

26. Plaintiff alleged the HOA Sale was required to be performed in a commercially reasonable manner and Defendants failed to do so. Thus, the HOA sale was invalid. Plaintiff alleged the HOA Sale was not commercially reasonable because: (a) the fair market value of the Property, at the time of the sale, greatly exceeded the purchase price; and (b) notice of the correct superpriority amount was not provided. Plaintiff also referenced the mortgagee protection clause and alleged that potential bidders were aware of the mortgagee protection clause.

27. Based on this alleged knowledge of potential bidders, Plaintiff alleged on the sale was commercially unreasonable because: (a) proper notice that the HOA intended to foreclose on the superpriority portion of the dues owing was not given; causing prospective bidders to not appear for the HOA Sale; (b) proper notice was not given prospective bidders did not appear for the sale; (c) Defendants knew Plaintiff would rely on the mortgagee protection clause and Plaintiff would not know the HOA was foreclosing on superpriority amounts, due to the lack of notice, which resulted in Plaintiff being absent; thereby allowing First 100 to acquire the property for a fraction of market value. (d) Defendants knew (I) prospective bidders would be less likely to attend the HOA Sale due to the mortgagee protection clause, (II) there would be an absence of prospective bidders. Plaintiff made various allegations that the HOA Sale and NRS Chapter 116 were unconstitutional (the "Commercially Unreasonable Allegations").

(7) The HOA's Duties Allegations

28. Plaintiff alleged the circumstances of the HOA sale breached the HOA's and HOA's trustee's obligations of good faith under NRS 116.1113 and their duty to act in a commercially reasonable manner (the "HOA's Duties Allegations").

(8) The BFP Allegations

29. Plaintiff alleged: (a) First 100 and Chersus are "professional foreclosure sale purchasers;" (b) First 100 and Chersus had actual, constructive or inquiry notice of Plaintiff's Deed of Trust; and (c) because of their "notice" of the Deed of Trust, and their status as "professional foreclosure sale purchasers," First 100 or Chersus cannot be deemed bona fide purchasers for value (the "BFP Allegations").

(9) Plaintiff's Damages Allegations

30. Plaintiff alleged that if its Deed of Trust was not reaffirmed or restored, it was entitled to damages from the HOA in the amount of the fair market value of the Property, or the unpaid balance of due under Deed of Trust and underlying note, at the time of the HOA Sale, whichever is greater ("Plaintiff's Damages Allegations").

31. Based on the allegations above, Plaintiff asserted claims for (a) Quiet Title and Declaratory relief; (b) Preliminary and permanent injunctions; (c) Wrongful foreclosure against the HOA, Red Rock, and ULS; (d) Negligence versus the HOA, Red Rock and ULS; (e) Negligence per se versus the HOA, Red Rock, and ULS; (f) Breach of contract versus the HOA, Red Rock and ULS; (g) Misrepresentation versus the HOA; (h) Unjust enrichment versus the HOA; (i) Tortious interference with contract.

e. Chersus's Counterclaims

32. On July 29, 2016, Chersus filed its Answer to the First Amended Complaint and asserted a Counterclaim against Plaintiff. Chersus denied the material allegations of the First Amended Complaint and it asserted Counterclaims against Ocwen as follows.

(1) The Chersus Title Allegations

33. Chersus alleged: (a) the First 100 Foreclosure Deed conveyed the Property to First 100; (b) the HOA Sale was held per NRS Chapter 116 and the HOA Sale foreclosed the HOA Lien; (c) on October 23, 2013, First 100, LLC sold the Property to Defendant Chersus and recorded the Chersus Deed on January 13, 2014 (the "Chersus Title Allegations").

(2) The Ocwen Foreclosure Allegations

34. Chersus alleged: (a) on November 13, 2014, First 100 put Plaintiff and its agents on actual notice that the HOA Lien had been foreclosed on and the Deed of Trust was extinguished; (b)

despite being its notice of the HOA Sale, Ocwen proceeded to try to acquire the Property at the Trustee's Sale in December 2014; and (c) it recorded the Ocwen Deed on January 7, 2014 (the "Ocwen Foreclosure Allegations").

35. Based on these allegations, Chersus asserted claims for (1) Wrongful foreclosure; (2) Quiet title; (3) Declaratory relief; and (4) Conversion.

f. Causes of Action in the First Amended Complaint Against the HOA.

36. Plaintiff asserted the allegations set forth above supported causes of action against the HOA for Injunctive Relief, Wrongful Foreclosure, Negligence, Negligence Per Se, Breach of Contract, Misrepresentation, Unjust Enrichment, and Tortious Interference.

g. Ocwen's Second Amended Complaint and Dismissal of ULS & Red Rock.

37. Red Rock filed a Motion to Dismiss the First Amended Complaint. In response, Ocwen filed its Second Amended Complaint on January 23, 2018.

38. As to Chersus and the HOA, the allegations and Causes of Action asserted in Ocwen's Second Amended Complaint are essentially the same as those asserted in First Amended Complaint, except for the deletion of certain "Constitutional Claims."

39. Chersus answered the Second Amended Complaint on March 19, 2018, and denied all the material allegations of the Second Amended Complaint. It reasserted its Counterclaims and added Causes of Actions for Unjust Enrichment and Slander of Title.

40. The HOA filed its Answer on April 5, 2018. The HOA denied all the material allegations of the Second Amended Complaint.

41. On April 10, 2018 a Notice of Stipulation and Order was entered dismissing ULS without prejudice.

h. Material Facts Revealed During Discovery

(1) Deposition Testimony of Red Rock's NRCP 30(b)(6) witness, Sara Trevino

42. . Red Rock's 30(b)(6) witness, Sara Trevino testified about the notices Red Rock mailed in this case and her testimony: (1) authenticated mailing affidavits signed by Red Rock employees that state how many notices were signed and how many were mailed; (2) identified which notices are sent by certified mail and first-class mail, which notices are sent by first-class mail only, (3) when

specific notices are sent; (4) how skip-traces and title reports are used to identify addresses for the homeowners and others holding vested interests in the Property, (5) how Red Rock maintains "return receipts" it receives from certified mail; (6) how Red Rock maintains checklists for each type of notice that its employees are to follow when mailing notices and how this information is included in the employees' mailing affidavits; (7) how Red Rock uses a third-party vendor Walz to mail many of the notices; (8) how she knows that Walz maintains records proving it sent notices and (9) how she is able to access Walz's system and obtain proof that notices were mailed. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter116.

43. Ms. Trevino testified: (a) about payoff demands made by Cooper Castle on behalf of GMAC Mortgage, LLC, (b) that Red Rock provided Cooper Castle with an Accounting Ledger in response to its payoff demands; (c) Cooper Castle could have calculated the amount of the superpriority lien by using the Accounting Ledger; (d) Red Rock did not receive any communications from Cooper Castle after it sent them the Accounting Ledger; and (e) Red Rock never received payment of the HOA Lien or a partial payment of the HOA Lien.

44. Based on Ms. Trevino's testimony, the Court finds GMAC Mortgage, LLC and Ocwen had notice of the HOA Sale, they were provided with an Accounting Ledger, they could have calculated the amount of the superpriority lien. Thus, GMAC and Ocwen could have calculated and paid the superpriority lien, the full HOA Lien, or any amount in between those two amounts. However, neither GMAC nor Ocwen paid any portion of the HOA Lien.

(2) Deposition Testimony of ULS's NRCP 30(b)(6) witness, Robert Atkinson

45. ULS's NRCP 30(b)(6) witness, Robert Atkinson, testified about the notices ULS mailed out in this case and he: (a) authenticated the Notice of Foreclosure sale sent in this case and he explained how it was mailed; (b) described how ULS conducts its own thorough investigation of the "land records;" including the Assessor's Records to make sure they have the best addresses for the property-owners and other parties holding vested interests in the Property; (c) authenticated the "bulk form certificate of mail," known as Postal Service Form 3877; which evidences the notices were delivered to the post-office and handed to a post-office clerk; (d) explains how ULS completed

the form by filling in the addresses for the Notices and by putting slashes on any unused lines; (e) explains how the Post-Office Clerk goes and confirms and matches each address to each address on the bulk form; (f) explains how once everything passes, the Post-Office Clerk verifies the mailing with a stamp and gives the original back to ULS. The bulk form shows the Notices of Foreclosure Sale were sent to GMAC Mortgage, LLC and Cooper Castle Law Firm, LLP. Based on this testimony the Court finds ULS sent the Notices of Foreclosure in compliance with NRS 116.31162 through 116.31168.

46. ULS did not receive any payments prior to the HOA Sale.

47. The HOA Sale occurred on a Saturday at Attorney Robert Atkinson's office.

48. Mr. Atkinson testified that he conducted HOA sales on Saturday mornings because his office did not have a conference room with closed doors and he did not want "a bunch of randoms" wandering around his law office. He also testified: (a) he conducted the auction; (b) he recalled the auction was well attended; (c) it was reasonable to infer that there was active bidding based on the $3,500 sales price; (d) a "core number of NRS 116 type buyers" usually always showed up for HOA sales that he conducted in his office; and (e) many buyers attended foreclosure sales he conducted for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

49. Mr. Atkinson testified about the Purchase and Sale Agreement ("PSA") between the HOA and First 100. Pursuant to the PSA, First 100 purchased "Past Proceeds of Income" ("PPI") for 24 delinquent properties from the HOA. The PSA was negotiated in an "arms-length" tri-partite agreement between First 100, the HOA, and ULS. Thus, the PSA did not affect the relationship between the HOA and the Harrisons.

50. The amount of $1,208.28 was an amount assigned to PPI for the Property. This amount was based on a calculation that First 100 made in connection with evaluating the value of the PPI related to the Property as part of the overall transaction.

51. First 100 paid the amount of the PPI provided for in the PSA. Pursuant to the PSA, First 100 paid ULS's fees of $1,200.00 and certain fees owed to Red Rock. First 100 paid $3,500.00 to the HOA at the HOA Sale.

52. Mr. Atkinson described how ULS worked with First 100 and homeowners' associations on the drafting of purchase and sales agreements like the PSA in this case. Mr. Atkinson testified that First 100 routinely used the same form of purchase agreement.

53. The PSA provided for the purchase of "Past Proceeds of Income" ("PPI"), and it is akin to a factoring agreement. The PSA did not amount the sale of the HOA Lien. Nothing in the PSA changed the fact that the HOA Lien belonged to the HOA. Pursuant to the PSA, First 100 purchased the right to receive all future monetization events related to the PPI.

54. The PSA provided that the HOA would retain ULS for collection efforts, including any efforts related to the foreclosure of the HOA Lien.

55. The PSA provided that if ULS foreclosed on the HOA Lien, the minimum bid at the foreclosure sale would be $99. The PSA prohibited the HOA for making a credit bid and it prohibited the HOA from interfering with any collection efforts.

56. Mr. Atkinson testified that, based on his experience, HOAs did not want to end up being the winning bidder for a property based on a credit bid. Based on his experience, Mr. Atkinson stated the HOAs did not want to be responsible for paying assessments, cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out squatters.

57. Based on his experience, Mr. Atkinson testified that HOAs were also afraid to take properties to auction given the legal uncertainties surrounding HOA foreclosure sales.

(3) Deposition Testimony of Chersus's NRCP 30(b)(6) witness, Jag Mehta.

58. Mr. Mehta testified Chersus spent approximately $40,000 in repairs on the Property.

59. Plaintiff, Chersus, and the HOA filed competing Motions for Summary Judgment.

II. CONCLUSIONS OF LAW

A. Summary Judgment Standard

60. N.R.C.P. Rule 56(e) states that summary judgment is in order when:

> *The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*

61. A genuine issue of material feet exists only when the evidence is adequate to where a reasonable jury" would return a verdict for the non-moving party. *Dermody v. Reno*, 113 Nev. 207, 210 (1997). The Court will accept as true only properly supported factual allegations and reasonable inferences of the party opposing summary judgment. *Wayment v. Holmes*, 112 Nev. 232, 237 (1996). "Conclusory allegations and general statements unsupported by evidence creating an issue of fact will not be accepted as true." *Id.*

62. The Nevada Supreme Court has provided additional clarity on the standards governing summary judgment motions. *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P. 3d 1026 (2005). In *Wood*, the Court "put to rest any questions regarding the continued viability of the 'slightest doubt' standard," when it held that the "substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P. 2d 274 (1979).

B. NRS 116.3116 Granted to the HOA a Superpriority Lien That Had Priority Over the Deed of Trust in Favor of GMAC Mortgage, LLC and, as a Result GMAC Mortgage, LLC's Deed of Trust Was Extinguished at the HOA Sale.

63. NRS 116.3116 provides in part:

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

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

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

64. Subsection 3 of NRS 116.3116 provides the lien created thereunder has priority over all security interests described in paragraph (b) of subsection 2 to the extent of:

(a) any charges incurred by the association on a unit pursuant to NRS 116.310312;
(b) The unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and
(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5....

65. By its clear terms, NRS 116.3116 (2) provides the superpriority lien for assessments which have come due in the 9 months prior to the initiation of an action to enforce the lien are "prior to all security interests described in paragraph (b)." The Deed of Trust held by GMAC Mortgage, LLC falls squarely within the language of paragraph (b). The statutory language does not limit the nature of this "priority" in any way.

66. In its decision of *SFR Invs. Pool 1, LLC v. US. Bank, NA.*, 334 P.3d 408, 411-412, 130 Nev. Adv. Rep. 75 (2014), the Supreme Court held that the foreclosure of the HOA superpriority lien extinguishes first trust deeds. The SFR Decision holds the 9-month HOA superpriority lien has precedence over the mortgage lien, and that the proper foreclosure of the HOA superpriority lien extinguishes a first trust deed.

67. In the case at bar, the HOA Sale resulted in the foreclosure of the HOA's superpriority lien on the Property. Consequently, when First 100 purchased the Property at the HOA Sale, it extinguished the Deed of Trust in favor of GMAC Mortgage, LLC.

68. When First 100 conveyed the Property to Defendant Chersus, the Property was not subject to the Deed of Trust in favor of GMAC Mortgage, LLC.

C. THE HOA COMPLIED WITH THE NOTICE REQUIREMENTS OF NRS CHAPTER 116.

1. The Recitals in The First 100 Foreclosure Deed Prove the HOA Complied with The Notice Requirements of NRS Chapter 116.

69. The recitals in the First 100 Foreclosure Deed establish both the default by Mr. and Mrs. Harrison and the HOA's compliance with each of the notice requirements of NRS 116.31162 through 116.31168 for the public auction held on May 25, 2013.

70. NRS 116.31166(1) provides:

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

(a) Default, the mailing of notice of delinquent assessment, and the recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
Are conclusive proof of the matters recited.

71. In *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 334 P.3d 408, 411-12 (2014), the Nevada Supreme Court recognized the "conclusive" effect of an HOA foreclosure deed when it stated:

> *NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and specifies the distribution order for the proceeds of sale. A trustee's deed reciting compliance with the notice provisions of NRS 116.31162 through NRS 116,31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns, and all other persons." NRS 116.31166(2). And, "[t]he sale of a unit pursuant to NRS 116.311162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption. NRS 116.31166(3).*

72. However, the enactment of NRS 116.31166 did not eliminate the court's equitable authority to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev. 2016). Equitable relief may still be available in the face of conclusive recitals, at least in cases involving fraud, unfairness, or oppression. *Id.*

73. In this case, Plaintiff has produced no evidence that the HOA's agent did not mail the notices to the holder of the beneficial interest of the Deed of Trust. Plaintiff has produced no evidence that the HOA's agent did not provide for the elapsing of the 90 days. Plaintiff has not

provided any other evidence that the recitals are not accurate. Further, as is set forth in Section II(D) below, Plaintiff has produced no evidence of fraud, unfairness, or oppression.

74. Thus, the recitals in First 100's Deed of Foreclosure are deemed to be conclusive proof that the HOA complied with the notice requirements of NRS Chapter 116.

2. Per the "Mailbox Rule," GMAC Mortgage, LLC Presumptively Received All of the Notices Required Per NRS 116.31162 through 116.31168.

75. Per the "mailbox rule," if the HOA's agents properly and timely mailed the required notices, a rebuttable presumption is raised that the beneficiary of the Deed of Trust received the notices. *See Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197, 1202-1203 (9th Cir. 1999). For the presumption to arise, the sender must establish the notice was sent. *Id.* The sender can establish the notice was sent by providing evidence of its standard business practices such as the use of computerized tracking and filing software and the use of procedures that ensure the number of outgoing notices correspond with the number of notices to be sent. *Turner v. Dep't of Educ.*, 2011 U.S. Dist. LEXIS 46421 (D. Haw. 2011) (citing *Mahon*, 171 F. 3d at 1199-1202).

76. Ms. Trevino's testimony about Red Rock's mailing procedures establishes the notices sent by Red Rock were sent. Further, Mr. Atkinson's testimony about ULS's mailing procedures establish the notices sent by ULS were sent. Thus, the Court finds GMAC Mortgage, LLC presumptively received all of the notices required per NRS 116.31162 through 116.31168.

D. FIRST 100'S PAYMENT TO THE HOA PURSUANT TO THE PSA WAS NOT RELATED TO THE HOA LIEN AND, THEREFORE, IT DID NOT DISCHARGE THE SUPERPRIORITY LIEN.

77. Ocwen contends that First 100's payment to the HOA, pursuant to the PSA, discharged the superpriority portion of the HOA Lien prior to the HOA sale. However, the PSA did not involve a sale of the HOA Lien. First 100 purchased the right to receive future monetization events related to the PPI.

78. The PSA did not affect the relationship between the Harrisons and the HOA in any way and First 100's payment to the HOA, pursuant to the PSA did not affect the HOA Lien in any way. Specifically, it did not discharge to superpriority portion of the HOA Lien.

79. In *West Sunset 2050 Trust v. Nationstar Mortgage*, 420 P. 3d 1032, (June 28, 2018), the Nevada Supreme Court recently considered a case almost identical to this case. In *West Sunset 2050 Trust*, the Toscano Homeowners Association ("Toscano"), pursuant to a similar purchase and sale agreement, sold to First 100 its "interest in any and all [proceeds on past income] arising from or relating to the [Property's] Delinquent Assessment. *Id.* at 1034.

80. In *West Sunset 2050 Trust*, the NV Supreme Court rejected Nationstar's argument that the purchase and sale agreement deprived HOA of standing to foreclose. 420 P3d. at 1036. The Court determined the purchase and sale agreement provided for the sale of proceeds on past income *Id.* The Court analogized the purchase and sale agreement to a "factoring agreement" and determined the "factoring agreement" did not change the fact that the property owner remained indebted to the HOA; and the property owner did not become indebted to First 100. *Id* at 1037.

81. The Court emphasized that the HOA retained the exclusive right to collect the HOA Lien, and it was required, through its agent, to continue collection efforts on past-due assessments. *Id.* Thus, the Court held that the "factoring agreement" did not affect the HOA's right to foreclose on the property and that the HOA sale was valid. *Id.*

82. Based on the facts of this case, and the Court's holding in *West Sunset 2050 Trust,* it is clear that First 100's payment to the HOA, pursuant to the PSA, did not affect the HOA Lien in any way; and it did not extinguish the superpriority portion of the HOA Lien.

E. OCWEN'S CONTENTION THAT THE HOA SALE WAS COMMERICIALLY UNREASONABLE IS WITHOUT MERIT BECAUSE THE HOA SALE WAS VALID AND DEFENDANT FAILED TO PRODUCE ANY EVIDENCE THAT FRAUD, UNFAIRNESS, OR OPPRESSION AFFECTED THE SALE.

83. Plaintiff contends that the sale was commercially unreasonable because the sales price paid by First 100 at the HOA Sale was grossly inadequate; and because there was evidence that fraud, unfairness, or oppression affected the sale. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev. 2016).

84. In *Shadow Wood,* the NV Supreme Court held that NRS 116.31166 did not preclude courts from granting equitable relief from a defective foreclosure sale when appropriate. 366 P.3d at

1110-1111. In this regard, the Court held that a foreclosure sale could be set aside if there was a grossly inadequate sales price, and a showing of fraud, unfairness, or oppression. *Id.*

85. In *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 643-44, the Nevada Supreme Court clarified that inadequacy of price alone is not a sufficient ground for setting aside foreclosure sale. *Id.* The Court further held that the party seeking to set aside the sale had the burden of proving that fraud, unfairness, or oppression affected the sale. *Id.*

86. The Court also rejected the application of the commercial reasonableness standard from UCC Article 9. *Id.* at 646. Thus, Plaintiff's arguments that the sale was commercially unreasonable based on UCC Article 9 must be rejected.

87. A district court cannot grant equitable relief when an adequate remedy at law exists. *Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 278 (1982). The failure to utilize legal remedies makes granting equitable remedies unlikely. *Bayview Loan Servicing, LLC v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 41309 (D. Nev. 2017).

(1) The HOA Sale Was Valid and Equitable Relief Is Not Warranted.

88. As stated above, based on the facts of this case, and the Nevada Supreme Court's holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (2018), the Court has determined that the HOA Sale was valid. Therefore, the Court does not have authority to grant equitable relief to the Plaintiff in this case. *Las Vegas Valley Water Dist.*, 98 Nev. at 278.

89. In this regard, it must also be noted that GMAC Mortgage, LLC and Plaintiff were aware of the HOA Sale and they could have paid, or at least tendered, the amount of the superpriority portion of the HOA Lien. Their failure to exercise adequate remedies at law precludes the granting of equitable relief in this case.

(2) Even If Equitable Arguments Were Available to Plaintiff, It Failed to Show Fraud, Unfairness, or Oppression Affected the HOA Sale.

90. To support of its contention that the HOA Sale was Commercially Unreasonable, Plaintiff offered the report of expert witness, R. Scott Dugan to show that the price paid at the HOA Sale was grossly inadequate. Mr. Dugan opined that the value of the Property was $148,000 as of the date of the HOA Sale. Plaintiff submitted that the $3,500.00 paid by First 100 was 2.6% of the value

of the Property. Chersus did not produce an expert report disputing Mr. Dugan's analysis. However, it contended First 100 and Chersus paid far more than $3,500.00 to acquire the Property.

91. Whether the price paid at the HOA Sale was grossly inadequate need not be resolved because Plaintiff has failed to show that fraud, unfairness, or oppression affected the sale.

92. In support of its contention that there was evidence that fraud, unfairness, or oppression affected the sale, Plaintiff argued:

> a. The HOA Sale was not conducted during normal business hours. The HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123.
>
> b. The HOA, ULS and First 100 colluded to ensure that First 100 would obtain this Property at the HOA Sale. Their PSA set the minimum bid at $99, and prohibited the HOA from making a credit bid at the HOA Sale or otherwise interfering with First 100's efforts to collect on the account or acquire the Property.
>
> c. The HOA relinquished all authority to control the HOA Sale and irrevocably made ULS its collection agent and foreclosure trustee for First 100.
>
> d. Even though the HOA Sale allegedly took place in the HOA's name, all actions were conducted for the benefit of First 100 pursuant to its agreement with the HOA.
>
> e. There is fraud, oppression and unfairness associated with the foreclosure sale because the HOA put the public on constructive notice in its CC&Rs—including First 100, and other prospective bidders — that the HOA's foreclosure would not disturb the first Deed of Trust. The CC&Rs applicable to this Property contain two relevant provisions (the "Mortgagee Protection Clauses"), which represented to the world the HOA's foreclosure would not extinguish the Deed of Trust.

93. These arguments do not show that fraud, unfairness, or oppression affected the sale.

94. The fact that the HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123 does not demonstrate the sale was patently unfair, fraudulent, or oppressive. In fact, ULS's NRCP 30(b)(6) witness, Robert Atkinson testified he conducted HOA Sales on Saturday because his office did not have a conference room and he did not want potential bidders wandering around his office. He also testified that he conducted the auction and he recalled the auction was well attended. He also testified it was reasonable to infer there was active bidding based on the $3,500 sales price. He testified a "core number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his

office. He testified many buyers attended foreclosure sales he conducted for the HOA and they purchased homes at the foreclosure sales he conducted for the HOA. Thus, Plaintiff has failed to show that conducting the HOA Sale on Saturday affected the HOA Sale.

95. Similarly, Plaintiff failed to show the HOA, ULS and First 100 colluded to ensure that First 100 would obtain the Property at the HOA Sale. Mr. Atkinson testified a "core number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his office. He testified many buyers, other than First 100, attended foreclosure sales he conducted for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

96. The Court's holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032, 1037 (2018), is also contrary to the Plaintiff's contention that the HOA, ULS, and First 100 unlawfully colluded. The Court analogized First 100's purchase and sale agreement to a "factoring agreement" and held factoring agreements serve the valid purpose of providing HOAs with immediate access to cash, and help them meet their perpetual upkeep obligations. The Court added it was disinclined to interfere with the HOA's use of factoring agreements absent a theory as to how factoring agreements result in harm.

97. In this case, the PSA signed by the HOA, ULS, and First 100 was akin to a "factoring agreement" and it served the valid purpose of providing the HOA with access to cash. Plaintiff has failed to provide any evidence that the HOA, ULS, and First 100 unlawfully colluded.

98. Similarly, Plaintiff's other contentions related to the PSA do not show that fraud, unfairness, or oppression affected the sale. First, contrary to Plaintiff's complaints regarding the $99.00 minimum bid, Mr. Atkinson testified that he was not aware of any statutory requirement in NRS Chapter 116 to establish a minimum bid; and the minimum bid was set at $99.00 in the valid PSA to encourage bidding. Next, contrary to Plaintiff's complaints that the HOA was prohibited from making a credit bid, Mr. Atkinson testified, in his experience, HOAs did not want to acquire a property via a credit bid because they did not want to be responsible for paying assessments, cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out squatters. Finally, Plaintiff's complaints that all actions were conducted for the benefit of First 100 pursuant to the PSA did not improperly affect the sale. In *West Sunset 2050 Trust,* the Court

recognized and did not object that the agreement required the HOA's agent to remit payments to First 100. Again, Plaintiff's references to the PSA fail to show that fraud, unfairness, or oppression affected the sale.

99. Plaintiff also argues there was fraud, oppression and unfairness associated with the foreclosure sale because the HOA put the public on constructive notice in its CC&Rs, that the HOA's foreclosure would not disturb the first Deed of Trust. In support of its argument, Plaintiff cited to the United State District Court's holding in *Zzyzx 2 v. Dizon*, No, 2:13-CV-1307, 2016 U.S. Dist. LEXIS 39467, 2016 WL 1181666 (D. Nev. 2016).

100. In *United States Bank N.A. v. Vistas Homeowners Ass'n*, 2018 Nev. Unpub. LEXIS 1146 (December 14, 2018) the Nevada Supreme Court rejected the appellant's argument that the CC&R's mortgagee protection clause was evidence of unfairness. In opining that it was not persuaded that evidence regarding the mortgage protection clause constituted unfairness, the Court noted the appellant had not provided any evidence that potential bidders were misled by the CC&R's protective covenant and that the bidding was chilled. *Id.* at *1. The court also noted that it must presume that any bidders at the HOA Sale were also aware of NRS 116.1104, and therefore, they were not misled. *Id.* at *2.

101. In *Vistas Homeowners*, the Court distinguished *Zzyzx 2* because, in *Zzyzx 2,* the HOA sent a letter to the deed of trust beneficiary that it did not need to protect the Deed of Trust. *Id.* at fn. 2. The HOA in *Vistas Homeowners* did not send such a letter. *Id.*

102. In *Vistas Homeowners,* the Court also pointed out that in *SFR Inv. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, (2014), it had held that nothing in NRS 116.3116 expressly provides for the waiver of the HOA's rights under NRS Chapter 116. *Id.* at *2. The Court determined that the protective covenant in the *Vistas Homeowners* CC&R was not distinguishable from the covenant at issue in *SFR. Id.*

103. Like the appellant in *Vistas Homeowners,* Plaintiff has failed to produce any evidence showing the mortgagee protection clause in this case created unfairness. Further, Plaintiff failed to produce any evidence that potential bidders were misled by the CC&R's protective covenant and that bidding was chilled. Further, the Nevada Supreme Court's holding in *SFR* also applies in this

case and Plaintiff has failed to produce any evidence that mortgagee protection clause in this case is distinguishable from the clauses in *SFR* or *Vistas Homeowners.*

F. PLAINTIFF'S CONTENTIONS THAT NEITHER FIRST 100 NOR CHERSUS WERE BONA FIDE PURCHASERS ARE IRRELEVANT.

104. Plaintiff argues that the HOA Sale was not valid because neither First 100 nor Chersus is a bona fide purchaser because they purchased the property with notice of Ocwen's interest in the property.

105. Defendant Chersus disputes Plaintiff's contention it was not a bona fide purchaser.

106. Again, however, the Nevada Supreme Court recently held in *West Sunset 2050 Trust*, that since the underlying HOA sale was valid, the Court did not need to resolve a dispute as to whether First 100 and Chersus were bona fide purchasers. 420 P 3d. at 1037.

107. Again, this Court holds the HOA Sale was a valid sale and Plaintiff is not entitled to any equitable relief. Thus, Plaintiff's arguments about whether First 100, LLC or Defendant Chersus were bona fide purchasers are irrelevant.

G. CHERSUS IS ENTITLED TO JUDGMENT ON ITS COUNTERCLAIMS AS TO ITS FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, AS A MATTER OF LAW.

108. Chersus has proven that the undisputed facts and circumstances surrounding the HOA Sale. Chersus has also demonstrated it is entitled to judgment on its Counterclaims as to its First, Second, Third, Fourth, and Fifth Causes of Action, as a matter of law. At the MSJ Hearing, Chersus agreed to voluntarily dismiss its Sixth Cause of Action.

1. Wrongful Foreclosure

109. In support of its claim for wrongful foreclosure, Chersus established that at the time GMAC Mortgage, LLC exercised the power of sale and foreclosed, that no breach of condition or failure of performance existed on Chersus's part which would have authorized the foreclosure or exercise of the power of sale. There is no dispute that when GMAC Mortgage, LLC exercised the power of sale and foreclosed, its Deed of Trust had been extinguished by the foreclosure sale. There is no dispute that GMAC Mortgage, LLC and Plaintiff knew that after the HOA Sale: (1) GMAC Mortgage, LLC had no interest in the Property; (2) GMAC Mortgage, LLC had no authority

whatsoever to authorize the foreclosure or exercise the power of sale that had been extinguished by the HOA Foreclosure sale; (3) GMAC Mortgage, LLC had no authority to convey the Property to Plaintiff; and (4) Plaintiff had no right or authority to take possession of the Property.

110. Thus, the authorization of the foreclosure sale, the exercise of the power of sale, the sale to Plaintiff, and Plaintiff's taking possession of the Property was clearly wrongful and Chersus is entitled to summary judgment on its wrongful foreclosure claim as a matter of law.

111. There may be genuine issues of material fact regarding the amount of damages that should be awarded to Defendant Chersus for Wrongful Foreclosure. Accordingly, the Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

2. Quiet Title

112. Chersus has shown the undisputed facts and circumstances surrounding the HOA sale, prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

113. Chersus has shown that Ocwen had actual and constructive notice of First 100's superior claim to the Property.

114. Chersus has shown that the Deed of Trust, in which Ocwen purportedly holds an interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

115. Thus, this Court holds that Chersus is entitled to an order quieting title to the Property in favor of Chersus. The Court will enter a separate order quieting title in favor of Chersus that incorporates these Findings of Fact and Conclusions of Law by reference.

116. Chersus further claims that it is entitled to recover the attorney's fees and costs it incurred in this matter. However, Chersus's counsel has not yet submitted a memorandum of costs or an Application for Attorney's Fees that addresses the *Brunzell v. Golden Gate Bank* (the "Brunzell Factors"). *See Miller v. Wilfong,* 121 Nev. 619, 623 (2005). The Court will consider Chersus's Memorandum of Costs and Application for Attorney's Fees separately from Chersus's Motion for Summary Judgment.

3. Declaratory Relief

117. In its Third Cause of Action, Chersus asserts a dispute has arisen with Ocwen that is ripe for adjudication, specifically, concerning the ownership of the Property and interpretation of NRS of 116.3116 et. seq.

118. Chersus contends that per NRS 30.030 and 30.040, it is entitled to declaratory relief concerning the proper interpretation and enforcement of the NRS 116.3116 et. seq.

119. Chersus has shown the undisputed facts and circumstances surrounding the HOA Sale prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

120. Chersus has shown that Ocwen had actual and constructive notice of First 100's superior claim to the Property.

121. Chersus has shown the Deed of Trust, in which Ocwen purportedly holds an interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

122. Thus, this Court holds that Chersus is entitled to an order declaring it is the lawful owner of the Property, it holds fee simple title to the Property, and the Property is not subject to the Deed of Trust. The Court will enter a separate order to this effect that incorporates these Findings of Fact and Conclusions of Law by reference.

123. Chersus further claims that it is entitled to recover the attorney's fees and costs it incurred in this matter. As stated above, the Court will consider Chersus's Memorandum of Costs and Application for Attorney's Fees separately from this Motion for Summary Judgment.

4. Trespass and Conversion

124. Plaintiff wrongfully deprived Chersus of its right to own and possess the Property. The Property includes the land and the appurtenant structures (the "Real Property"); and any improvements that may be considered personal property (the "Personal Property").

125. Defendant Chersus admitted that it incorrectly partially labeled this Cause of Action as a Cause of Action for "Conversion," and that it should have labeled the Cause of Action as one for Trespass and Conversion.

126. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of Action to apply to claims for Trespass and Conversion.

127. In support of its request, Defendant Chersus noted the allegations supporting the Cause of Action refer to Chersus's "Property" and the allegations do not distinguish between Real Property and Personal Property. Defendant Chersus also noted whether Plaintiff's actions amount to Conversion or Trespass turns on the character of the property over which Plaintiff wrongfully exercised control. *See e.g. Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008) (citing NRS 40.170). Thus, Defendant Chersus contended that the Cause of Action properly alleged facts that support claims based on Trespass and Conversion.

128. Defendant Chersus contends that it is undisputed that Plaintiff wrongfully exercised control over its Real Property and Personal Property. Defendant Chersus further contends that when the complaint was drafted, the nature of its interest in its Property was not clear. However, as a result of the discovery completed in this case, it has long been clear that Chersus's damages include loss of rental income; which would be based on a claim for Trespass. It has also long been clear that Chersus's damages include loss of the use/value of its improvements; which likely include personal property. Chersus claims for damages related to personal property would be based on a claim for Conversion.

129. Chersus also stated it its Reply Brief, and at the MSJ Hearing, that it understood that the measure of compensatory damages for Trespass and Conversion are similar to the measure of damages for quasi-contract/unjust enrichment. However, Chersus pointed out that punitive damages may be available for claims based on Trespass and Conversion.

130. Based on the contentions in its Reply Brief, and at the MSJ Hearing, the Court construes Chersus's Fourth Cause of Action to be based on claims for Trespass and Conversion.

131. There may be genuine issues of material fact regarding the amount of damages that could be awarded to Defendant Chersus for its claims for Trespass and Conversion. Accordingly, the

Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

5. Unjust Enrichment

132. In support of its claim for Unjust Enrichment, Defendant Chersus pointed out that the appraisal performed by Plaintiff's expert appraiser Scott Dugan proves that Plaintiff is the record owner of the Property pursuant to a Deed recorded January 13, 2014. In addition, the appraisal indisputably shows Mr. Dugan estimated the monthly market rent to be $1,050.00.

133. In this case, there was no contract between Plaintiff and Defendant Chersus. It is well established that a court will imply a quasi-contract to grant unjust enrichment where there is no legal contract but the person sought to be charged is in possession of property which in good conscience and justice should not be retained. *Lease Partners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975,* 113 Nev. 747, 756 (1997). Further, in *Asphalt Prods. Corp. v. All Star Ready Mix,* 111 Nev. 799 (1995), the Nevada Supreme Court determined that the seller prevailed on its claim for unjust enrichment. As a result, the court compelled the buyer to pay the reasonable rental value for use of the tractor after the buyer failed to obtain financing according to an unenforceable sales agreement.

134. Accordingly, this Court imposes a quasi-contract upon Plaintiff and it compels Plaintiff to pay Defendant Chersus the reasonable rental value of the property as established by Plaintiff's expert's appraisal.

135. In addition to payment for the reasonable rental value of the property, Plaintiff is liable to Defendant Chersus because Plaintiff was unjustly enriched by any improvements that Defendant Chersus made to the Property.

136. There appear to be genuine issues of material dispute regarding the amount of any improvements made by Defendant Chersus. Accordingly, the Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus for improvements that Chersus made to the Property.

H. THE HOA IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

137. The Findings of Fact set forth above, and the Conclusions of Law vis-à-vis Plaintiff and Defendant Chersus, also demonstrate the HOA is entitled to judgment as a matter of law.

1. Injunctive Relief

138. Ocwen asserts a cause of action for a preliminary and permanent injunction against the HOA seeking an order prohibiting Defendant Chersus from selling, transferring or encumbering the Property.

139. The HOA has never claimed an ownership interest in the Property and the allegations in this cause of action are not directed at the HOA.

140. Moreover, a request for injunctive relief by itself does not state a cause of action. *Jensen v. Quality Loan Serv. Corp*, 702 F. Supp. 2d 1183, 1201 (E.D. Ca. 2010). Accordingly, the Court dismisses with prejudice Ocwen's Cause of Action for Injunctive Relief pursuant to NRCP 12(b)(5) for failure to state a cause of action.

2. Wrongful Foreclosure

141. Ocwen alleges the HOA wrongfully foreclosed based on the following contentions: (a) the HOA did not comply with mailing and notice requirements; (2) the HOA foreclosure sale "violated applicable law;" and (3) the HOA foreclosure sale was not commercially reasonable.

142. As is stated in the Findings of Fact and in the Conclusions of Law supporting the Court's Order granting summary judgment in favor of Chersus, each of Ocwen's contentions fail as a matter of law. The Court again finds (1) that the HOA Sale was properly noticed pursuant to NRS Chapter 116, (2) that the HOA Sale was properly conducted pursuant to NRS Chapter 116, (3) that no other interest party at the time of the HOA Sale tendered the superpriority amount of the HOA's lien before the HOA Sale, (4) that the HOA was authorized to foreclose at the time of the HOA Sale. Thus, the HOA is entitled to summary judgment on Ocwen's cause of action for wrongful foreclosure.

3. Negligence and Negligence Per Se

143. As a preliminary matter, the Court notes that "negligence per se" is not an independent cause of action separate from the negligence claim but a legal theory affecting the standards of the

negligence claim. *US Bank, N.A. v. SFR Investments Pool I, LLC*, 3:15-CV-00241-RCJ-WGC, 2017 WL 2991359, at *1 (D. Nev. July 12, 2017). Accordingly, the Court addresses Ocwen's negligence and negligence per se causes of action as one negligence claim.

144. To prevail on a claim for negligence, a plaintiff adduce evidence that shows: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injuries; and (4) the plaintiff suffered damages. *Sadler v. PacifiCare of Nev., Inc.*, 340 P.3d 1264, 1267 (Nev. 2014).

145. With regard to its cause of action for negligence, Ocwen alleged: (a) the HOA owed a duty to Plaintiff to conduct the HOA Sale properly and in a manner that allowed them an opportunity to cure the super-priority lien; (b) the HOA breached its duty; (c) the breach was a proximate cause of damages; and (d) Ocwen suffered damages.

146. In its Motion for Summary Judgment, the HOA argued: (1) it did not owe a duty to Ocwen; (2) Ocwen produced no evidence that HOA breached any purported duty to Ocwen; and (3) any negligence claim Ocwen may have was barred by the economic loss doctrine. Ocwen disputed that its claim was barred by the economic loss doctrine.

147. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court determined that the HOA Sale was properly noticed and conducted pursuant to NRS 116.Assuming, *arguendo,* that the HOA did owe a duty to Ocwen, there is no evidence that the HOA breached its duty, or engaged in any other type of negligent action. Thus, the Court grants the HOA's motion for summary judgment as to Ocwen's causes of action for negligence and negligence per se.

4. Breach of Contract

148. Ocwen alleged it was an intended beneficiary of the HOA's CC&Rs and the HOA breached the CC&Rs by the circumstances under which they conducted the HOA Sale.

149. In its Motion for Summary Judgment, the HOA contended it did not breach the CC&Rs based on the Nevada Supreme Court's decision in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-58, 334 P.3d 408, 419 (2014); where the Court recognized that NRS 116.1104 overrules mortgage protection clauses contained in CC&Rs. *See also* NRS 116.1104 (stating that

NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as provided by the statute)."

150. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court has determined that the Nevada Supreme Court's holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. 742, 757-58, 334 P.3d 408, 419 (2014), applies to this case, and as a result, the provisions of NRS Chapter 116 cannot be varied or waived by the CC&Rs. Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for breach of contract.

5. Negligent Misrepresentation

151. As to Negligent Misrepresentation, Ocwen alleged: (1) the HOA should have known that Ocwen would rely on the representations contained in the Mortgagee Protection Clause in the CC&Rs; (2) it justifiably relied on the representations contained in the Mortgagee Protection Clause in giving consideration for the Deed of Trust; (3) the HOA's representations about the Mortgagee Protection Clause were false; (4) the HOA knew, or should have known the representations in the CC&RS, including the Mortgagee Protection Clause, were false; (5) the HOA had a pecuniary interest in having Plaintiff rely on the CC&Rs, including the Mortgagee Protection Clause; and (6) the HOA failed to exercise reasonable care or competence in communicating the information within the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

152. In its Motion for Summary Judgment, the HOA argued Ocwen's misrepresentation claim was barred by the economic loss doctrine. The HOA also argued the claim failed as a matter of law because NRS 116.1104 clearly and unambiguously states that NRS Chapter 116 provisions cannot be varied by agreement. Thus, Ocwen did not, and could not have, justifiably relied on any misrepresentations related to the Mortgagee Protection Clause. Ocwen disputed that its claim was barred by the economic loss doctrine. Ocwen also argued that based on *ZYZZX2 v. Dizon, supra,* it had set forth a viable claim for misrepresentation.

153. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court has determined that the Nevada Supreme Court's holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-

58, 334 P.3d 408, 419 (2014), applies to this case. As a result, the Court holds the provisions of NRS Chapter 116 cannot be varied or waived by the CC&Rs. Thus, Ocwen did not, and could not have, justifiably relied on any misrepresentations related to the Mortgagee Protection Clause. Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for misrepresentation.

6. Unjust Enrichment

154. As to its Cause of Action for Unjust Enrichment, Plaintiff alleged: (a) it has been deprived of the benefit of its secured deed of trust by the actions of the HOA; (b) the HOA benefitted from the unlawful HOA Sale, and (c) the HOA benefitted from Plaintiff's payment of property taxes, insurance premiums, or homeowner's association assessments.

155. The HOA contended it Motion for Summary Judgment should be granted because Ocwen did not pay any money to it; and it did not unjustly retain money owed to Ocwen.

156. Based on the HOA's and Ocwen's briefing on the HOA's motion for summary judgment, and the argument at the MSJ Hearing, the Court holds that the HOA did not benefit from the Ocwen's payment of taxes, insurance premiums, or homeowner's association assessments. First, any property taxes paid by Ocwen were not paid to the HOA and the HOA did not benefit from Ocwen's payment of property taxes because the HOA was not the property owner. Second, at the hearing, the Court asked Ocwen's counsel to explain how the payment of insurance premiums benefited the HOA. Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property. However, it is undisputed that the HOA did not own the Property.

157. Finally, based on its purported purchase of the Property at the Deed of Trust Foreclosure, Ocwen obtained possession of the Property, and it was identified as the record owner of the Property. While it was the record owner of the Property, and while it held possession of the Property, it was in Ocwen's interest to pay the property taxes, insurance premiums and homeowner's association assessments. Consequently, the HOA was not unjustly enriched by Ocwen's payment of property taxes, insurance premiums and homeowner's association assessments. Thus, the HOA's motion for summary judgment as to Ocwen's unjust enrichment cause of action must be granted.

158. If any Conclusion of Law set forth herein is determined to properly constitute a Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

7. Tortious Interference with Contractual Relations

159. To prevail on a claim for tortious inference with contractual relations, Ocwen must demonstrate that: "(1) a valid and existing contract; (2) the [HOA's] knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." J.J. Indus., LLC v. Bennett, 71 P.3d 1264, 1267 (Nev. 2003).

160. Ocwen argues that the HOA's decision to foreclose on the Property was designed to disrupt the contractual relationship between [Ocwen] and the borrower by extinguishing the senior deed of trust.

161. The Court finds that Ocwen cannot demonstrate any motive by the HOA to interfere. The borrower breached the contract with Ocwen well before the HOA Sale. Thus, the HOA did not induce the borrower to breach. There is also no actual disruption because the borrower had already breached the contract.

162. The Court further finds that the HOA Sale in no way prevented Ocwen from taking legal action against the borrower for her breach of the note. Ocwen could have pursued its own foreclosure before the HOA Sale and the HOA Sale did not preclude Ocwen from taking other legal action against the borrower for breaching her contract with Ocwen.

163. The Court finds that HOA Sale did not cause Ocwen any harm. Rather, Ocwen caused any purported harm by failing to tender the superpriority portion of the lien or to take any other affirmative action to protect its interest. If the deed of trust was extinguished by the foreclosure sale, then any harm stems entirely from the inaction of Ocwen and its predecessors, not the HOA.

164. The Court, therefore, grant summary judgment in favor of the HOA on Ocwen's tortious interference claim.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT HEREBY ORDERS AS FOLLOWS:

1. Ocwen's Motion for Summary Judgment is DENIED;

2. The HOA's Motion for Summary Judgment is GRANTED;

3. Chersus's Oral Motion, made at the MSJ Hearing, to Dismiss Its Counterclaim for Slander of Title with Prejudice is GRANTED;

4. Chersus's Motion for Summary Judgment is GRANTED as follows:

A. An Order shall be entered granting Judgment in favor of Chersus and dismissing Ocwen's Second Amended Complaint against Chersus.

B. An Order shall be entered granting Judgment in favor of Chersus as to its Counterclaims for Quiet Title and Declaratory Relief. The Order granting Judgment in favor of Chersus shall provide that: (1) Chersus is the undisputed owner of the Property, (2) Chersus is the holder of "fee simple" title to the Property; (3) the Property is not subject to the Deed of Trust; and (4) the Deed of Trust was extinguished by the HOA Sale.

C. An Order shall be entered granting partial summary judgment in favor of Chersus, as to liability only, with respect to Chersus's Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and Unjust Enrichment.

D. Within 30 days of the Notice of Entry of this Order, Chersus shall file an Application for a Prove-Up Hearing as to the amount and types of damages to be awarded to Chersus with respect to its Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and Unjust Enrichment.

E. Within 45 days of the Notice of Entry of this Order, Chersus shall file its Memorandum of Costs, and Motion for Attorney's Fees.

5. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed

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against the Property under any of the Deed of Trust has been extinguished.

IT IS SO ORDERED.

DATED this 2 day of MAY, 2019

DISTRICT JUDGE

Submitted by:

THE LAW OFFICE OF VERNON NELSON

By: */s/ Vernon Nelson*

VERNON NELSON, ESQ.
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Attorney for Defendant Chersus Holdings, LLC

A-14-696357C

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC *v.* CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On ~~March 19~~ May 9, 2019, I served the following document(s):

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
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Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Thomas N. Beckom .	tbeckom@mccarthyholthus.com

X☐ By Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:13 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL- EX I

Paterno- Separately, I disagree with Dana's comment that the Order should state who the notices were sent to. That is not consistent with our argument that the recitals establish that these requirements were met and it is not consistent with Judge Early's ruling.

Vernon

1. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter116.

From: Vernon Nelson <vnelson@nelsonlawfirmlv.com>
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani <pjurani@wrightlegal.net>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Paterno-

Sorry for the delay. I have attached the transcript.

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Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property

At pp. 54-55, the Judge is asking Dana to explain the unjust enrichment claim. On page 55 at lines 13-24 he explains how the HOA benefited and he includes the payment of insurance premiums.

From: Paterno Jurani <pjurani@wrightlegal.net>
Sent: Tuesday, March 26, 2019 1:50 PM
To: Vernon Nelson <vnelson@nelsonlawfirmlv.com>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Vernon, Ashlie,

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Paterno C. Jurani, Esq.
Attorney
Licensed in Nevada and California

WRIGHT FINLAY & ZAK LLP
ATTORNEYS AT LAW

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Wright, Finlay & Zak: Your Western Regional Counsel for California, Nevada, Arizona, Washington, Oregon, Utah and New Mexico

Certified WBENC Women's Business Enterprise

From: Vernon Nelson [mailto:vnelson@nelsonlawfirmlv.com]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

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Kind regards,

Vernon

EXHIBIT 2

EXHIBIT 2

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL-EX II

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Vernon

NEOJ
VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
THE LAW OFFICE OF VERNON NELSON
9480 S. Eastern Ave., Ste. 252
Las Vegas, NV 89123
Tel.: 702-476-2500
Fax.: 702-476-2788
E-mail: vnelson@nelsonlawfirmlv.com
Attorney for Defendant Chersus Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

NOTICE OF ENTRY OF ORDER

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 2nd day of May, 2019, a Findings of Fact, Conclusions of Law and Order was entered on the Court's docket. A copy of said Order is attached hereto.

DATED this 7th day of May, 2019

THE LAW OFFICE OF VERNON NELSON

By: */s/ Vernon A. Nelson*

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
9480 S. Eastern Avenue, Suite 252
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Attorney for Defendant Chersus Holdings, LLC

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC *v.* CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On May 7, 2019, I served the following document(s):

NOTICE OF ENTRY OF ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
Paralegal .	bknotices@nv-lawfirm.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Thomas N. Beckom .	tbeckom@mccarthyholthus.com

X☐ By Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1

FFCO
VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
THE LAW OFFICE OF VERNON NELSON
9480 S. Eastern Ave., Ste. 252
Las Vegas, NV 89123
Tel.: 702-476-2500
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E-Mail: vnelson@nelsonlawfirmlv.com
Attorneys for Defendant Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant, CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Counter-Defendants.	Case No.: A-14-696357-C Dept No.: IV **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Plaintiff/Counter-Defendant, Ocwen Loan Servicing LLC, ("Plaintiff" or "Ocwen"), Defendant/Counter-Claimant, Chersus Holdings, LLC ("Chersus" or "Defendant Chersus"), and Defendant Southern Terrace Homeowner's (hereinafter "the HOA") filed competing Motions for Summary Judgment (the "Competing MSJ Motions"). The Court scheduled a hearing on January 22, 2019 to consider the Competing MSJ Motions, and the parties' respective oppositions to the Competing MSJ Motions (the "MSJ Hearing"). Ocwen appeared through its counsel of record, Dana Nitz, Esq. of the law firm of Wright, Finlay, & Zak, LLP. Defendant Chersus appeared through its counsel of record, Vernon Nelson of the Law Offices of Vernon Nelson, PLLC. The HOA appeared through its counsel of record, Ashlie Surur, Esq. of the law firm of Hall, Jaffe & Clayton, LLP. Having duly considered all arguments and evidence presented by the parties including the arguments made by counsel at the MSJ Hearing, and finding good cause therefore, the Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

A. FACTUAL BACKGROUND

1. Prior to Litigation

a. Harrison Loan Documents.

1. On or about March 13, 2008, Joseph F. Harrison and Bonnie L. Harrison (hereinafter the "Harrisons") purchased the property located at 5946 Lingering Breeze St, Las Vegas, NV 89148 (APN 163-31-611-022) (hereinafter the "Property").

2. The Deed of Trust executed by the Harrisons (hereinafter the "Deed of Trust") identified Direct Equity Mortgage, LLC as the Lender and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary acting solely as a nominee for Lender and Lender's successors and assigns, Nevada Title Company as Trustee, and secured a loan in the amount of $234,739.00 (hereinafter the "Harrison Loan").

3. On July 23, 2012, an Assignment of Deed of Trust was recorded, reflecting that MERS assigned the Deed of Trust to GMAC Mortgage, LLC.

b. HOA Lien Documents.

4. The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Southern Terrace (the "CC&Rs"), which were recorded on August 9, 2001.

5. On December 8, 2011, a Lien for Delinquent Assessments (the "HOA Lien") was recorded against the Property by Red Rock Financial Services ("Red Rock") on behalf of the HOA. The HOA Lien was recorded as Instrument Number 201112080002960. The HOA Lien provides that Red Rock was officially assigned as agent by the HOA, in accordance with NRS 116, as outlined in the HOA's CC&Rs, and that Red Rock notified Mr. and Mrs. Harrison that the HOA imposed the HOA Lien on the Property.

6. On February 2, 2012, a Notice of Default and Election to Sell Pursuant to the HOA Lien was recorded against the Property by Red Rock, on behalf of the HOA, as Instrument Number 201202020000465. The Notice of Default and Election to Sell shows Red Rock notified Mr. and Mrs. Harrison that it had recorded a Notice that made it known that their obligation under the CC&Rs had been breached; and therefore, the HOA was declaring any and all amounts secured, due and payable, and electing the Property to be sold to satisfy the HOA Lien.

7. On May 2, 2013, a Notice of Foreclosure Sale was recorded against the Property by a new Trustee, United Legal Services, Inc. ("ULS"), as Instrument Number 01305020000105. The Notice of Foreclosure Sale shows that Mr. and Mrs. Harrison were notified and warned: (a) the sale of their property was imminent; (b) they had to pay the specified amount or risk losing their home; (c) if they continued to be in Default under the HOA Lien their home could be sold at auction, and (d) the auction was scheduled to be held on May 25, 2013 at 9:00AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123.

8. On or around May 28, 2013, a Foreclosure Deed upon Sale (the "First 100 Foreclosure Deed") was executed conveying Property to First 100, LLC ("First 100") pursuant to a sale (the "HOA Foreclosure" or the "HOA Sale") held under NRS Chapter 116 foreclosing on the HOA Lien. First 100 subsequently recorded the First 100 Foreclosure Deed on May 29, 2013 as Instrument number 201305290002514.

9. The first page of the First 100 Foreclosure Deed includes the following recitals:

This conveyance is made pursuant to the powers conferred upon Agent by NRS Chapter 116, the foreclosing Association's governing documents (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded on December 8, 2011 as instrument 201112080002960 in the Official Records of the Recorder of Clark County, Nevada. Default occurred as set forth in the Notice of Default and Election to Sell, recorded on February 2, 2012 as instrument 201202020000465 in the Official Records of the Recorder of Clark County, Nevada. All requirements of law have been complied with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing, posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164, sold the property at public auction on May 25, 2013.

c. Subsequent Transfers of the Property.

10. On August 24, 2012, a Substitution of Trustee was recorded, reflecting that Cooper Castle Law Firm ("Cooper Castle") was substituted as Trustee under the Deed of Trust.

11. On March 6, 2013, a Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust was recorded by Cooper Castle.

12. On October 23, 2013, First 100 sold the Subject Property to Defendant Chersus which recorded its deed on January 13, 2014 as instrument number 201401130001734.

13. On or around December 20, 2013, GMAC Mortgage, LLC purported to foreclose on the Property pursuant to its Deed of Trust. Plaintiff purportedly purchased the Property at the resulting foreclosure sale (the "Deed of Trust Foreclosure" or the "Trustee Sale").

14. Plaintiff recorded its Trustee's Deed Upon Sale on January 7, 2014 (the "Ocwen Deed") as instrument Number 201401070000775.

2. The Litigation

a. Litigation Related to Ocwen's Initial Complaint

15. Ocwen filed its initial Complaint commencing this action on February 19, 2014. Chersus was the sole Defendant in the Complaint. In its Complaint, Ocwen alleged it is the owner of the Property. Ocwen alleged it obtained its ownership interest in the Property via the Deed of Trust Foreclosure. Ocwen alleged that any interest First 100 may have obtained in the Property was subject to the Deed of Trust and that the Deed of Trust Foreclosure extinguished First 100's interest

in the Property; and any interest Chersus may have acquired in the Property. Ocwen asserted claims for quiet title, and declaratory relief.

16. Chersus filed its Answer and Counterclaim on March 28, 2014. Chersus denied the material allegations in the Complaint. In its Counterclaim, Chersus alleged that on November 13, 2014, First 100 put GMAC and Ocwen on actual notice that the HOA Lien had been foreclosed upon and the Deed of Trust had been extinguished. Chersus alleged Ocwen was on constructive and actual notice of the HOA Foreclosure. Yet, despite such notice Plaintiff wrongfully proceeded to acquire the Property vial the Deed of Trust Foreclosure. Chersus asserted claims for wrongful foreclosure, quiet title, declaratory relief, and conversion.

17. Plaintiff filed a Motion for Summary Judgment in April 2014. Defendant filed its Opposition and a Countermotion for Summary Judgment (the "First MSJ Motions").

b. The SFR Decision.

18. During the pendency of the First MSJ Motions, the NV Supreme Court decided *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) (the "SFR Decision").

c. Plaintiff Files Amended Complaint.

19. Due to the SFR Decision, Plaintiff moved for leave to amend its complaint.

20. The Court granted Plaintiff's motion and it First Amended Complaint on June 24, 2016. In its First Amended Complaint, Plaintiff restated its allegations against First 100; and it added several defendants including, the HOA, Red Rock Financial Services LLC, ("Red Rock") and United Legal Services, Inc. ("United").

d. Allegations Included In First Amended Complaint Against Chersus

(1) The Deed of Trust Priority Allegations.

21. Plaintiff alleged: (a) any interest First 100 may have obtained in the Property was subject to the Deed of Trust; (b) the Deed of Trust Foreclosure extinguished any interest that First 100 or Chersus had in the Property; and (c) the HOA sale was invalid if it extinguished the Deed of Trust (the "Deed of Trust Priority Allegations").

(2) The Defective Notice Allegations

22. Plaintiff also alleged: (a) an HOA sale conducted pursuant to chapter NRS 116 must comply with NRS 116.31162 through NRS 116.31168; (b) a lender/holder of a beneficial interest in a senior deed of trust has a right to cure a delinquent HOA Lien to protect its interest; (c) Red Rock and ULS did not comply with all mailing and noticing requirements of NRS 116.31162-NRS 116.31168; (d) a recorded notice of default must describe the deficiency in payment; (e) the HOA Sale occurred without adequate notice to Plaintiff; (f) the HOA Sale occurred without notice to Plaintiff as to what portion of the HOA Lien, if any, that HOA and HOA trustee claimed constituted a superpriority lien; (g) the HOA Sale occurred without notice to Plaintiff whether the HOA was foreclosing on the superpriority portion of the lien, if any, or under the "non-superpriority" portion of the HOA Lien; (h) the HOA Sale occurred without notice to Plaintiff of the right to cure the delinquent assessment and the superpriority lien, if any; (i) the HOA sale was an invalid sale and cannot extinguish Plaintiff's secured interest because of the defective notices; (j) the HOA foreclosure notices included improper fees and costs in the amount required to cure, thus invalidating the HOA Lien (the "Defective Notice Allegations").

(3) The Statutory Allegations

23. Plaintiff also alleged: (a) per NRS Chapter 116, a lien under NRS 116.3116 (1) can only include costs and fees that are specifically enumerated in the statute; (b) a HOA may only collect as part of the superpriority lien nuisance abatement charges and nine months of common assessments (unless Fannie Mae and Freddie Mac regulations require a shorter period of not less than six months); (c) the attorney's fees and costs of collecting an HOA Lien cannot be included in the lien or superpriority lien; (d) upon information and belief the HOA Lien is unlawful and void under NRS 116.3102 et seq. (the "Statutory Allegations").

(4) The Constitutional Allegations

24. Plaintiff alleged that the HOA Sale and NRS Chapter 116 were unconstitutional (the "Constitutional Allegations").

(5) The CC&R Allegations

25. Plaintiff alleged: (a) the CC&Rs for the HOA provided the HOA Lien was subordinate to the Plaintiff's Deed of Trust; (b) the CC&Rs had a mortgagee protection clause; (c) due to the mortgagee protection clause, and the lack of notice, Plaintiff did not know it had to attend the HOA Sale to protect its Deed of Trust (the "CC&R Allegations").

(6) The Commercially Unreasonable Allegations

26. Plaintiff alleged the HOA Sale was required to be performed in a commercially reasonable manner and Defendants failed to do so. Thus, the HOA sale was invalid. Plaintiff alleged the HOA Sale was not commercially reasonable because: (a) the fair market value of the Property, at the time of the sale, greatly exceeded the purchase price; and (b) notice of the correct superpriority amount was not provided. Plaintiff also referenced the mortgagee protection clause and alleged that potential bidders were aware of the mortgagee protection clause.

27. Based on this alleged knowledge of potential bidders, Plaintiff alleged on the sale was commercially unreasonable because: (a) proper notice that the HOA intended to foreclose on the superpriority portion of the dues owing was not given; causing prospective bidders to not appear for the HOA Sale; (b) proper notice was not given prospective bidders did not appear for the sale; (c) Defendants knew Plaintiff would rely on the mortgagee protection clause and Plaintiff would not know the HOA was foreclosing on superpriority amounts, due to the lack of notice, which resulted in Plaintiff being absent; thereby allowing First 100 to acquire the property for a fraction of market value. (d) Defendants knew (I) prospective bidders would be less likely to attend the HOA Sale due to the mortgagee protection clause, (II) there would be an absence of prospective bidders. Plaintiff made various allegations that the HOA Sale and NRS Chapter 116 were unconstitutional (the "Commercially Unreasonable Allegations").

(7) The HOA's Duties Allegations

28. Plaintiff alleged the circumstances of the HOA sale breached the HOA's and HOA's trustee's obligations of good faith under NRS 116.1113 and their duty to act in a commercially reasonable manner (the "HOA's Duties Allegations").

(8) The BFP Allegations

29. Plaintiff alleged: (a) First 100 and Chersus are "professional foreclosure sale purchasers;" (b) First 100 and Chersus had actual, constructive or inquiry notice of Plaintiff's Deed of Trust; and (c) because of their "notice" of the Deed of Trust, and their status as "professional foreclosure sale purchasers," First 100 or Chersus cannot be deemed bona fide purchasers for value (the "BFP Allegations").

(9) Plaintiff's Damages Allegations

30. Plaintiff alleged that if its Deed of Trust was not reaffirmed or restored, it was entitled to damages from the HOA in the amount of the fair market value of the Property, or the unpaid balance of due under Deed of Trust and underlying note, at the time of the HOA Sale, whichever is greater ("Plaintiff's Damages Allegations").

31. Based on the allegations above, Plaintiff asserted claims for (a) Quiet Title and Declaratory relief; (b) Preliminary and permanent injunctions; (c) Wrongful foreclosure against the HOA, Red Rock, and ULS; (d) Negligence versus the HOA, Red Rock and ULS; (e) Negligence per se versus the HOA, Red Rock, and ULS; (f) Breach of contract versus the HOA, Red Rock and ULS; (g) Misrepresentation versus the HOA; (h) Unjust enrichment versus the HOA; (i) Tortious interference with contract.

e. Chersus's Counterclaims

32. On July 29, 2016, Chersus filed its Answer to the First Amended Complaint and asserted a Counterclaim against Plaintiff. Chersus denied the material allegations of the First Amended Complaint and it asserted Counterclaims against Ocwen as follows.

(1) The Chersus Title Allegations

33. Chersus alleged: (a) the First 100 Foreclosure Deed conveyed the Property to First 100; (b) the HOA Sale was held per NRS Chapter 116 and the HOA Sale foreclosed the HOA Lien; (c) on October 23, 2013, First 100, LLC sold the Property to Defendant Chersus and recorded the Chersus Deed on January 13, 2014 (the "Chersus Title Allegations").

(2) The Ocwen Foreclosure Allegations

34. Chersus alleged: (a) on November 13, 2014, First 100 put Plaintiff and its agents on actual notice that the HOA Lien had been foreclosed on and the Deed of Trust was extinguished; (b)

despite being its notice of the HOA Sale, Ocwen proceeded to try to acquire the Property at the Trustee's Sale in December 2014; and (c) it recorded the Ocwen Deed on January 7, 2014 (the "Ocwen Foreclosure Allegations").

35. Based on these allegations, Chersus asserted claims for (1) Wrongful foreclosure; (2) Quiet title; (3) Declaratory relief; and (4) Conversion.

f. Causes of Action in the First Amended Complaint Against the HOA.

36. Plaintiff asserted the allegations set forth above supported causes of action against the HOA for Injunctive Relief, Wrongful Foreclosure, Negligence, Negligence Per Se, Breach of Contract, Misrepresentation, Unjust Enrichment, and Tortious Interference.

g. Ocwen's Second Amended Complaint and Dismissal of ULS & Red Rock.

37. Red Rock filed a Motion to Dismiss the First Amended Complaint. In response, Ocwen filed its Second Amended Complaint on January 23, 2018.

38. As to Chersus and the HOA, the allegations and Causes of Action asserted in Ocwen's Second Amended Complaint are essentially the same as those asserted in First Amended Complaint, except for the deletion of certain "Constitutional Claims."

39. Chersus answered the Second Amended Complaint on March 19, 2018, and denied all the material allegations of the Second Amended Complaint. It reasserted its Counterclaims and added Causes of Actions for Unjust Enrichment and Slander of Title.

40. The HOA filed its Answer on April 5, 2018. The HOA denied all the material allegations of the Second Amended Complaint.

41. On April 10, 2018 a Notice of Stipulation and Order was entered dismissing ULS without prejudice.

h. Material Facts Revealed During Discovery

(1) Deposition Testimony of Red Rock's NRCP 30(b)(6) witness, Sara Trevino

42. . Red Rock's 30(b)(6) witness, Sara Trevino testified about the notices Red Rock mailed in this case and her testimony: (1) authenticated mailing affidavits signed by Red Rock employees that state how many notices were signed and how many were mailed; (2) identified which notices are sent by certified mail and first-class mail, which notices are sent by first-class mail only, (3) when

specific notices are sent; (4) how skip-traces and title reports are used to identify addresses for the homeowners and others holding vested interests in the Property, (5) how Red Rock maintains "return receipts" it receives from certified mail; (6) how Red Rock maintains checklists for each type of notice that its employees are to follow when mailing notices and how this information is included in the employees' mailing affidavits; (7) how Red Rock uses a third-party vendor Walz to mail many of the notices; (8) how she knows that Walz maintains records proving it sent notices and (9) how she is able to access Walz's system and obtain proof that notices were mailed. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter116.

43. Ms. Trevino testified: (a) about payoff demands made by Cooper Castle on behalf of GMAC Mortgage, LLC, (b) that Red Rock provided Cooper Castle with an Accounting Ledger in response to its payoff demands; (c) Cooper Castle could have calculated the amount of the superpriority lien by using the Accounting Ledger; (d) Red Rock did not receive any communications from Cooper Castle after it sent them the Accounting Ledger; and (e) Red Rock never received payment of the HOA Lien or a partial payment of the HOA Lien.

44. Based on Ms. Trevino's testimony, the Court finds GMAC Mortgage, LLC and Ocwen had notice of the HOA Sale, they were provided with an Accounting Ledger, they could have calculated the amount of the superpriority lien. Thus, GMAC and Ocwen could have calculated and paid the superpriority lien, the full HOA Lien, or any amount in between those two amounts. However, neither GMAC nor Ocwen paid any portion of the HOA Lien.

(2) Deposition Testimony of ULS's NRCP 30(b)(6) witness, Robert Atkinson

45. ULS's NRCP 30(b)(6) witness, Robert Atkinson, testified about the notices ULS mailed out in this case and he: (a) authenticated the Notice of Foreclosure sale sent in this case and he explained how it was mailed; (b) described how ULS conducts its own thorough investigation of the "land records;" including the Assessor's Records to make sure they have the best addresses for the property-owners and other parties holding vested interests in the Property; (c) authenticated the "bulk form certificate of mail," known as Postal Service Form 3877; which evidences the notices were delivered to the post-office and handed to a post-office clerk; (d) explains how ULS completed

the form by filling in the addresses for the Notices and by putting slashes on any unused lines; (e) explains how the Post-Office Clerk goes and confirms and matches each address to each address on the bulk form; (f) explains how once everything passes, the Post-Office Clerk verifies the mailing with a stamp and gives the original back to ULS. The bulk form shows the Notices of Foreclosure Sale were sent to GMAC Mortgage, LLC and Cooper Castle Law Firm, LLP. Based on this testimony the Court finds ULS sent the Notices of Foreclosure in compliance with NRS 116.31162 through 116.31168.

46. ULS did not receive any payments prior to the HOA Sale.

47. The HOA Sale occurred on a Saturday at Attorney Robert Atkinson's office.

48. Mr. Atkinson testified that he conducted HOA sales on Saturday mornings because his office did not have a conference room with closed doors and he did not want "a bunch of randoms" wandering around his law office. He also testified: (a) he conducted the auction; (b) he recalled the auction was well attended; (c) it was reasonable to infer that there was active bidding based on the $3,500 sales price; (d) a "core number of NRS 116 type buyers" usually always showed up for HOA sales that he conducted in his office; and (e) many buyers attended foreclosure sales he conducted for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

49. Mr. Atkinson testified about the Purchase and Sale Agreement ("PSA") between the HOA and First 100. Pursuant to the PSA, First 100 purchased "Past Proceeds of Income" ("PPI") for 24 delinquent properties from the HOA. The PSA was negotiated in an "arms-length" tri-partite agreement between First 100, the HOA, and ULS. Thus, the PSA did not affect the relationship between the HOA and the Harrisons.

50. The amount of $1,208.28 was an amount assigned to PPI for the Property. This amount was based on a calculation that First 100 made in connection with evaluating the value of the PPI related to the Property as part of the overall transaction.

51. First 100 paid the amount of the PPI provided for in the PSA. Pursuant to the PSA, First 100 paid ULS's fees of $1,200.00 and certain fees owed to Red Rock. First 100 paid $3,500.00 to the HOA at the HOA Sale.

52. Mr. Atkinson described how ULS worked with First 100 and homeowners' associations on the drafting of purchase and sales agreements like the PSA in this case. Mr. Atkinson testified that First 100 routinely used the same form of purchase agreement.

53. The PSA provided for the purchase of "Past Proceeds of Income" ("PPI"), and it is akin to a factoring agreement. The PSA did not amount the sale of the HOA Lien. Nothing in the PSA changed the fact that the HOA Lien belonged to the HOA. Pursuant to the PSA, First 100 purchased the right to receive all future monetization events related to the PPI.

54. The PSA provided that the HOA would retain ULS for collection efforts, including any efforts related to the foreclosure of the HOA Lien.

55. The PSA provided that if ULS foreclosed on the HOA Lien, the minimum bid at the foreclosure sale would be $99. The PSA prohibited the HOA for making a credit bid and it prohibited the HOA from interfering with any collection efforts.

56. Mr. Atkinson testified that, based on his experience, HOAs did not want to end up being the winning bidder for a property based on a credit bid. Based on his experience, Mr. Atkinson stated the HOAs did not want to be responsible for paying assessments, cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out squatters.

57. Based on his experience, Mr. Atkinson testified that HOAs were also afraid to take properties to auction given the legal uncertainties surrounding HOA foreclosure sales.

(3) Deposition Testimony of Chersus's NRCP 30(b)(6) witness, Jag Mehta.

58. Mr. Mehta testified Chersus spent approximately $40,000 in repairs on the Property.

59. Plaintiff, Chersus, and the HOA filed competing Motions for Summary Judgment.

II. CONCLUSIONS OF LAW

A. Summary Judgment Standard

60. N.R.C.P. Rule 56(e) states that summary judgment is in order when:

> *The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*

61. A genuine issue of material feet exists only when the evidence is adequate to where a reasonable jury" would return a verdict for the non-moving party. *Dermody v. Reno*, 113 Nev. 207, 210 (1997). The Court will accept as true only properly supported factual allegations and reasonable inferences of the party opposing summary judgment. *Wayment v. Holmes*, 112 Nev. 232, 237 (1996). "Conclusory allegations and general statements unsupported by evidence creating an issue of fact will not be accepted as true." *Id.*

62. The Nevada Supreme Court has provided additional clarity on the standards governing summary judgment motions. *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P. 3d 1026 (2005). In *Wood*, the Court "put to rest any questions regarding the continued viability of the 'slightest doubt' standard," when it held that the "substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P. 2d 274 (1979).

B. NRS 116.3116 Granted to the HOA a Superpriority Lien That Had Priority Over the Deed of Trust in Favor of GMAC Mortgage, LLC and, as a Result GMAC Mortgage, LLC's Deed of Trust Was Extinguished at the HOA Sale.

63. NRS 116.3116 provides in part:

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

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

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

64. Subsection 3 of NRS 116.3116 provides the lien created thereunder has priority over all security interests described in paragraph (b) of subsection 2 to the extent of:

(a) any charges incurred by the association on a unit pursuant to NRS 116.310312;
(b) The unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and
(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5....

65. By its clear terms, NRS 116.3116 (2) provides the superpriority lien for assessments which have come due in the 9 months prior to the initiation of an action to enforce the lien are "prior to all security interests described in paragraph (b)." The Deed of Trust held by GMAC Mortgage, LLC falls squarely within the language of paragraph (b). The statutory language does not limit the nature of this "priority" in any way.

66. In its decision of *SFR Invs. Pool 1, LLC v. US. Bank, NA.*, 334 P.3d 408, 411-412, 130 Nev. Adv. Rep. 75 (2014), the Supreme Court held that the foreclosure of the HOA superpriority lien extinguishes first trust deeds. The SFR Decision holds the 9-month HOA superpriority lien has precedence over the mortgage lien, and that the proper foreclosure of the HOA superpriority lien extinguishes a first trust deed.

67. In the case at bar, the HOA Sale resulted in the foreclosure of the HOA's superpriority lien on the Property. Consequently, when First 100 purchased the Property at the HOA Sale, it extinguished the Deed of Trust in favor of GMAC Mortgage, LLC.

68. When First 100 conveyed the Property to Defendant Chersus, the Property was not subject to the Deed of Trust in favor of GMAC Mortgage, LLC.

C. THE HOA COMPLIED WITH THE NOTICE REQUIREMENTS OF NRS CHAPTER 116.

1. The Recitals in The First 100 Foreclosure Deed Prove the HOA Complied with The Notice Requirements of NRS Chapter 116.

69. The recitals in the First 100 Foreclosure Deed establish both the default by Mr. and Mrs. Harrison and the HOA's compliance with each of the notice requirements of NRS 116.31162 through 116.31168 for the public auction held on May 25, 2013.

70. NRS 116.31166(1) provides:

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

(a) Default, the mailing of notice of delinquent assessment, and the recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
Are conclusive proof of the matters recited.

71. In *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 334 P.3d 408, 411-12 (2014), the Nevada Supreme Court recognized the "conclusive" effect of an HOA foreclosure deed when it stated:

> *NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and specifies the distribution order for the proceeds of sale. A trustee's deed reciting compliance with the notice provisions of NRS 116.31162 through NRS 116,31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns, and all other persons." NRS 116.31166(2). And, "[t]he sale of a unit pursuant to NRS 116.311162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption. NRS 116.31166(3).*

72. However, the enactment of NRS 116.31166 did not eliminate the court's equitable authority to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev. 2016). Equitable relief may still be available in the face of conclusive recitals, at least in cases involving fraud, unfairness, or oppression. *Id.*

73. In this case, Plaintiff has produced no evidence that the HOA's agent did not mail the notices to the holder of the beneficial interest of the Deed of Trust. Plaintiff has produced no evidence that the HOA's agent did not provide for the elapsing of the 90 days. Plaintiff has not

provided any other evidence that the recitals are not accurate. Further, as is set forth in Section II(D) below, Plaintiff has produced no evidence of fraud, unfairness, or oppression.

74. Thus, the recitals in First 100's Deed of Foreclosure are deemed to be conclusive proof that the HOA complied with the notice requirements of NRS Chapter 116.

2. Per the "Mailbox Rule," GMAC Mortgage, LLC Presumptively Received All of the Notices Required Per NRS 116.31162 through 116.31168.

75. Per the "mailbox rule," if the HOA's agents properly and timely mailed the required notices, a rebuttable presumption is raised that the beneficiary of the Deed of Trust received the notices. *See Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197, 1202-1203 (9th Cir. 1999). For the presumption to arise, the sender must establish the notice was sent. *Id.* The sender can establish the notice was sent by providing evidence of its standard business practices such as the use of computerized tracking and filing software and the use of procedures that ensure the number of outgoing notices correspond with the number of notices to be sent. *Turner v. Dep't of Educ.*, 2011 U.S. Dist. LEXIS 46421 (D. Haw. 2011) (citing *Mahon*, 171 F. 3d at 1199-1202).

76. Ms. Trevino's testimony about Red Rock's mailing procedures establishes the notices sent by Red Rock were sent. Further, Mr. Atkinson's testimony about ULS's mailing procedures establish the notices sent by ULS were sent. Thus, the Court finds GMAC Mortgage, LLC presumptively received all of the notices required per NRS 116.31162 through 116.31168.

D. FIRST 100'S PAYMENT TO THE HOA PURSUANT TO THE PSA WAS NOT RELATED TO THE HOA LIEN AND, THEREFORE, IT DID NOT DISCHARGE THE SUPERPRIORITY LIEN.

77. Ocwen contends that First 100's payment to the HOA, pursuant to the PSA, discharged the superpriority portion of the HOA Lien prior to the HOA sale. However, the PSA did not involve a sale of the HOA Lien. First 100 purchased the right to receive future monetization events related to the PPI.

78. The PSA did not affect the relationship between the Harrisons and the HOA in any way and First 100's payment to the HOA, pursuant to the PSA did not affect the HOA Lien in any way. Specifically, it did not discharge to superpriority portion of the HOA Lien.

79. In *West Sunset 2050 Trust v. Nationstar Mortgage*, 420 P. 3d 1032, (June 28, 2018), the Nevada Supreme Court recently considered a case almost identical to this case. In *West Sunset 2050 Trust*, the Toscano Homeowners Association ("Toscano"), pursuant to a similar purchase and sale agreement, sold to First 100 its "interest in any and all [proceeds on past income] arising from or relating to the [Property's] Delinquent Assessment. *Id.* at 1034.

80. In *West Sunset 2050 Trust*, the NV Supreme Court rejected Nationstar's argument that the purchase and sale agreement deprived HOA of standing to foreclose. 420 P3d. at 1036. The Court determined the purchase and sale agreement provided for the sale of proceeds on past income *Id.* The Court analogized the purchase and sale agreement to a "factoring agreement" and determined the "factoring agreement" did not change the fact that the property owner remained indebted to the HOA; and the property owner did not become indebted to First 100. *Id* at 1037.

81. The Court emphasized that the HOA retained the exclusive right to collect the HOA Lien, and it was required, through its agent, to continue collection efforts on past-due assessments. *Id.* Thus, the Court held that the "factoring agreement" did not affect the HOA's right to foreclose on the property and that the HOA sale was valid. *Id.*

82. Based on the facts of this case, and the Court's holding in *West Sunset 2050 Trust,* it is clear that First 100's payment to the HOA, pursuant to the PSA, did not affect the HOA Lien in any way; and it did not extinguish the superpriority portion of the HOA Lien.

E. OCWEN'S CONTENTION THAT THE HOA SALE WAS COMMERICIALLY UNREASONABLE IS WITHOUT MERIT BECAUSE THE HOA SALE WAS VALID AND DEFENDANT FAILED TO PRODUCE ANY EVIDENCE THAT FRAUD, UNFAIRNESS, OR OPPRESSION AFFECTED THE SALE.

83. Plaintiff contends that the sale was commercially unreasonable because the sales price paid by First 100 at the HOA Sale was grossly inadequate; and because there was evidence that fraud, unfairness, or oppression affected the sale. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1112 (Nev. 2016).

84. In *Shadow Wood,* the NV Supreme Court held that NRS 116.31166 did not preclude courts from granting equitable relief from a defective foreclosure sale when appropriate. 366 P.3d at

1110-1111. In this regard, the Court held that a foreclosure sale could be set aside if there was a grossly inadequate sales price, and a showing of fraud, unfairness, or oppression. *Id.*

85. In *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 643-44, the Nevada Supreme Court clarified that inadequacy of price alone is not a sufficient ground for setting aside foreclosure sale. *Id.* The Court further held that the party seeking to set aside the sale had the burden of proving that fraud, unfairness, or oppression affected the sale. *Id.*

86. The Court also rejected the application of the commercial reasonableness standard from UCC Article 9. *Id.* at 646. Thus, Plaintiff's arguments that the sale was commercially unreasonable based on UCC Article 9 must be rejected.

87. A district court cannot grant equitable relief when an adequate remedy at law exists. *Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 278 (1982). The failure to utilize legal remedies makes granting equitable remedies unlikely. *Bayview Loan Servicing, LLC v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 41309 (D. Nev. 2017).

(1) The HOA Sale Was Valid and Equitable Relief Is Not Warranted.

88. As stated above, based on the facts of this case, and the Nevada Supreme Court's holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (2018), the Court has determined that the HOA Sale was valid. Therefore, the Court does not have authority to grant equitable relief to the Plaintiff in this case. *Las Vegas Valley Water Dist.*, 98 Nev. at 278.

89. In this regard, it must also be noted that GMAC Mortgage, LLC and Plaintiff were aware of the HOA Sale and they could have paid, or at least tendered, the amount of the superpriority portion of the HOA Lien. Their failure to exercise adequate remedies at law precludes the granting of equitable relief in this case.

(2) Even If Equitable Arguments Were Available to Plaintiff, It Failed to Show Fraud, Unfairness, or Oppression Affected the HOA Sale.

90. To support of its contention that the HOA Sale was Commercially Unreasonable, Plaintiff offered the report of expert witness, R. Scott Dugan to show that the price paid at the HOA Sale was grossly inadequate. Mr. Dugan opined that the value of the Property was $148,000 as of the date of the HOA Sale. Plaintiff submitted that the $3,500.00 paid by First 100 was 2.6% of the value

of the Property. Chersus did not produce an expert report disputing Mr. Dugan's analysis. However, it contended First 100 and Chersus paid far more than $3,500.00 to acquire the Property.

91. Whether the price paid at the HOA Sale was grossly inadequate need not be resolved because Plaintiff has failed to show that fraud, unfairness, or oppression affected the sale.

92. In support of its contention that there was evidence that fraud, unfairness, or oppression affected the sale, Plaintiff argued:

> a. The HOA Sale was not conducted during normal business hours. The HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123.
>
> b. The HOA, ULS and First 100 colluded to ensure that First 100 would obtain this Property at the HOA Sale. Their PSA set the minimum bid at $99, and prohibited the HOA from making a credit bid at the HOA Sale or otherwise interfering with First 100's efforts to collect on the account or acquire the Property.
>
> c. The HOA relinquished all authority to control the HOA Sale and irrevocably made ULS its collection agent and foreclosure trustee for First 100.
>
> d. Even though the HOA Sale allegedly took place in the HOA's name, all actions were conducted for the benefit of First 100 pursuant to its agreement with the HOA.
>
> e. There is fraud, oppression and unfairness associated with the foreclosure sale because the HOA put the public on constructive notice in its CC&Rs—including First 100, and other prospective bidders — that the HOA's foreclosure would not disturb the first Deed of Trust. The CC&Rs applicable to this Property contain two relevant provisions (the "Mortgagee Protection Clauses"), which represented to the world the HOA's foreclosure would not extinguish the Deed of Trust.

93. These arguments do not show that fraud, unfairness, or oppression affected the sale.

94. The fact that the HOA Sale took place on Saturday, May 25, 2013, at 9:00 a.m. at ULS's office – 8965 S. Eastern Ave., Suite 350, Las Vegas, NV 89123 does not demonstrate the sale was patently unfair, fraudulent, or oppressive. In fact, ULS's NRCP 30(b)(6) witness, Robert Atkinson testified he conducted HOA Sales on Saturday because his office did not have a conference room and he did not want potential bidders wandering around his office. He also testified that he conducted the auction and he recalled the auction was well attended. He also testified it was reasonable to infer there was active bidding based on the $3,500 sales price. He testified a "core number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his

office. He testified many buyers attended foreclosure sales he conducted for the HOA and they purchased homes at the foreclosure sales he conducted for the HOA. Thus, Plaintiff has failed to show that conducting the HOA Sale on Saturday affected the HOA Sale.

95. Similarly, Plaintiff failed to show the HOA, ULS and First 100 colluded to ensure that First 100 would obtain the Property at the HOA Sale. Mr. Atkinson testified a "core number of NRS 116 type buyers" usually always showed up for HOA sales he conducted in his office. He testified many buyers, other than First 100, attended foreclosure sales he conducted for the HOA and purchased homes at the foreclosure sales he conducted for the HOA.

96. The Court's holding in *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032, 1037 (2018), is also contrary to the Plaintiff's contention that the HOA, ULS, and First 100 unlawfully colluded. The Court analogized First 100's purchase and sale agreement to a "factoring agreement" and held factoring agreements serve the valid purpose of providing HOAs with immediate access to cash, and help them meet their perpetual upkeep obligations. The Court added it was disinclined to interfere with the HOA's use of factoring agreements absent a theory as to how factoring agreements result in harm.

97. In this case, the PSA signed by the HOA, ULS, and First 100 was akin to a "factoring agreement" and it served the valid purpose of providing the HOA with access to cash. Plaintiff has failed to provide any evidence that the HOA, ULS, and First 100 unlawfully colluded.

98. Similarly, Plaintiff's other contentions related to the PSA do not show that fraud, unfairness, or oppression affected the sale. First, contrary to Plaintiff's complaints regarding the $99.00 minimum bid, Mr. Atkinson testified that he was not aware of any statutory requirement in NRS Chapter 116 to establish a minimum bid; and the minimum bid was set at $99.00 in the valid PSA to encourage bidding. Next, contrary to Plaintiff's complaints that the HOA was prohibited from making a credit bid, Mr. Atkinson testified, in his experience, HOAs did not want to acquire a property via a credit bid because they did not want to be responsible for paying assessments, cleaning up the property, being subject to self-compliance fines, or being responsible for kicking out squatters. Finally, Plaintiff's complaints that all actions were conducted for the benefit of First 100 pursuant to the PSA did not improperly affect the sale. In *West Sunset 2050 Trust,* the Court

recognized and did not object that the agreement required the HOA's agent to remit payments to First 100. Again, Plaintiff's references to the PSA fail to show that fraud, unfairness, or oppression affected the sale.

99. Plaintiff also argues there was fraud, oppression and unfairness associated with the foreclosure sale because the HOA put the public on constructive notice in its CC&Rs, that the HOA's foreclosure would not disturb the first Deed of Trust. In support of its argument, Plaintiff cited to the United State District Court's holding in *Zzyzx 2 v. Dizon*, No, 2:13-CV-1307, 2016 U.S. Dist. LEXIS 39467, 2016 WL 1181666 (D. Nev. 2016).

100. In *United States Bank N.A. v. Vistas Homeowners Ass'n*, 2018 Nev. Unpub. LEXIS 1146 (December 14, 2018) the Nevada Supreme Court rejected the appellant's argument that the CC&R's mortgagee protection clause was evidence of unfairness. In opining that it was not persuaded that evidence regarding the mortgage protection clause constituted unfairness, the Court noted the appellant had not provided any evidence that potential bidders were misled by the CC&R's protective covenant and that the bidding was chilled. *Id.* at *1. The court also noted that it must presume that any bidders at the HOA Sale were also aware of NRS 116.1104, and therefore, they were not misled. *Id.* at *2.

101. In *Vistas Homeowners*, the Court distinguished *Zzyzx 2* because, in *Zzyzx 2,* the HOA sent a letter to the deed of trust beneficiary that it did not need to protect the Deed of Trust. *Id.* at fn. 2. The HOA in *Vistas Homeowners* did not send such a letter. *Id.*

102. In *Vistas Homeowners,* the Court also pointed out that in *SFR Inv. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, (2014), it had held that nothing in NRS 116.3116 expressly provides for the waiver of the HOA's rights under NRS Chapter 116. *Id.* at *2. The Court determined that the protective covenant in the *Vistas Homeowners* CC&R was not distinguishable from the covenant at issue in *SFR. Id.*

103. Like the appellant in *Vistas Homeowners,* Plaintiff has failed to produce any evidence showing the mortgagee protection clause in this case created unfairness. Further, Plaintiff failed to produce any evidence that potential bidders were misled by the CC&R's protective covenant and that bidding was chilled. Further, the Nevada Supreme Court's holding in *SFR* also applies in this

case and Plaintiff has failed to produce any evidence that mortgagee protection clause in this case is distinguishable from the clauses in *SFR* or *Vistas Homeowners.*

F. PLAINTIFF'S CONTENTIONS THAT NEITHER FIRST 100 NOR CHERSUS WERE BONA FIDE PURCHASERS ARE IRRELEVANT.

104. Plaintiff argues that the HOA Sale was not valid because neither First 100 nor Chersus is a bona fide purchaser because they purchased the property with notice of Ocwen's interest in the property.

105. Defendant Chersus disputes Plaintiff's contention it was not a bona fide purchaser.

106. Again, however, the Nevada Supreme Court recently held in *West Sunset 2050 Trust*, that since the underlying HOA sale was valid, the Court did not need to resolve a dispute as to whether First 100 and Chersus were bona fide purchasers. 420 P 3d. at 1037.

107. Again, this Court holds the HOA Sale was a valid sale and Plaintiff is not entitled to any equitable relief. Thus, Plaintiff's arguments about whether First 100, LLC or Defendant Chersus were bona fide purchasers are irrelevant.

G. CHERSUS IS ENTITLED TO JUDGMENT ON ITS COUNTERCLAIMS AS TO ITS FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, AS A MATTER OF LAW.

108. Chersus has proven that the undisputed facts and circumstances surrounding the HOA Sale. Chersus has also demonstrated it is entitled to judgment on its Counterclaims as to its First, Second, Third, Fourth, and Fifth Causes of Action, as a matter of law. At the MSJ Hearing, Chersus agreed to voluntarily dismiss its Sixth Cause of Action.

1. Wrongful Foreclosure

109. In support of its claim for wrongful foreclosure, Chersus established that at the time GMAC Mortgage, LLC exercised the power of sale and foreclosed, that no breach of condition or failure of performance existed on Chersus's part which would have authorized the foreclosure or exercise of the power of sale. There is no dispute that when GMAC Mortgage, LLC exercised the power of sale and foreclosed, its Deed of Trust had been extinguished by the foreclosure sale. There is no dispute that GMAC Mortgage, LLC and Plaintiff knew that after the HOA Sale: (1) GMAC Mortgage, LLC had no interest in the Property; (2) GMAC Mortgage, LLC had no authority

whatsoever to authorize the foreclosure or exercise the power of sale that had been extinguished by the HOA Foreclosure sale; (3) GMAC Mortgage, LLC had no authority to convey the Property to Plaintiff; and (4) Plaintiff had no right or authority to take possession of the Property.

110. Thus, the authorization of the foreclosure sale, the exercise of the power of sale, the sale to Plaintiff, and Plaintiff's taking possession of the Property was clearly wrongful and Chersus is entitled to summary judgment on its wrongful foreclosure claim as a matter of law.

111. There may be genuine issues of material fact regarding the amount of damages that should be awarded to Defendant Chersus for Wrongful Foreclosure. Accordingly, the Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

2. Quiet Title

112. Chersus has shown the undisputed facts and circumstances surrounding the HOA sale, prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

113. Chersus has shown that Ocwen had actual and constructive notice of First 100's superior claim to the Property.

114. Chersus has shown that the Deed of Trust, in which Ocwen purportedly holds an interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

115. Thus, this Court holds that Chersus is entitled to an order quieting title to the Property in favor of Chersus. The Court will enter a separate order quieting title in favor of Chersus that incorporates these Findings of Fact and Conclusions of Law by reference.

116. Chersus further claims that it is entitled to recover the attorney's fees and costs it incurred in this matter. However, Chersus's counsel has not yet submitted a memorandum of costs or an Application for Attorney's Fees that addresses the *Brunzell v. Golden Gate Bank* (the "Brunzell Factors"). *See Miller v. Wilfong,* 121 Nev. 619, 623 (2005). The Court will consider Chersus's Memorandum of Costs and Application for Attorney's Fees separately from Chersus's Motion for Summary Judgment.

3. Declaratory Relief

117. In its Third Cause of Action, Chersus asserts a dispute has arisen with Ocwen that is ripe for adjudication, specifically, concerning the ownership of the Property and interpretation of NRS of 116.3116 et. seq.

118. Chersus contends that per NRS 30.030 and 30.040, it is entitled to declaratory relief concerning the proper interpretation and enforcement of the NRS 116.3116 et. seq.

119. Chersus has shown the undisputed facts and circumstances surrounding the HOA Sale prove it is the rightful owner of the Property via chain of title starting with First 100's purchase of the Property at the HOA Sale and reflected in the deed recorded May 29, 2013.

120. Chersus has shown that Ocwen had actual and constructive notice of First 100's superior claim to the Property.

121. Chersus has shown the Deed of Trust, in which Ocwen purportedly holds an interest, was extinguished at the HOA Sale. Thus, Ocwen did not acquire any interest in the Property when it purportedly acquired the Property pursuant to the Trustee's Deed Upon Sale.

122. Thus, this Court holds that Chersus is entitled to an order declaring it is the lawful owner of the Property, it holds fee simple title to the Property, and the Property is not subject to the Deed of Trust. The Court will enter a separate order to this effect that incorporates these Findings of Fact and Conclusions of Law by reference.

123. Chersus further claims that it is entitled to recover the attorney's fees and costs it incurred in this matter. As stated above, the Court will consider Chersus's Memorandum of Costs and Application for Attorney's Fees separately from this Motion for Summary Judgment.

4. Trespass and Conversion

124. Plaintiff wrongfully deprived Chersus of its right to own and possess the Property. The Property includes the land and the appurtenant structures (the "Real Property"); and any improvements that may be considered personal property (the "Personal Property").

125. Defendant Chersus admitted that it incorrectly partially labeled this Cause of Action as a Cause of Action for "Conversion," and that it should have labeled the Cause of Action as one for Trespass and Conversion.

126. In its REPLY TO OCWEN'S OPPOSITION TO CHERSUS HOLDINGS, LLC's MOTION FOR SUMMARY JUDGMENT ("Reply Brief") filed on January 13, 2019, and at the MSJ Hearing, Defendant Chersus requested, without objection, that the Court consider the Cause of Action to apply to claims for Trespass and Conversion.

127. In support of its request, Defendant Chersus noted the allegations supporting the Cause of Action refer to Chersus's "Property" and the allegations do not distinguish between Real Property and Personal Property. Defendant Chersus also noted whether Plaintiff's actions amount to Conversion or Trespass turns on the character of the property over which Plaintiff wrongfully exercised control. *See e.g. Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008) (citing NRS 40.170). Thus, Defendant Chersus contended that the Cause of Action properly alleged facts that support claims based on Trespass and Conversion.

128. Defendant Chersus contends that it is undisputed that Plaintiff wrongfully exercised control over its Real Property and Personal Property. Defendant Chersus further contends that when the complaint was drafted, the nature of its interest in its Property was not clear. However, as a result of the discovery completed in this case, it has long been clear that Chersus's damages include loss of rental income; which would be based on a claim for Trespass. It has also long been clear that Chersus's damages include loss of the use/value of its improvements; which likely include personal property. Chersus claims for damages related to personal property would be based on a claim for Conversion.

129. Chersus also stated it its Reply Brief, and at the MSJ Hearing, that it understood that the measure of compensatory damages for Trespass and Conversion are similar to the measure of damages for quasi-contract/unjust enrichment. However, Chersus pointed out that punitive damages may be available for claims based on Trespass and Conversion.

130. Based on the contentions in its Reply Brief, and at the MSJ Hearing, the Court construes Chersus's Fourth Cause of Action to be based on claims for Trespass and Conversion.

131. There may be genuine issues of material fact regarding the amount of damages that could be awarded to Defendant Chersus for its claims for Trespass and Conversion. Accordingly, the

Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus based on Defendant Chersus's claims for Trespass and Conversion.

5. Unjust Enrichment

132. In support of its claim for Unjust Enrichment, Defendant Chersus pointed out that the appraisal performed by Plaintiff's expert appraiser Scott Dugan proves that Plaintiff is the record owner of the Property pursuant to a Deed recorded January 13, 2014. In addition, the appraisal indisputably shows Mr. Dugan estimated the monthly market rent to be $1,050.00.

133. In this case, there was no contract between Plaintiff and Defendant Chersus. It is well established that a court will imply a quasi-contract to grant unjust enrichment where there is no legal contract but the person sought to be charged is in possession of property which in good conscience and justice should not be retained. *Lease Partners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975,* 113 Nev. 747, 756 (1997). Further, in *Asphalt Prods. Corp. v. All Star Ready Mix,* 111 Nev. 799 (1995), the Nevada Supreme Court determined that the seller prevailed on its claim for unjust enrichment. As a result, the court compelled the buyer to pay the reasonable rental value for use of the tractor after the buyer failed to obtain financing according to an unenforceable sales agreement.

134. Accordingly, this Court imposes a quasi-contract upon Plaintiff and it compels Plaintiff to pay Defendant Chersus the reasonable rental value of the property as established by Plaintiff's expert's appraisal.

135. In addition to payment for the reasonable rental value of the property, Plaintiff is liable to Defendant Chersus because Plaintiff was unjustly enriched by any improvements that Defendant Chersus made to the Property.

136. There appear to be genuine issues of material dispute regarding the amount of any improvements made by Defendant Chersus. Accordingly, the Court shall conduct a separate evidentiary hearing to determine any amounts Plaintiff may owe to Defendant Chersus for improvements that Chersus made to the Property.

H. THE HOA IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

137. The Findings of Fact set forth above, and the Conclusions of Law vis-à-vis Plaintiff and Defendant Chersus, also demonstrate the HOA is entitled to judgment as a matter of law.

1. Injunctive Relief

138. Ocwen asserts a cause of action for a preliminary and permanent injunction against the HOA seeking an order prohibiting Defendant Chersus from selling, transferring or encumbering the Property.

139. The HOA has never claimed an ownership interest in the Property and the allegations in this cause of action are not directed at the HOA.

140. Moreover, a request for injunctive relief by itself does not state a cause of action. *Jensen v. Quality Loan Serv. Corp*, 702 F. Supp. 2d 1183, 1201 (E.D. Ca. 2010). Accordingly, the Court dismisses with prejudice Ocwen's Cause of Action for Injunctive Relief pursuant to NRCP 12(b)(5) for failure to state a cause of action.

2. Wrongful Foreclosure

141. Ocwen alleges the HOA wrongfully foreclosed based on the following contentions: (a) the HOA did not comply with mailing and notice requirements; (2) the HOA foreclosure sale "violated applicable law;" and (3) the HOA foreclosure sale was not commercially reasonable.

142. As is stated in the Findings of Fact and in the Conclusions of Law supporting the Court's Order granting summary judgment in favor of Chersus, each of Ocwen's contentions fail as a matter of law. The Court again finds (1) that the HOA Sale was properly noticed pursuant to NRS Chapter 116, (2) that the HOA Sale was properly conducted pursuant to NRS Chapter 116, (3) that no other interest party at the time of the HOA Sale tendered the superpriority amount of the HOA's lien before the HOA Sale, (4) that the HOA was authorized to foreclose at the time of the HOA Sale. Thus, the HOA is entitled to summary judgment on Ocwen's cause of action for wrongful foreclosure.

3. Negligence and Negligence Per Se

143. As a preliminary matter, the Court notes that "negligence per se" is not an independent cause of action separate from the negligence claim but a legal theory affecting the standards of the

negligence claim. *US Bank, N.A. v. SFR Investments Pool I, LLC*, 3:15-CV-00241-RCJ-WGC, 2017 WL 2991359, at *1 (D. Nev. July 12, 2017). Accordingly, the Court addresses Ocwen's negligence and negligence per se causes of action as one negligence claim.

144. To prevail on a claim for negligence, a plaintiff adduce evidence that shows: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injuries; and (4) the plaintiff suffered damages. *Sadler v. PacifiCare of Nev., Inc.*, 340 P.3d 1264, 1267 (Nev. 2014).

145. With regard to its cause of action for negligence, Ocwen alleged: (a) the HOA owed a duty to Plaintiff to conduct the HOA Sale properly and in a manner that allowed them an opportunity to cure the super-priority lien; (b) the HOA breached its duty; (c) the breach was a proximate cause of damages; and (d) Ocwen suffered damages.

146. In its Motion for Summary Judgment, the HOA argued: (1) it did not owe a duty to Ocwen; (2) Ocwen produced no evidence that HOA breached any purported duty to Ocwen; and (3) any negligence claim Ocwen may have was barred by the economic loss doctrine. Ocwen disputed that its claim was barred by the economic loss doctrine.

147. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court determined that the HOA Sale was properly noticed and conducted pursuant to NRS 116.Assuming, *arguendo,* that the HOA did owe a duty to Ocwen, there is no evidence that the HOA breached its duty, or engaged in any other type of negligent action. Thus, the Court grants the HOA's motion for summary judgment as to Ocwen's causes of action for negligence and negligence per se.

4. Breach of Contract

148. Ocwen alleged it was an intended beneficiary of the HOA's CC&Rs and the HOA breached the CC&Rs by the circumstances under which they conducted the HOA Sale.

149. In its Motion for Summary Judgment, the HOA contended it did not breach the CC&Rs based on the Nevada Supreme Court's decision in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-58, 334 P.3d 408, 419 (2014); where the Court recognized that NRS 116.1104 overrules mortgage protection clauses contained in CC&Rs. *See also* NRS 116.1104 (stating that

NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as provided by the statute)."

150. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court has determined that the Nevada Supreme Court's holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. 742, 757-58, 334 P.3d 408, 419 (2014), applies to this case, and as a result, the provisions of NRS Chapter 116 cannot be varied or waived by the CC&Rs. Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for breach of contract.

5. Negligent Misrepresentation

151. As to Negligent Misrepresentation, Ocwen alleged: (1) the HOA should have known that Ocwen would rely on the representations contained in the Mortgagee Protection Clause in the CC&Rs; (2) it justifiably relied on the representations contained in the Mortgagee Protection Clause in giving consideration for the Deed of Trust; (3) the HOA's representations about the Mortgagee Protection Clause were false; (4) the HOA knew, or should have known the representations in the CC&RS, including the Mortgagee Protection Clause, were false; (5) the HOA had a pecuniary interest in having Plaintiff rely on the CC&Rs, including the Mortgagee Protection Clause; and (6) the HOA failed to exercise reasonable care or competence in communicating the information within the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

152. In its Motion for Summary Judgment, the HOA argued Ocwen's misrepresentation claim was barred by the economic loss doctrine. The HOA also argued the claim failed as a matter of law because NRS 116.1104 clearly and unambiguously states that NRS Chapter 116 provisions cannot be varied by agreement. Thus, Ocwen did not, and could not have, justifiably relied on any misrepresentations related to the Mortgagee Protection Clause. Ocwen disputed that its claim was barred by the economic loss doctrine. Ocwen also argued that based on *ZYZZX2 v. Dizon, supra,* it had set forth a viable claim for misrepresentation.

153. As is stated in the Findings of Fact and in the Conclusions of Law that support the Court's Order granting summary judgment in favor of Chersus, the Court has determined that the Nevada Supreme Court's holding in *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-

58, 334 P.3d 408, 419 (2014), applies to this case. As a result, the Court holds the provisions of NRS Chapter 116 cannot be varied or waived by the CC&Rs. Thus, Ocwen did not, and could not have, justifiably relied on any misrepresentations related to the Mortgagee Protection Clause. Accordingly, the Court grants the HOA's motion for summary judgment as to Ocwen's claim for misrepresentation.

6. Unjust Enrichment

154. As to its Cause of Action for Unjust Enrichment, Plaintiff alleged: (a) it has been deprived of the benefit of its secured deed of trust by the actions of the HOA; (b) the HOA benefitted from the unlawful HOA Sale, and (c) the HOA benefitted from Plaintiff's payment of property taxes, insurance premiums, or homeowner's association assessments.

155. The HOA contended it Motion for Summary Judgment should be granted because Ocwen did not pay any money to it; and it did not unjustly retain money owed to Ocwen.

156. Based on the HOA's and Ocwen's briefing on the HOA's motion for summary judgment, and the argument at the MSJ Hearing, the Court holds that the HOA did not benefit from the Ocwen's payment of taxes, insurance premiums, or homeowner's association assessments. First, any property taxes paid by Ocwen were not paid to the HOA and the HOA did not benefit from Ocwen's payment of property taxes because the HOA was not the property owner. Second, at the hearing, the Court asked Ocwen's counsel to explain how the payment of insurance premiums benefited the HOA. Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property. However, it is undisputed that the HOA did not own the Property.

157. Finally, based on its purported purchase of the Property at the Deed of Trust Foreclosure, Ocwen obtained possession of the Property, and it was identified as the record owner of the Property. While it was the record owner of the Property, and while it held possession of the Property, it was in Ocwen's interest to pay the property taxes, insurance premiums and homeowner's association assessments. Consequently, the HOA was not unjustly enriched by Ocwen's payment of property taxes, insurance premiums and homeowner's association assessments. Thus, the HOA's motion for summary judgment as to Ocwen's unjust enrichment cause of action must be granted.

158. If any Conclusion of Law set forth herein is determined to properly constitute a Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

7. Tortious Interference with Contractual Relations

159. To prevail on a claim for tortious inference with contractual relations, Ocwen must demonstrate that: "(1) a valid and existing contract; (2) the [HOA's] knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." J.J. Indus., LLC v. Bennett, 71 P.3d 1264, 1267 (Nev. 2003).

160. Ocwen argues that the HOA's decision to foreclose on the Property was designed to disrupt the contractual relationship between [Ocwen] and the borrower by extinguishing the senior deed of trust.

161. The Court finds that Ocwen cannot demonstrate any motive by the HOA to interfere. The borrower breached the contract with Ocwen well before the HOA Sale. Thus, the HOA did not induce the borrower to breach. There is also no actual disruption because the borrower had already breached the contract.

162. The Court further finds that the HOA Sale in no way prevented Ocwen from taking legal action against the borrower for her breach of the note. Ocwen could have pursued its own foreclosure before the HOA Sale and the HOA Sale did not preclude Ocwen from taking other legal action against the borrower for breaching her contract with Ocwen.

163. The Court finds that HOA Sale did not cause Ocwen any harm. Rather, Ocwen caused any purported harm by failing to tender the superpriority portion of the lien or to take any other affirmative action to protect its interest. If the deed of trust was extinguished by the foreclosure sale, then any harm stems entirely from the inaction of Ocwen and its predecessors, not the HOA.

164. The Court, therefore, grant summary judgment in favor of the HOA on Ocwen's tortious interference claim.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT HEREBY ORDERS AS FOLLOWS:

1. Ocwen's Motion for Summary Judgment is DENIED;

2. The HOA's Motion for Summary Judgment is GRANTED;

3. Chersus's Oral Motion, made at the MSJ Hearing, to Dismiss Its Counterclaim for Slander of Title with Prejudice is GRANTED;

4. Chersus's Motion for Summary Judgment is GRANTED as follows:

A. An Order shall be entered granting Judgment in favor of Chersus and dismissing Ocwen's Second Amended Complaint against Chersus.

B. An Order shall be entered granting Judgment in favor of Chersus as to its Counterclaims for Quiet Title and Declaratory Relief. The Order granting Judgment in favor of Chersus shall provide that: (1) Chersus is the undisputed owner of the Property, (2) Chersus is the holder of "fee simple" title to the Property; (3) the Property is not subject to the Deed of Trust; and (4) the Deed of Trust was extinguished by the HOA Sale.

C. An Order shall be entered granting partial summary judgment in favor of Chersus, as to liability only, with respect to Chersus's Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and Unjust Enrichment.

D. Within 30 days of the Notice of Entry of this Order, Chersus shall file an Application for a Prove-Up Hearing as to the amount and types of damages to be awarded to Chersus with respect to its Counterclaims for Wrongful Foreclosure, Trespass and Conversion, and Unjust Enrichment.

E. Within 45 days of the Notice of Entry of this Order, Chersus shall file its Memorandum of Costs, and Motion for Attorney's Fees.

5. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed

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against the Property under any of the Deed of Trust has been extinguished.

IT IS SO ORDERED.

DATED this 2 day of MAY, 2019

DISTRICT JUDGE

Submitted by:

THE LAW OFFICE OF VERNON NELSON

By: */s/ Vernon Nelson*

VERNON NELSON, ESQ.
Nevada Bar No.: 6434
9480 S. Eastern Avenue, Suite 252
Las Vegas, NV 89123
Tel: 702-476-2500
Fax: 702-476-2788
E-Mail: vnelson@nelsonlawfirmlv.com
Attorney for Defendant Chersus Holdings, LLC

A-14-696357C

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC *v.* CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I, Jennifer Martinez, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC, 9480 S. Eastern Avenue, Suite 252, Las Vegas, Nevada 89123. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On ~~March 19~~ May 9, 2019, I served the following document(s):

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

on the interested party(ies) in this action as follows:

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
Brody Wight .	bwight@kochscow.com
Kristin Schuler-Hintz .	dcnv@mccarthyholthus.com
NVEfile .	nvefile@wrightlegal.net
Paralegal .	bknotices@nv-lawfirm.com
Staff .	aeshenbaugh@kochscow.com
Steven B. Scow .	sscow@kochscow.com
Thomas N. Beckom .	tbeckom@mccarthyholthus.com

X☐ By Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Jennifer Martinez
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

EXHIBIT 1

Jennifer Martinez

From: Vernon Nelson
Sent: Friday, April 5, 2019 7:13 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL- EX I

Paterno- Separately, I disagree with Dana's comment that the Order should state who the notices were sent to. That is not consistent with our argument that the recitals establish that these requirements were met and it is not consistent with Judge Early's ruling.

Vernon

1. Thus, the Court finds Red Rock sent the Lien for Delinquent Assessment Notices and the Notice of Default and Election to Sell in accordance with NRS Chapter116.

From: Vernon Nelson <vnelson@nelsonlawfirmlv.com>
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani <pjurani@wrightlegal.net>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Paterno-

Sorry for the delay. I have attached the transcript.

With respect to the issue about Trespass being raised at the MSJ, please refer to pp. 43-44 of the transcript. At lines 4-5 is where I repeated that the brief argued that the Conversion claim should have been labeled as Trespass and Conversion...however, there was a lot of back and forth and Judge Early and I were talking over each other. I had started talking about trespass, and she cut me off and started distinguishing conversion.

1. Trespass and Conversion.

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With respect to

Ocwen's counsel stated the payment of insurance premiums benefited the HOA because the HOA owned the Property

At pp. 54-55, the Judge is asking Dana to explain the unjust enrichment claim. On page 55 at lines 13-24 he explains how the HOA benefited and he includes the payment of insurance premiums.

From: Paterno Jurani <pjurani@wrightlegal.net>
Sent: Tuesday, March 26, 2019 1:50 PM
To: Vernon Nelson <vnelson@nelsonlawfirmlv.com>; Ashlie Surur <ASurur@lawhjc.com>
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi Vernon, Ashlie,

Attached is the order with Dana's changes and comments. There are a couple of paragraphs that reference his comments at the hearing. Could you please provide us with the transcript and identify where the comments were made. Alternatively, please identify the time stamp as we have video of the hearing. Thanks.

Paterno C. Jurani, Esq.
Attorney
Licensed in Nevada and California

WRIGHT FINLAY & ZAK LLP
ATTORNEYS AT LAW

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Wright, Finlay & Zak: Your Western Regional Counsel for California, Nevada, Arizona, Washington, Oregon, Utah and New Mexico

Certified WBENC Women's Business Enterprise

From: Vernon Nelson [mailto:vnelson@nelsonlawfirmlv.com]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Ashlie Surur; Paterno Jurani; Dana J. Nitz
Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL

Hi All- Hope you are well. I apologize for the delay in getting his out. We had some turnover and Steve Burke, Coreene Drose, and Julie Hall are no longer with the firm. Jennifer Martinez is our new Legal Assistant. Pls cc Jennifer and Michelle on a communications.

I have a attached a draft of proposed Findings of Fact and Conclusions of Law.

Please review and let me know if you have any comments/changes. If you do have changes, please use the track changes feature in Word. Please do not send a list of changes for our staff to type into the document. Unfortunately, we stretched a little to thin to do that work.

Kind regards,

Vernon

EXHIBIT 2

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From: Vernon Nelson
Sent: Friday, April 5, 2019 7:09 PM
To: Paterno Jurani; Ashlie Surur
Subject: RE: Ocwen v. Chersus; A-14-696357-C - Proposed FFCL-EX II

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Paterno C. Jurani, Esq.
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Licensed in Nevada and California

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Certified WBENC Women's Business Enterprise

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Cc: Michelle Adams; Alexandria Raleigh; Jennifer Martinez
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Kind regards,

Vernon

MRCN
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
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pjurani@wrightlegal.net
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Case No.: A-14-696357-C
Dept. No.: IV

OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

[Hearing Requested]

Counter-Defendants.

COMES NOW Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC (hereinafter "Ocwen"), by and through its attorneys of record, Dana Jonathon Nitz, Esq. and Paterno C. Jurani, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60 ("Motion").

This Motion is based upon EDCR 2.24, N.R.C.P. 60(b), N.R.C.P. 59(e), the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and on any oral or documentary evidence that may be submitted at a hearing on the matter.

DATED this 11th day of June, 2019.

WRIGHT, FINLAY & ZAK, LLP

/s/ Paterno C. Jurani, Esq.
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Paterno C. Jurani, Esq.
Nevada Bar No. 8136
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On or about January 22, 2019, a hearing was held on the parties' competing Motions for Summary Judgment. On May 7, 2019, this Court entered its Order granting Summary Judgment in favor of Chersus Holdings, LLC ("Chersus") and Southern Terrace Homeowners Association (the "HOA") ("Order"), relying on the Nevada Supreme Court's ruling in *West Sunset*.[1] On March 14, 2019, the U.S. District Court, Nevada, issued an order in *BONY v. Christopher Communities HOA* which, like this case, involved an agreement between the HOA

[1] Although the Notice of Entry of Order was filed on May 7, 2019, it was not served until May 14, 2019.

and First 100, LLC ("First 100"). The U.S. District Court's ruling adroitly explains why this Court should not have relied on *West Sunset* in granting summary judgment in favor of Chersus and the HOA. This Court should rule that the HOA Sale was commercially unreasonable, not because of the existence of a "factoring agreement," but because the sale price was intentionally suppressed.

In addition, *West Sunset* is distinguishable in material regards. In *West Sunset*, the factoring agreement, "the sale of accounts receivable of a firm to a factor at a discounted price," was an approved financing arrangement. But, there, the Nevada Supreme Court approved the arrangement because the factoring agreement obliged the HOA, through its agent, to continue its collection efforts on the past-due assessments, and instructed the agent to remit all payments directly to First 100, whereas, here, the HOA **completely** relinquished its right to foreclose to First 100. Furthermore, *West Sunset* is a case about the homeowners' association's standing to foreclose, not about the commercial unreasonableness of the HOA Sale. As such, Ocwen respectfully requests that its Motion for Reconsideration be granted in its entirety.

II. UNDISPUTED FACTS REGARDING THE PURCHASE AND SALE AGREEMENT BETWEEN FIRST 100 AND THE HOA

1) On April 23, 2013, the HOA entered unto a "Purchase and Sale Agreement" ("PSA") with First 100 and United Legal Services, Inc. ("ULS") wherein First 100 purchased the right to receive future monies related to the Property, referred to as "Proceeds on Past Income" or "PPI," from the HOA for $1,208.28.[2]

2) The PSA included the following terms:

   a. The HOA sold its interest in the delinquent assessments to First 100 and agreed to cease all collection efforts on them. (PSA, paras. 2.01 and 4.02(h))[3]

   b. Whatever rights the HOA had to pursue collection of the delinquency on the Property passed to First 100 and whatever collection efforts were undertaken were

[2] *See* Purchase and Sale Agreement, included in **Exhibit 6** attached to Ocwen's MSJ, at WFZ0060-72.
[3] *Id*. at WFZ061 and WFZ0065, respectively.

solely at First 100's expense. (PSA, paras. 3.02(a); 3.04 (c); (g)-(h))[4]

c. The HOA relinquished to First 100 its right to use any other collection company for the delinquent assessments sold under the PSA. (PSA, para. 3.02(a))[5]

d. ULS and the HOA were required to turn over any collections related to the delinquency to First 100, instead of the HOA, after any offsets or costs were paid. (PSA, paras. 3.04(i) and 4.02(a))[6]

e. Collections included payments made pre-foreclosure by the homeowner, lender, or interested third party, via a foreclosure sale conducted pursuant to NRS 116.3116 et seq., or through post-lender foreclosure lien satisfaction. (PSA, Recitals, p. 1)[7]

f. The opening bid at any subsequent foreclosure sale was set at $99, and ULS was prohibited from bidding any higher. (PSA, Section 3.02(l))[8]

g. After the PSA was executed, the HOA had no responsibility to pay ULS's fees and costs. Rather, First 100 was required to pay ULS all of the costs related to the collection and the foreclosure sale under a set schedule of fees. (PSA, paras. 3.03(c), (e); 3.04(a))[9]

h. First 100 was required to pay all of the collection costs charged by the previous collection company, Red Rock, before the PSA was executed. (PSA, para. 3.03(c))[10]

i. After the sale, the auction costs would be deducted and the net would be remitted to First 100. (PSA, para. 3.04(i))[11]

3) First 100 purchased the HOA's lien by paying the HOA $1,208.28 on or about June 27,

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[4] *Id*. at WFZ062 and WFZ0064-65, respectively.
[5] *Id*. at WFZ062.
[6] *Id*. at WFZ065.
[7] *Id*. at WFZ060.
[8] *Id*. at WFZ063.
[9] *Id*. at WFZ064.
[10] *Id*.
[11] *Id*. at WFZ065.

2013.[12]

III. LEGAL STANDARD UPON RECONSIDERATION

Pursuant to EDCR 2.24(b), a motion for reconsideration of a ruling, other than one based on N.R.C.P. 50(b), 52(b), 59 or 60, must be filed "within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." Pursuant to N.R.C.P. 59(e), the Court should grant relief where "(1) **the motion is necessary to correct manifest errors of law or fact upon which the judgment is based**; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law." *See Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003)(emphasis added);[13] *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 ("Among the "basic grounds" for a Rule 59(e) motion are "correct[ing] manifest errors of law or fact," "newly discovery or previously unavailable evidence," the need "to prevent manifest injustice," or "change in controlling law." (emphasis added) (citing *Coury v. Robison*, 115 Nev. 84, 124-127, 976 P.2d 518)); see also *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.2000). "There may also be other, highly unusual, circumstances warranting reconsideration." *School Dist. No 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). A district court may consider a motion for reconsideration under N.R.C.P. 60 even if untimely under N.R.C.P. 59(e). *Adams v. Quilici*, 126 Nev. 688, 367 P.3d 743 (2010) (unpub.)

Summary judgment is proper where "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,*

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[12] *See* Excerpts of Documents Produced by the HOA, a true and correct copy of which is attached to Ocwen's MSJ as **Exhibit 13**, at HOA-15.

[13] "The Nevada Supreme Court considers federal law interpreting the Federal Rules of Civil Procedure, 'because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Barbara Ann Hollier Trust v. Shack*, 356 P.3d 1085, 1089 (Nev. Aug. 6, 2015) (quoting *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 782, 786 (2002)).

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)).

After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must produce evidence upon which a jury could reasonably base a verdict in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment must be granted if "the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1220 (9th Cir. 1995).

Here, this Court should not have relied upon the Nevada Supreme Court's ruling in *West Sunset*, a case about the homeowners' association's standing to foreclose, because the Supreme Court did not address the impact of the "factoring agreement's" provisions on the sale price.[14] First 100, ULS, and the HOA intentionally suppressed the sales price of the Property, rendering the sale commercially unreasonable. As such, Ocwen is entitled to judgment as a matter of law on its claim to quiet title.

IV. LEGAL ARGUMENT

A. THIS COURT SHOULD NOT HAVE RELIED ON THE NEVADA SUPREME COURT'S RULING IN *WEST SUNSET* IN GRANTING SUMMARY JUDGMENT IN FAVOR OF CHERSUS AND THE HOA.

In Ocwen's Motion for Summary Judgment ("Ocwen's MSJ") and Reply ("Ocwen's Reply"), Ocwen argued that the undisputed facts show that the HOA and First 100 agreed in April of 2013, one month prior to the date of the HOA Sale, for First 100 to pay, and for the

[14] Ocwen disagrees that the PSA is a factoring agreement, and ULS testified that the PSA is not a factoring agreement. *See* Deposition of United Legal Services, 22:18 – 23:3. However, the Court found the PSA was akin to a factoring agreement. Order at ¶53.

HOA to accept, an amount exceeding nine months worth of assessments.[15] First 100 paid the HOA $1,208.28, an amount far exceeding the superpriority amount of $657.00.[16] Accordingly, the superpriority lien was discharged by this agreement and the Deed of Trust was not extinguished by the alleged "foreclosure" conducted by ULS. Further, in its Reply, Ocwen explained why the Nevada Supreme Court's ruling in *West Sunset*[17] is distinguishable from the instant case.

This Court relied on *West Sunset* in granting Chersus's and the HOA's motions for summary judgment, repeatedly referring to the case in support of the finding that the HOA Sale was valid. In *West Sunset*, the Supreme Court analogized the PSA to a "factoring agreement," and determined the "factoring agreement" did not change the fact that the property owner remained indebted to the HOA. Order at ¶80. Based on the holding in *West Sunset*, this Court concluded that First 100's payment to the HOA, pursuant to the PSA, did not affect the HOA Lien in any way; and it did not extinguish the superpriority portion of the HOA Lien. Order at ¶82.

1. This Court should find the HOA Sale was Commercially Unreasonable, not because of the Existence of a "Factoring Agreement," but because the Sale Price was Intentionally Suppressed.

On March 14, 2019, the U.S. District Court, Nevada, issued an order in *Bank of New York Mellon v. Christopher Communities at S. Highlands Golf Club Homeowners Ass'n*, No. 217CV1033JCMGWF, 2019 WL 1209082 (D. Nev. Mar. 14, 2019) ("*Christopher Communities*"). Ocwen respectfully submits that the ruling in *Christopher Communities* is instructive as to why *West Sunset* should not be relied upon by this Court. In *Christopher Communities*, the court granted summary judgment in favor of Bank of New York ("BONY") on its quiet title claim, finding that the purchasers of the property, the Lahrs, took subject to BONY's deed of trust. The court found the foreclosure sale to be commercially unreasonable on two grounds: (1) that the subject property was governed by CC&R's which contained a

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[15] Ocwen incorporates its Motion for Summary Judgment and Reply herein by reference.
[16] *See* Ocwen's MSJ at p. 11:5 – 12:6.
[17] *West Sunset 2050 Trust v. Nationstar Mortg., LLC*, 420 P.3d 1032 (June 2018) ("*West Sunset*").

mortgage protection clause; and (2) because the homeowners' association, Christopher Communities, had entered into a "factoring agreement" with First 100, which, in part, led to First 100 being the only bidder at the foreclosure sale, purchasing the property for $151. *Id*. at *1.

In *Christopher Communities*, like this case, the "factoring agreement" provided that First 100 would purchase the delinquency owed to the HOA from the HOA for a discounted price. *Id.* Under the agreement, the HOA would retain its lien interest, but sold its interest in receivables arising from or related to the lien in exchange for nine months of unpaid assessments. *Id.* The HOA agreed to not negotiate or impair the value of the account upon which the lien was based. *Id.* The HOA promised that it would not send anyone to the foreclosure sale to bid "'in any amount in excess of the Opening Bid' of $99. *Id.* Per the purchase and sale agreement, [Red Rock Financial Services] was removed as Christopher Communities' agent and replaced with Kupperlin.[18] *Id.* Kupperlin was instructed not to postpone any foreclosure sale, even if few or no bidders were present. *Id.*

Based on the Supreme Court's ruling in *West Sunset*, the Lahrs filed a motion for reconsideration. *Id*. at *2. In denying the motion for reconsideration, the court noted that, while *West Sunset* supports the proposition that the existence of a "factoring agreement" does not necessarily render a foreclosure sale invalid, the "factoring agreement" was not the sole basis for the court's finding of commercial unreasonableness. *Id*. at *3. The court further noted that the Nevada Supreme Court did not address certain promises or provisions of the "factoring agreement" that were at issue: specifically, Christopher Communities' promise that it would not send anyone to the foreclosure sale to bid in an amount in excess of the opening bid of $99, or its instruction to Kupperlin not to postpone any foreclosure sale, even if few or no bidders were present. *Id.* The court noted that summary judgment was granted because the intentional suppression of the sale price of the property at the sale rendered the sale commercially

[18] *See* Excerpts of Transcript of Deposition of United Legal Services, at 37:20 – 39:11, attached to Ocwen's MSJ as **Exhibit 12**. Mr. Atkinson testified that Kupperlin was another law firm of his that handled the first batch of homeowners' association properties that were run through a purchase and sale agreement.

unreasonable. *Id.* The court had held not that the ***existence*** of the "factoring agreement" rendered the sale commercially unreasonable, but rather that the ***effect*** of certain provisions of the agreement and the promises made by Christopher Communities and Kupperlin prior to the sale rendered the foreclosure sale commercially unreasonable. *Id.*

Here, like in *Christopher Communities*, the HOA Sale was rendered commercially unreasonable not because of the existence of the PSA, but because its provisions intentionally suppressed the sale price. Here, as in *Christopher Communities*, the HOA promised that it would not send anyone to the HOA Sale to bid "in any amount in excess of the Opening Bid" of $99. The PSA provides for the opening bid of $99, and that ULS was prohibited from bidding any higher.[19] The PSA further provides, "That for all foreclosure sales, [the HOA] shall not send any person or agent to credit bid for or on behalf of the [HOA] on any Parcel in any amount in excess of the Opening Bid."[20]

Further, it is clear from the deposition testimony of ULS that the HOA Sale would not be postponed, even if few or no bidders were present. In *Christopher Communities*, the court noted that Christopher Communities instructed Kupperlin not to postpone any foreclosure sale, even if few or no bidders were present. *Christopher Communities*, at *3. Here, the HOA's N.R.C.P. 30(b)(6) witness did not become a member of the board until after the HOA Sale and, thus, repeatedly expressed a lack of knowledge of the agreement with First 100 and ULS.[21] However, ULS testified that when a property sold for a minimal amount, it always sold to First 100.[22] Specifically, ULS testified that every time a property sold for $100, it was purchased by First 100, confirming that sales were not postponed, despite few or no bidders being present. *Id.*

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[19] *See* Purchase and Sale Agreement, included in **Exhibit 6** attached to Ocwen's MSJ, at Section 3.02(l), "Places with the [ULS] a pre-set opening credit bid for [HOA] of ninety-nine dollars ($99.00) for each Parcel *("Opening Bid"),* and authorizes [ULS] to open the auction for any Parcel with the Opening Bid, and not to bid any higher;" (emphasis in original).

[20] *Id*. at Section 4.02(i).

[21] *See* Excerpts of Transcript of Deposition of HOA, at12: 12-18, attached to Ocwen's MSJ as **Exhibit 7**.

[22] *See* Excerpts of Transcript of Deposition of United Legal Services, at 81:12 – 82:1, attached to Ocwen's MSJ as **Exhibit 12.**

As noted in *Christopher Communities*, the Supreme Court in *West Sunset*, which was a case about the homeowners' association's standing to foreclose, did not address the impact of the "factoring agreement's" provisions on the sale price. The PSA, the minimal opening bid of $99, the HOA's promise not to bid in excess of the opening bid, and ULS's practice of moving forward with the sale despite a lack of bidders, resulted in the sale of the Property at an unreasonably low price of only $3,500.[23] The sale price of $3,500 represents a mere **2.36%** of the undisputed fair market value of the Property value of $148,000, pursuant to the report of Ocwen's expert witness, R. Scott Dugan.[24] Consequently, this Court should not have relied on *West Sunset* in granting summary judgment in favor of Chersus and the HOA, and Ocwen's Motion for Reconsideration should be granted.

B. BECAUSE THE SALE WAS COMMERCIALLY UNREASONABLE, CHERSUS IS NOT ENTITLED TO SUMMARY JUDGMENT ON ITS COUNTERCLAIMS.

The Court further found that when GMAC Mortgage, LLC exercised the power of sale and foreclosed, its Deed of Trust had been extinguished by the foreclosure sale. Order at ¶109. The Court found that there is no dispute that GMAC Mortgage, LLC and Ocwen knew that after the HOA Sale: (1) GMAC Mortgage, LLC had no interest in the Property; (2) GMAC Mortgage, LLC had no authority whatsoever to authorize the foreclosure or exercise the power of sale that had been extinguished by the HOA Foreclosure sale; (3) GMAC Mortgage, LLC had no authority to convey the Property to Ocwen; and (4) Ocwen had no right or authority to take possession of the Property. *Id*. Thus, the Court found that the authorization of the foreclosure sale, the exercise of the power of sale, the sale to Ocwen, and Ocwen's taking possession of the Property was clearly wrongful and Chersus was entitled to summary judgment on its wrongful foreclosure claim as a matter of law. Order at ¶110.

As argued above, and in Ocwen's MSJ and Reply, the HOA Sale was invalid because the payment by First 100 extinguished the superpriority lien, and the sale was commercially

[23] *See* Receipt of Sale, attached to Ocwen's MSJ as **Exhibit 11**; *see also* Deposition of United Legal Services, 63:4-10, attached to Ocwen's MSJ as **Exhibit 12**.
[24] *See* Ocwen's Initial Disclosure of Expert Witness, attached to Ocwen's MSJ as **Exhibit 22**.

unreasonable because the PSA intentionally suppressed the sale price. Because the HOA Sale was not valid, Chersus is not entitled to summary judgment on its counterclaims against Ocwen.

V. CONCLUSION

This Court should not have relied on *West Sunset*, in granting summary judgment in favor of Chersus and the HOA. In *West Sunset*, a case about the HOA's standing to foreclose, the Nevada Supreme Court does not address the impact of provisions of the "factoring agreement" on the sales price. The HOA Sale was commercially unreasonable, not because of the existence of a "factoring agreement," but because the sale price was intentionally suppressed. As such, Ocwen respectfully requests that its Motion for Reconsideration be granted in its entirety, with the result that Summary Judgment in favor of Buyer is removed and replaced with a Summary Judgment in favor of Ocwen.

DATED this 11th day of June, 2019.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 11th day of June, 2019, I did cause a true copy of **OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C

Dept No.: 4

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter came before the Court on October 21, 2019 on Plaintiff's Motion to Alter or Amend Judgment and for Reconsideration pursuant to NRCP 59 and 60 ("Motion for Reconsideration") filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019 and a Notice of Supplemental Authority on September 6, 2019

Having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, the court hereby enters is decision.

COURT FINDS that NRCP 59(e) states that a motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

COURT FINDS that NRCP 59(e) states that the 28-day time periods specified in this rule cannot be extended under Rule 6(b).

COURT FINDS that here, the Notice of Entry of the Judgment in question, the Findings of Fact, Conclusions of Law and Order granting summary judgment for Defendants Chersus Holdings, LLC and Southern Terrace Homeowners Association, was entered on May 6, 2019.

COURT FINDS that Plaintiff's Motion to Alter or Amend Judgment was filed on June 11, 2019, 36 days after the Judgment was entered.

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THEREFORE, Plaintiff's Motion is DENIED.

DATED this 29 day of October, 2019.

DISTRICT COURT JUDGE

Respectfully submitted,

DATED this 28th day of October, 2019

THE LAW OFFICE OF VERNON NELSON

By _____

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A-14-696357-C

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DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

OCWEN LOAN SERVICING, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S OCTOBER 30, 2019 ORDER PURSUANT TO NRCP 59 AND 60

[Hearing Requested]

COMES NOW Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC (hereinafter "Ocwen"), by and through its attorneys of record, Dana Jonathon Nitz, Esq. and Paterno C. Jurani, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60 ("Motion").

This Motion is based upon EDCR 2.24, NRCP 60(b), NRCP 59(e), the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and on any oral or documentary evidence that may be submitted at a hearing on the matter.

DATED this 18th day of November, 2019.

WRIGHT, FINLAY & ZAK, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court denied Ocwen's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60, filed on June 11, 2019 ("Ocwen's Prior Motion"), finding that, "NRCP 59(e) states that the 28-day time periods specified in this rule cannot be extended under Rule 6(b)." However, Ocwen did not argue NRCP 6(b), as no excusable neglect is alleged by Ocwen under Rules 6(b) or 60(b). Instead, this Court overlooked a material, dispositive, procedural fact: Chersus Holdings, LLC ("Chersus") simply did not serve the Notice of Entry of Order until May 14, 2019, and the Court's ruling was based on Chersus's misrepresentation of its date of service of notice of entry of the prior order. Had

the court not overlooked this material fact, Ocwen's Prior Motion for reconsideration was timely and should have been granted.

Further, the Court's Minute Order does not address the questions of fact and law of proper service of the Notice of Entry or Order. This motion is thus necessary to correct manifest errors of law or fact upon which the judgment is based and to prevent manifest injustice. For example, although Chersus should have been able to look at the court's system and obtain a screenshot that service was proper, it did not. Nor did Chersus explain why, if service was proper, it served it a second time.

The Court did not rule on what was the actual operative date from which the deadline pursuant to NRCP 59(e) began to run, or whether the date on the Proof of Service was used even in the face of proof that it was not actually served on that date. Consequently, Ocwen respectfully requests that this Court reconsider its October 30, 2019 Order Denying Plaintiff's Motion for Reconsideration to correct manifest errors of law or fact and to prevent manifest injustice.

II. FACTS AND PROCEDURAL HISTORY

On May 6, 2019, Chersus filed the Findings of Fact, Conclusions of Law and Order in this matter. On May 7, 2019, Chersus filed the Notice of Entry of Order. However, the Notice of Entry of Order was not served to Ocwen on that date. It was not actually served until May 14.

On May 13, 2019, having received the Order and anticipating the filing of a motion for reconsideration, counsel for Ocwen reviewed the docket and discovered that a Notice of Entry of Order had been *filed* on May 7, 2019. [1] As a result, counsel searched his email for service of the Notice of Entry of Order, but found none. *Id.* Additionally, counsel requested that his firm's support staff determine whether they had been served with the Notice of Entry of Order. *Id.* No evidence of service was found. *Id.*

On May 14, 2019, counsel for Ocwen called Chersus's counsel regarding the Notice of Entry of Order and spoke to support staff, believed to be Jennifer Martinez. *Id.* Ms. Martinez advised that she was having issues with her computer, and that she would look into the issue.

[1] *See* Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.

Id. Counsel immediately followed up with an email to Chersus's counsel.[2] Counsel received no further response from Chersus's counsel or support staff.[3] Later that day, the operative Notice of Entry of Order was served.[4] Notably, the notice is stamped at the top, "ELECTRONICALLY SERVED 5/14/2019 11:56 AM," while the prior Notice of Entry of Order contains no such date and time stamp. *Id.*

III. LEGAL STANDARD UPON RECONSIDERATION

Pursuant to EDCR 2.24(b), a motion for reconsideration of a ruling, other than one based on NRCP 50(b), 52(b), 59 or 60, must be filed "within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." Pursuant to NRCP 59(e), the Court should grant relief where "(1) **the motion is necessary to correct manifest errors of law or fact upon which the judgment is based**; (2) the moving party presents newly discovered or previously unavailable evidence; (3) **the motion is necessary to prevent manifest injustice**; or (4) there is an intervening change in controlling law." *See Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003)(emphasis added);[5] *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 ("Among the "basic grounds" for a Rule 59(e) motion are "correct[ing] manifest errors of law or fact," "newly discovery or previously unavailable evidence," the need "to prevent manifest injustice," or "change in controlling law." (emphasis added) (citing *Coury v. Robison*, 115 Nev. 84, 124-127, 976 P.2d 518)); see also *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.2000). "**There may also be other, highly unusual, circumstances warranting reconsideration**." *School Dist. No 1J, Multnomah Cnty., Or. v. ACandS, Inc.,* 5 F.3d 1255, 1263 (9th Cir.1993) (emphasis added). A district court may consider a motion for

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[2] *See* Email, Dated May 14, 2019, 8:15 AM, attached to Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.
[3] *See* Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.
[4] *See* Notice of Entry of Order, May 14, 2019, attached to Ocwen's Prior Reply as **Exhibit 24**.
[5] "The Nevada Supreme Court considers federal law interpreting the Federal Rules of Civil Procedure, 'because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Barbara Ann Hollier Trust v. Shack*, 356 P.3d 1085, 1089 (Nev. Aug. 6, 2015) (quoting *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 782, 786 (2002)).

reconsideration under NRCP 60 even if untimely under NRCP 59(e). *Adams v. Quilici*, 126 Nev. 688, 367 P.3d 743 (2010) (unpub.).

IV. LEGAL ARGUMENT

A. THIS COURT SHOULD NOT HAVE DENIED OCWEN'S MOTION FOR RECONSIDERATION BASED ON NRCP 6(b) AS NO EXCUSABLE NEGLECT IS ALLEGED BY OCWEN AND CHERSUS SIMPLY DID NOT SERVE THE NOTICE OF ENTRY OF ORDER UNTIL MAY 14, 2019.

Here, this Court denied Ocwen's Prior Motion, finding that, "NRCP 59(e) states that the 28-day time periods specified in this rule cannot be extended under Rule 6(b)."[6] However, in its Prior Motion Ocwen did not argue for an extension under NRCP 6(b), as no excusable neglect is alleged by Ocwen. Instead it simply argued that the Motion was timely because Chersus simply did not serve the Notice of Entry of Order initially. The Notice of Entry of Order was not served until May 14, 2019.

As explained in Ocwen's Reply in Support of its Prior Motion ("Ocwen's Prior Reply"), at pp. 3-4, which Ocwen incorporates herein by reference, Chersus's Notice of Entry of Order was filed on May 7, 2019. Counsel for Ocwen only learned of the Notice of Entry of Order by checking the docket on May 13, 2019.[7] As a result, counsel searched his email for service of the Notice of Entry of Order, but found none. *Id.* Additionally, counsel requested that his firm's support staff determine whether they had been served with the Notice of Entry of Order. *Id.* No evidence of service was found. *Id.*

On May 14, 2019, counsel for Ocwen called Chersus's counsel regarding the Notice of Entry of Order and spoke to support staff, believed to be Jennifer Martinez. *Id.* Ms. Martinez advised that she was having issues with her computer, and that she would look into the issue. *Id.* Counsel immediately followed up with an email to Chersus's counsel.[8] Counsel received no further response from Chersus's counsel or support staff.[9] Later that day, the Notice of Entry

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[6] *See* Order Denying Plaintiff's Motion for Reconsideration.
[7] *See* Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.
[8] *See* Email, Dated May 14, 2019, 8:15 AM, attached to Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.
[9] *See* Declaration of Paterno C. Jurani, Esq., attached to Ocwen's Prior Reply as **Exhibit 23**.

of Order was served.[10] Notably, the notice is stamped at the top, "ELECTRONICALLY SERVED 5/14/2019 11:56 AM," while the prior Notice of Entry of Order contains no such date and time stamp. *Id.* Ocwen's Prior Motion was timely filed based on that date of service (May 14, 2019.

The Court's Order denying Ocwen's Prior Motion does not address the questions of fact and law regarding proper service of the Notice of Entry of Order. As argued in Ocwen's Prior Reply, although Chersus should be able to look at the court's system and obtain a screenshot that service was proper, they did not. Further, Chersus does not explain why, if service was proper, they served it a second time. Indeed, when Ocwen's counsel contacted Chersus's counsel to inquire about the Notice of Entry of Order, Chersus's counsel made no response except to serve it on May 14, 2019. If service was proper on May 7th, Chersus's counsel could simply have advised Ocwen's counsel of same, rather than taking the confusing action of serving the Notice of Entry of Order a second time.

Here, the only evidence Chersus presented of the May 7, 2019 service date was the Proof of Service, which is drafted as part of the document and provides no real evidence that the Notice of Entry of Order was properly served on that date. The Proof of Service is clearly contradicted by the second Notice of Entry, which states it was electronically served on May 14, 2019, at 11:56 a.m.[11]

Furthermore, the Court's Order incorrectly states that the purported date of service is May 6, 2019.[12] In fact, the court's docket indicates the Notice of Entry of Order was filed on May 7, 2019.[13] The Court's Order does not rule on whether the May 6, 2019, May 7, 2019, or May 14, 2019 date was the actual operative date from which the deadline pursuant to NRCP 59(e) began to run. Further, the Court's Order does not rule on whether the date on the Notice of Entry of Order's Proof of Service was used even in the face of proof that it was not actually served on that date. Consequently, Ocwen respectfully requests that this Court reconsider its

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[10] *See* Notice of Entry of Order, May 14, 2019, attached to Ocwen's Prior Reply as **Exhibit 24**.
[11] *See* Notice of Entry of Order, May 14, 2019, attached to Ocwen's Prior Reply as **Exhibit 24**.
[12] *See* Order Denying Plaintiff's Motion for Reconsideration.
[13] *See* Docket.

October 30, 2019 Order Denying Plaintiff's Motion for Reconsideration to correct manifest errors of law or fact and to prevent manifest injustice.

V. CONCLUSION

This Court should not have denied Ocwen's Prior Motion based on NRCP 6(b), as Ocwen did not argue NRCP 6(b). No excusable neglect is alleged by Ocwen, as Chersus simply did not serve the Notice of Entry of Order until May 14, 2019. Thus, Ocwen's Prior Motion was timely. As such, Ocwen respectfully requests that the instant Motion for Reconsideration be granted in its entirety, and the Court hear Ocwen's Prior Motion for Reconsideration on its merits.

DATED this 18th day of November, 2019.

WRIGHT, FINLAY & ZAK, LLP

/s/ Paterno C. Jurani, Esq.
Dana Jonathon Nitz, Esq.
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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 18th day of November, 2019, I did cause a true copy of **OCWEN LOAN SERVICING, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S OCTOBER 30, 2019 ORDER PURSUANT TO NRCP 59 AND 60** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

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/s/ Faith Harris
An Employee of WRIGHT, FINLAY & ZAK, LLP

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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

ORDER GRANTING OCWEN LOAN SERVICING, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S OCTOBER 30, 2019 ORDER PURSUANT TO NRCP 59 AND 60

Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC ("Ocwen"), filed a motion entitled "Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60" ("Motion") in the above-entitled Court on November 18, 2019. The Motion having come on for hearing on January 3, 2020, in chambers, the Court having reviewed the papers and pleadings on file herein, being fully advised in the premises, and good cause appearing therefore, the Court hereby enters the following findings and conclusions:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to EDCR 2.20, NRCP 59, NRCP 60, and for good cause shown, that Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the October 30, 2019 Order denying Ocwen's June 11, 2019 Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 is hereby REVERSED, and a hearing set for this motion is set in Department IV on February 6, 2020 at 9:00 am.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Chersus Holdings, LLC's Motion to Vacate Hearing on Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60 is DENIED.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hearing currently set on January 7, 2020 for Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order, and the hearing currently set on January 7, 2020 for Chersus Holding, LLC's Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings, LLC; and (3) Orders for Specific Performance are hereby VACATED.

IT IS SO ORDERED.

Dated this 22 day of January, 2020.

DISTRICT COURT JUDGE

Respectfully submitted by:

WRIGHT, FINLAY & ZAK, LLP

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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

Approved as to Form and Content by:

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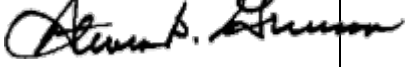
Attorney for Defendant, Chersus Holdings, LLC



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DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, vs. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive, Defendants.	Case No.: A-14-696357-C Dept. No.: IV **NOTICE OF ENTRY OF ORDER**
CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, vs. OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company, Counter-Defendants.	

PLEASE TAKE NOTICE that an ORDER GRANTING OCWEN LOAN SERVICING, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S OCTOBER 30, 2019 ORDER PURSUANT TO NRCP 59 AND 60 was entered in the above-entitled Court on the 27th day of January, 2020. A copy of which is attached hereto.

DATED this 3rd day of February, 2020.

WRIGHT, FINLAY & ZAK, LLP

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Las Vegas, Nevada 89117
Attorney for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 3rd day of February, 2020, I did cause a true copy of **NOTICE OF ENTRY OF ORDER** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

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Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

vs.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive,

Defendants.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

vs.

OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept. No.: IV

ORDER GRANTING OCWEN LOAN SERVICING, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S OCTOBER 30, 2019 ORDER PURSUANT TO NRCP 59 AND 60

Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC ("Ocwen"), filed a motion entitled "Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60" ("Motion") in the above-entitled Court on November 18, 2019. The Motion having come on for hearing on January 3, 2020, in chambers, the Court having reviewed the papers and pleadings on file herein, being fully advised in the premises, and good cause appearing therefore, the Court hereby enters the following findings and conclusions:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to EDCR 2.20, NRCP 59, NRCP 60, and for good cause shown, that Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the October 30, 2019 Order denying Ocwen's June 11, 2019 Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 is hereby REVERSED, and a hearing set for this motion is set in Department IV on February 6, 2020 at 9:00 am.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Chersus Holdings, LLC's Motion to Vacate Hearing on Motion to Extend Time to Oppose Motion for Reconsideration of the Court's October 30, 2019 Order Pursuant to NRCP 59 and 60 is DENIED.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hearing currently set on January 7, 2020 for Ocwen's Motion for Reconsideration of the Court's October 30, 2019 Order, and the hearing currently set on January 7, 2020 for Chersus Holding, LLC's Motion for: (1) Judgment or Prove-Up Hearing for Compensatory, Statutory, and Punitive Damages; (2) Order Awarding Attorney's Fees to Chersus Holdings, LLC; and (3) Orders for Specific Performance are hereby VACATED.

IT IS SO ORDERED.

Dated this 22 day of January, 2020.

DISTRICT COURT JUDGE

Respectfully submitted by:

WRIGHT, FINLAY & ZAK, LLP

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Approved as to Form and Content by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

This matter came before the Court on February 6, 2020, on Plaintiff's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 ("Motion for Reconsideration") filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019 and a Notice of Supplemental Authority on September 6, 2019. The Court having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, hereby DENIES Plaintiff's Motion for Reconsideration.

ITS IS SO ORDERED this 14 day of February, 2020.

DISTRICT COURT JUDGE

Respectfully Submitted:

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A-14-696357-C
Ord Denying Ocwen Loan - Mtn to Alter or Amend Judg + Reconsideration

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Attorney for Defendant Chersus Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Counter-Defendants.	Case No.: A-14-696357-C Dept No.: IV **NOTICE OF ENTRY OF ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60**

NOTICE OF ENTRY OF ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

PLEASE TAKE NOTICE that on the 20th day of February, 2020, an Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to N.R.C.P. 59 and 60 was entered on the Court's docket. A copy of said Order is attached hereto.

DATED this 20th day of February, 2020

THE LAW OFFICE OF VERNON NELSON

/s/ Vernon A. Nelson

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PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC *v.* CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On February 20, 2020, I served the following document(s):

NOTICE OF ENTRY OF ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

on the interested party(ies) in this action as follows:

WRIGHT, FINLAY & ZAK, LLP
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HALL, JAFFE & CLAYTON, LLP
ASHLIE L. SURUR, ESQ.
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7425 Peak Drive
Las Vegas, NV 89128
Attorney for Defendant, Southern Terrace Homeowners Association

X **By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

/s/ Ana Brady
An Employee of the Law Offices of Vernon Nelson

ORD

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Attorney for Defendant Chersus Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive

Defendant.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

ORDER DENYING OCWEN LOAN SERVICING, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FOR RECONSIDERATION PURSUANT TO N.R.C.P. 59 AND 60

This matter came before the Court on February 6, 2020, on Plaintiff's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 ("Motion for Reconsideration") filed on June 11, 2019 by counsel Paterno C. Jurani, Esq. Counsel Vernon A. Nelson, Esq. filed an Opposition thereto on July 2, 2019 on behalf of Defendant Chersus Holdings, LLC. Counsel Paterno C. Jurani, Esq. then filed a Reply thereto on July 11, 2019 and a Notice of Supplemental Authority on September 6, 2019. The Court having reviewed the matter, including all points, authorities, and exhibits submitted by counsel, hereby DENIES Plaintiff's Motion for Reconsideration.

ITS IS SO ORDERED this 14 day of February, 2020.

DISTRICT COURT JUDGE

Respectfully Submitted:

THE LAW OFFICE OF VERNON NELSON

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89130
Tel: 702-476-2500
Fax: 702-476-2788
E-Mail: vnelson@nelsonlawfirmlv.com
Attorneys for Defendant Chersus Holdings, LLC

A-14-696357-C
Ord Denying Ocwen Loan - Mtn to Alter or Amend Judg + Reconsideration

NOAS

WRIGHT, FINLAY & ZAK, LLP
R. Samuel Ehlers, Esq.
Nevada Bar No. 9313
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 475-7964 Fax: (702) 946-1345
alancaster@wrightlegal.net
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, vs. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive, Defendants.	Case No.: A-14-696357-C Dept. No.: IV **NOTICE OF APPEAL**
CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, vs. OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company, Counter-Defendants.	

PLEASE TAKE NOTICE that Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC hereby appeals to the Supreme Court of Nevada (1) Order Denying Ocwen Loan

Servicing, LLC's Motion to Alter or Amend Judgment and for Reconsideration Pursuant to NRCP 59 and 60 filed on February 20, 2020, and (2) Notice of Entry entered on February 20, 2020, and all orders rendered final thereby.

DATED this 6th day of March, 2020.

WRIGHT, FINLAY & ZAK, LLP

/s/ Aaron D. Lancaster
R. Samuel Ehlers, Esq.
Nevada Bar No. 9313
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorney for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 6th day of March, 2020, I did cause a true copy of **NOTICE OF APPEAL** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

Michelle Adams	michellea@nelsonlawfirmlv.com
Legal Assistant	legalassistant@nelsonlawfirmlv.com
Master Calendering	mail@nelsonlawfirmlv.com
Vernon A. Nelson	vnelson@nelsonlawfirmlv.com
Robert E. Atkinson	Robert@nv-lawfirm.com
Alexandria Raleigh	ARaleigh@lawhjc.com
Ashlie Surur	Asurur@lawhjc.com
Brody Wight	bwight@kochscow.com
David R. Koch	dkoch@kochscow.com
Kristin Schuler-Hintz	dcnv@mccarthyholthus.com
Paralegal	bknotices@nv-lawfirm.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com
Thomas N. Beckom	tbeckom@mccarthyholthus.com

/s/ Lisa Cox
An Employee of WRIGHT, FINLAY & ZAK, LLP

ORDR

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6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel.: 702-476-2500
Fax.: 702-476-2788
vnelson@nelsonlawfirmlv.com
Attorney for Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Plaintiff,

v.

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive

Defendant,

CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company,

Counterclaimant,

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company,

Counter-Defendants.

Case No.: A-14-696357-C
Dept No.: IV

ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC.

This matter came for before the Court for a prove-up hearing on Counter Claimant, Chersus Holdings, LLC's MOTION FOR: (1) JUDGMENT OR PROVE-UP HEARING FOR COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES; (2) ORDER AWARDING ATTORNEY'S FEES TO CHERSUS HOLDINGS LLC; AND (3) ORDERS FOR SPECIFIC PERFORMANCE. Vernon Nelson, Esq. appeared for Chersus Holdings, LLC. Aaron Lancaster

appeared for Counter Defendant and Ashlie Surur appearing for Defendant Southern Terrace Homeowner's Association. The Court, having the moving papers, the testimony of witnesses, the papers and pleadings on file herein, and the arguments of counsel, and good cause appearing, the Court HEREBY ORDERS:

1. Counter Claimant is hereby awarded lost rental damages as follows:

a. November and December 2016:	$1,200.00/month x 2 months	$ 2,400.00
b. 2017	$1,300/month x 12 months	$15,600.00
c. 2018	$1,400/month x 12 months	$16,800.00
d. 2019	$1,550/month x 12 months	$18,600.00
e. 2020	$1,550/month x 12 months	$18,600.00
f. 2021	$1,550/month x 3 months	$ 4,650.00
	Total Amount of Lost Rental Damages	$76,650.00

(At the hearing, Mr. Nelson miscalculated this amount to be $58,050.00. The correct amount is $76,650.00).

2. Counter Claimant is awarded costs based on amounts that are documented within the Memorandum of Costs; which are as follows:

Independent Transcriber Charges	01/30/2019	$378.63	MC Exhibit 1
Deposition Transcripts	03/01/2018	$527.24	MC Exhibit 2
Court Runner Services	02/15/219	$117.00	MC Exhibit 3
Court Runner Services	02/22/2019	$30.00	MC Exhibit 4
Court Runner Services	01/18/2019	$92.00	MC Exhibit 5
Court Runner Services	05/28/2019	$55.00	MC Exhibit 6
Litigation Support Vendor	05/01/2019	$401.26	MC Exhibit 7
Deposition Transcripts	07/16/2018	$368.80	MC Exhibit 8

Deposition Transcript	01/09/2018	$ 535.27	MC Exhibit 9
Deposition Transcripts	08/22/2018	$357.77	MC Exhibit 11
Deposition Transcripts	08/30/2018	$554.07	MC Exhibit 11
Total Documented Costs		$2,522.17	

3. The Court determined Counterclaimant is not entitled to damages for taxes, trash liens from Republic Services, the Preliminary Title Report and for a home inspection.

4. The Court determined Counterclaimant shall not be awarded punitive damages or treble damages pursuant to NRS 42.230.

5. As to specific Performance, the COURT ORDERS, Ocwen to comply with any requests from the title company that is hired by Chersus Holdings that are necessary to transfer title.

6. As to attorney's fees the COURT FINDS it was reasonable for Ocwen to reject the offer of judgment based on the constant and current flux of law on these foreclosure issues. COURT FURTHER FINDS, attorney's fees are not warranted under NRS Section 18.010(b).

IT IS SO ORDERED that Judgment shall be awarded to Counter Claimant Chersus Holding, LLC, and Counter Defendant Ocwen Loan Servicing, LLC Defendants in the amount of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 ($79,172.17) is hereby entered as follows:

1. The principal amount due and owing to Plaintiff for lost rent in the amount of SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS ($76,650.00).

2. Costs and disbursements in the amount of ONE THOUSAND THREE HUNDRED SIXTY-FOUR AND 60/100 DOLLARS ($1,364.60).

3. For a total judgment of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 ($79,172.17)

4. This Judgment shall bear interest at the Nevada statutory rate from the entry of the Judgment until paid in full.

~~DATED this _____ day of March, 2021~~

Dated this 22nd day of March, 2021

DISTRICT COURT JUDGE

E2A 5FD 62AF EAC6
Nadia Krall
District Court Judge

Respectfully submitted by:

LAW OFFICE OF VERNON NELSON, PLLC

/s/ Vernon A. Nelson, Jr., Esq.
VERNON A. NELSON, JR., ESQ.
Nevada Bar No. 6434
6787 W. Tropicana Ave., Suite 103
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Tel: 702-476-2500
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Email: vnelson@nelsonlawfirmlv.com
Attorneys for Plaintiff

Approved as to form:

SURUR LAW GROUP

/S/ Ashlie L. Surur
ASHLIE L. SURUR, ESQ.
Nevada Bar No. 11290
561 Ivy Spring St.
Las Vegas, NV 89138
Attorneys for Southern Terrace Homeowners Association

WRIGHT FINLAY & ZAK

NO RESPONSE FROM COUNSEL
Aaron Lancaster, Esq.
Nevada Bar No.
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorneys for Ocwen Holdings, LLC

Ana Brady

From: Ashlie Surur <ashlie@sururlaw.com>
Sent: Monday, March 15, 2021 1:13 PM
To: Vernon Nelson`
Cc: Aaron D. Lancaster; Ana Brady; Paula Keller
Subject: Re: Proposed Judgment

Hi Vernon,

I approve and you may submit with my electronic signature.

Ashlie L. Surur, Esq.
SURUR LAW GROUP
D: 702-909-0838
ashlie@sururlaw.com
www.sururlaw.com

On Thu, Mar 11, 2021 at 2:03 PM Vernon Nelson` <vnelson@nelsonlawfirmlv.com> wrote:

> Hi All- Here is the proposed judgment. As you will see, I made a mistake when I calculated the lost rental income amount at the hearing. I have corrected it in the proposed judgment.
>
> Let me know if you have any questions/comments, and/or if we have your approval to submit to the Court along with an email indicating your approval.
>
> Thanks
>
> Vernon Nelson
>
> The Law Office of Vernon Nelson
>
> 6787 W. Tropicana Ave., Suite 103
>
> Las Vegas, NV 89103
>
> 702-476-2500 (Office)

702-525-7884 (Cell)

vnelson@nelsonlawfirmlv.com

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)	CASE NO: A-14-696357-C DEPT. NO. Department 4

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/22/2021

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
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Michelle Adams	michellea@nelsonlawfirmlv.com
Legal Assistant	legalassistant@nelsonlawfirmlv.com
Ashlie Surur	ashlie@sururlaw.com

NEO
VERNON A. NELSON, JR., ESQ.
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E-mail: vnelson@nelsonlawfirmlv.com
Attorney for Defendant Chersus Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Counter-Defendants.	Case No.: A-14-696357-C Dept No.: IV **NOTICE OF ENTRY OF ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC.**

PLEASE TAKE NOTICE that on the 22nd day of March, 2021, an Order Granting Judgment In Favor of Counterclaimant Chersus Holdings, LLC was entered on the Court's docket. A copy of

said Order is attached hereto.

DATED this 22nd day of March, 2021.

THE LAW OFFICE OF VERNON NELSON

/s/ Vernon Nelson

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89130
Tel: 702-476-2500
Fax: 702-476-2788
E-Mail: vnelson@nelsonlawfirmlv.com
Attorney for Defendant Chersus Holdings, LLC

PROOF OF SERVICE
OCWEN LOAN SERVICING, LLC *v.* CHERSUS HOLDINGS, LLC
Case No.: A-14-696357-C

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by The Law Office of Vernon Nelson, PLLC. I am readily familiar with The Law Office of Vernon Nelson, PLLC's practice for collection and processing of documents for delivery by way of the service indicated below.

On March 22, 2021, I served the following document(s):

NOTICE OF ENTRY OF ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC

on the interested party(ies) in this action as follows:

WRIGHT, FINLAY & ZAK, LLP
DANA JONATHON NITZ, ESQ.
Nevada Bar No. 0050
PATERNO C. JURANI, ESQ.
Nevada Bar No. 8136
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorneys for Plaintiff/Counter-Defendant Ocwen Loan Servicing, LLC

URUR LAW GROUP
ASHLIE L. SURUR, ESQ.
Nevada Bar No. 11290
561 Ivy Spring St.
Las Vegas, NV 89138
Attorneys for Southern Terrace Homeowners Association

X **By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

/s/ Ana Brady
An Employee of the Law Offices of Vernon Nelson

EXHIBIT 1

Electronically Filed
03/22/2021 12:38 PM
CLERK OF THE COURT

ORDR

VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
THE LAW OFFICE OF VERNON NELSON
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel.: 702-476-2500
Fax.: 702-476-2788
vnelson@nelsonlawfirmlv.com
Attorney for Chersus Holdings, LLC

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, v. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; First 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, A Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive Defendant, CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Counter-Defendants.	Case No.: A-14-696357-C Dept No.: IV **ORDER GRANTING JUDGMENT IN FAVOR OF COUNTERCLAIMANT CHERSUS HOLDINGS, LLC.**

This matter came for before the Court for a prove-up hearing on Counter Claimant, Chersus Holdings, LLC's MOTION FOR: (1) JUDGMENT OR PROVE-UP HEARING FOR COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES; (2) ORDER AWARDING ATTORNEY'S FEES TO CHERSUS HOLDINGS LLC; AND (3) ORDERS FOR SPECIFIC PERFORMANCE. Vernon Nelson, Esq. appeared for Chersus Holdings, LLC. Aaron Lancaster

appeared for Counter Defendant and Ashlie Surur appearing for Defendant Southern Terrace Homeowner's Association. The Court, having the moving papers, the testimony of witnesses, the papers and pleadings on file herein, and the arguments of counsel, and good cause appearing, the Court HEREBY ORDERS:

1. Counter Claimant is hereby awarded lost rental damages as follows:

a. November and December 2016:	$1,200.00/month x 2 months	$ 2,400.00
b. 2017	$1,300/month x 12 months	$15,600.00
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f. 2021	$1,550/month x 3 months	$ 4,650.00
	Total Amount of Lost Rental Damages	$76,650.00

(At the hearing, Mr. Nelson miscalculated this amount to be $58,050.00. The correct amount is $76,650.00).

2. Counter Claimant is awarded costs based on amounts that are documented within the Memorandum of Costs; which are as follows:

Independent Transcriber Charges	01/30/2019	$378.63	MC Exhibit 1
Deposition Transcripts	03/01/2018	$527.24	MC Exhibit 2
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Deposition Transcripts	08/22/2018	$357.77	MC Exhibit 11
Deposition Transcripts	08/30/2018	$554.07	MC Exhibit 11
Total Documented Costs		$2,522.17	

3. The Court determined Counterclaimant is not entitled to damages for taxes, trash liens from Republic Services, the Preliminary Title Report and for a home inspection.

4. The Court determined Counterclaimant shall not be awarded punitive damages or treble damages pursuant to NRS 42.230.

5. As to specific Performance, the COURT ORDERS, Ocwen to comply with any requests from the title company that is hired by Chersus Holdings that are necessary to transfer title.

6. As to attorney's fees the COURT FINDS it was reasonable for Ocwen to reject the offer of judgment based on the constant and current flux of law on these foreclosure issues. COURT FURTHER FINDS, attorney's fees are not warranted under NRS Section 18.010(b).

IT IS SO ORDERED that Judgment shall be awarded to Counter Claimant Chersus Holding, LLC, and Counter Defendant Ocwen Loan Servicing, LLC Defendants in the amount of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 ($79,172.17) is hereby entered as follows:

1. The principal amount due and owing to Plaintiff for lost rent in the amount of SEVENTY-SIX THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS ($76,650.00).

2. Costs and disbursements in the amount of ONE THOUSAND THREE HUNDRED SIXTY-FOUR AND 60/100 DOLLARS ($1,364.60).

3. For a total judgment of SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY-TWO AND 17/100 ($79,172.17)

4. This Judgment shall bear interest at the Nevada statutory rate from the entry of the Judgment until paid in full.

~~DATED this _____ day of March, 2021~~

Dated this 22nd day of March, 2021

DISTRICT COURT JUDGE

E2A 5FD 62AF EAC6
Nadia Krall
District Court Judge

Respectfully submitted by:

LAW OFFICE OF VERNON NELSON, PLLC

/s/ Vernon A. Nelson, Jr., Esq.
VERNON A. NELSON, JR., ESQ.
Nevada Bar No. 6434
6787 W. Tropicana Ave., Suite 103
Las Vegas, NV 89103
Tel: 702-476-2500
Fax: 702-476-2788
Email: vnelson@nelsonlawfirmlv.com
Attorneys for Plaintiff

Approved as to form:

SURUR LAW GROUP

/S/ Ashlie L. Surur
ASHLIE L. SURUR, ESQ.
Nevada Bar No. 11290
561 Ivy Spring St.
Las Vegas, NV 89138
Attorneys for Southern Terrace Homeowners Association

WRIGHT FINLAY & ZAK

NO RESPONSE FROM COUNSEL
Aaron Lancaster, Esq.
Nevada Bar No.
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorneys for Ocwen Holdings, LLC

Ana Brady

From: Ashlie Surur <ashlie@sururlaw.com>
Sent: Monday, March 15, 2021 1:13 PM
To: Vernon Nelson`
Cc: Aaron D. Lancaster; Ana Brady; Paula Keller
Subject: Re: Proposed Judgment

Hi Vernon,

I approve and you may submit with my electronic signature.

Ashlie L. Surur, Esq.
SURUR LAW GROUP
D: 702-909-0838
ashlie@sururlaw.com
www.sururlaw.com

On Thu, Mar 11, 2021 at 2:03 PM Vernon Nelson` <ynelson@nelsonlawfirmlv.com> wrote:

> Hi All- Here is the proposed judgment. As you will see, I made a mistake when I calculated the lost rental income amount at the hearing. I have corrected it in the proposed judgment.
>
> Let me know if you have any questions/comments, and/or if we have your approval to submit to the Court along with an email indicating your approval.
>
> Thanks
>
> Vernon Nelson
>
> The Law Office of Vernon Nelson
>
> 6787 W. Tropicana Ave., Suite 103
>
> Las Vegas, NV 89103
>
> 702-476-2500 (Office)

702-525-7884 (Cell)

ynelson@nelsonlawfirmlv.com

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Ocwen Loan Servicing, LLC, Plaintiff(s) vs. Chersus Holdings, LLC, Defendant(s)	CASE NO: A-14-696357-C DEPT. NO. Department 4

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/22/2021

"Robert E. Atkinson, Esq." .	robert@nv-lawfirm.com
Alexandria Raleigh .	ARaleigh@lawhjc.com
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Vernon Nelson	vnelson@nelsonlawfirmlv.com
Vernon Nelson	vnelson@nelsonlawfirmlv.com
Michelle Adams	michellea@nelsonlawfirmlv.com
Legal Assistant	legalassistant@nelsonlawfirmlv.com
Ashlie Surur	ashlie@sururlaw.com

NOAS

WRIGHT, FINLAY & ZAK, LLP
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Las Vegas, Nevada 89117
(702) 475-7964 Fax: (702) 946-1345
alancaster@wrightlegal.net
Attorneys for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

OCWEN LOAN SERVICING, LLC, a foreign Limited Liability Company, Plaintiff, vs. CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company; FIRST 100, LLC, a Domestic Limited Liability Company; SOUTHERN TERRACE HOMEOWNERS ASSOCIATION, a Domestic Non-Profit Corporation; RED ROCK FINANCIAL SERVICES, LLC, a Foreign Limited Liability Company; UNITED LEGAL SERVICES, INC., a Domestic Corporation; DOES I through X; and ROE CORPORATIONS XI through XX, inclusive, Defendants.	Case No.: A-14-696357-C Dept. No.: IV **NOTICE OF APPEAL**
CHERSUS HOLDINGS, LLC, a Domestic Limited Liability Company, Counterclaimant, vs. OCWEN LOAN SERVICING, LLC, a Foreign Limited Liability Company, Counter-Defendants.	

PLEASE TAKE NOTICE that Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC hereby appeals to the Supreme Court of Nevada (1) Findings of Fact, Conclusions of Law and Order filed on May 6, 2019; (6) Notice of Entry of Order filed on May 7, 2019; (3) Order Denying Ocwen Loan Servicing, LLC's Motion to Alter or Amend Judgment and for

Reconsideration Pursuant to NRCP 59 and 60 filed on February 20, 2020, (4) Notice of Entry entered on February 20, 2020, (5) Order Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC filed on March 22, 2021; (6) Notice of Entry of Order Granting Judgment in Favor of Counterclaimant Chersus Holdings, LLC filed on March 22, 2021; (7) and all orders rendered final thereby.

DATED this 23rd day of March, 2021.

WRIGHT, FINLAY & ZAK, LLP
/s/ Aaron D. Lancaster
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorney for Plaintiff/Counter-Defendant, Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 23rd day of March, 2021, I did cause a true copy of **NOTICE OF APPEAL** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9, addressed as follows:

Michelle Adams	michellea@nelsonlawfirmlv.com
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