

## INDEX TO APPENDIX 1

Volume	Date Filed	Document	Bates Stamp
1	09/25/13	Complaint	Electronically Filed Jul 14 2021 02:13 p.m. AA-000001- AA-000007 Elizabeth A. Brown Clerk of Supreme Court
1	10/16/13	Affidavit of Service for Cooper Castle Law Firm	AA-000008
1	10/16/13	Affidavit of Service for Monique Guillory	AA-000009
1	10/29/13	Affidavit of Service for Nationstar Mortgage, LLC	AA-000010
1	11/19/13	Default as to Monique Guillory	AA-000011
1	04/15/14	Order granting countermotion to stay	AA-000012- AA-000013
1	02/12/15	Order granting motion to lift stay	AA-000014- AA-000015
1	03/13/15	Nationstar's Answer to Complaint and Counterclaim	AA-000016- AA-000017
1	03/19/15	Plaintiff's Motion to Dismiss Counterclaim	AA-000018- AA-000019

## ALPHABETICAL INDEX TO APPELLANT'S APPENDIXES

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1	10/16/13	Affidavit of Service for Cooper Castle Law Firm	AA-000008
1	10/16/13	Affidavit of Service for Monique Guillory	AA-000009
1	10/29/13	Affidavit of Service for Nationstar Mortgage, LLC	AA-000010
10	02/03/21	Case Appeal Statement	AA-001894- AA-001896
1	09/25/13	Complaint	AA-000001- AA-000007
1	11/19/13	Default as to Monique Guillory	AA-000011

1	5	09/25/17	Default Judgment Against Defendant Monique Guillory	AA-000983-AA-000985
2	7	12/19/17	Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001161-AA-001317
3	5	09/12/17	Findings of Fact, Conclusions of Law, and Judgment	AA-000955-AA-000967
4	8	11/02/20	Minute Order	AA-001457-AA-001459
5	2	04/29/15	Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community	AA-000333-AA-000394
6	3	07/31/17	Motion for Default Judgment Against Defendant Monique Guillory	AA-000647-AA-000657
7	5	08/29//17	Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm, LLP	AA-000951-AA-000954
8	1	03/13/15	Nationstar's Answer to Complaint and Counterclaim	AA-000016-AA-000167
9	8	01/07/19	Nationstar Mortgage LLC's Case Appeal Statement	AA-001450-AA-001453
10	8	12/11/18	Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001431-AA-001436
11	10	12/08/20	Nationstar Mortgage LLC's Reply Supporting Its Summary Judgment Motion	AA-001823-AA-001839
12	9	11/09/20	Nationstar Mortgage LLC's Summary Judgment Motion	AA-001460-AA-001668
13	5	10/02/17	Nationstar's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment	AA-000991-AA-001011
14	2	04/20/15	Nationstar's Opposition to Motion to Dismiss Counterclaim and Countermotion for Summary Judgment	AA-000198-AA-000332
15	2	05/19/15	Nationstar's Opposition to Naples Community Homeowners Association's Motion to Dismiss Counterclaim	AA-000408-AA-000447

1	4	08/10/17	Nationstar's Opposition to Plaintiff's Motion for Summary Judgment	AA-000658-AA-000814
2				
3	5	08/10/17	Nationstar's Request for Judicial Notice	AA-000815-AA-000950
4				
5	8	01/07/19	Notice of Appeal	AA-001447-AA-001449
6	10	02/03/21	Notice of Appeal	AA-001891-AA-001893
7	5	09/26/17	Notice of Entry of Default Judgment	AA-000986-AA-000990
8				
9	5	09/13/17	Notice of Entry of Judgment	AA-000968-AA-000982
10	8	12/14/18	Notice of Entry of Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001437-AA-001446
11				
12	5	10/05/17	Notice of Entry of Order	AA-001014-AA-001017
13	10	12/28/20	Notice of Entry of Order Denying Saticoy Bay LLC Series 4641 Viareggio Ct's Summary Judgment Motion	AA-001850-AA-001863
14				
15	10	01/05/21	Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment	AA-001874-AA-001887
16				
17	10	01/06/21	Notice of Release of Lis Pendens	AA-001888-AA-001890
18				
19	3	08/12/15	Order to Dismiss Without Prejudice Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community Homeowners Association Only	AA-000469-AA-000477
20				
21				
22	10	12/28/20	Order Denying Saticoy Bay LLC Series 4641 Viareggio Ct's Summary Judgment Motion	AA-001840-AA-001849
23				
24	1	04/15/14	Order Granting Countermotion to Stay	AA-000012-AA-000013
25				
26	1	02/12/15	Order Granting Motion to Lift Stay	AA-000014-AA-000015
27	5	10/05/17	Order Granting Motion for Voluntary Dismissal	AA-001012-AA-001013
28				

1	10	01/04/21	Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment	AA-001864-AA-001873
2	3	07/28/15	Order Granting Plaintiff's Motion to Dismiss and Denying Nationstar Mortgage, LLC's Countermotion for Summary Judgment	AA-000454-AA-000468
3	8	09/28/20	Order Setting Further Proceedings	AA-001454-AA-001456
4	1	03/19/15	Plaintiff's Motion to Dismiss Counterclaim	AA-000168-AA-000197
5	3	05/11/17	Plaintiff's Motion for Summary Judgment	AA-000478-AA-000646
6	5	10/07/17	Plaintiff's Opposition to Nationstar's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment	AA-001018-AA-001024
7	10	11/25/20	Plaintiff's Opposition to Nationstar Mortgage LLC's Summary Judgment Motion	AA-001669-AA-001822
8	2	05/04/15	Reply in Support of Plaintiff's Motion to Dismiss Counterclaim and Opposition to Countermotion for Summary Judgment	AA-000395-AA-000407
9	3	06/11/15	Reply Brief in Support of Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community Homeowners Association Only	AA-000448-AA-000453
10	8	01/11/18	Reply to Opposition to Motion for Summary Judgment	AA-001318-AA-001430
11	6	12/19/17	Request for Judicial Notice in Support of Nationstar's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001025-AA-001160

## CIVIL COVER SHEET A - 1 3 - 6 8 9 2 4 0 - C

CLARK County, Nevada  
Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

V

**I. Party Information**

Plaintiff(s) (name/address/phone): SATICOY BAY LLC SERIES 4641 VIAREGGIO CT	Defendant(s) (name/address/phone): NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; AND MONIQUE GUILLORY
Attorney (name/address/phone): MICHAEL F. BOHN, Esq. 376 E. Warm Springs Road Suite 125 Las Vegas, NV 89119 (702) 642-3113	Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence -- Auto</b> <input type="checkbox"/> <b>Negligence -- Medical/Dental</b> <input type="checkbox"/> <b>Negligence -- Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence -- Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recover of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

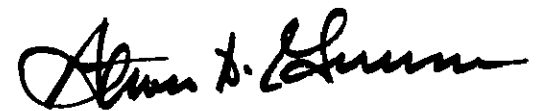
**III. Business Court Requested** (Please check applicable category; for Clark and Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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September 25, 2013  
Date

Signature of initiating party or representative AA000001

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)

3 LAW OFFICES OF

MICHAEL F. BOHN, ESQ., LTD.

4 376 East Warm Springs Road, Ste. 125

Las Vegas, Nevada 89119

5 (702) 642-3113/ (702) 642-9766 FAX

6 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 SATICOY BAY LLC SERIES 4641  
10 VIAREGGIO CT

11 Plaintiff,

12 vs.

13 NATIONSTAR MORTGAGE, LLC; COOPER  
14 CASTLE LAW FIRM, LLP; and MONIQUE  
GUILLORY

15 Defendants.

CASE NO.: A - 1 3 - 6 8 9 2 4 0 - C  
DEPT NO.: V

**EXEMPTION FROM ARBITRATION:**  
**Title to real property**

16 **COMPLAINT**

17 Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct, by and through it's attorney, Michael F.  
18 Bohn, Esq. alleges as follows:

19 1. Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las  
20 Vegas, Nevada.

21 2. Plaintiff obtained title by foreclosure deed recorded September 6, 2013.

22 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in  
23 assessments due from the former owner to the Naples Community Homeowners Association,  
24 pursuant to NRS Chapter 116.

25 4. Nationstar Mortgage, LLC is the beneficiary of a deed of trust which was recorded as an  
26 encumbrance to the subject property on January 25, 2007.

5. Cooper Castle Law Firm, LLP is the trustee on the deed of trust.

6. Defendant Monique Guillory was the former owner of the subject real property.

7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owner, Monique Guillory to the Naples Community Homeowners Association, pursuant to NRS Chapter 116.

8. Nonetheless, defendant Nationstar Mortgage, LLC has recorded a notice of default and election to sell under it's deed of trust pursuant to NRS 107.080.

9. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

10. The plaintiff is entitled to an award of attorneys fees and costs.

## **SECOND CLAIM FOR RELIEF**

11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

12. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.

13. The plaintiff is entitled to an award of attorneys fees and costs.

### **THIRD CLAIM FOR RELIEF**

14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

15. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

16. The plaintiff is entitled to an award of attorneys fees and costs.

#### **FOURTH CLAIM FOR RELIEF**

17. Plaintiff repeats the allegations contained in paragraphs 1 through 16.

18. Defendant Monique Guillory was served with a 3 day notice to quit.

19. The defendant has failed to vacate the premises despite the notice that have been served upon him.

1           20. The defendant has remained in possession of said property up to and including the  
2 present time.

3           21. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

4           22. Plaintiff is entitled to an award of attorneys fees and costs of suit.

5           WHEREFORE, plaintiff prays as follows:

6                           **ON ACCOUNT OF THE FIRST CLAIM FOR RELIEF**

7           1. For injunctive relief;

8           2. For an award of attorneys fees and costs; and

9           3. For such other and further relief as the Court may deem just and proper.

10                          **ON ACCOUNT OF THE SECOND CLAIM FOR RELIEF**

11           1. For a determination and declaration that plaintiff is the rightful holder of title to the  
12 property, free and clear of all liens, encumbrances, and claims of the defendants.

13           2. For an award of attorneys fees and costs; and

14           3. For such other and further relief as the Court may deem just and proper.

15                          **ON ACCOUNT OF THE THIRD CLAIM FOR RELIEF**

16           1. For a determination and declaration that the defendants have no estate, right, title, interest  
17 or claim in the property.

18           2. For a judgment forever enjoining the defendants from asserting any estate, right, title,  
19 interest or claim in the property; and

20           3. For such other and further relief as the Court may deem just and proper.

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**ON ACCOUNT OF THE FOURTH CLAIM FOR RELIEF**

- 1. For restitution and possession of the premises;
- 2. For reasonable attorneys fees and costs of Court; and
- 3. For such other and further relief as the Court may deem proper.

DATED this 25th day of September 2013.

LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

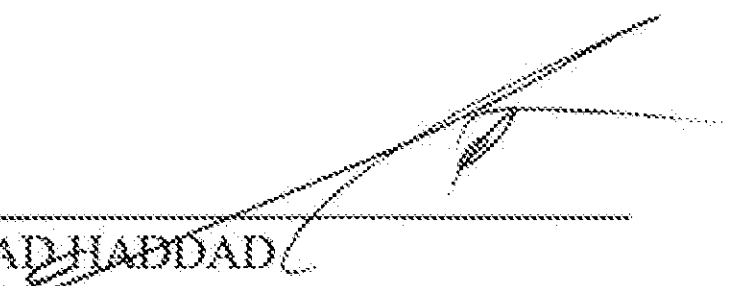
By: / s / Michael F. Bohn, Esq. /  
Michael F. Bohn, Esq.  
376 East Warm Springs Road, Ste. 125  
Las Vegas, Nevada 89119  
Attorney for plaintiff

VERIFICATION


STATE OF NEVADA       )  
                                  ) ss:  
COUNTY OF CLARK     )

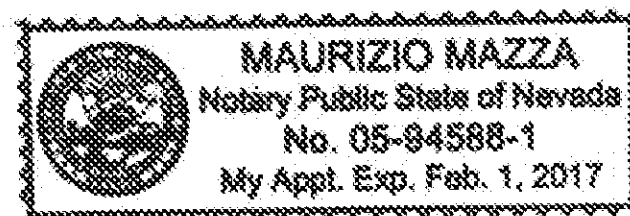
Iyad Haddad, being first duly sworn, deposes and says;

That he is the authorized representative of the plaintiff Limited Liability Company in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
IYAD HADDAD

SUBSCRIBED and SWORN to before me  
this 25<sup>th</sup> day of September, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State



1 **IAFD**  
MICHAEL F. BOHN, ESQ.  
2 Nevada Bar No.: 1641  
mbohn@bohnlawfirm.com  
3 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
4 376 East Warm Springs Road, Ste. 125  
Las Vegas, Nevada 89119  
5 (702) 642-3113/ (702) 642-9766 FAX  
6 Attorney for plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 SATICOY BAY LLC SERIES 4641  
10 VIAREGGIO CT

11 Plaintiff,

12 vs.

13 NATIONSTAR MORTGAGE, LLC; COOPER  
14 CASTLE LAW FIRM, LLP; AND MONIQUE  
GUILLORY

15 Defendants.

CASE NO.: A - 1 3 - 6 8 9 2 4 0 - C  
DEPT NO.: V

16 **INITIAL APPEARANCE FEE DISCLOSURE**

17 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-  
18 entitled action as indicated below:

19 SATICOY BAY LLC SERIES 4641 VIAREGGIO CT \$270.00

20 TOTAL REMITTED: \$270.00

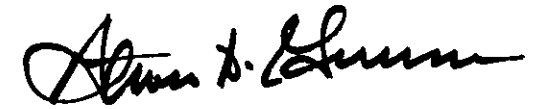
21 DATED this 25th day of September 2013.

22 LAW OFFICES OF  
23 MICHAEL F. BOHN, ESQ., LTD.

24  
25 By: / s / Michael F. Bohn, Esq. /  
Michael F. Bohn, Esq.  
26 376 East Warm Springs Road, Ste. 125  
Las Vegas, Nevada 89119  
27 Attorney for plaintiff

AOS

**DISTRICT COURT,  
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

**SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT**

**Plaintiff**

**VS**

**NATIONSTAR MORTGAGE, LLC,  
ET AL**

**Defendant**

**CASE NO: A-13-689240-C**

**HEARING DATE/TIME:**

**DEPT NO: V**

**AFFIDAVIT OF SERVICE**

JACK RILEY 3015835 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the SUMMONS; COMPLAINT, on the 30th day of September, 2013 and served the same on the 3rd day of October, 2013, at 14:01 by:

serving the servee THE COOPER CASTLE LAW FIRM, LLP C/O REGISTERED AGENT THE COOPER CASTLE LAW FIRM, LLP by personally delivering and leaving a copy at (address) 5275 SO. DURANGO DR., LAS VEGAS NV 89113 with I. VANTILBURG, RECEPTIONIST pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

**Pursuant to NRS 53.045**

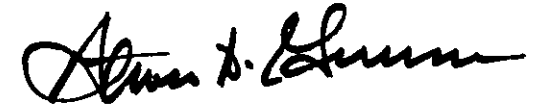
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

**EXECUTED this** 7 **day of** OCTOBER, 2013.

  
**JACK RILEY 3015835**

AOS

**DISTRICT COURT,  
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

**SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT**

**Plaintiff**

**VS**

**NATIONSTAR MORTGAGE, LLC,  
ET AL**

**Defendant**

**CASE NO: A-13-689240-C**

**HEARING DATE/TIME:**

**DEPT NO: v**

**AFFIDAVIT OF SERVICE**

DOUGLAS DEMOTTA 0830109 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the SUMMONS; COMPLAINT, on the 9th day of October, 2013 and served the same on the 11th day of October, 2013, at 08:00 by:

delivering and leaving a copy with the servee MONIQUE GUILLORY at (address) 7605 CRUZ BAY COURT,  
LAS VEGAS NV 89128

DESCRIPTION; 5'4" TALL, 120LBS, DARK HAIR, DARK SKINNED FEMALE, 25 PLUS YEARS OLD.

**Pursuant to NRS 53.045**

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

**EXECUTED this** 11 **day of** Oct, 2013.



**DOUGLAS DEMOTTA 0830109**

CVAOS

DISTRICT COURT  
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO  
CT

Plaintiff,

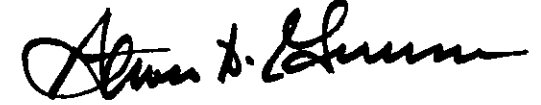
vs.

NATIONSTAR MORTGAGE, LLC; COOPER  
CASTLE LAW FIRM, LLP; and MONIQUE  
GUILLORY

Defendants.

CASE NO.: A689240  
DEPT NO.: V

Electronically Filed  
10/29/2013 09:54:32 AM



CLERK OF THE COURT

AFFIDAVIT OF SERVICE

STATE OF NEVADA )  
COUNTY OF CLARK)

SS:

Maurizio Mazza, being duly sworn, says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made.

The affiant received 1 copy of the Summons and Complaint on the 21<sup>ST</sup> day of October, 2013 and served the same on the 24<sup>th</sup> day of October, 2013, on defendant, **Nationstar Mortgage LLC.**, By Serving its Resident Agent, **CSC Services of Nevada Inc., at 2215-B Renaissance Drive Las Vegas NV 89119, By Delivering and leaving a copy with Frances Guitierrez, a person lawfully designated by statute to accept service of process.**

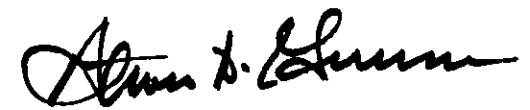
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 29<sup>th</sup> day of October, 2013

By:



Maurizio Mazza



CLERK OF THE COURT

**DFLT**

MICHAEL F. BOHN

Nevada Bar No.: /641

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

376 E. Warm Springs Road, Ste. 125

Las Vegas, NV 89119

(702) 642-3113

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641

VIAREGGIO CT

Plaintiff(s),

-VS-

CASE NO. A689240

DEPT NO. V

NATIONSTAR MORTGAGE, LLC;  
COOPER CASTLE LAW FIRM, LLP; and  
MONIQUE GUILLORY

Defendant(s).

**DEFAULT**

It appearing from the files and records in the above entitled action that  
MONIQUE GUILLORY

Defendant(s) herein, being duly served with a copy of the Summons and Complaint on  
October 11th, 2013 that more than 20 days, exclusive of the day

of service, having expired since service upon the Defendant(s); that no answer or other  
appearance having been filed and no further time having been granted, the default of  
the above-named Defendant(s) for failing to answer or otherwise plead to Plaintiff's  
Complaint is hereby entered.

STEVEN D. GRIERSON, CLERK OF COURT

By:

Deputy Clerk

Date

Submitted By:

MICHELLE MCCARTHY

NOV 15 2013

MICHAEL F. BOHN, ESQ

AA000011

Nevada Bar No.: 1641  
LAW OFFICES OF MICHAEL F. BOHN, ESQ  
376 E. Warm Springs Road, Ste. 125  
Las Vegas, NV 89119  
(702) 642-3113

Default2.wpd/February 19, 2003

RECEIVED

NOV 13 2013

CLERK OF THE COURT

1 **ORDD**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)

5 KELLY M. PERRI, ESQ.

6 Nevada Bar No. 13220

7 [kperri@bohnlawfirm.com](mailto:kperri@bohnlawfirm.com)

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 East Warm Springs Road, Ste. 140

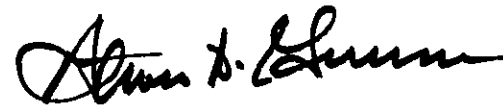
11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorneys for plaintiff

Electronically Filed

04/15/2014 02:22:23 PM



CLERK OF THE COURT

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 4641  
17 VIAREGGIO CT

18 Plaintiff,

19 vs.

20 NATIONSTAR MORTGAGE, LLC; COOPER  
21 CASTLE LAW FIRM, LLP; and MONIQUE  
22 GUILLORY

23 Defendants.

CASE NO.: A689240-C  
DEPT NO.: V

Date of hearing: January 24, 2014  
Time of hearing: 9:00 a.m.

24 **ORDER**

25 The motion of defendants, Nationstar Mortgage and the Cooper Castle Law Firm, to dismiss and  
26 the plaintiff's countermotion to stay proceedings having come before the court on the 24<sup>th</sup> day of January,  
27 2014, Michael F. Bohn, Esq. and Kelly M. Perri, Esq., appearing on behalf of the plaintiff and Jason M.  
28 Peck, Esq. appearing on behalf of Nationstar Mortgage and the Cooper Castle Law Firm, and the court,  
having reviewed the motion and countermotion and having heard the arguments of counsel and for good  
cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion to dismiss is denied.

IT IS FURTHER ORDERED that the countermotion to stay the proceedings in this case is



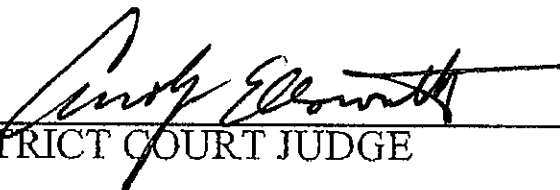
1 granted. Any further proceedings in this case is stayed until further <sup>order</sup> of the court.

2 IT IS FURTHER ORDERED that the plaintiff shall be required to keep current on all property  
3 taxes and assessments, HOA dues, to maintain the property and to maintain insurance on the property.

4 IT IS FURTHER ORDERED that the plaintiff shall be prohibited from selling or encumbering  
5 the property unless otherwise ordered by the court.


6 IT IS FURTHER ORDERED that defendant Nationstar Mortgage is prohibited from conducting  
7 a foreclosure sale on the property unless otherwise ordered by the court.

8 DATED this 11<sup>th</sup> day of April, 2014.

10   
11 DISTRICT COURT JUDGE

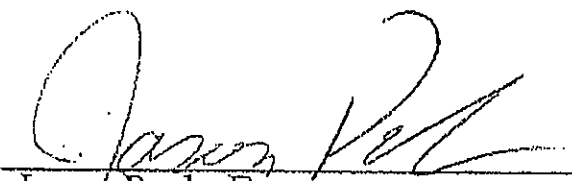
12 Respectfully submitted by:

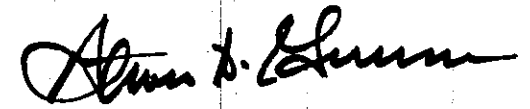
13 LAW OFFICES OF  
14 MICHAEL F. BOHN, ESQ., LTD.

15  
16 By:   
17 Michael F. Bohn, Esq.  
18 376 East Warm Springs Road, Ste. 140  
Las Vegas, NV 89119  
Attorney for plaintiff

19 Reviewed by:

20 THE COOPER CASTLE LAW FIRM, LLP

21  
22 By:   
23 Jason Peck, Esq.  
24 5275 South Durango Drive  
Las Vegas, Nevada 89113  
Attorney for defendants, Nationstar Mortgage and the Cooper Castle Law Firm



CLERK OF THE COURT

1 **ORDG**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)

5 LAW OFFICES OF

6 MICHAEL F. BOHN, ESQ., LTD.

7 376 East Warm Springs Road, Ste. 140

8 Las Vegas, Nevada 89119

9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorneys for plaintiff

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 SATICOY BAY LLC SERIES 4641  
14 VIAREGGIO CT

CASE NO.: A689240-C

DEPT NO.: V

15 Plaintiff,

16 vs.

17 NATIONSTAR MORTGAGE, LLC; COOPER  
18 CASTLE LAW FIRM, LLP; and MONIQUE  
19 GUILLORY

20 Defendants.

21 **ORDER GRANTING MOTION TO LIFT STAY**

22 The plaintiffs motion to lift stay having come before the court on it's chambers calendar, and there  
23 being no opposition to the motion and EDCR 2.20 provides that the failure of a party to oppose a motion  
24 may be deemed to be an admission that the motion is meritorious and a consent to the motion being  
25 granted, and for good cause appearing;

26 ///

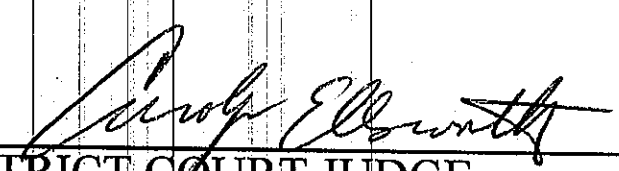
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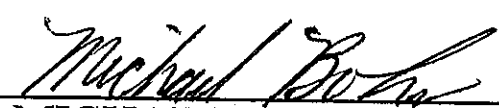
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion to lift stay imposed  
2 by the order entered on January 24, 2014 is granted. The parties may proceed with discovery in due  
3 course.

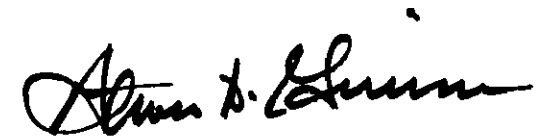
4 IT IS FURTHER ORDERED that the remainder of the provisions of the order <sup>Filed on</sup> ~~entered on~~  
5 <sup>April 15</sup> ~~January 24~~, 2014 shall continue to be in effect.

6 DATED this 9th day of January, 2015

7  
8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:  
11  
12 LAW OFFICES OF  
13 MICHAEL F. BOHN, ESQ., LTD.

14 By:   
15 MICHAEL F. BOHN, ESQ.  
16 376 East Warm Springs Road, Ste. 140  
17 Las Vegas, Nevada 89119  
18 Attorney for plaintiffs  
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CLERK OF THE COURT

AACC  
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Dana Jonathon Nitz, Esq. (SBN 50)  
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ccrowton@wrightlegal.net  
Attorneys for Defendant, NATIONSTAR MORTGAGE, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT,

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER  
CASTLE LAW FIRM, LLP; and MONIQUE  
GUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept. No.: V

**NATIONSTAR'S ANSWER TO THE  
COMPLAINT AND COUNTERCLAIM**

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT; NAPLES COMMUNITY  
HOMEOWNERS ASSOCIATION; DOES I  
through X; and ROE CORPORATIONS I  
through X, inclusive,

Counter-Defendants,

COMES NOW Defendant/Counterclaimant, NATIONSTAR MORTGAGE, LLC  
("Nationstar" or "Defendant"), by and through its attorneys of record, Dana Jonathon Nitz, Esq.,

AA000016

1 and R. Samuel Ehlers, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits  
2 its Answer to the Plaintiff's Complaint.

3 **COMPLAINT**

4 1. Defendant does not possess enough information to admit or deny the allegations  
5 in paragraph 1 of the Complaint; therefore, the Defendant denies said allegations.

6 2. Defendant admits only that Plaintiff was the successful bidder at a foreclosure  
7 sale occurring on August 22, 2013, concerning the property located at 4641 Viareggio Court, Las  
8 Vegas, Nevada 89147, APN No. 163-19-311-015 (the "Property"); and as to the remaining  
9 allegations contained in paragraph 2, Defendant does not possess enough information to admit or  
10 deny them; therefore, Defendant denies said allegations.

11 3. Defendant does not possess enough information to admit or deny the allegations  
12 in paragraph 3 of the Complaint; therefore, the Defendant denies said allegations.

13 4. Defendant admits the allegations in paragraph 4 of the Complaint.

14 5. Defendant admits the allegations in paragraph 5 of the Complaint.

15 6. Defendant does not possess enough information to admit or deny the allegations  
16 in paragraph 6 of the Complaint; therefore, the Defendant denies said allegations.

17 7. Defendant denies the allegations in paragraph 7 of the Complaint.

18 8. Defendant admits it has recorded a notice of default and election to sell under its  
19 deed of trust pursuant to NRS 107.080; however, as to the remaining allegations in paragraph 8  
20 of the Complaint, Defendant denies those allegations.

21 9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

22 10. Defendant denies the allegations in paragraph 10 of the Complaint.

23 **SECOND [sic] CLAIM FOR RELIEF**

24 11. Answering paragraph 11, Defendant hereby repeats, realleges and incorporates  
25 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as  
26 if set forth at length and in full.

27 12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

28 13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

1                                   **THIRD [sic] CLAIM FOR RELIEF**

2           **14.**     Answering paragraph 14, Defendant hereby repeats, realleges and incorporates  
3 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as  
4 if set forth at length and in full.

5           **15.**     Defendant denies the allegations in paragraph 15 of the Complaint.

6           **16.**     Defendant denies the allegations in paragraph 16 of the Complaint.

7                                   **FOURTH [sic] CLAIM FOR RELIEF**

8           **17.**     Answering paragraph 17, Defendant hereby repeats, realleges and incorporates  
9 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as  
10 if set forth at length and in full.

11          **18.**     Defendant does not possess enough information to admit or deny the allegations  
12 in paragraph 18 of the Complaint; therefore, the Defendant denies said allegations.

13          **19.**     Defendant does not possess enough information to admit or deny the allegations  
14 in paragraph 19 of the Complaint; therefore, the Defendant denies said allegations.

15          **20.**     Defendant does not possess enough information to admit or deny the allegations  
16 in paragraph 20 of the Complaint; therefore, the Defendant denies said allegations.

17          **21.**     Defendant denies the allegations in paragraph 21 of the Complaint.

18          **22.**     Defendant denies the allegations in paragraph 22 of the Complaint.

19          Defendant denies that Plaintiff is entitled to the relief sought in the “Wherefore” clauses  
20 of the Complaint.

21          Unless specifically admitted herein, all other allegations of the Complaint are expressly  
22 denied.

23                   **NATIONSTAR ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

24                           **FIRST AFFIRMATIVE DEFENSE**

25                                   **(Failure to State a Claim)**

26          Plaintiff’s Complaint fails to state a claim against Defendant upon which relief can be  
27 granted.

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1 “satisfy” the amount due and owing on the Note and would not constitute a waiver of its rights  
2 under the Note and Deed of Trust, or statute.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Waiver and Estoppel)**

5 Defendant alleges that by reason of Plaintiff’s acts and omissions, Plaintiff has waived its  
6 rights and is estopped from asserting the claims against Defendant.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 **(Void for Vagueness)**

9 To the extent that Plaintiff’s interpretation of NRS 116.3116 is accurate, the statute and  
10 Chapter 116 as a whole are void for vagueness as applied to this matter.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(Due Process Violations)**

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

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(Violation of Procedural Due Process)**

18 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust  
19 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **-(Satisfaction of Super-Priority Lien)**

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

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(12 U.S.C. Section 4617(j)(3))**

26 Plaintiff’s claim of free and clear title to the property is barred by 12 U.S.C. Section  
27 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust and preempts  
28 any state law to the contrary.



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

2 2. The real property which is the subject of this civil action consists of a residence  
3 commonly known as 4641 Viareggio Court, Las Vegas, Nevada 89147, APN No. 163-19-311-  
4 015 (hereinafter "Property").

### 5 JURISDICTION AND VENUE

6 3. Venue and jurisdiction is proper in this judicial district because Defendants reside  
7 in this district; a substantial part of the events or omissions giving rise to Nationstar's claims  
8 occurred in this district; and the Property that is the subject of this action is situated in this  
9 district, in Las Vegas, Clark County, Nevada.

### 10 PARTIES

11 4. Nationstar is a Delaware limited liability company with its principal place of  
12 business in the State of Texas and at all times relevant was doing business in the State of  
13 Nevada.

14 5. Nationstar is now and at all times relevant herein the assigned Beneficiary under  
15 and deed of trust signed by Monique Guillory (hereinafter "Guillory"), recorded on January 25,  
16 2007, (hereinafter "Deed of Trust"), which encumbers the Property and secures a promissory  
17 note.

18 6. Upon information and belief, Counter-Defendant, Saticoy Bay LLC Series 4641  
19 Viareggio Ct, (hereinafter "Saticoy Bay" or "Buyer"), is a Nevada limited liability company and  
20 at all times relevant was doing business in the State of Nevada, and claims it is the current  
21 titleholder of the Property.

22 7. Upon information and belief, Counter-Defendant, Naples Community  
23 Homeowners Association (hereinafter "Naples" or the "HOA"), is a Nevada non-profit  
24 corporation, licensed to do business in the State of Nevada.

25 8. Nationstar does not know the true names, capacities or bases of liability of  
26 fictitious defendants sued as Does I through X and Roe Corporations I through X, inclusive  
27 (collectively "fictitious Defendants"). Each of the fictitious Defendants is in some way liable to  
28 Nationstar or claims some rights, title, or interest in the Property that is subsequent to or subject

to the interests of Nationstar, or both. Nationstar will amend this Counterclaim to reflect the true names of said defendants when the same have been ascertained.

9. Upon information and belief, Leach Johnson Song & Gruchow, (hereinafter “Leach Johnson” or “HOA Trustee”) and one or more fictitious Defendants are the agents of the HOA, and the HOA is responsible for their acts and omissions under the doctrine of *respondeat superior*.

## FACTUAL BACKGROUND

**10.** On or about January 22, 2007, Guillory purchased the Property.<sup>1</sup>

11. The Deed of Trust executed by Guillory identified First Magnus Financial Corporation as the Lender, Great American Title as the Trustee, and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary acting solely as a nominee for lender and lender's successors and assigns, and secured a loan in the amount of \$258,400.00 (hereinafter the "Guillory Loan").<sup>2</sup>

12. On August 30, 2012, an Assignment of Deed of Trust was recorded by which MERS assigned all its beneficial interest under the Deed of Trust to Nationstar.<sup>3</sup>

13. On August 18, 2011, a Notice of Delinquent Assessment Lien was recorded against the Property on behalf of the HOA by the HOA Trustee.<sup>4</sup>

14. On January 24, 2012, a Notice of Default and Election to Sell under Homeowners Association Lien was recorded against the Property.<sup>5</sup>

<sup>1</sup> A true and correct copy of the Grant, Bargain and Sale Deed recorded in the Clark County Recorder's Office as Book and Instrument Number 20070125-0003582 on January 25, 2007, is attached hereto as **Exhibit 1**. All other recordings stated hereafter are recorded in the same manner.

<sup>2</sup> A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20070125-0003583 on January 25, 2007, is attached hereto as **Exhibit 2**.

<sup>3</sup> A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument Number 20120830-0000676 on August 30, 2012, is attached hereto as **Exhibit 3**.

<sup>4</sup> A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 20110818-0002904 on August 18, 2011, is attached hereto as **Exhibit 4**.

<sup>5</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners Association Lien recorded as Book and Instrument Number 20120124-0000764 on January 24, 2012, is attached hereto as **Exhibit 5**.

1           **15.**     On July 30, 2012, a Notice of Foreclosure Sale was recorded against the Property  
2 by the HOA Trustee.<sup>6</sup>

3           **16.**     Upon information and belief, pursuant to that Notice of Sale, a non-judicial  
4 foreclosure sale purportedly occurred on August 22, 2013 (hereinafter the "HOA Sale"),  
5 whereby Buyer acquired its interest in the Property, if any, for \$5,563.00.

6           **17.**     On September 6, 2013, a Foreclosure Deed was recorded by which Buyer claims  
7 its interest.<sup>7</sup>

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

11           **19.**     A lender or holder, such as Nationstar, has a right to cure a delinquent  
12 homeowner's association lien in order to protect its interest.

13           **20.**     Further, the Covenants, Conditions and Restrictions that relate to the Property (the  
14 "CC&Rs") require reasonable notice of delinquency to all lien holders on the Property.

15           **21.**     Upon information and belief, the HOA and its agent, the HOA Trustee, did not  
16 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS  
17 116.31168.

18           **22.**     A recorded notice of default must "describe the deficiency in payment."

19           **23.**     The HOA Sale occurred without notice to Nationstar, or its predecessors, agents,  
20 servicers or trustees, what proportion of the lien, if any, that HOA and HOA Trustee claimed  
21 constituted a "super-priority" lien.

22           **24.**     The HOA Sale occurred without notice to Nationstar, or its predecessors, agents,  
23 servicers or trustees, whether HOA was foreclosing on the "super-priority" portion of its lien, if  
24 any, or under the non-super-priority portion of the lien.

25           **25.**     The HOA Sale occurred without notice to Nationstar, or its predecessors, agents,

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26 <sup>6</sup> A true and correct copy of the Notice of Foreclosure Sale recorded as Book and Instrument  
27 Number 20120730-0001448 on July 30, 2012, is attached hereto as **Exhibit 6**.

28 <sup>7</sup> A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number  
20130906-0000930 on September 6, 2013, is attached hereto as **Exhibit 7**.

1 servicers or trustees, of a right to cure the delinquent assessment and the super-priority lien, if  
2 any.

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

6       **27.**     The HOA Sale was an invalid sale and could not have extinguished Nationstar's  
7 secured interest because of defects in the notices given to Nationstar, or its predecessors, agents,  
8 servicers or trustees, if any.

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

11       **29.**     A homeowner's association may only collect as a part of the super priority lien (a)  
12 nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)  
13 nine months of common assessments which became due prior to the institution of an action to  
14 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not  
15 less than six months).

16       **30.**     Upon information and belief, the HOA Foreclosure Notices included improper  
17 fees and costs in the amount demanded.

18       **31.**     The attorney's fees and the costs of collecting on a homeowner's association lien  
19 cannot be included in the super-priority lien.

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

24       **33.**     The HOA Sale is unlawful and void under NRS 116.3102 et seq.

25       **34.**     The HOA Sale deprived Nationstar of its right to due process because the  
26 foreclosure notices failed to identify the super-priority amount, to adequately describe the  
27 deficiency in payment, to provide Nationstar notice of the correct super-priority amount, and to  
28 provide a reasonable opportunity to satisfy that amount.

1           35.     A homeowner's association sale must be done in a commercially reasonable  
2 manner.

3           36.     At the time of the HOA Sale, the amount owed on the Guillory Loan exceeded  
4 \$300,216.00.

5           37.     Upon information and belief, at the time of the HOA Sale, the fair market value of  
6 the Property exceeded \$130,000.00.

7           38.     The amount paid at the HOA Sale allegedly totaled \$5,563.00.

8           39.     The sales price at the HOA Sale is not commercially reasonable, and not done in  
9 good faith, when compared to the debt owed to Nationstar on the Guillory Loan and the fair  
10 market value of the Property.

11          40.     The HOA Sale by which Buyer took its interest was commercially unreasonable if  
12 it extinguished Nationstar's Deed of Trust.

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

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

20          43.     The CC&Rs for the HOA<sup>8</sup> provide in Section 7.8, "Mortgage Protection," that  
21 Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the  
22 enforcement of any provision of this Declaration shall defeat or render invalid the rights  
23 of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made on  
24 good faith and for value.... The lien of the assessments including interest and costs, shall  
25 be subordinate to the lien of any First Mortgage upon the Unit,...

26          44.     The CC&Rs for the HOA provide in Section 7.9, "Priority of Assessment Lien,"  
27 that Nationstar's Deed of Trust encumbers the Property, even in the event the HOA conducts a  
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<sup>8</sup> A true and correct copy of the Declaration of Covenants, Conditions and Restrictions recorded  
as Book and Instrument Number 20000307.00911 on March 7, 2000, is attached hereto as  
**Exhibit 8.**

1 sale pursuant to NRS 116.3116 et seq.

2       **45.**     Because the CC&Rs contained a Mortgagee Protection Clause in Section 7.9, and  
3 because Nationstar, or its predecessors, agents, servicers or trustees, was not given proper notice  
4 that the HOA intended to foreclose on the super-priority portion of the dues owing, Nationstar  
5 did not know that it had to attend the HOA Sale to protect its security interest.

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

10       **47.**     Buyer, HOA, and HOA Trustee knew that Nationstar would rely on the  
11 Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that Nationstar would  
12 not know that HOA was foreclosing on super-priority amounts because of the failure of HOA  
13 and HOA Trustee to provide such notice. Nationstar's absence from the HOA Sale allowed  
14 Buyer to appear at the HOA Sale and purchase the Property for a fraction of market value,  
15 making the HOA Sale commercially unreasonable.

16       **48.**     Buyer, HOA, and HOA Trustee knew that prospective bidders would be less  
17 likely to attend the HOA Sale because the public at large believed that Nationstar was protected  
18 under the Mortgagee Protection Clause in the CC&Rs of public record, and that the public at  
19 large did not receive notice, constructive or actual, that HOA was foreclosing on a super-priority  
20 portion of its lien because HOA and HOA Trustee improperly failed to provide such notice. The  
21 general public's belief therefore was that a buyer at the HOA Sale would take title to the  
22 Property subject to Nationstar's Deed of Trust. This general belief resulted in the absence of  
23 prospective bidders at the HOA Sale, which allowed Buyer to appear at the HOA Sale and  
24 purchase the Property for a fraction of market value, making the HOA Sale commercially  
25 unreasonable.

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

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1           **50.**     Nationstar is informed and believes that Buyer is a professional property  
2 purchaser.

3           **51.**     The circumstances of the HOA Sale of the Property and its status as a professional  
4 property purchaser prevent Buyer from being deemed a bona fide purchaser for value.

5           **52.**     Upon information and belief, Buyer had actual, constructive or inquiry notice of  
6 Nationstar's first Deed of Trust, which prevents Buyer from being deemed a bona fide purchaser  
7 or lender for value.

8           **53.**     In the event Nationstar's interest in the Property is not reaffirmed or restored,  
9 Nationstar suffered damages in the amount of the fair market value of the Property or the unpaid  
10 balance of the Guillory Loan and Deed of Trust, at the time of the HOA Sale, whichever is  
11 greater, as a proximate result of Defendants' acts and omissions.

12                                   **FIRST CAUSE OF ACTION**

13           **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**

14                                   **versus Buyer, HOA and all fictitious Defendants)**

15           **54.**     Nationstar incorporates and re-alleges all previous paragraphs, as if fully set forth  
16 herein.

17           **55.**     Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and  
18 authority to declare Nationstar's rights and interests in the Property and to resolve Counter-  
19 Defendants' adverse claims in the Property.

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

23           **57.**     Nationstar's Deed of Trust is a first secured interest on the Property as intended  
24 by NRS 116.3116(2)(b).

25           **58.**     As the current beneficiary under the Deed of Trust and Guillory Loan,  
26 Nationstar's interest still encumbers the Property and retains its first position status in the chain  
27 of title for the Property after the HOA Sale and is superior to the interest, if any, acquired by  
28 Buyer, or held or claimed by any other party.



1           59.     Upon information and belief, Buyer claims an interest in the Property that is  
2 adverse to Nationstar's interest.

3           60.     Upon information and belief, the HOA, the HOA Trustee and the fictitious  
4 Defendants failed to provide proper, adequate notices required by Nevada statutes, the CC&R's  
5 and due process to Nationstar and/or its predecessors, and therefore the HOA Sale is void and  
6 should be set aside or rescinded.

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

9           62.     For all the reasons set forth above and in the Factual Background, Nationstar is  
10 entitled to a determination from this Court, pursuant to NRS 40.010, that Nationstar is the  
11 beneficiary of a first position Deed of Trust which still encumbers the Property and is superior to  
12 the interest held by Buyer, and all other parties, if any.

13           63.     In the alternative, if it is found under state law that Nationstar's interest could  
14 have been extinguished by the HOA Sale, for all the reasons set forth above and in the Factual  
15 Background, Nationstar is entitled to a determination from this Court, pursuant to NRS 40.010,  
16 the HOA Sale was unlawful and void and conveyed no legitimate interest to Buyer.

17           64.     Nationstar has furthermore been required to retain counsel and is entitled to  
18 recover reasonable attorney's fees for having brought the underlying action.

19                   **SECOND CAUSE OF ACTION**

20                   **(Permanent and Preliminary Injunction versus Buyer)**

21           65.     Nationstar incorporates by reference the allegations of all previous paragraphs, as  
22 if fully set forth herein.

23           66.     As set forth above, Buyer claims an ownership interest in the Property that is  
24 adverse to Nationstar.

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

1           68.     Nationstar has a reasonable probability of success on the merits of the complaint,  
2 for which compensatory damages will not compensate Nationstar for the irreparable harm of the  
3 loss of title to a bona fide purchaser or loss of the first position priority status secured by the  
4 Property.

5           69.     Nationstar has no adequate remedy at law due to the uniqueness of the Property  
6 involved in the case.

7           70.     Nationstar is entitled to a preliminary and permanent injunction prohibiting  
8 Buyer, its successors, assigns, and agents from conducting a sale, transfer or encumbrance of the  
9 Property if it is claimed to be superior to Nationstar's Deed of Trust or not subject to that Deed  
10 of Trust.

11          71.     Nationstar is entitled to a preliminary injunction requiring Buyer to pay all taxes,  
12 insurance and homeowner's association dues during the pendency of this action.

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

16          73.     Nationstar has been required to retain counsel to prosecute this action and is  
17 entitled to recover reasonable attorney's fees to prosecute this action.

### 18                                   **THIRD CAUSE OF ACTION**

#### 19                   **(Wrongful Foreclosure versus the HOA and fictitious Defendants)**

20          74.     Nationstar incorporates by reference the allegations of all previous paragraphs, as  
21 if fully set forth herein.

22          75.     Upon information and belief, the HOA, the HOA Trustee and all fictitious  
23 Defendants did not comply with all mailing and noticing requirements stated in NRS 116.31162  
24 through NRS 116.31168.

25          76.     The HOA, the HOA Trustee and all fictitious Defendants failed to provide notice  
26 pursuant to the CC&Rs.

27          77.     Because the HOA Sale was wrongfully conducted and violated applicable law, the  
28 Court should set it aside to the extent that it purports to have extinguished Nationstar's first Deed



- 1 interest of Buyer, and all other fictitious Defendants;
- 2 3. For a declaration and determination that the HOA Sale was invalid to the extent it
- 3 purports to convey the Property free and clear to Buyer;
- 4 4. In the alternative, for a declaration and determination that the HOA Sale was
- 5 invalid and conveyed no legitimate interest to Buyer;
- 6 5. For a preliminary and permanent injunction that Buyer, its successors, assigns,
- 7 and agents are prohibited from conducting a sale or transfer of the Property if it is
- 8 claimed to be superior to Nationstar's Deed of Trust or not subject to that Deed of
- 9 Trust;
- 10 6. For a preliminary injunction that Buyer, its successors, assigns, and agents pay all
- 11 taxes, insurance and homeowner's association dues during the pendency of this
- 12 action;
- 13 7. For a preliminary injunction that Buyer, its successors, assigns, and agents be
- 14 required to segregate and deposit all rents with the Court or a Court-approved
- 15 trust account over which Buyer has no control during the pendency of this action;
- 16 8. If it is determined that Nationstar's Deed of Trust has been extinguished by the
- 17 HOA Sale, for special damages in the amount of the fair market value of the
- 18 Property or the unpaid balance of the Guillory Loan and Deed of Trust, at the time
- 19 of the HOA Sale, whichever is greater;
- 20 9. For general and special damages in excess of \$10,000.00;
- 21
- 22
- 23
- 24
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- 28

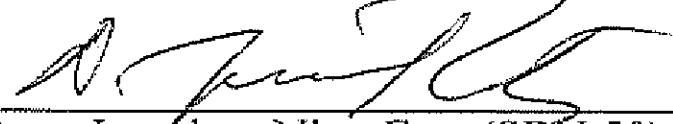
1           10.     For attorney's fees;

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

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

4     DATED this 13<sup>th</sup> day of March, 2015.

5                                 WRIGHT, FINLAY & ZAK, LLP

6                                 

7                                 Dana Jonathon Nitz, Esq. (SBN 50)

8                                 Chelsea A. Crowton, Esq. (SBN 11547)

9                                 7785 W. Sahara Ave., Suite 200

10                                Las Vegas, NV, 89117

11                                Tel: (702) 475-7964 Fax: (702) 946-1345

12                                dnitz@wrightlegal.net

13                                ccrowton@wrightlegal.net

14                                Attorneys for Defendant, Nationstar Mortgage, LLC


1 **AFFIRMATION**

2 Pursuant to NRS 239B.030

3 The undersigned does hereby affirm that the preceding **DEFENDANT**  
4 **NATIONSTAR'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIM**  
5 filed in Case No. A-13-689240-C **does not** contain the social security number of any person.

6 DATED this 13 day of March, 2015

7 WRIGHT, FINLAY & ZAK, LLP

8   
9 Dana Jonathon Nitz, Esq. (SBN 50)  
10 Chelsea A. Crowton, Esq. (SBN 11547)  
11 7785 W. Sahara Ave., Suite 200  
12 Las Vegas, NV, 89117  
13 (702) 475-7964; Fax: (702) 946-1345  
14 dnitz@wrightlegal.net  
ccrowton@wrightlegal.net  
Attorneys for Defendant, Nationstar Mortgage, LLC

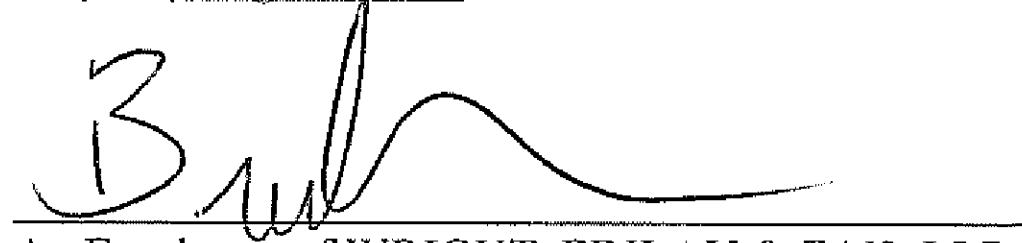
15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
17 LLP, and that on this 13 day of March, 2015, I did cause a true copy of **NATIONSTAR'S**  
18 **ANSWER TO THE COMPLAINT AND COUNTERCLAIM** to be e-filed and e-served  
19 through the Eighth Judicial District EFP system pursuant to NEFR 9.  
20 Law Offices of Michael F. Bohn, Esq.

Name	Email
Eserve Contact	<a href="mailto:office@bohnlawfirm.com">office@bohnlawfirm.com</a>
Michael F Bohn Esq	<a href="mailto:mbohn@bohnlawfirm.com">mbohn@bohnlawfirm.com</a>

23 The Cooper Caslte Law Firm. LLP

Name	Email
Jason Peck, Esq.	<a href="mailto:jasonpeck@ccfirm.com">jasonpeck@ccfirm.com</a>


26   
27  
28 An Employee of WRIGHT, FINLAY & ZAK, LLP

AA000034

# **Exhibit 1**

# **Exhibit 1**

# **Exhibit 1**

  
20070125-0003582

APN: 163-19-311-015  
Affix R.P.T.T.: \$1,647.30  
Escrow NO.: 07-01-6578DH  
**WHEN RECORDED MAIL DEED  
AND TAX STATEMENTS TO:**  
Monique Guillory  
4641 Viareggio Court  
Las Vegas, NV 89147

Fee: \$19.00 RPTT: \$1,647.30  
N/C Fee: \$0.00

01/25/2007 13:30:50  
T20070014336

Requestor:  
GREAT AMERICAN TITLE

Debbie Conway KXC  
Clark County Recorder Pgs: 8

*8-2*  
Actualization copy on check

### GRANT, BARGIN, SALE DEED

THIS INDENTURE WITNESSETH: That Bakers Financial Power Group LLC, A Limited Liability

For valuable consideration, receipt of which is hereby acknowledged, hereby Grant, Bargain, Sell and Convey to Monique Guillory, A Single Woman

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

SEE EXHIBIT "A"

SUBJECT TO: 1. Taxes for the current fiscal year.  
2. Rights of way, reservations, restrictions, easements and conditions of record.



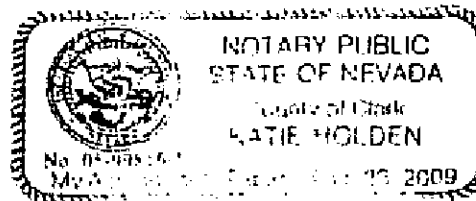
Together with all an singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 22 day of January, 2007

Bakers Financial Power Group, LLC

  
By: Justin Baker, President

STATE OF NEVADA  
COUNTY OF CLARK



On January 22, 2007 personally appeared before me, a Notary Public, Justin Baker, personally known (or proven) to me to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged that he/she/they executed the instrument.

  
Notary Public

**EXHIBIT "A"**

:  
:  
:

**PARCEL ONE (1):**

**Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Book 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.**

**PARCEL TWO (2):**

**A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).**

APN: 163-19-311-015

Affix R.P.T.T.: \$1,647.30

Escrow NO.: 07-01-6578DH

**WHEN RECORDED MAIL DEED  
AND TAX STATEMENTS TO:**

Monique Guillory  
4641 Viareggio Court  
Las Vegas, NV 89147

*\*Clarification copy\**

---

**GRANT, BARGIN, SALE DEED**

THIS INDENTURE WITNESSETH: That Bakers Financial Power Group LLC, A Limited Liability

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

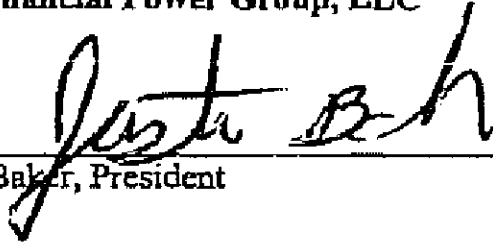
SEE EXHIBIT "A"

SUBJECT TO:      1. Taxes for the current fiscal year.  
                      2. Rights of way, reservations, restrictions, easements and conditions of record.

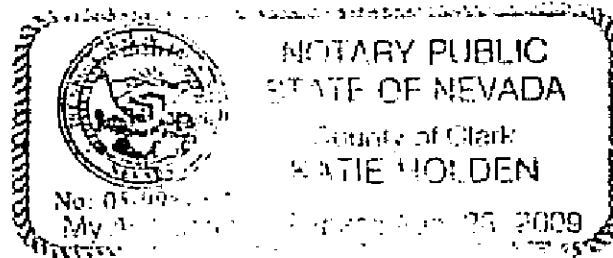
Together with all an singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 22 day of January, 2007

Bakers Financial Power Group, LLC

  
By: Justin Baker, President

STATE OF NEVADA  
COUNTY OF CLARK



On January 22, 2007 personally appeared before me, a Notary Public, Justin Baker, personally known (or proven) to me to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged that he/she/they executed the instrument.



Notary Public

**EXHIBIT "A"**

:  
:  
:

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**PARCEL TWO (2):**

**A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets 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) 163-19-311-015

b) \_\_\_\_\_

c) \_\_\_\_\_

d) \_\_\_\_\_

For recorders optional use only

Document/Instrument#: \_\_\_\_\_

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

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

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

**2. Type of Property**

a) ☐ Vacant Land

b) ☒ Single Fam. Res.

c) ☐ Condo/Townhse

d) ☐ 2-4 Plex

e) ☐ Apt. Bldg

f) ☐ Comm/Indl

g) ☐ Agricultural

h) ☐ Mobile Home

**3. Total Value/Sales Price of Property**

\$323,000.00

Deed in Lieu of Foreclosure Only (value of property)

\$

Transfer tax value:

\$323,000.00

Real Property Transfer Tax Due:

\$1,647.30

**4. If Exemption Claimed**

a) Transfer Tax Exemption per NRS 375.090, Section

b) Explain Reason for Exemption:

**5. Partial Interest: Percentage being transferred: %**

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

Signature [Signature] Capacity Seller

Signature [Signature] Capacity Agent

**SELLER (GRANTOR) INFORMATION (REQUIRED) BUYER (GRANTEE) INFORMATION (REQUIRED)**

Print Bakers Financial Power Group, LLC

Print Monique Guillory

Name:

Name:

Address: 4641 Viareggio Court

Address: 4641 Viareggio Court

City: Las Vegas NV 89147

City: Las Vegas, NV 89147

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

Great American Title  
3137 E. Warm Springs, Suite 200  
Las Vegas NV, 89120

Escrow No 07-01-6578DH (AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

3582  
Cont

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s):**

a) 163-19-311-015

b) \_\_\_\_\_

c) \_\_\_\_\_

d) \_\_\_\_\_

5

For recorders optional use only

Document/Instrument#: \_\_\_\_\_

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

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

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

**2. Type of Property**

a) ☐ Vacant Land

b) ☒ Single Fam. Res.

c) ☐ Condo/Twnhse

d) ☐ 2-4 Plex

e) ☐ Apt. Bldg

f) ☐ Comm/Indl

g) ☐ Apicultural

h) ☐ Mobile Home

**3. Total Value/Sales Price of Property**

\$323,000.00

Deed in Lieu of Foreclosure Only ( value of property)

\$

Transfer tax value

\$323,000.00

Real Property Transfer Tax Due:

\$1,647.30

**4. If Exemption Claimed**

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b) Explain Reason for Exemption:

**5. Partial Interest: Percentage being transferred: %**

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Signature [Signature] Capacity Seller

Signature [Signature] Capacity Agent

**SELLER (GRANTOR) INFORMATION (REQUIRED) BUYER (GRANTEE) INFORMATION (REQUIRED)**

Print Name: Bakers Financial Power Group, LLC

Print Name: Monique Guillory

Address: 4641 Viareggio Court

Address: 4641 Viareggio Court

City: Las Vegas NV 89147

City: Las Vegas, NV 89147

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

Great American Title

3137 E. Warm Springs, Suite 200

Las Vegas NV, 89120

Escrow No 07-01-6578DH (AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

3582

## **Exhibit 2**

## **Exhibit 2**

## **Exhibit 2**



Assessor's Parcel Number:  
163-19-311-015  
Return To:  
FIRST MAGNUS FINANCIAL CORPORATION

603 N. WILMOT  
TUCSON, AZ 85711

Prepared By:

FIRST MAGNUS FINANCIAL CORPORATION  
603 N. WILMOT  
TUCSON, AZ 85711

~~Recording Requested By:~~  
FIRST MAGNUS FINANCIAL CORPORATION

07-01-6578DH

[Space Above This Line For Recording Data]

20070125-0003583

Fee: \$40.00  
N/C Fee: \$0.00

01/25/2007 13:30:50

T20070014336

Requestor:  
GREAT AMERICAN TITLE

Debbie Conway KXC  
Clark County Recorder Pgs: 27

## DEED OF TRUST

LOAN NO.: 5040782241  
ESCROW NO.: 07-01-6578DH

MIN 100039250407822414  
MERS Phone: 1-888-679-6377

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated JANUARY 17, 2007 together with all Riders to this document.

(B) "Borrower" is  
MONIQUE GUILLORY, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is  
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

Lender is a CORPORATION  
organized and existing under the laws of ARIZONA

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
WITH MERS  
V-6A(NV) (0510)

Page 1 of 15

LENDER SUPPORT SYSTEMS INC. MERS6ANV.NEW (04/06)

Form 3029 1/01

Lender's address is

603 North Wilmot Road, Tucson, AZ 85711

(D) "Trustee" is

GREAT AMERICAN TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JANUARY 17, 2007

The Note states that Borrower owes Lender

TWO HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED AND NO/100 X X X X X X X X

Dollars

(U.S. \$ 258,400.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 2037

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

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

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

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home Rider
<input checked="" type="checkbox"/> Other(s) [specify]	INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER ADDENDUM TO ADJUSTABLE RATE RIDER	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

V-6A(NV) (0510)

Page 2 of 15

Form 3029 1/01  
Initials: MG

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE PART HEREOF .....AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 163-19-311-015 which currently has the address of  
4641 VIAREGGIO COURT [Street]  
LAS VEGAS [City], Nevada 89147 [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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

V-6A(NV) (0510)

Page 3 of 15

Form 3029 1/01

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

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

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

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

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

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

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

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

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

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

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

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

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

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

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

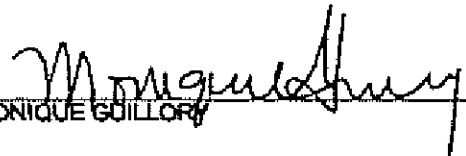
**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

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

Witnesses:

\_\_\_\_\_  
-Witness

\_\_\_\_\_  
-Witness

  
MONIQUE GUILLORY (Seal)  
-Borrower

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

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

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

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

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

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

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

STATE OF ~~NEVADA~~ *California*  
COUNTY OF *Los Angeles*

This instrument was acknowledged before me on *January 19, 2007* by  
MONIQUE GUILLORY



*Ashlee Lena Turner*  
Notary Public

Mail Tax Statements To:  
CLARK COUNTY  
PO BOX 551220  
LAS VEGAS, NV 89155-0000

## PLANNED UNIT DEVELOPMENT RIDER

LOAN NO.: 5040782241

MIN: 100039250407822414  
MERS Phone: 1-888-679-6377

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 17th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

### COVENANTS, CONDITIONS AND RESTRICTIONS.


(the "Declaration"). The Property is a part of a planned unit development known as CONQUISTADOR TOMPKINS

[Name of Planned Unit Development]

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

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

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

initials 

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01  
V-7R (0411).01

Page 1 of 3

LENDER SUPPORT SYSTEMS INC. TR.NEW (07/06)



**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

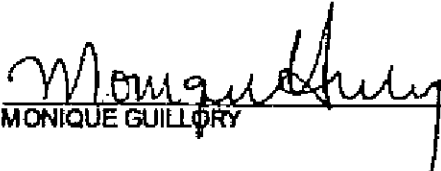
**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby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

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

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become

additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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

 (Seal) \_\_\_\_\_ (Seal)  
MONIQUE GUILLORY -Borrower -Borrower

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

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

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

## ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)  
 SEE "ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.  
 SEE "INTEREST-ONLY ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.  
 LOAN NO.: 5040782241 MIN: 100039250407822414  
 MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 17th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147  
 [Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

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

The Note provides for an initial interest rate of 8.375 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

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

**(A) Change Dates**

The interest rate I will pay may change on the first day of FEBRUARY, 2012, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

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

Initials: *ML*

Form 3138 1/01

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae Uniform Instrument

V-838R (0402).01

Page 1 of 4

LENDER SUPPORT SYSTEMS INC. B3BR.NEW (09/06)

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

**(C) Calculation of Changes**

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

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

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage points ( 2.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 14.375 % , or less than 8.375 %.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

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

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

Uniform Covenant 18 of the Security Instrument is amended to read as follows:


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

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

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

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 (Seal) (Seal)  
MONIQUE GUILFORD -Borrower -Borrower

(Seal) (Seal)  
-Borrower -Borrower

(Seal) (Seal)  
-Borrower -Borrower

(Seal) (Seal)  
-Borrower -Borrower

**INTEREST-ONLY ADDENDUM  
TO ADJUSTABLE RATE RIDER**

LOAN NO.: 5040782241

MIN: 100039250407822414  
MERS Phone: 1-888-679-6377

PROPERTY ADDRESS: 4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

THIS ADDENDUM is made this 17th day of JANUARY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to  
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

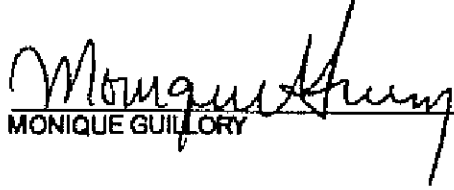
(the "Lender").

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Note are changed by this Addendum.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES****(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE QUARTERS percentage point(s) ( 2.750 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment will not be reduced due to voluntary prepayments.

 MONIQUE GUILORY	(Seal) -Borrower		(Seal) -Borrower
	(Seal) -Borrower		(Seal) -Borrower
	(Seal) -Borrower		(Seal) -Borrower
	(Seal) -Borrower		(Seal) -Borrower



**ADDENDUM TO ADJUSTABLE RATE RIDER**

MIN: 100039250407822414  
MERS Phone: 1-888-679-6377

LOAN NO.: 5040782241

This addendum is made JANUARY 17, 2007 and is incorporated into and deemed to amend and supplement the Adjustable Rate Rider of the same date.

The property covered by this addendum is described in the Security Instrument and located at:  
4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

**AMENDED PROVISIONS**

In addition to the provisions and agreements made in the Security Instrument, I/we further covenant and agree as follows:

**ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES****Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage point(s) ( 2.000 %) from the rate of interest I have been paying for the preceding six (6) months. My interest rate will never be greater than 14.375 %. My interest rate will never be less than 8.375 %.

**TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

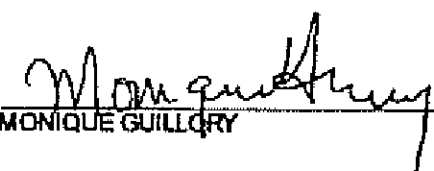
Initials *MS*

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

In Witness Whereof, Trustor has executed this addendum.

Witness

\_\_\_\_\_

  
MONIQUE GUILLORY

(Seal)  
-Borrower

(Seal)  
-Borrower

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

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

**EXHIBIT "A"**

:  
:  
:

**PARCEL ONE (1):**

**Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Book 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.**

**PARCEL TWO (2):**

**A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).**

## **Exhibit 3**

## **Exhibit 3**

## **Exhibit 3**

Inst #: 201208300000676

Fees: \$19.00

N/C Fee: \$0.00

08/30/2012 09:08:01 AM

Receipt #: 1289865

Requestor:

CASTLE STAWIARSKI, LLC - NE

Recorded By: MJM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN 163-19-311-015

APN

APN

APN

Recording Requested By:

Name Cooper Castle Law Firm

Address 5275 S Durango Drive

City / State / Zip Las Vegas, NV 89113

Corporate Assignment of Deed of Trust

(Print Name Of Document On The Line Above)

☐ I the undersigned hereby affirm that this document submitted for recording contains <sup>no</sup> personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statue (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.

I hereby affirm that this document submitted for recording does not contain a social security number.

Signed: Angela Sanchez  
Angela Sanchez  
ASST. SECRETARY

Parcel #: 163-19-311-015

When Recorded Mail To:  
Nationstar Mortgage LLC  
C/O NTC 2100 Alt. 19 North  
Palm Harbor, FL 34683



### CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, ITS SUCCESSORS AND ASSIGNS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS 350 Highland Drive, Lewisville, TX 75067 (469)549-2000, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Deed of Trust made by MONIQUE GUILLORY, and recorded on 01/25/2007 as Instrument # 20070125-0003583, and/or Book n/a, Page n/a, in the Recorder's office of CLARK County, Nevada.

Dated on 08/15/2012 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, ITS SUCCESSORS AND ASSIGNS

By: Angela Sanchez  
Angela Sanchez  
ASST. SECRETARY



NSMAV 17175662 - DOCADMIN CJ40707131X MIN 100039250407822414 MERS PHONE  
1-888-679-6377 [C] FRMNV1



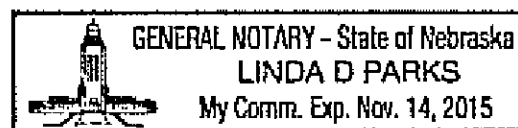
\*17175662\*

Parcel #: 163-19-311-015

STATE OF NEBRASKA  
COUNTY OF SCOTTS BLUFF

The foregoing instrument was acknowledged before me on 08 / 15 / 2012 (MM/DD/YYYY) by Angela Sanchez as ASST. SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, ITS SUCCESSORS AND ASSIGNS. He/she/they is (are) personally known to me.

Signed:

Linda D Parks  
Linda D PARKSNotary Public - State of NEBRASKA  
Commission expires: 11-14-15

Prepared By: E.Lance/NTC, 2100 Alt 19 North, Palm Harbor, FL 34683 (800)346-9152  
NSMAV 17175662 - DOCADMIN CJ40707131X MIN 100039250407822414 MERS PHONE  
1-888-679-6377 [C] FRMNV1



\*17175662\*

## **Exhibit 4**

## **Exhibit 4**

## **Exhibit 4**



Inst #: 201108180002904

Fees: \$15.00

N/C Fee: \$0.00

08/18/2011 02:30:03 PM

Receipt #: 884664

Requestor:

LEACH JOHNSON SONG &amp; GRUCHOW

Recorded By: MGM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**When Recorded, Mail To:**

JOHN E. LEACH, ESQ.  
LEACH JOHNSON SONG & GRUCHOW  
8945 W. Russell Road, Suite 330  
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

---

**NOTICE OF DELINQUENT ASSESSMENT LIEN**

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

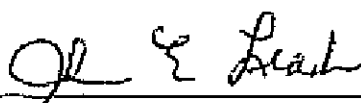
2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17<sup>th</sup> day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS  
ASSOCIATION

By   
JOHN E. LEACH, ESQ., as  
Authorized Agent for Naples Community  
Homeowners Association

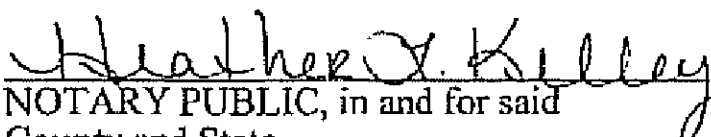
STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK     )     ss.

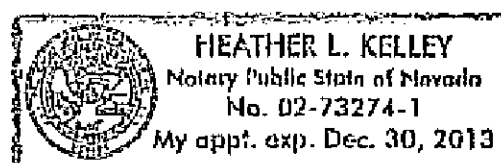
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

  
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me  
this 17<sup>th</sup> day of August, 2011.

  
NOTARY PUBLIC, in and for said  
County and State  
Notary Appointment No.: 02-73274-1  
Notary Seal Expiration: December 30, 2013



## **Exhibit 5**

## **Exhibit 5**

## **Exhibit 5**

Inet #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG &amp; GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**When Recorded, Mail To:**

KIRBY C. GRUCHOW, JR., ESQ.  
LEACH JOHNSON SONG & GRUCHOW  
8945 West Russell Road, Suite 330  
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

---

**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 OF DEFAULT AND ELECTION TO SELL**  
**REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

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

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23<sup>rd</sup> day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized  
Agent for Naples Community Homeowners  
Association

STATE OF NEVADA )

ss.

COUNTY OF CLARK )

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

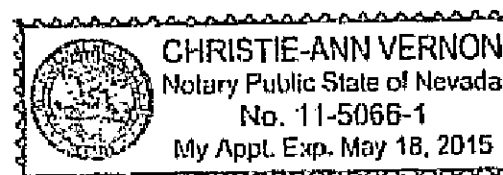
SUBSCRIBED and SWORN to before me  
this 23<sup>rd</sup> day of January, 2012.

*Christie Ann Vernon*  
NOTARY PUBLIC, in and for said

County and State

Notary Appointment No.: 11-5066-1

Notary Seal Expiration: May 18, 2015



## **Exhibit 6**

## **Exhibit 6**

## **Exhibit 6**

3

A P N: 163-19-311-015

Inst #: 201207300001448

Fees: \$19.00

N/C Fee: \$0.00

07/30/2012 01:36:24 PM

Receipt #: 1251958

Requestor:

NATIONAL SEARCH SOLUTIONS

Recorded By: SAO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF FORECLOSURE SALE**  
**UNDER NOTICE OF DELINQUENT**  
**ASSESSMENT LIEN**

**Recording Requested by:**

**Pro Forma Lien & Foreclosure Services**

**Return to:**

**Pro Forma Lien & Foreclosure Services**  
**P.O. Box 96807**  
**Las Vegas, NV 89193**

**NOTICE OF FORECLOSURE SALE**  
**UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN**

TS# 1079.005KCG

APN: 163-19-311-015

**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 PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction **at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, **plus** any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. ***\*The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.***




The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 6/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By   
KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory  
For sale information access [www.priorityposting.com](http://www.priorityposting.com) TS# 1079.005KCG

## **Exhibit 7**

## **Exhibit 7**

## **Exhibit 7**

When recorded return to, and  
Mail Tax Statements to:

Saticoy Bay LLC Series 4641 Viareggio Ct.  
900 S. Las Vegas Blvd., Suite 810  
Las Vegas, NV 89101

APN: 163-19-311-015

Inst #: 201309060000930

Fees: \$18.00 N/C Fee: \$25.00

RPTT: \$840.05 Ex: #

09/06/2013 09:03:24 AM

Receipt #: 1761079

Requestor:

RESOURCES GROUP

Recorded By: LEX Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

### **FORECLOSURE DEED**

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

Lot 70 in Block 1 of Conquistador/Tompkins -- Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as:  
4641 Viareggio Ct., Las Vegas, NV

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record

and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4<sup>th</sup> Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

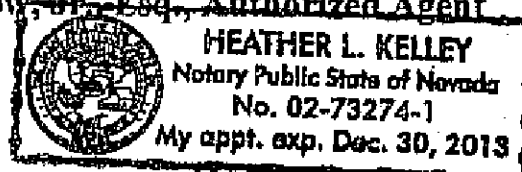
Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By:

Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA     )  
COUNTY OF CLARK    )



On 8/27/13, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.

Heather L. Kelley  
NOTARY PUBLIC

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

a. 163-19-311-015

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDERS OPTIONAL USE ONLY**

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

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

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

**3.a. Total Value/Sales Price of Property**

\$ 125,057.00

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

\$ \_\_\_\_\_

**c. Transfer Tax Value:**

\$ 125,057.00

**d. Real Property Transfer Tax Due**

\$ 640.05

**4. If Exemption Claimed:**

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

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

**5. Partial Interest: Percentage being transferred: 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  8/27/13  
Kirby R. Gruchow, Jr., Esq.

Capacity: Agent for Seller

Signature \_\_\_\_\_ Capacity: Agent for Buyer

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

Print Name: Naples Community HOA  
Address: c/o Leach Johnson Song & Gruchow  
City: 8945 W. Russel Rd., Suite 330  
State: Las Vegas, NV Zip: 89148

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

Print Name: SATICOY BAY LLC  
Address: Series 4641 Viareggio Ct.  
City: 900 S. Las Vegas Blvd., #810  
State: Las Vegas, NV Zip: 89101

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

Print Name: SATICOY BAY LLC SERIES 4641 Escrow # \_\_\_\_\_  
Address: 900 S Las Vegas Blvd #810 Viareggio Ct  
City: NV State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

## **Exhibit 8**

## **Exhibit 8**

## **Exhibit 8**

20000307  
.00911

APN: 163-19-310-013

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)

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS**

**FOR**

**NAPLES**

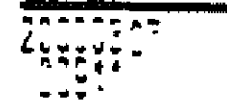
(a Nevada Residential Common-Interest Planned Community)  
**CLARK COUNTY, NEVADA**

20071307  
00911

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
NAPLES**

**THIS DECLARATION** ("Declaration"), made as of the 29<sup>th</sup> day of February, 2000, by PERMA-BILT a Nevada corporation ("Declarant"),

**WITNESSETH:**

**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 as "NAPLES", 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 NAPLES, and the name of the Nevada nonprofit corporation organized in connection therewith shall be NAPLES 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 two hundred and twelve (212) 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 Original Property and any Annexed Property, 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

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1 This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of a unique 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 devoted 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 or to be 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, and any applicable Capital Assessments and Special 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 (monthly or quarterly, as determined from time to time by the Board)

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installments commencing on 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 NAPLES 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.

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 (and any personal property) owned or leased by the Association, but shall exclude Units (other than easements on portions thereof), as provided in NRS § 116.110318. Common Elements shall include all real property in the Community (other than Units), including, but not necessarily limited to, all real property designated on the Plat as "Private Landscape Easement", "Private Drainage Easement", "Public Utility Easement," or "Private Street and Public Utility Easement," and any Improvements respectively thereon, as "Common Elements" on the Plat, and Improvements thereon. Without limiting the generality of the foregoing, Common Elements shall include private entry gates and entry monumentation, emergency access easements, utility easements, private

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streets, street lights, curbs and gutters, sidewalks and walkways (all of which may be located on easements over portions of Lots), Common Element landscaping, and designated drainage and sewer easement areas, all or some of which are or may be located on easements over portions of Lots) Without limiting the foregoing, Declarant reserves the right, but not the obligation, in Declarant's sole discretion, to develop and include a common recreational area within the Community (which may include, but not necessarily be limited to, a lot lot, park, and/or pool) as a part of the Common Elements of this Community, as set forth in further detail in Article 14, below.

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, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti on the exterior side of perimeter walls, pursuant to Section 9 10 [Article 9 only has 8 sections] below, 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 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.110323, and a Planned Community, as defined in NRS § 116.110368.

Section 1.20 "County" shall mean the county in which the Properties are located (i.e., Clark County, Nevada).

Section 1.21 "Declarant" shall mean PERMA-BILT, a Nevada corporation, and its successors and any Person(s) to which it shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers as defined in NRS § 116 110375).

Section 1.22 "Declaration" shall mean this instrument as it may be amended from time to time

Section 1.23 "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 1.24 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

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Section 1.25 "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 1.26 "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 1.27 "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 1.28 "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 1.29 "FHA" shall mean the Federal Housing Administration.

Section 1.30 "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 1.31 "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 1.32 "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 1.33 "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 1.34 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and any Rules and Regulations. Any inconsistency among the Governing Documents shall be governed pursuant to Section 17.12 below.

Section 1.35 "Identifying Number", pursuant to NRS § 116.110348, shall mean the number which identifies a Unit on the Plat.

Section 1.36 "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, waterways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, 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, storage areas, exterior air conditioning and water-softener fixtures or equipment.

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Section 1.37 "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, 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 (such as, for example, a common recreational area), 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 1.38 "Manager" shall mean the Person, if any, whether an employee or independent contractor, appointed by the Association and delegated the authority to implement certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

Section 1.39 "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 1.40 "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 1.41 "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 1.42 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.43 "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 1.44 "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.



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Section 1.45 "Perimeter Walls" shall mean the walls, initially constructed by Declarant, and located generally around the exterior perimeter of the Properties.

Section 1.46 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.47 "Plat" shall mean the final plat map of CONQUISTADOR/TOMPKINS - UNIT 1, Recorded on December 27, 1999, in Book 92 of Plats, Page 68, as said plat map from time to time may be amended or supplemented of Record by Declarant.

Section 1.48 "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 1.49 "Propertes" 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 may from time to time hereafter be annexed thereto pursuant to Article 15 of this Declaration.

Section 1.50 "Purchaser" shall have that meaning as provided in NRS § 116.110375.

Section 1.51 "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 1.52 "Resident" shall mean any Owner, tenant, or other person who is physically residing in a Unit.

Section 1.53 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.54 "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 or other sight restricting improvements shall be limited to 24 inches (or as otherwise set forth on the Plat).

Section 1.55 "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 such Lot and all Improvements thereon (specifically including 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 1.56 "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., 212 Units).

Section 1.57 "VA" shall mean the U.S. Department of Veterans Affairs.

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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 voting and approval requirements set forth in Subsection 2.1(c) above, and the provisions of Article 13 below, 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

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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 other project of Declarant;

(j) the right of the Association, acting through the Board, to uniformly and 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; and

(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;  
and

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

**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 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 the private main entry gate areas and all Private Streets, and any walkways within the Common Elements, subject to parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 10, below.

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**Section 2.4 Easement Right of Declarant Incident to Construction, Marketing and/or 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 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 or sales hours (including weekend sales hours) of Declarant, or shall in any other way impede or hinder Declarant's marketing or sales 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 2.5 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). 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 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

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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 adjoining Units 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 such Unit, shall have an easement appurtenant to such Unit, 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 any Dwelling or other Improvement located on such Unit, 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 Improvement 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.

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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.

### **ARTICLE 3**

#### **NAPLES HOMEOWNERS ASSOCIATION**

Section 3.1 Organization of Association. The Association is or shall be incorporated under the name of NAPLES 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 only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any 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 purchasing a Unit, 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

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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

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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.



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(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

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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 6.2 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

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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

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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 17.1, 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

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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.

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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 law or by this Declaration.

**Section 4.9 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 4.10 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 Section 4.9. 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.

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**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 Declaration, Articles and Bylaws. 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 any 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 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.

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(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



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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) Reviewed or audited 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, to the extent deemed advisable 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. 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.

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(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

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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:

(1) 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 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

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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

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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 unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) 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 voting 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

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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 § 116.3119.3, or duly exempted pursuant to NRS § 116.3119.4). 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.

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**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.

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**ARTICLE 6**  
**COVENANT FOR MAINTENANCE 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 successors.

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 reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used 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, or for any other purpose whatsoever, (iv) 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 foregoing, (v) funds in the Reserve Fund may not be



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withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the 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) any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund.

(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"). The Board shall cause to be prepared an initial Reserve Study by not later than October 1, 2000. Thereafter, the Board shall: (1) cause to be conducted at least once every five years, a subsequent Reserve Study; (2) review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and (3) make any adjustments the Board deems necessary to maintain the required reserves.

(c) 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). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) 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 (5) 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). The Reserve Study shall be conducted in accordance with any applicable regulations adopted by the Nevada Real Estate Division

#### Section 6.4 Budget; Reserve Budget.

(a) The Board shall adopt a proposed annual 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:

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(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 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 as an advance payment of, the Annual Assessment for such Unit, and may be applied to initial working capital needs of the Association.

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**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 within 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, in 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).

**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.

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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

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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

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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, subject to Sections 9.7(b) and 10.15, below, and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including

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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 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

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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 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 Units.

**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.



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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).

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(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 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. The granting of a variance by 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

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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, 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, unsightly or unattractive, 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 portion of a Lot which constitutes a Common Element and the 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 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.

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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

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(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 of Lots ("Declarant 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 (1) 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 Section 9.7(c)-(e), 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.

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(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 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 (provided that Declarant shall have the right, but not the obligation, to designate certain specific Lots as private park or "open area" Common Elements). No part of the Properties shall ever be used or caused to be used or allowed

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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, its successors and assigns, 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 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 this Declaration. 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 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

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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 judgment of the Board; and (b) all Owners shall comply fully in all respects with all applicable County 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.



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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 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

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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 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 or 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 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) 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

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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, and all alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the ARC

(d) Garages shall be used only for 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 Unit into living space or otherwise use or modify the 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. 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,

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(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 eight (8) feet, 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 maintenance 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, Sections 9.7 and 9.8 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 this Declaration or such Rules and Regulations, 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 Unit, 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"); (c) *Cynodon dactylon* ("bermuda

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grass"). (d) *Amaranthus palmeri* ("careless weed"); (e) *Salsola kali* ("Russian thistle"); and/or (f) *Franseria dumosa* ("desert ragweed").

**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

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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 direct vehicular access to Tompkins from any abutting Unit (and no direct vehicular access to Carsoli Court from Lots 18, 19, 20, or 21 of Block 1 of Unit 1 of the Properties), and any such direct vehicular access is hereby prohibited pursuant to and in accordance with the Plat (other than over Private Streets which shall be permitted, subject to the provisions set forth in this Declaration).

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. Lots owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Lot 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, 166.21183 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.

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(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

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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 such time as Declarant no longer has the power to control the Board, as set forth in Section 3.7(c) above, blanket fidelity insurance coverage which names the Association as an obligee shall



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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.

**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

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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 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.

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(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 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

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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, FHLMC, 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 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 as set forth in Section 3.7 hereof, for the period set forth therein during the Declarant Control Period.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 17.7, below, during the time periods set forth therein.

(f) 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.

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

(h) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, Article 16 below, 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.

(i) 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

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gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(j) 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.

(k) Possible Future Common Recreation Area. Declarant reserves the right, but not the obligation, in Declarant's sole and absolute discretion, until the Close of Escrow of the last Unit in the Properties, to unilaterally develop and convey to the Association a common recreational area within the Community (which may but need not necessarily include, and need not necessarily be limited to, a tot lot, park, and/or pool) as a part of the Common Elements of this Community (and, in such event, the costs of maintenance and repair of the same shall be a Common Expense)

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.

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(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.

#### **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 of 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 § 116.2110, 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;

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- (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 all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

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:



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(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 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 lines.

(d) 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;

(e) 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;

(f) 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;

(g) 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.

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(h) 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;

(i) 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;

(j) 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 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;

(k) 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;

(l) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances". Purchaser acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that Purchaser will experience and accept substantial levels of construction-related "nuisances" until the subdivision and any neighboring land have been completed and sold out;

(m) 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;

(n) 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

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not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, 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 a 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; and

(o) 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; and

(p) 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; and

(q) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities;

(r) 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;

(s) 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);

(t) that Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration;

(u) 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 (including, but not necessarily limited to, the Naples Channel), major washes, and a major water detention basin (all of the foregoing, collectively, "Channel"), 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 Channel may be an attractive nuisance; (2) maintenance and use of the Channel 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 Channel 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 Channel, as the result of nonfunction,

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malfunction, or overtaxing of the Channel 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.

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**

### **GENERAL PROVISIONS**

Section 17.1 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

(i) 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

(ii) 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 notice of such violation has been given to such Owner or

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Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties:

(iii) 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;

(iv) no fine imposed under this Section 17.1 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 the limitations set forth in Section 5.2(b), above);

(v) subject to Section 5.2(c)(iii) above, if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid 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

(vi) 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

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(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 17.2 Severability. Invalidaton 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 17.3 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 17.4 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 17.5 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, 12, 13, 14 and 16 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.

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(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 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 Holders shall include a certification that the requisite approval of the Eligible Holders 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

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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 17.6 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 17.7 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 17.8 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 17.9 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 17.10 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 a term or provision of this Declaration fails to comply with applicable provision of NRS Chapter 116. 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.

Section 17.11 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



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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 17.12 Business of Declarant. Except to the extent expressly provided herein or as required by 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 17.13 Compliance With NRS Chapter 116. It is the intent of Declarant and the Community that this Declaration 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 such applicable provision of NRS Chapter 116, such offending Declaration provision shall be deemed automatically 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*  
Daniel Schwartz, President

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK        )

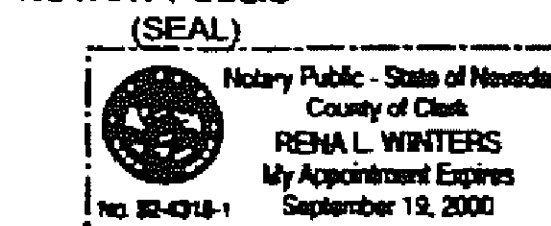
This instrument was acknowledged before me on this 29 day of February, 2000, by DANIEL SCHWARTZ, as President of PERMA-BILT, a Nevada corporation.

*Reha L. Winters*  
NOTARY PUBLIC

My Commission Expires:

9-19-2000

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**EXHIBIT "A"**

**ORIGINAL PROPERTY**

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA,  
DESCRIBED AS FOLLOWS

**Lot Thirteen (13) in Block One (1), as shown by final map of CONQUESTADORTOMPKINS - UNIT 1, on file in Book 92 of Plats, Page 68, Office of the County Recorder, Clark County, Nevada; TOGETHER WITH a non-exclusive easement of ingress, egress, and enjoyment of Common Elements of the Properties (as said terms are defined and egress over and across the entry area and private streets of NAPLES, and a non-exclusive easement of use and enjoyment of the 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)**

20000307  
.00911

**EXHIBIT "B"**

**ANNEXABLE AREA**

[ALL, OR ANY PORTIONS FROM TIME TO TIME MAY, BUT NEED NOT  
NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]

**PARCEL 1**

All of the real property as shown by final map of **CONQUISTADOR/TOMPKINS - UNIT 1**,  
on file in **Book 92 of Plats, Page 68**, Office of the County Recorder of Clark County, Nevada;

(EXCEPTING THEREFROM ONLY Lot Thirteen (13), in Block One (1), of NAPLES,  
as shown by said final map of CONQUISTADOR/TOMPKINS - UNIT 1).

**PARCEL 2**

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 2**, as shown by final map  
thereof on file in **Book 93 of Plats, Page 1**, Office of the County Recorder of Clark County, Nevada.

**PARCEL 3**

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 3**, as shown by final map  
thereof on file in Book \_\_\_\_ of Plats, Page \_\_\_\_, Office of the County Recorder of Clark County,  
Nevada

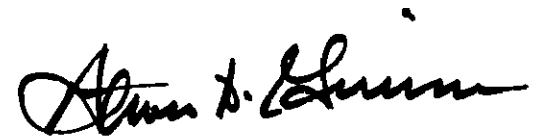
[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME  
TO TIME TO UNILATERALLY ADD TO OR MODIFY OF RECORD ALL OR ANY  
PARTS OF THE FOREGOING AND/OR ATTACHED DESCRIPTIONS]

When Recorded, Return to:

**WILBUR M. ROADHOUSE, ESQ.**  
Gould 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:  
W ROADHOUSE  
03-07-2000 15:17 JSB 77  
BOOK: 20000307 INST: 00911  
FEE: 83.00 APTT: .00

AA000167



CLERK OF THE COURT

1 **MODR**  
MICHAEL F. BOHN, ESQ.  
2 Nevada Bar No.: 1641  
[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
3 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
4 376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
5 (702) 642-3113/ (702) 642-9766 FAX  
6 Attorney for plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 4641  
11 VIAREGGIO CT

CASE NO.: A689240-C  
DEPT NO.: V

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER  
CASTLE LAW FIRM, LLP; and MONIQUE  
15 GUILLORY

16 Defendants.

17 **MOTION TO DISMISS COUNTERCLAIM**

18 Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct., by and through its attorney, Michael F.  
19 Bohn, Esq., hereby moves to dismiss Nationstar Mortgage's counterclaim. This motion is based on

20 ///

21 ///

22 ///

23 ///

1 the points and authorities contained herein.

2 DATED this 19<sup>th</sup> day of March, 2015

3 LAW OFFICES OF  
4 MICHAEL F. BOHN, ESQ., LTD.

5 By: / s / Michael F. Bohn, Esq. /  
6 Michael F. Bohn, Esq.  
7 376 East Warm Springs Road, Ste. 140  
8 Las Vegas, Nevada 89119  
9 Attorney for plaintiff

10 **NOTICE OF MOTION**

11 TO: Parties above named; and

12 TO: Their respective counsel of record

13 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the  
14 above and foregoing Motion on for hearing before the above entitled Court, Department V, on  
15 the 24 day of APRIL, 2015, at 9:00 a.m. or as soon thereafter as counsel can be heard.

16 DATED this 19th day of March, 2015.

17 LAW OFFICES OF  
18 MICHAEL F. BOHN, ESQ., LTD.

19 By: /s/ /Michael F. Bohn, Esq. /  
20 Michael F. Bohn, Esq.  
21 36 East Warm Springs Road, Ste. 140  
22 Las Vegas NV 89119  
23 Attorney for plaintiff

24 **FACTS**

25 Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las  
26 Vegas, Nevada. Plaintiff obtained title by foreclosure deed recorded September 6, 2013. A copy of  
27 the deed is Exhibit 1.

28 The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments  
due from the former owner to the Naples Community Homeowners Association, pursuant to NRS  
Chapter 116.

1 Nationstar Mortgage, LLC is the beneficiary of a deed of trust which was recorded as an  
2 encumbrance to the subject property on January 25, 2007.

3 Defendants Nationstar Mortgage has filed a counterclaim. For the reasons set forth herein, the  
4 counterclaim should be dismissed.

5  
6 **POINTS AND AUTHORITIES**

7 **A. The trust deed is extinguished**

NRS 116.3116 provides in part:

8 **Liens against units for assessments.**

9 **1. The association has a lien on a unit for** any construction penalty that is imposed  
10 **against the unit's owner pursuant to NRS 116.310305, any assessment levied against**  
11 **that unit or any fines imposed against the**  
12 **unit's owner from the time the construction penalty, assessment or fine**  
13 **becomes due.** Unless the declaration otherwise provides, any penalties, fees, charges,  
14 late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of  
15 subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an  
16 assessment is payable in installments, the full amount of the assessment is a lien from  
17 the time the first installment thereof becomes due.

18 **2. A lien under this section is prior** to all other liens and encumbrances on a unit  
19 **except:**

20 (a) Liens and encumbrances recorded before the recordation of the declaration and, in a  
21 cooperative, liens and encumbrances which the association creates, assumes or takes  
22 subject to;

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

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

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

1 By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for 9 months of  
2 charges is “prior to all security interests described in paragraph (b).” The first deed of trust, recorded  
3 on September 2, 2008 , assigned to BAC Home Loans Servicing, LP, fka Countrywide Home Loans  
4 Servicing falls squarely within the language of paragraph (b). The statutory language does not limit  
5 the nature of this “priority” in any way.

6 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.  
7 Op. 75, 334 P.3d 408 (2014), the Supreme Court stated:

8 NRS 116.3116 gives a homeowners’ association (HOA) a superpriority lien on  
9 an individual homeowner’s property for up to nine months of unpaid HOA dues. With  
10 limited exceptions, this lien is “prior to all other liens and encumbrances” on the  
11 homeowner’s property, even a first deed of trust recorded before the dues became  
12 delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien  
13 such that its foreclosure extinguishes a first deed of trust on the property and, if so,  
14 whether it can be foreclosed nonjudicially. We answer both questions in the  
15 affirmative and therefore reverse.

16 At the conclusion of its opinion, the Supreme Court stated:

17 NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of  
18 which will extinguish a first deed of trust. Because Chapter 116 permits nonjudicial  
19 foreclosure of HOA liens, and because SFR’s complaint alleges that proper notices  
20 were sent and received, we reverse the district court’s order of dismissal. In view of  
21 this holding, we vacate the order denying preliminary injunctive relief and remand for  
22 further proceedings consistent with this opinion.

23 Because the facts in the present case are substantially the same as the facts in SFR  
24 Investments Pool 1, LLC v. U.S. Bank, N.A., the court should reach the same conclusion that the  
25 nonjudicial foreclosure of the HOA’s super priority lien at the public auction extinguished the “first  
26 security interest” assigned to BAC Home Loans Servicing, LP, fka Countrywide Home Loans  
27 Servicing . As a result, this court should rule that the defendant’s trust deed has been extinguished by  
28 the HOA foreclosure

**B. There is a conclusive presumption that the foreclosure sale was properly conducted**

The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a  
public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels,  
Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill

1 Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985);  
2 and Miller & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1,  
3 LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the court described the non-  
4 judicial foreclosure provisions of NRS Chapter 116 as “elaborate,” and therefore is indicative of the  
5 public policy favoring the finality of a foreclosure sale.

6 Additionally, there is a common law presumption that a foreclosure sale was conducted  
7 validly. Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller  
8 v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d  
9 353 (2014); Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas  
10 v. McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968);  
11 American Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank &  
12 Trust, 208 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

13 Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16).  
14 This creates a disputable presumption that the foreclosure sale was conducted in compliance with the  
15 law.

16 By statute, the recitals in the deed are sufficient and conclusive proof that the required notices  
17 were mailed by the HOA. The trustee’s deed upon sale recorded on August 15, 2012 includes the  
18 following recitals:

19 This conveyance is made pursuant to the authority and powers vested to Naples by  
20 Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of  
21 Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as  
22 Instrument No. 00911, in the Official Records of Clark County, Nevada, and any  
23 subsequent modifications, amendments or updates of the said Declaration of  
24 Covenants, Conditions and Restrictions, and Naples having complied with all  
25 applicable statutory requirements of the State of Nevada, and performed all duties  
26 required by such Declaration of Covenants, Conditions and Restrictions.

27 A notice of Delinquent Assessment lien was recorded on August 18, 2011 in Book  
28 20110818, Instrument No. 02904 of the Official Records of the Clark County  
Recorder, Nevada, said Notice having been mailed by certified mail to the owners of  
record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment  
Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in  
the Official Records, Clark County, Nevada said document having been mailed by  
certified mail to the owner of record and all parties of interest, and more than ninety  
(90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale



1 was published once a week for three consecutive weeks commencing on September  
2 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was  
3 recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official  
4 Records of the Clark County Recorder, Nevada, and at least twenty days before the  
date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted  
in three of the most public places in Clark County, Nevada and in a conspicuous place  
on the property located at 4641 Viareggio Ct., Las Vegas, NV

5 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada  
6 Corporation, Front Entrance Lobby, 930 South 4<sup>th</sup> Street, Las Vegas, Nevada, 89101,  
7 Naples, by and through its Agent, exercised its power of sale and did sell the above  
described property at public auction. Grantee, being the highest bidder at said sale,  
became the purchaser and owner of said property for the sum of FIVE THOUSAND  
8 FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the  
United States, in full satisfaction of the indebtedness secured by the lien of Naples.

9 The controlling statute, NRS 116.31166 provides:

10 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for**  
11 **proper application of purchase money; title vested in purchaser without equity or**  
12 **right of redemption.**

13 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:  
14 (a) Default, the mailing of the notice of delinquent assessment, and the recording  
of the notice of default and election to sell;  
15 (b) The elapsing of the 90 days; and  
(c) The giving of notice of sale,  
are **conclusive proof of the matters recited.**

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

18 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests  
19 in the purchaser the title of the unit's owner without equity or right of redemption.  
(emphasis added)

20 NRS 47.240(6) also provides that conclusive presumptions include "[a]ny other presumption  
21 which, by statute, is expressly made conclusive." Because NRS 116.31166 contains such an  
22 expressly conclusive presumption, the recitals in the foreclosure deed are "conclusive proof" that the  
23 defendant was served with copies of the required notices for the foreclosure sale.

24 An additional conclusive presumption is found in NRS 47.240(2) which provides:

25 The truth of the fact recited, from the recital in a written instrument between the parties  
26 thereto, or their successors in interest by a subsequent title, but this rule does not apply  
to the recital of a consideration.

1 The recitals in the deed between the foreclosure agent and the purchaser at the foreclosure sale  
2 are conclusive from this statute in addition to NRS116.31166.

3 In the case of Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001), the district court  
4 refused to apply the conclusive presumption contained in NRS 106.240 because “[t]he district court  
5 determined that the legislature intended for the statute to protect bona fide purchasers.” The Supreme  
6 Court reversed the district court’s judgment that the statute only protects bona fide purchasers and  
7 stated:

8 We conclude that the statute is clear and unambiguous. That being the case, no further  
9 interpretation is required or permissible. Under the plain language of the statute, the  
10 deeds of trust are conclusively presumed to have been satisfied and the notes  
11 discharged. This conclusive presumption is plain, clear and unambiguous. **No  
12 limitation of the statute’s terms to bona fide purchasers can be read into the  
13 statute.** (emphasis added)

14 117 Nev. at 95, 16 P.3d at 1078-79.

15 Furthermore, the title in the name of the plaintiff is made conclusive and not subject to attack  
16 from any party including the defendant bank. The defendant bank’s claims, if any, for any alleged  
17 failure to receive notice are against the foreclosure agent. See Moeller v. Lien 25 Cal. App. 4th 822,  
18 832, 30 Cal. Rptr. 2d 777 (1994).

19 It is respectfully submitted that this court should find that the foreclosure deed received by the  
20 plaintiff at the time it obtained title to the subject property is conclusive and sufficient proof that title  
21 is vested in the plaintiff and not subject to attack from the defendant.

22 **C. The “commercial reasonableness” requirements contained in the Uniform  
23 Commercial Code do not apply to the HOA’s foreclosure sale in this case.**

24 NRS Chapter 116 does not contain any language that requires that an HOA foreclosure sale be  
25 “commercially reasonable,” and no language in NRS Chapter 116 even suggests that an interested  
26 party can seek to set aside an HOA foreclosure sale as being “commercially unreasonable” under the  
27 terms of the Uniform Commercial Code. NRS Chapter 116 is based on the Uniform Common-  
28 Interest Ownership Act (“the UCIOA”). The UCIOA also does not contain any language that  
incorporates Article 9 of the Uniform Commercial Code nor the “commercial reasonableness”

1 language found only in Article 9.

2 The holding of the Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001) case again is  
3 applicable to this issue. There is no provision for “commercial reasonableness” to be found within  
4 NRS Chapter 116 and it would be improper for this court to read this additional requirement when it  
5 is not specifically set forth in the chapter.

6 Lenders in similar cases have relied upon Vermont law as authority for the commercial  
7 reasonableness requirement. This is a requirement that is specific to Vermont law, not Nevada law.  
8 cited The opinion in Will v. Mill Condominium Owners’ Association, 848 A.2d 336, 342 (2004),  
9 provides that, under Vermont law “[t]he commercial reasonableness of a sale must be determined on a  
10 case-by-case basis,” and “[t]he secured party bears the burden ‘to prove that the disposition of  
11 collateral was commercially reasonable.’” Id.

12 The Supreme Court of Vermont’s analysis of Vermont law is not helpful in interpreting  
13 Nevada’s version of the UCOIA, however, because Vermont law does not include the nonjudicial  
14 foreclosure procedure that was “handcrafted” by the Nevada Legislature in NRS 116.31162 through  
15 NRS 116.31168. In particular, Vermont’s version of the UCIOA does not contain any statutory  
16 language similar to the provision in NRS 116.31166(1) that the recitals in an HOA foreclosure deed  
17 “are conclusive proof of the matters recited.” Vermont’s version of the UCIOA also does not contain  
18 any provisions similar to the statement in NRS 116.31166(2) that “[s]uch a deed containing those  
19 recitals is conclusive against the unit’s former owner, his or her heirs and assigns, **and all other**  
20 **persons.**” (emphasis added) While it might make sense to make a secured party prove that its  
21 “disposition of collateral was commercially reasonable” when it seeks to recover a deficiency  
22 judgment, it makes no sense to impose this obligation on the purchaser at an HOA foreclosure sale.  
23 To do so would read NRS 116.31166 out of the statute.

24 NRS Chapter 116 does not contain any language that requires an HOA foreclosure sale to be  
25 “commercially reasonable,” and no language in NRS Chapter 116 even suggests that an interested  
26 party can seek to set aside an HOA foreclosure sale as being “commercially unreasonable” under the  
27 terms of the Uniform Commercial Code. Instead, the Nevada Supreme Court recognized that:

1 NRS 116.3116 largely tracks section 3-116(a)-(ii) of the 1982 UCIOA. But it does not  
2 use the language in subsections (j) and (k) of UCIOA § 3-116, which offer alternative  
3 HOA lien foreclosure provisions for adaptation to local law. *See* 1982 UCIOA § 3-  
4 116(j)(1) (“In a condominium or planned community, the association’s lien must be  
5 foreclosed in a like manner as a mortgage on real estate [or by power of sale] under  
6 [insert appropriate state statute]”); *id.* § 3-116(k) (offering optional fast-track  
foreclosure method for cooperatives, which often carry substantial debt service  
obligations). **Instead, the Nevada Legislature handcrafted a series of provisions to  
govern HOA lien foreclosures, NRS 116.31162 through NRS 116.31168, and  
refashioned 1982 UCIOA §§ 3-116(j)(2) and (3), concerning cooperatives, as NRS  
116.3116(10). (emphasis added)**

7 130 Nev. Adv. Op. 75 at \*6, 334 P.3d at 411.

8 The comment to Section 1-113 of the UCIOA states that the definition of “good faith”  
9 contained in Section 1-113 of the UCIOA is derived from and used in the same manner as in Sections  
10 2-103(i)(b) and 7-404 of the Uniform Commercial Code.” It has been contended that the definition of  
11 “good faith” contained in NRS 104.1201(2)(t) must be applied to an HOA foreclosure sale and add a  
12 “commercial reasonableness” standard to the HOA foreclosure sale. The UCIOA, however, does not  
13 contain any language that incorporates Article 9 of the Uniform Commercial Code and the  
14 “commercial reasonableness” language is not to be found in Nevada’s version of the UCIOA.

15 The Nevada version of the Uniform Commercial Code does not apply to real property  
16 foreclosure sales. NRS 104.9109(4)(k) provides that Article 9 of the Uniform Commercial Code  
17 does not apply to “[t]he creation or transfer of an interest in or lien on real property . . .”  
18 Consequently, the language in NRS 104.9610(2) requiring that “[e]very aspect of a disposition of  
19 collateral, including the method, manner, time, place and other terms, must be commercially  
20 reasonable” does not apply to the HOA foreclosure sale that was held in the present case pursuant to  
21 NRS 116.31162 through NRS 116.31168 and, by incorporation, NRS 107.090.

22 To the extent that this Court may feel that “commercial reasonableness” does apply to the  
23 instant foreclosure sale, compliance with the foreclosure statutes is all that is required, and the recitals  
24 in the foreclosure deed are conclusive proof that the statutory requirements were satisfied.

25 “Every aspect of the disposition, including the method, manner, time, place, and terms, must  
26 be commercially reasonable.” Levers v. Rio King Land & Investment Co., 93 Nev. 95, 560 P.2d 917  
27 (1977). Levers involved a sale under the UCC. However, the method, manner, time, and place of an

1 HOA foreclosure sale, unlike a UCC sale, are governed by statute – NRS 116.31162 through  
2 116.31168. The final factor, price, is not an issue pursuant to SFR.

3 In SFR, the Nevada Supreme Court painstakingly went through each of the foreclosure  
4 statutes, calling the statutory scheme “elaborate.” The SFR court began by comparing the Nevada  
5 statutes to the UCIOA:

6 NRS 116.3116 largely tracks section 3–116(a)–(i) of the 1982 UCIOA. But it does not  
7 use the language in subsections (j) and (k) of UCIOA § 3–116, which offer alternative  
8 HOA lien foreclosure provisions for adaptation to local law. *See* 1982 UCIOA §  
9 3–116(j)(1) (“In a condominium or planned community, the association's lien must be  
10 foreclosed in like manner as a mortgage on real estate [or by power of sale under  
11 [insert appropriate state statute]].”); *id.* § 3–116(k) (offering an optional fast-track  
foreclosure method for cooperatives, which often carry substantial debt service  
obligations). **Instead, the Nevada Legislature handcrafted a series of provisions to  
govern HOA lien foreclosures, NRS 116.31162 through NRS 116.31168, and  
refashioned 1982 UCIOA §§ 3–116(j)(2) and (3), concerning cooperatives, as NRS  
116.3116(10).** (emphasis added)

12 To initiate foreclosure under NRS 116.31162 through NRS 116.31168, a Nevada HOA  
13 must notify the owner of the delinquent assessments. NRS 116.31162(1)(a). If the  
14 owner does not pay within 30 days, the HOA may record a notice of default and  
15 election to sell. NRS 116.31162(1)(b). Where the UCIOA states general third-party  
16 notice requirements, *see* 1982 UCIOA § 3–116(j)(4) (“In the case of foreclosure under  
[insert reference to state power of sale statute], the association shall give reasonable  
notice of its action to all lien holders of the unit whose interest would be affected.”),  
NRS 116.31168 imposes specific timing and notice requirements.

17 “The provisions of NRS 107.090,” governing notice to junior lienholders and others in  
18 deed-of-trust foreclosure sales, “apply to the foreclosure of an association's lien as if a  
19 deed of trust were being foreclosed.” NRS 116.31168(1). The HOA must provide the  
20 homeowner notice of default and election to sell; it also must notify “[e]ach person  
21 who has requested notice pursuant to NRS 107.090 or 116.31168” and “[a]ny holder of  
22 a recorded security interest encumbering the unit's owner's interest who has notified  
the association, 30 days before the recordation of the notice of default, of the existence  
of the security interest.” NRS 116.31163(1), (2). The homeowner must be given at  
least 90 days to pay off the lien. NRS 116.31162. If the lien is not paid off, then the  
HOA may proceed to foreclosure sale. *Id.* Before doing so, the HOA must give notice  
of the sale to the owner and to the holder of a recorded security interest if the security  
interest holder “has notified the association, before the mailing of the notice of sale of  
the existence of the security interest.” NRS 116.311635(1)(b)(2); *see* NRS  
107.090(3)(b), (4) (requiring notice of default and notice of sale to “[e]ach other  
person with an interest whose interest or claimed interest is subordinate to the deed of  
trust”).

25 NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and  
26 specifies the distribution order for the proceeds of sale. A trustee's deed reciting  
27 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

1 to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the  
2 unit's owner without equity or right of redemption.” NRS 116.31166(3).

3 The court confirmed that the HOA lien may be foreclosed non-judicially, stating:

4 Since NRS 116.3116(2) establishes a true superpriority lien, the next question we must  
5 decide is whether the lien may be foreclosed nonjudicially or requires judicial  
6 foreclosure. NRS Chapter 116 answers this question directly: An HOA may foreclose  
7 its lien by nonjudicial foreclosure sale. . . . To “foreclose [a] lien by sale” under NRS  
8 116.31162(1) encompasses an HOAs conducting a nonjudicial foreclosure sale. This is  
evident from the remainder of NRS 116.31162, which speaks to the statutory notices  
of delinquency, default and election to sell required of a nonjudicial foreclosure sale,  
and the sections that follow, NRS 116.31163 through NRS 116.31168, all of which  
concern the mechanics and requirements of nonjudicial foreclosure sales of HOA  
liens...

9 The court also stated:

10 But the choice of foreclosure method for HOA liens is the Legislature's, and the  
11 Nevada Legislature has written NRS Chapter 116 to allow nonjudicial foreclosure of  
HOA liens, subject to the special notice requirements and protections handcrafted by  
the Legislature in NRS 116.31162 through NRS 116.31168.

12 The court noted that the “requirements of law” were compliance with these foreclosure  
13 statutes, stating:

14 In view of the fact that the “requirements of law” include compliance with NRS  
15 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, *see* NRS  
16 116.31168(1), we conclude that U.S. Bank's due process challenge to the lack of  
adequate notice fails, at least at this early stage in the proceeding<sup>FN6</sup>

17 It is in this context that the court inserted footnote 6 and its passing reference to commercial  
18 reasonableness. Footnote 6 provides:

19 On a motion to dismiss, a court must take all factual allegations in the complaint as  
20 true and not delve into matters asserted defensively that are not apparent from the face  
of the complaint....Consistent with this standard, we note but do not resolve U.S.  
Bank's suggestion that we could affirm by deeming SFR's purchase ‘void as  
21 commercially unreasonable.’” (citations omitted)

22 This “elaborate” and all inclusive statutory scheme must be found, as a matter of law, to be  
23 commercially reasonable, simply because the method of foreclosure was chosen by the legislature.

24 The cases by the Nevada Supreme Court that discuss “commercially reasonable” sales all  
25 involved sales of personal property pursuant to Article 9 of the Uniform Commercial Code. See  
26 Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994); Savage Construction,  
27 Inc. v. Challenge-Cook Bros., Inc., 102 Nev. 34, 714 P.2d 573 (1986); Levers v. Rio King Land &

1 Investment Co., 93 Nev. 95, 560 P.2d 917 (1977).

2 Because the foreclosure sale was performed in compliance with the specific Nevada statutes,  
3 the method, manner, time, and place of the sale must be deemed “commercially reasonable” as a  
4 matter of law.

5 **E. The “terms of sale” or price paid are not sufficient grounds to set aside a foreclosure sale.**

6 To the extent that the Court finds that “commercial reasonableness” applies to the instant  
7 HOA foreclosure sale, the “terms of sale,” i.e. the price paid, is the only remaining factor. The  
8 Nevada Supreme Court has repeatedly held that inadequacy of price is not sufficient to set aside a  
9 foreclosure sale where there is no showing of fraud, unfairness, or oppression. Long v. Towne, 98  
10 Nev. 11, 639 P.2d 528, 530 (1982); Turner v. Dewco Services, Inc., 87 Nev. 14, 479 P.2d 462 (1971);  
11 Brunzell v. Woodbury, 85 Nev. 29, 449 P.2d 158 (1969); Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d  
12 989 (1963).

13 There is no authority for the proposition that a foreclosure agent must seek sufficient sums to  
14 satisfy the claims of junior lienholders. This was noted by Judge Pro in his recently issued decision  
15 which is to be published in the near future in the case of Bourne Valley Court Trust v. Wells Fargo  
16 Bank, –F.Supp.3d–, 2015 WL301063 (D. Nev.). A copy of the decision is Exhibit 2. The decision  
17 addresses commercial reasonableness and notes that there is no duty to obtain sums in excess of the  
18 sums necessary to satisfy the HOA lien. The court stated:

19 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first  
20 deed of trust on the property, the HOA foreclosure sale was “commercially  
21 unreasonable” and therefore was void. (Opp’n at 5–7.) Specifically, Wells Fargo argues  
22 the HOA foreclosure sale was not conducted in good faith because “the HOA made no  
23 effort to obtain the best price or to protect either Johnson or Wells Fargo” by selling  
24 the property for \$4,145.00 when the assessed value of the property was \$90,543.00.  
(*Id.* at 7.) Bourne Valley replies that Chapter 116 does not require an HOA foreclosure  
sale to be commercially reasonable. Bourne Valley further argues that the inadequacy  
of the price is not sufficient to void the HOA foreclosure sale when there is no  
evidence of fraud, procedural defects, or other irregularities in the conduct of the sale.

25 The commercial reasonableness here must be assessed as of the time the sale occurred.  
26 Wells Fargo’s argument that the HOA foreclosure sale was commercially unreasonable  
27 due to the discrepancy between the sale price and the assessed value of the property  
ignores the practical reality that confronted the purchaser at the sale. Before the  
Nevada Supreme Court issued *SFR Investments*, purchasing property at an HOA

1 foreclosure sale was a risky investment, akin to purchasing a lawsuit. Nevada state trial  
2 courts and decisions from the United States District Court for the District of Nevada  
3 were divided on the issue of whether HOA liens are true priority liens such that their  
4 foreclosure extinguishes a first deed of trust on the property. *SFR Investments*, 334  
5 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale risked purchasing merely a  
6 possessory interest in the property subject to the first deed of trust. This risk is  
illustrated by the fact that title insurance companies refused to issue title insurance  
policies on titles received from foreclosures of HOA super priority liens absent a court  
order quieting title. (Mot. to Remand to State Court (Doc. # 6), Decl. of Ron  
Bloecker.) Given these risks, a large discrepancy between the purchase price a buyer  
would be willing to pay and the assessed value of the property is to be expected.

7 **Moreover, Wells Fargo does not point to any evidence or legal authority**  
8 **indicating the Court must void an HOA foreclosure sale because the purchaser**  
9 **bid only a fraction of the property's assessed value. Wells Fargo does not point to**  
10 **evidence of fraud or any other procedural defects or other irregularities in the**  
11 **conduct of the sale that would require the Court to void the sale, or any evidence**  
12 **indicating the HOA acted in bad faith by selling the property for an amount that**  
13 **would satisfy the unpaid assessments. Nor does Wells Fargo point to evidence or**  
14 **legal authority indicating that beyond selling the property to the highest bidder,**  
15 **the HOA was responsible for protecting Wells Fargo and Johnson's interests in**  
16 **addition to the homeowners' interests. See *Carmen v. S.F. Unified Sch. Dist.*, 237**  
17 **F.3d 1026, 1028–31 (9th Cir.2001) (stating that a court need not “comb the record”**  
18 **looking for a genuine issue of material fact if the party has not brought the evidence to**  
19 **the court's attention) (quotation omitted)). Thus, no genuine issue of material fact**  
20 **remains as to whether the HOA foreclosure sale was commercially unreasonable.**  
21 **Under the specific facts presented here, it was not. (emphasis added)**

22 Additionally, the SFR court said not once, but twice, that the price paid at the foreclosure sale  
23 was not an issue because the bank could simply have paid the super-priority amount to preserve its  
24 interest in the property. The court stated at page 414:

25 U.S. Bank's final objection is that it makes little sense and is unfair to allow a  
26 relatively nominal lien—nine months of HOA dues—to extinguish a first deed of trust  
27 securing hundreds of thousands of dollars of debt. But as a junior lienholder, U.S.  
28 Bank could have paid off the SHHOA lien to avert loss of its security; it also could  
have established an escrow for SHHOA assessments to avoid having to use its own  
funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA §  
3–116 cmt. 2. **The inequity U.S. Bank decries is thus of its own making and not a**  
**reason to give NRS 116.3116(2) a singular reading at odds with its text and the**  
**interpretation given it by the authors and editors of the UCIOA. (emphasis added)**

The court also stated at page 418:

U.S. Bank further complains about the content of the notice it received. It argues that  
due process requires specific notice indicating the amount of the superpriority piece of  
the lien and explaining how the beneficiary of the first deed of trust can prevent the  
superpriority foreclosure sale. But it appears from the record that specific lien amounts  
were stated in the notices, ranging from \$1,149.24 when the notice of delinquency was  
recorded to \$4,542.06 when the notice of sale was sent. The notices went to the  
homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to



1 state the total amount of the lien. As U.S. Bank argues elsewhere, dues will typically  
2 comprise most, perhaps even all, of the HOA lien. *See supra* note 3. **And from what**  
3 **little the record contains, nothing appears to have stopped U.S. Bank from**  
4 **determining the precise superpriority amount in advance of the sale or paying the**  
5 **entire amount and requesting a refund of the balance.** *Cf. In re Medaglia*, 52 F.3d  
451, 455 (2d Cir.1995) (“[I]t is well established that due process is not offended by  
requiring a person with actual, timely knowledge of an event that may affect a right to  
exercise due diligence and take necessary steps to preserve that right.”). (emphasis  
added)

6 In BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the United States  
7 Supreme Court explained why the fair market value of a property sold at foreclosure, or a “forced  
8 sale,” is in fact the price paid at the foreclosure sale:

9 [T]he fact that a piece of property is legally subject to forced sale, like any other fact  
10 bearing upon the property’s use or alienability, necessarily affects its worth. Unlike  
11 most other legal restrictions, however, foreclosure has the effect of completely  
12 redefining the market in which the property is offered for sale; normal free-market  
rules of exchange are replaced by the far more restrictive rules governing forced sales.  
Given this altered reality, and the concomitant inutility of the normal tool for  
determining what property is worth (fair market value), the only legitimate evidence of  
the property’s value at the time it is sold is the foreclosure-sale price itself.

13 Each of the factors involved in a “commercially reasonable” sale are not an issue here. The  
14 method, time, place, and manner of sale is governed by statute, and there is no allegation that the  
15 statutes were not followed or that the defendants did not get notice. The sole remaining factor is  
16 “term” or “price,” but price alone is not sufficient grounds to set aside a foreclosure sale, and the  
17 Nevada Supreme Court has noted that the bank is the cause of its own harm by failing to pay the super  
18 priority amount prior to the foreclosure sale. Commercial reasonableness of the sale is not an issue in  
19 this case.

#### 20 **F. The statutes take priority over the mortgage saving clause**

21 The counterclaim seeks relief based on the mortgage savings clause. This was specifically  
22 rejected by the Supreme Court in the SFR decision. The court stated:

23  
24 NRS 116.1104 defeats this argument. It states that Chapter 116's “provisions may not  
25 be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as  
expressly provided in” Chapter 116. (Emphasis added.) “Nothing in [NRS] 116.3116  
26 expressly provides for a waiver of the HOA's right to a priority position for the HOA's  
super priority lien.” *See 7912 Limbwood Court Trust*, 979 F.Supp.2d at 1153: The  
mortgage savings clause thus does not affect NRS 116.3116(2)'s application in this  
27 case.<sup>FN7</sup> *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397,

1 407, 215 P.3d 27, 34 (2009) (holding that a CC & Rs clause that created a statutorily  
2 prohibited voting class was void and unenforceable).

3 **CONCLUSION**

4 The statutes and the SFR decision make it clear that the foreclosure sale vests title with the  
5 plaintiff and that the defendants trust deed has been extinguished. The foreclosure deed by statute is  
6 conclusive proof that the statutory requirements have been met. The commercial reasonableness  
7 argument is not applicable to an HOA foreclosure sale, the sale price alone is not grounds to set aside  
8 a foreclosure sale, and the mortgage savings clause does not survive the statutes.

9 For these reasons, the defendants counterclaim should be dismissed.

10 DATED this 19<sup>th</sup> ay of March 2015.

11 LAW OFFICES OF  
12 MICHAEL F. BOHN, ESQ., LTD.

13 By: / s / Michael F. Bohn, Esq. /  
14 Michael F. Bohn, Esq.  
15 376 East Warm Springs Road, Ste. 140  
16 Las Vegas, Nevada 89119  
17 Attorney for plaintiff

18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCPC 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
20 Offices of Michael F. Bohn., Esq., and on the 19<sup>st</sup> day of March, 2015 an electronic copy of the  
21 **MOTION TO DISMISS** was served on opposing counsel via the Court's electronic service system to  
22 the following counsel of record:

23 Chelsea Crowton, Esq.  
24 Wright Finlay & Zak  
25 7785 W. Sahara Ave # 200  
26 Las Vegas, NV 89117

27 /s/ /Marc Sameroff/  
28 An Employee of the LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

# EXHIBIT 1

# EXHIBIT 1

When recorded return to, and  
Mail Tax Statements to:

Saticoy Bay LLC Series 4641 Viareggio Ct.  
900 S. Las Vegas Blvd., Suite 810  
Las Vegas, NV 89101

APN: 163-19-311-015

Inst #: 201309060000930  
Fees: \$18.00 N/C Fee: \$25.00  
RPTT: \$640.05 Ex: #  
09/06/2013 09:03:24 AM  
Receipt #: 1761079  
Requestor:  
RESOURCES GROUP  
Recorded By: LEX Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**FORECLOSURE DEED**

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as:  
4641 Viareggio Ct., Las Vegas, NV

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record

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and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4<sup>th</sup> Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

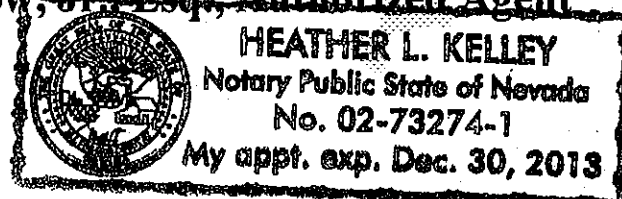
IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By: Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA     )  
COUNTY OF CLARK    )



On 8/27/13, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.

Heather L. Kelley  
NOTARY PUBLIC

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

a. 163-19-311-015

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDERS OPTIONAL USE ONLY**

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

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

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

**3.a. Total Value/Sales Price of Property**

\$ 125,057.00

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

c. Transfer Tax Value:

\$ 125,057.00

d. Real Property Transfer Tax Due

\$ 640.05

**4. If Exemption Claimed:**

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

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

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

8/27/13  
Kirby K. Gruchow, Jr., Esq.

Capacity: Agent for Seller

Signature \_\_\_\_\_

Capacity: Agent for Buyer

**SELLER (GRANTOR) INFORMATION**

**(REQUIRED)**

Print Name: Naples Community HOA

Address: c/o Leach Johnson Song & Gruchow

City: 8945 W. Russel Rd., Suite 330

State: Las Vegas, NV Zip: 89148

**BUYER (GRANTEE) INFORMATION**

**(REQUIRED)**

Print Name: SATICOY BAY LLC

Address: Series 4641 Viareggio Ct.

City: 900 S. Las Vegas Blvd., #810

State: Las Vegas, NV Zip: 89101

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

Print Name: SATICOY BAY LLC SERIES 4641

Escrow # \_\_\_\_\_

Address: 900 S Las Vegas Blvd #810 Viareggio Ct

City: L.V.

State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BOURNE VALLEY COURT TRUST,

Plaintiff,

v.

WELLS FARGO BANK, N.A., et al.

Defendants.

2:13-CV-00649-PMP-NJK

ORDER

Presently before the Court is Plaintiff Bourne Valley Court Trust's Motion for Summary Judgment (Doc. #45), filed on September 26, 2014. Defendant Wells Fargo Bank, N.A. filed an Opposition (Doc. #48) on November 3, 2014. Plaintiff Bourne Valley Court Trust filed a Reply (Doc. #51) on December 1, 2014.

**I. BACKGROUND**

This case involves a dispute over whether a foreclosure sale conducted by a homeowners' association ("HOA") to collect unpaid HOA assessments extinguishes all junior liens, including a first deed of trust. The property at issue, located at 410 Horse Pointe Avenue, Las Vegas, Nevada, previously was owned by Defendant Renee Johnson. (Mot. for Summ. J. (Doc. #45) ["MSJ"], Ex. 2 at 1.) The property was subject to a first deed of trust recorded in 2006, which identified Plaza Home Mortgage, Inc. as the lender. (Def. Wells Fargo Bank, N.A.'s Req. for Judicial Notice (Doc. #25) ["Req. for Judicial Notice"], Ex. B at 1.) On March 7, 2011, Plaza Home Mortgage, Inc. assigned the deed of



1 trust to Defendant Wells Fargo Bank, N.A. (“Wells Fargo”). (Req. for Judicial Notice, Ex.  
2 C at 1.) Later that same date, Plaza Home Mortgage, Inc. recorded a notice of default and  
3 election to sell based on Defendant Johnson’s deed of trust. (Req. for Judicial Notice, Ex.  
4 D.)

5           The property is subject to Covenants, Conditions and Restrictions (“CC&Rs”)  
6 recorded in 2000 by The Parks Homeowners Association (“The Parks”). (Def. Wells Fargo  
7 Bank, N.A.’s Opp’n to Pl.’s Mot. for Summ. J. (Doc. #48) [“Opp’n”], Ex. B.) In August of  
8 2011, The Parks recorded a notice of delinquent assessment lien with respect to Johnson’s  
9 property, and in October of 2011, The Parks initiated an HOA foreclosure sale of the  
10 property pursuant to Nevada Revised Statutes § 116.3116 et seq. to recover unpaid HOA  
11 assessments. (Req. for Judicial Notice, Ex. F, Ex. G.) The sale was conducted on May 7,  
12 2012, at which Horse Pointe Avenue Trust purchased the property for \$4,145.00. (MSJ, Ex.  
13 2.) The HOA foreclosure deed was recorded with the Clark County Recorder on May 29,  
14 2012. (Id.) The HOA foreclosure deed states that the foreclosure sale was conducted in  
15 compliance with all applicable notice requirements. (Id. at 1.) The same date, a grant deed  
16 from Horse Pointe Avenue Trust to Plaintiff Bourne Valley Court Trust (“Bourne Valley”)  
17 was recorded with the Clark County Recorder. (MSJ, Ex. 1.) According to Wells Fargo, at  
18 the time of the HOA foreclosure sale, the property’s assessed value was \$90,543.00.  
19 (Opp’n, Ex. A.)

20           Bourne Valley brought suit in Nevada state court on January 16, 2013, asserting  
21 claims for quiet title and declaratory relief against Defendants. (Pet. for Removal (Doc.  
22 #1), Ex. A at 5-8, Ex. D at 4-6.) According to Bourne Valley, the foreclosure deed  
23 extinguished Wells Fargo’s deed of trust and vested clear title in Bourne Valley, leaving  
24 Wells Fargo nothing to foreclose. (Id.) Defendant MTC Financial Inc. removed the action  
25 to this Court on April 17, 2013. (Pet. for Removal.)

26 ///

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1 Bourne Valley now moves for summary judgment on its claims, arguing Nevada  
2 Revised Statutes § 116.3116 and SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334  
3 P.3d 408 (Nev. 2014), provide an HOA with a lien for nine months' worth of unpaid HOA  
4 assessments that is superior to the first deed of trust, commonly referred to as the "super  
5 priority lien." Bourne Valley further argues that SFR Investments clarifies that under  
6 § 116.3116, foreclosure of an HOA super priority lien extinguishes all junior liens,  
7 including a first deed of trust. Bourne Valley therefore contends that Wells Fargo's first  
8 deed of trust was extinguished by the HOA foreclosure sale and that title to the property  
9 should be quieted in Bourne Valley's name.

10 Wells Fargo responds that Bourne Valley is not entitled to summary judgment  
11 because it does not provide evidence indicating that the HOA sale complied with the notice  
12 requirements of Nevada Revised Statutes Chapter 116. Wells Fargo further argues that the  
13 HOA foreclosure sale was commercially unreasonable and therefore was void. Wells Fargo  
14 also argues Bourne Valley is not a bona fide purchaser because it purchased the property  
15 with knowledge of the previously-recorded CC&Rs, which contain a mortgage protection  
16 clause stating that a lender's deed of trust cannot be extinguished by an HOA foreclosure  
17 sale to satisfy a lien for delinquent assessments. Finally, Wells Fargo argues that because  
18 Bourne Valley does not provide evidence the HOA complied with all statutory notice  
19 requirements, Bourne Valley has not demonstrated that constitutional due process  
20 requirements were met.

21 Bourne Valley replies that the recitals in the trustee's deed upon sale stating there  
22 was compliance with all statutory notice requirements are conclusive proof that the HOA  
23 complied with the notice requirements. Bourne Valley further argues that Wells Fargo does  
24 not provide any evidence indicating it did not receive the required statutory notices.  
25 Regarding Wells Fargo's argument that the HOA foreclosure sale was commercially  
26 unreasonable, Bourne Valley replies that Chapter 116 does not require an HOA foreclosure

1 sale to be commercially reasonable. Bourne Valley further argues that the inadequacy of  
 2 the price is not sufficient to void the HOA foreclosure sale when there is no evidence of  
 3 fraud, procedural defects, or other irregularities in the conduct of the sale. As for Wells  
 4 Fargo's mortgage protection clause argument, Bourne Valley replies that the clause is  
 5 unenforceable to the extent that it attempts to limit the super priority lien given to the HOA  
 6 under § 116.3116. Finally, regarding Wells Fargo's due process argument, Bourne Valley  
 7 replies that no state action is involved in a nonjudicial HOA foreclosure sale. Bourne  
 8 Valley further argues the trustee's deed reciting compliance with all applicable notice  
 9 requirements is conclusive proof that statutory notice requirements were met, and hence  
 10 Wells Fargo received all process that was due.

## 11 **II. DISCUSSION**

12 Summary judgment is appropriate if the pleadings, the discovery and disclosure  
 13 materials on file, and any affidavits "show[] that there is no genuine dispute as to any  
 14 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.  
 15 56(a), (c). A fact is "material" if it might affect the outcome of a suit, as determined by the  
 16 governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An  
 17 issue is "genuine" if sufficient evidence exists such that a reasonable fact finder could find  
 18 for the non-moving party. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th  
 19 Cir. 2002). Initially, the moving party bears the burden of proving there is no genuine issue  
 20 of material fact. Leisek v. Brightwood Corp., 278 F.3d 895, 898 (9th Cir. 2002). After the  
 21 moving party meets its burden, the burden shifts to the non-moving party to produce  
 22 evidence that a genuine issue of material fact remains for trial. Id. The Court views all  
 23 evidence in the light most favorable to the non-moving party. Id.

### 24 **A. Notice**

25 Wells Fargo argues Bourne Valley is not entitled to judgment on its quiet title  
 26 claim because Bourne Valley does not provide evidence indicating that the HOA sale

1 complied with the notice requirements of Chapter 116. Bourne Valley contends that the  
 2 recitals in the trustee's deed upon sale stating there was compliance with all statutory notice  
 3 requirements are conclusive proof that the HOA complied with the notice requirements.  
 4 Bourne Valley further argues that Wells Fargo does not provide any evidence indicating it  
 5 did not receive the required statutory notices.

6 The Nevada statutes and case law applicable in this case are clear and conclusive.  
 7 Section 116.3116(2) sets forth the priority of the HOA lien with respect to other liens on the  
 8 property. Pursuant to § 116.3116(2), the HOA lien is prior to all other liens on the property  
 9 except:

- 10 (a) Liens and encumbrances recorded before the recordation of the declaration  
 11 and, in a cooperative, liens and encumbrances which the association creates,  
 assumes or takes subject to;
- 12 (b) A first security interest on the unit recorded before the date on which the  
 assessment sought to be enforced became delinquent . . . ; and
- 13 (c) Liens for real estate taxes and other governmental assessments or charges  
 against the unit or cooperative.

14 Although § 116.3116(2)(b) makes a first deed of trust superior to an HOA lien, the  
 15 last paragraph of § 116.3116(2) gives what is commonly referred to as "super priority"  
 16 status to a portion of the HOA's lien which is superior to the first deed of trust:

17 The lien is also prior to all security interests described in paragraph (b) to the  
 18 extent of any charges incurred by the association on a unit pursuant to NRS  
 116.310312 and to the extent of the assessments for common expenses based  
 19 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  
 20 months immediately preceding institution of an action to enforce the lien,  
 unless federal regulations adopted by the Federal Home Loan Mortgage  
 Corporation or the Federal National Mortgage Association require a shorter  
 21 period of priority for the lien. . . . This subsection does not affect the priority  
 of mechanics' or materialmen's liens, or the priority of liens for other  
 22 assessments made by the association.

23 Id. § 116.3116(2).

24 The Nevada Supreme Court recently held in SFR Investments that foreclosure of a  
 25 super priority lien established pursuant to § 116.3116(2) extinguishes all junior interests,  
 26 including a first deed of trust on the property. 334 P.3d at 410-14; see also 7912 Limbwood

1 Court Trust v. Wells Fargo Bank, N.A., 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013). SFR  
 2 Investments resolves a previous division of authority among the Nevada state trial courts  
 3 and decisions from the United States District Court for the District of Nevada on the  
 4 question. 334 P.3d at 412.

5 To conduct a foreclosure on this type of lien, an HOA must comply with certain  
 6 notice requirements at certain time intervals, including mailing a notice of delinquent  
 7 assessment, recording and mailing a notice of default and election to sell, and providing  
 8 notice of the time and place of the sale. Nev. Rev. Stat. §§ 116.31162-116.311635.  
 9 Contrary to the argument advanced by Wells Fargo, a deed which recites that there was a  
 10 default, that the notice of delinquent assessment was mailed, that the notice of default and  
 11 election to sell was recorded, that 90 days have lapsed between notice of default and sale,  
 12 and that notice of the sale was given, is “conclusive proof of the matters recited.” Id.  
 13 § 116.31166(1). A deed containing these recitals also “is conclusive against the unit’s  
 14 former owner, his or her heirs and assigns, and all other persons.” Id. § 116.31166(2).

15 Here, the foreclosure deed recites as follows:

16 Default occurred as set forth in the Notice of Default and Election to Sell  
 17 which was recorded October 12, 2011 as instrument/document number  
 201110120001641 in the office of the Recorder of said County. After the  
 18 expiration of ninety (90) days from the recording and mailing of the copies of  
 the Notice of Default and Election to Sell, a Notice of Trustee’s Sale was  
 19 recorded on April 09, 2012 as instrument/document number  
 201204090000179 in the Office of the Recorder of said County and the  
 Association claimant, The Parks Homeowners Association, demanded that  
 20 such sale be made.

21 All requirements of law regarding the recording and mailing of copies of the  
 Notice of Delinquent Assessment, Notice of Default and Election to Sell, and  
 22 the recording, mailing, posting and publication of copies of the Notice of  
 Trustee’s Sale have been complied with.  
 23

24 (MSJ, Ex. 2 at 1.) Given that the foreclosure deed recites there was a default, the proper  
 25 notices were given, the appropriate amount of time has lapsed between notice of default and  
 26 sale, and notice of the sale was given, under § 116.31166(1), the foreclosure deed

1 constitutes “conclusive proof” that the required statutory notices were provided. Bourne  
 2 Valley therefore has met its burden of showing the required statutory notices were provided  
 3 to Wells Fargo.

4 Once Bourne Valley met its burden of showing the required statutory notices were  
 5 provided, Wells Fargo was required to come forward with evidence that a genuine issue of  
 6 fact remains for trial as to notice. See Leisek, 278 F.3d at 898. Wells Fargo does not  
 7 provide any evidence or even assert that it did not receive the required statutory notices.  
 8 Nor does Wells Fargo point to any other procedural irregularities related to the HOA  
 9 foreclosure sale that would explain Wells Fargo’s failure to pay the HOA lien to avert its  
 10 loss of security. See SFR Investments, 334 P.3d at 414; Limbwood, 979 F. Supp. 2d at  
 11 1149 (“If junior lienholders want to avoid this result, they readily can preserve their security  
 12 interests by buying out the senior lienholder’s interest.”). Therefore, no issue of fact  
 13 remains as to whether the required statutory notices were provided. Given that Wells  
 14 Fargo’s due process arguments are premised on Bourne Valley not providing evidence that  
 15 the statutory notice requirements were met, the Court likewise finds that no genuine issue of  
 16 material fact remains as to whether Wells Fargo’s due process rights were violated.

#### 17 **B. HOA Foreclosure Sale**

18 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first  
 19 deed of trust on the property, the HOA foreclosure sale was “commercially unreasonable”  
 20 and therefore was void. (Opp’n at 5-7.) Specifically, Wells Fargo argues the HOA  
 21 foreclosure sale was not conducted in good faith because “the HOA made no effort to  
 22 obtain the best price or to protect either Johnson or Wells Fargo” by selling the property for  
 23 \$4,145.00 when the assessed value of the property was \$90,543.00. (Id. at 7.) Bourne  
 24 Valley replies that Chapter 116 does not require an HOA foreclosure sale to be  
 25 commercially reasonable. Bourne Valley further argues that the inadequacy of the price is  
 26 not sufficient to void the HOA foreclosure sale when there is no evidence of fraud,

1 procedural defects, or other irregularities in the conduct of the sale.

2 The commercial reasonableness here must be assessed as of the time the sale  
3 occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially  
4 unreasonable due to the discrepancy between the sale price and the assessed value of the  
5 property ignores the practical reality that confronted the purchaser at the sale. Before the  
6 Nevada Supreme Court issued SFR Investments, purchasing property at an HOA  
7 foreclosure sale was a risky investment, akin to purchasing a lawsuit. Nevada state trial  
8 courts and decisions from the United States District Court for the District of Nevada were  
9 divided on the issue of whether HOA liens are true priority liens such that their foreclosure  
10 extinguishes a first deed of trust on the property. SFR Investments, 334 P.3d at 412. Thus,  
11 a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in  
12 the property subject to the first deed of trust. This risk is illustrated by the fact that title  
13 insurance companies refused to issue title insurance policies on titles received from  
14 foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to  
15 Remand to State Court (Doc. #6), Decl. of Ron Bloecker.) Given these risks, a large  
16 discrepancy between the purchase price a buyer would be willing to pay and the assessed  
17 value of the property is to be expected.

18 Moreover, Wells Fargo does not point to any evidence or legal authority indicating  
19 the Court must void an HOA foreclosure sale because the purchaser bid only a fraction of  
20 the property's assessed value. Wells Fargo does not point to evidence of fraud or any other  
21 procedural defects or other irregularities in the conduct of the sale that would require the  
22 Court to void the sale, or any evidence indicating the HOA acted in bad faith by selling the  
23 property for an amount that would satisfy the unpaid assessments. Nor does Wells Fargo  
24 point to evidence or legal authority indicating that beyond selling the property to the highest  
25 bidder, the HOA was responsible for protecting Wells Fargo and Johnson's interests in  
26 addition to the homeowners' interests. See Carmen v. S.F. Unified Sch. Dist., 237 F.3d  
AA000195

1 1026, 1028–31 (9th Cir. 2001) (stating that a court need not “comb the record” looking for a  
 2 genuine issue of material fact if the party has not brought the evidence to the court’s  
 3 attention) (quotation omitted)). Thus, no genuine issue of material fact remains as to  
 4 whether the HOA foreclosure sale was commercially unreasonable. Under the specific  
 5 facts presented here, it was not.

### 6 C. CC&Rs

7 Wells Fargo argues Bourne Valley is not a bona fide purchaser because it purchased  
 8 the property with knowledge of the previously-recorded CC&Rs, which contain a mortgage  
 9 protection clause. According to Wells Fargo, under the mortgage protection clause, its deed  
 10 of trust cannot be extinguished by an HOA foreclosure sale to satisfy a lien for delinquent  
 11 assessments. Bourne Valley replies that the clause is unenforceable to the extent that it  
 12 attempts to limit the super priority lien given to the HOA under § 116.3116. The mortgage  
 13 savings clause states as follows:

14 [N]o lien created under this Article V [titled “Mortgage Protection”] or under  
 15 any other Article of this Declaration, nor any lien arising by reason of any  
 16 breach of this Declaration, nor the enforcement of any provision of this  
 17 Declaration, shall defeat or render invalid the rights of the beneficiary under  
 any Recorded Mortgage of first and senior priority now or hereafter upon a  
 Lot, made in good faith and for value, perfected before the date on which the  
 Assessment sought to be enforced became delinquent.

18 (Opp’n, Ex. B at § 5.08.) The preceding section, titled “Unpaid Assessments,” provides  
 19 that liens for unpaid assessments “shall be created in accordance with NRS § 116.3116 and  
 20 shall be foreclosed on in the manner provided for in NRS § 116.31162-116.31168 as is now  
 21 or hereafter may be in effect.” (*Id.* at § 5.07.)

22 The Nevada Supreme Court held in SFR Investments that a mortgage protection  
 23 clause does not affect the application of § 116.3116(2) in an HOA super priority lien  
 24 foreclosure case. 334 P.3d at 419. Specifically, “Chapter 116’s ‘provisions may not be  
 25 varied by agreement, and rights conferred by it may not be waived . . . [e]xcept as expressly  
 26 provided in’ Chapter 116.” *Id.* (quoting Nev. Rev. Stat. § 116.1104) (emphasis omitted).



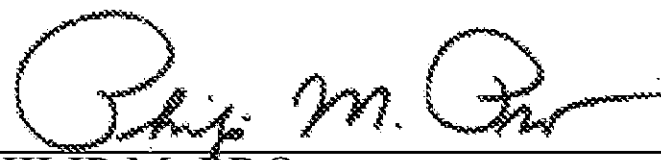
1 “Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA’s right to a  
2 priority position for the HOA’s super priority lien.” Id. (quoting Limbwood, 979 F. Supp.  
3 2d at 1153).

4         Given that Chapter 116’s requirements cannot be varied by agreement, the mortgage  
5 protection clause in the CC&Rs does not preserve Wells Fargo’s security interest in the  
6 property. Moreover, by the CC&R’s plain language, in § 5.07 The Parks preserved its  
7 statutory super priority lien rights by reference to § 116.3116, which is the statutory section  
8 setting forth the relative priority of the HOA’s super priority and the junior liens in relation  
9 to a first deed of trust. Thus, no genuine issue of fact remains as to whether the mortgage  
10 protection clause affects the application of § 116.3116 in this case. The Court therefore  
11 will grant Bourne Valley’s Motion for Summary Judgment.

### 12 **III. CONCLUSION**

13         IT IS THEREFORE ORDERED that Plaintiff Bourne Valley Court Trust’s Motion  
14 for Summary Judgment (Doc. #45) is GRANTED.

15  
16 DATED: January 23, 2015

17  
18   
19 PHILIP M. PRO  
United States District Judge