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5 Attorney for plaintiff/appellant  
5316 Clover Blossom Ct Trust

Electronically Filed  
Jul 15 2021 08:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8 SUPREME COURT  
9 STATE OF NEVADA

10 5316 CLOVER BLOSSOM CT TRUST, CASE NO.: 82426

11 Appellant,

12 vs.

13 U.S. BANK, NATIONAL  
14 ASSOCIATION, SUCCESSOR  
15 TRUSTEE TO BANK OF AMERICA,  
16 N.A., SUCCESSOR BY MERGER TO  
17 LASALLE BANK, N.A., AS TRUSTEE  
18 TO THE HOLDERS OF THE ZUNI  
MORTGAGE LOAN TRUST  
2006-OA1, MORTGAGE LOAN  
PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR  
RECON CORPS,

19 Respondents.  
20

21 **APPELLANT'S APPENDIX VOLUME 4**  
22

23 Michael F. Bohn, Esq.  
24 Law Office of Michael F. Bohn, Esq., Ltd.  
2260 Corporate Circle, Suite 140  
Henderson, Nevada 89074  
25 (702) 642-3113/ (702) 642-9766 FAX  
26 Attorney for Plaintiff/Appellant  
5316 Clover Blossom Ct Trust

Ariel E. Stern, Esq.  
Melanie D. Morgan, Esq.  
Nicholas E. Belay, Esq.  
Akerman LLP  
1635 Village Center Circle, Ste. 200  
Las Vegas, NV 89134  
Attorneys for Defendant/Respondent  
U.S. Bank, National Association

## **INDEX TO APPENDIX 4**

<b>Volume</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Stamp</b>
4	02/26/18	U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59 (Part 2)	AA000733-AA000906
4	03/14/18	Plaintiff's Opposition to U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000907-AA000916
4	04/16/18	Notice of Entry of Order Granting Country Garden Owners' Association's Motion to Dismiss the Crossclaims of U.S. Bank, National Association, Findings of Fact, Conclusions of Law, and Judgment	AA00917-AA000931
4	05/01/18	Order Denying U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000932-AA000935
4	05/10/18	Notice of Appeal	AA000936-AA000938
4	01/07/20	Order	AA000939-AA000943
4	01/07/20	Notice of Entry of Order	AA000944-AA000951
4	02/24/20	Answer to Defendant U.S. Bank, National Association's Counterclaims	AA000952-AA000957
4	10/01/20	Motion for Summary Judgment (Part 1)	AA000958-AA000980

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1	08/26/14	Affidavit of Service for Clear Recon Corps	AA000009
1	08/13/14	Affidavit of Service for U.S. Bank	AA000007-AA000008
1	04/23/15	Amended Complaint	AA000019-AA000021
4	02/24/20	Answer to Defendant U.S. Bank, National Association's Counterclaims	AA000952-AA000957
7	01/28/21	Case Appeal Statement	AA001514-AA001516

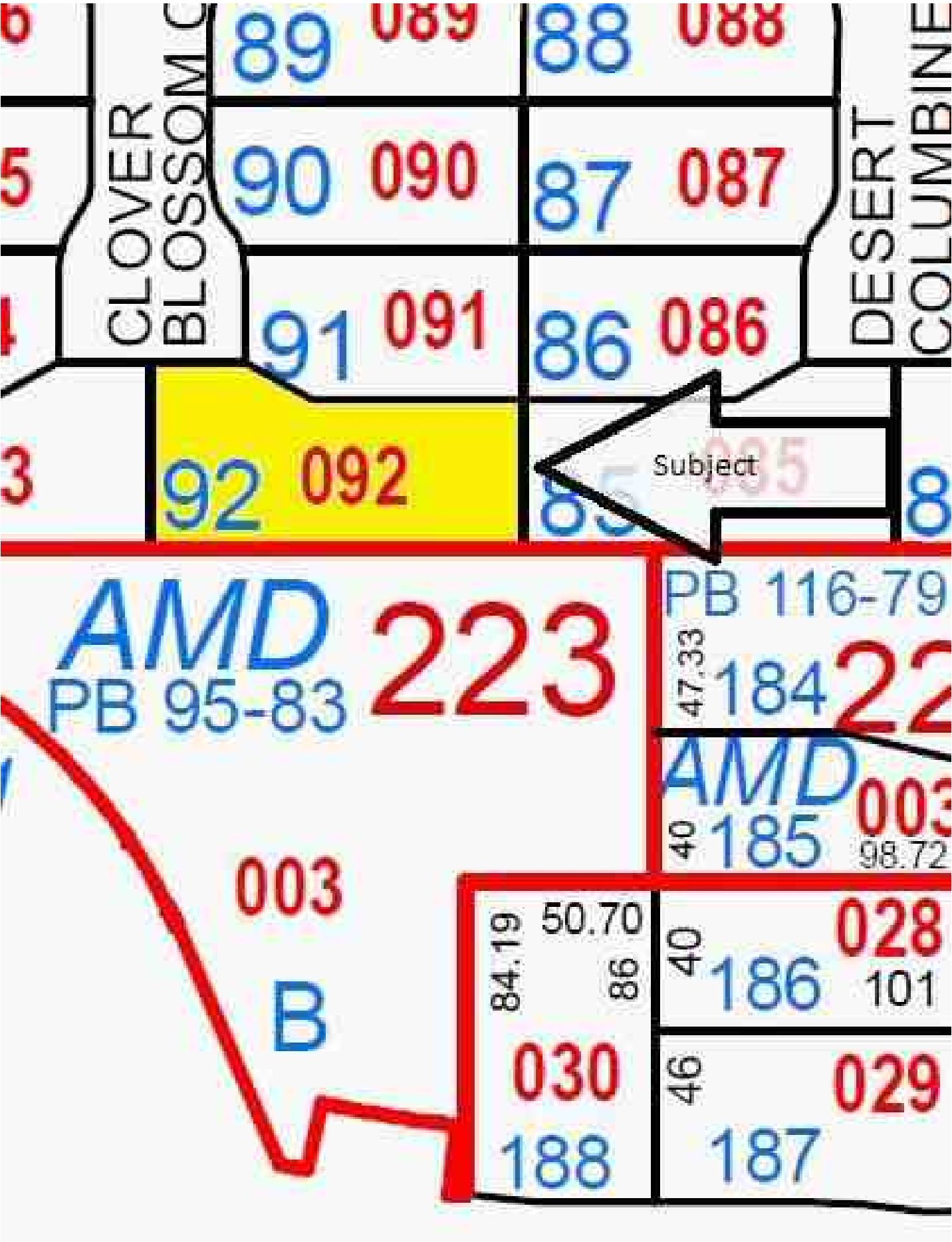
1	1	07/25/14	Complaint	AA000001- AA000006
2	3	11/09/17	Country Garden Owners' Association's Motion to Dismiss the Crossclaims of U.S. Bank, National Association	AA000500- AA000510
3	3	12/07/17	Country Garden Owners' Association's Reply in Support of Motion to Dismiss the Crossclaims of U.S. Bank, National Association	AA000658- AA000674
4	7	12/07/20	Court Minutes	AA001484- AA001485
5	3	02/07/18	Findings of Fact, Conclusions of Law, and Judgment	AA000675- AA000688
6	1	09/10/15	Findings of Fact, Conclusions of Law, and Judgment Quieting Title	AA000214- AA000220
7	7	12/29/20	Findings of Fact, Conclusions of Law, and Order	AA001486- AA001496
8	2	10/23/17	Motion to Dismiss Counterclaim	AA000339- AA000394
9	1	05/18/15	Motion for Summary Judgment	AA000024- AA000082
10	4&5	10/01/20	Motion for Summary Judgment	AA000958- AA000998
11	4	05/10/18	Notice of Appeal	AA000936- AA000938
12	7	01/28/21	Notice of Appeal	AA001512- AA001513
13	3	02/08/18	Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment	AA000689- AA000704
14	7	12/29/20	Notice of Entry of Findings of Fact, Conclusions of Law, and Order	AA001497- AA001511
15	1	09/10/15	Notice of Entry of Judgment	AA000221- AA000229
16	4	01/07/20	Notice of Entry of Order	AA000944- AA000951
17	4	04/16/18	Notice of Entry of Order Granting Country Garden Owners' Association's Motion to Dismiss the Crossclaims of U.S. Bank, National Association, Findings of Fact, Conclusions of Law, and Judgment	AA000917- AA000931

1	7	10/15/20	Opposition U.S. Bank's Motion for Summary Judgment	AA001434-AA001441
2	4	01/07/20	Order	AA000939-AA000943
3	4	05/01/18	Order Denying U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000932-AA000935
4	1	05/06/15	Order Granting Motion to Amend Complaint	AA000022-AA000023
5	1	08/03/17	Order Vacating Judgment and Setting Further Proceedings	AA000233
6	4	03/14/18	Plaintiff's Opposition to U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000907-AA000916
7	7	12/03/20	Plaintiff's Reply in Support of Motion for Summary Judgment	AA001464-AA001474
8	3	11/21/17	Reply in Support of Motion to Dismiss Counterclaim	AA000511-AA000522
9	1	07/29/15	Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment, or Alternatively, for Rule 56(F) Relief	AA000171-AA000191
10	1	09/28/17	Stipulation and Order to Amend Pleadings and Add Parties	AA000234-AA000235
11	1	09/30/14	Stipulation and Order for Non-Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust	AA000016-AA000018
12	3	11/29/17	Supplemental Authority in Support of Motion to Dismiss Counterclaim	AA000631-AA000657
13	1	08/13/15	Supplemental Points and Authorities in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Countermotion for Summary Judgment	AA000206-AA000213
14	1	09/25/14	U.S. Bank's Answer to Complaint	AA000010-AA000015
15	2	10/10/17	U.S. Bank's Answer to 5316 Clover Blossom Trust's Amended Complaint, Counterclaims, and Cross-Claims	AA000237-AA000338
16	3&4	02/26/18	U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000705-AA000906

1	1	09/28/15	U.S. Bank's Notice of Appeal	AA000230- AA000232
2	2&3	11/09/17	U.S. Bank's Opposition to 5316 Clover Blossom Trust's Motion to Dismiss Counterclaim	AA000395- AA000499
3	3	11/27/17	U.S. Bank's Opposition to Country Garden Owners Association's Motion to Dismiss	AA000523- AA000630
4	1	07/22/15	U.S. Bank, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment Based on the Due Process Clause and Tender, or Alternatively, for Rule 56(F) Relief	AA000083- AA000170
5	7	10/15/20	U.S. Bank, N.A., as Trustee's Opposition to Plaintiff 5316 Clover Blossom Ct Trust's Motion for Summary Judgment	AA001442- AA001463
6	5,6 & 7	10/01/20	U.S. Bank, N.A., as Trustee's Renewed Motion for Summary Judgment	AA000999- AA001433
7	7	12/03/20	U.S. Bank, N.A., as Trustee's Reply in Support of Its Renewed Motion for Summary Judgment	AA001475- AA001483
8	1	08/13/15	U.S. Bank, N.A.'s Supplemental Briefing in Support of Its Countermotion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment	AA000192- AA000205

Assessor's Parcel Map Close Up

Owner	Dennis L. & Geraldine J. Johnson *					
Property Address	5316 Clover Blossom Ct					
City	North Las Vegas	County	Clark	State	NV	Zip Code 89031
Client	Akerman, LLP					



Subject Photo Page

Owner	Dennis L. & Geraldine J. Johnson *				
Property Address	5316 Clover Blossom Ct				
City	North Las Vegas	County	Clark	State	NV      Zip Code    89031
Client	Akerman, LLP				



Subject Front

5316 Clover Blossom Court	
Sales Price	0.00
Gross Living Area	1,370
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Average/gated
View	Park
Site	4,385 sf/CDS
Quality	Average, typical
Age	13

Photo from MLS  
1324995



Additional front

Photo taken 10/19/17  
by Tammy Howard



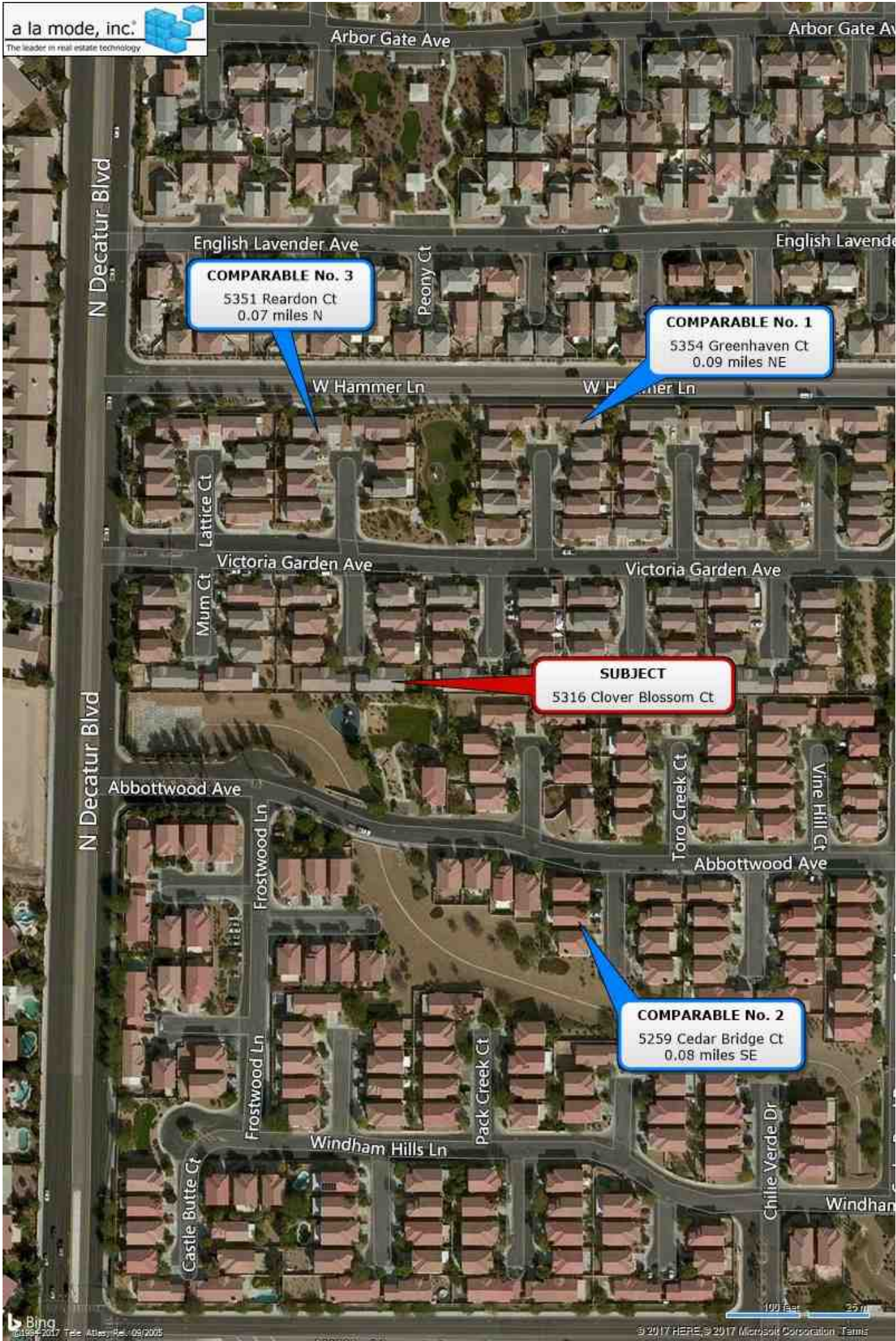
Street scene

Looking south along  
Clover Blossom Ct,  
subject is at rear of  
photo on left



Comparable Sale Location Map

Owner	Dennis L. & Geraldine J. Johnson *				
Property Address	5316 Clover Blossom Ct				
City	North Las Vegas	County	Clark	State	NV
				Zip Code	89031
Client	Akerman, LLP				





Comparable Photo Page

Owner	Dennis L. & Geraldine J. Johnson *				
Property Address	5316 Clover Blossom Ct				
City	North Las Vegas	County	Clark	State	NV      Zip Code    89031
Client	Akerman, LLP				



Comparable 1

5354 Greenhaven Ct	
Prox. to Subject	0.09 miles NE
Sales Price	108,000
Gross Living Area	1,370
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Average/gated
View	Street
Site	4,792 sf/CDS
Quality	Average
Age	12 years

Photo from MLS



Comparable 2

5259 Cedar Bridge Ct	
Prox. to Subject	0.08 miles SE
Sales Price	110,000
Gross Living Area	1,606
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/gated
View	None
Site	2,940 sf/CDS
Quality	Average
Age	11 years

Photo from MLS



Comparable 3

5351 Reardon Ct	
Prox. to Subject	0.07 miles N
Sales Price	95,000
Gross Living Area	1,370
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Average/gated
View	Street
Site	4,356 sf/CDS
Quality	Average
Age	12 years

Photo from MLS

Assumptions, Limiting Conditions & Scope of Work

File No.: 17-0498

Property Address:	5316 Clover Blossom Ct	City:	North Las Vegas	State:	NV	Zip Code:	89031
Client:	Akerman, LLP	Address:	1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144				
Appraiser:	Tammy L. Howard	Address:	3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117				

**STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS**

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

**The Scope of Work** is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

**Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):**  
**An exterior inspection of the property was performed from the street. An extraordinary assumption is made the interior is in similar condition as the exterior and that these conditions were similar on the retrospective date of value. The use of the extraordinary assumption may have affected the assignment results.**

The purpose of this appraisal is for a "non lender" appraisal. It should be noted that the appraisers's data and comparables utilized were retrieved as of the inspection date noted within the body of the report. This report is intended for use by the Client that is named on page 1 of this report.

Measurements and room counts used in this report come from the appraisers interior/exterior inspection of the subject property, previous appraisal files and/or builder floor plans. These numbers may differ slightly with those recorded with Clark County records due to differences in measuring techniques.

The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner or the title company.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Certifications

File No.: 17-0498

Property Address:	5316 Clover Blossom Ct	City:	North Las Vegas	State:	NV	Zip Code:	89031
Client:	Akerman, LLP	Address:	1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144				
Appraiser:	Tammy L. Howard	Address:	3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117				

**APPRAISER'S CERTIFICATION**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

**Additional Certifications:**

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.

-The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

-As of the date of this report, Matthew Lubawy, MAI has completed the continuing education program of the Appraisal Institute.

-The appraisers' state registration/certification has not been revoked, suspended, canceled or restricted.

**Disclosure of Prior Appraisal and/or Other Services:**

I certify that, to the best of my knowledge and belief:

I have not performed a prior appraisal or other service regarding the subject property within the 3 year period immediately preceding acceptance of this appraisal assignment.

**DEFINITION OF FAIR MARKET VALUE \*:**

"The price which a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell, taking into consideration all the uses to which the property is adapted and might in reason be applied."

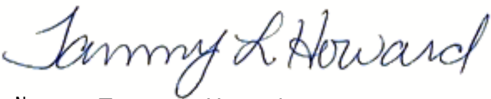
Source: Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247 (1980)

This definition of market value was obtained from the 1980 Nevada Supreme Court decision of Unruh v. Streight. In this case, the court required the determination of market value in order to ascertain the amount of the deficiency judgment as of the foreclosure date. Although components of the fair market value definition were not specifically stated, existing debt, liens, duress and distress were not included in appraising the property. Therefore, our conclusion of fair market value is based on the subject property being free and clear of liens, encumbrances and debt. Furthermore, it is based on sales that were purchased with cash or terms equivalent to cash, without any duress or distress of any parties to the transaction.

Since the subject property involves the foreclosure of real estate, this definition was agreed to by the appraiser and the client as being reasonable and appropriate for their intended use.

Client Contact:	Brianne Siriwan	Client Name:	Akerman, LLP
E-Mail:	brianne.siriwan@akerman.com	Address:	1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144

**APPRAISER**



Appraiser Name: Tammy L. Howard

Company: Valbridge Property Advisors

Phone: (702) 242-9369 Fax: (702) 242-6391

E-Mail: tlhoward@valbridge.com

Date Report Signed: 10/19/2017

License or Certification #: A.0000253-CG State: NV

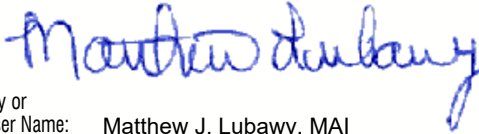
Designation:

Expiration Date of License or Certification: 06/30/2019

Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None

Date of Inspection: October 19, 2017

**SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)**



Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI

Company: Valbridge Property Advisors

Phone: (702) 242-9369 Fax: (702) 242-6391

E-Mail: mlubawy@valbridge.com

Date Report Signed: 10/19/2017

License or Certification #: A.0000044-CG State: NV

Designation:

Expiration Date of License or Certification: 04/30/2019

Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☒ None

Date of Inspection:



Qualifications of Tammy L Howard  
Senior Appraiser  
Valbridge Property Advisors | Lubawy & Associates, Inc.

Independent Valuations for a Variable World

State Certifications

State of Nevada  
License #A.0000253-CG

Education

Attended University of Nevada, Las Vegas, 1988-89  
Graduated Plainwell High School, MI, 1980

Contact Details

702-242-9369 (p)  
702-242-6391 (f)

Valbridge Property Advisors |  
Lubawy & Associates  
3034 S. Durango Drive  
Suite 100  
Las Vegas, NV 89117

[www.valbridge.com](http://www.valbridge.com)  
[torourke@valbridge.com](mailto:torourke@valbridge.com)

Related Courses/Seminars

Real Estate Appraisal Principles  
Residential Valuation  
Uniform Standards of Professional Appraisal Practice  
Basic Valuation Procedures  
Residential Case Studies  
Case Studies in Law & Ethics  
Forensic Real Property Appraising  
FHA Appraisal Inspections from the Ground Up  
Litigation Appraisal & Expert Testimony  
Real Estate Law I and II  
Income Property Analysis  
Market Extraction  
Factory Built Housing  
Income Capitalization

Experience

Senior Appraiser

Valbridge Property Advisors | Lubawy & Associates (2013-Present)

Senior Appraiser

Lubawy & Associates (June 2012-2013)

Senior Appraiser

Grubb & Ellis-Landauer Valuation (Oct 2010-May 2012)

Associate Appraiser

Integra Realty Resources | Shelli Lowe & Associates (1985-2010)

Appraisal/valuation and consulting assignments include: apartment buildings; retail buildings and shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools and houses of worship; residential subdivisions; and vacant industrial, commercial and residential land. Assignments have been concentrated in Nevada.



# APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That : TAMMY L HOWARD

Certificate Number: A.0000253-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: June 29, 2017

Expire Date: June 30, 2019

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS  
3034 S DURANGO DR #100  
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

SHARATH CHANDRA  
*Administrator*



Qualifications of Matthew Lubawy, MAI, CVA, CMEA  
Senior Managing Director  
Valbridge Property Advisors | Lubawy & Associates, Inc.



*Independent Valuations for a Variable World*

State Certifications

Nevada License  
# A.0000044-CG

Arizona License  
#31821

Education

Bachelor of Science  
Business Administration  
University of Nevada, Las Vegas

Contact Details

702-242-9369 (p)  
702-242-6391 (f)

Valbridge Property Advisors |  
Lubawy & Associates, Inc.  
3034 S. Durango Dr. #100  
Las Vegas, NV 89117  
[www.valbridge.com](http://www.valbridge.com)  
[mlubawy@valbridge.com](mailto:mlubawy@valbridge.com)

Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653  
Director - (2008 - 2011)  
President of Las Vegas Chapter (1998 - 1999)  
1<sup>st</sup> V.P. of Las Vegas Chapter (1997 - 1998)  
2<sup>nd</sup> V.P. of Las Vegas Chapter (1996 - 1997)  
Member: NACVA - CVA Designation (Certified Valuation  
Analyst for business valuation)  
Member: NEBB Institute - CMEA Designation for Machinery  
and Equipment  
Board Member: Valbridge Property Advisors -  
Vice-Chairman of the Board of Directors  
(2011 - Present)  
Member: International Right of Way Association  
Member: National Association of Realtors  
Member: GLVAR  
Board Member: Nevada State Development Corporation  
Chairman of the Board (2008-Present)

Experience:

**Senior Managing Director**  
ValbridgePropertyAdvisors|Lubawy & Associates (2013 to Present)

**Principal**  
Lubawy & Associates (1994-2013)

**Independent Fee Appraiser and Real Estate Consultant**  
Timothy R. Morse and Associates (1992 - 1994)

**Staff Appraiser/Assistant Vice President**  
First Interstate Bank (1988 - 1992)

**Independent Fee Appraiser and Real Estate Consultant**  
The Clark Companies (1987 - 1988)

# APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That : MATTHEW J LUBAWY

Certificate Number: A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: March 7, 2017

Expire Date: April 30, 2019

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS  
3034 S DURANGO DR #100  
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

SHARATH CHANDRA  
*Administrator*



# MATTHEW LUBAWY, MAI DEPOSITIONS/TRIAL TESTIMONY

## DEPOSITIONS

### NEVADA STATE DISTRICT COURT

- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)  
Date: August 9, 2013  
Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff  
Our File No: 13-0108-000
- **Richard & Bie-Shia K. Chu, et al. vs. Alan Schachtman, et al.,** (Case #A572474)  
Date: November 19, 2014  
Attorneys: Scott Coston, Burdman & Coston - Attorneys for Plaintiff; Jeff Garofalo, Lee, Hernandez, Landrum & Garofalo, Attorneys for Defendant  
Our File No: 14-0195-001
- **SFR Investment Pool 1, LLC. vs. Nationstar Mortgage, LLC., Sandra Salas, Does 1 through X and ROE Corporations I through X** (Case #A-13-684596-C)  
Date: July 1, 2015  
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Melanie D. Morgan, Akerman, LLP - Attorneys for Defendant  
Our File No: 15-1013
- **Ignacio Gutierrez vs. SFR Investments Pool 1, LLC; Nevada Association Services, Inc., Horizon Heights Homeowners Association; KB Home Mortgage Company, , DOE Individuals I through X, ROE Corporations and Organization I through X.**  
  
**SFR Investments Pool 1, LLC. vs. Ignacio Gutierrez; Nationstar Mortgage, LLC, Countrywide Home Loans, Inc., Does I-X; and Roes 1-10, inclusive** (Case #A-13-684715-C)  
Date: August 5, 2015  
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Akerman, LLP, Attorneys for Defendant  
Our File No: 15-1021



**MATTHEW LUBAWY, MAI  
DEPOSITIONS (continued)**

**Hodgepodge, LLC. vs. Blood Family Trust U/A/D 10/25/90, by and through its Trustees, John R. Blood and Paula Blood, Does I-X; and ROE Entities I-X, inclusive**  
(Case #A-15-719153-B)

Date: November 10, 2015

Attorneys: Erika Pike Turner with Garman, Turner, Gordon – Attorneys for Plaintiff;  
Jeff Sylvester with Sylvester & Polednak, LTD, Attorneys for Defendant

Our File No: 15-0131-001 & 002

**Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank. vs. Nevada Title Company** (Case #2:14-cv-01567-GMN-GWF)

Date: December 21, 2015

Attorneys: Emilia P.E. Morris, Mortgage Recovery Law Group LLP. – Attorneys for Plaintiff;

Scott Burris with Wilson Elser Moskowitz Edelman & Dicker, LLP, Attorneys for Defendant

Our File No: 15-1070

**Carrington Mortgage Services, LLC vs Saticoy Bay LLC Series 6709 Brick House; Cactus Springs at Fairfax Village Homeowners Association; Hampton & Hampton Collections, LLC** (Case #2:15-cv-01852 APG-PAL)

Date: June 3, 2016

Attorneys: Maximiliano D. Couvillier, III, Black & Lobello – Attorneys for Plaintiff;

Robert S. Larsen and David T. Gluth, Gordon & Rees LLP - Attorneys for Defendant

Our File No: 16-0057

**U.S. DISTRICT COURT**

- **George F. Tibsherany, Inc. vs. The Midby Companies, LLC** (Case #CV-S-05-0613-LDG-GWF)

Date: December 11, 2006

Attorneys: Nicholas M. Wieczorek (Morris, Polich, and Purdy, LLPO),  
William L. Coulthard (Harrison, Kemp & Jones), John Wendland (Weil & Drage, APC), Scott R. Cook (Gordon & Rees), Aviva Gordon (Ellis & Gordon)

Judge: Lloyd D. George

Our File No: 06-301

## **FEDERAL BANKRUPTCY COURT**

- **Whitton Corporation** (Case #BK-S-10-32680-BAM)  
Date: April 13, 2011  
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins)
- **Marion Manor, LLC** (Case No. BK-S-11-28020-BAM)  
Date: February 24, 2012  
Attorneys: Chris Kaup and Lars Evensen with Holland & Hart; David J. Winterton & Associates, Ltd.
- **Desert Inn Management Company, LTD.** (Case No. BK-S-12-16719-LBR)  
Date: January 29, 2013  
Attorneys: Eric T. Gjerdingen, Gordon Silver & Jeffrey Willis, Snell & Wilmer

## **TRIAL TESTIMONY**

## **NEVADA STATE DISTRICT COURT**

- **Bank of Nevada vs. Monterey Industrial, LLC; and Maria Guadalupe De Tostado,** (Case #A-10-623435-C)  
Date: March 15, 2011  
Attorney: Michael D. Mazur, ESQ  
Judge: Jessie Walsh
- **Alliance Homes LLC (Bank of NV) vs. N. Las Vegas II, LLC; Frank T. Ferraro, Jr.; Christopher Paskvan; Tom Fehrman,** (Case #A-10-610698-C)  
Date: April 15, 2011  
Attorneys: H. Stanley Johnson, CJD Law Group LLC; James B. Ball, Poli and Ball, PLC  
Judge: Nancy L. Allf
- **Bank of Nevada vs. Pebble Pines, LLC and Quiet Moon, LLC,** (Case #A-11-637410-C)  
Date: June 3, 2011  
Attorney: Stephanie Hardie Allen - Kaempfer Crowell Penschaw Gronauer & Fiorentino  
Judge: Jerry A. Wiese  
Our File No: 10-468

- **NV Energy v. Copperfield Investment & Development Co.**  
(Case # A-09-604760-C) testified on behalf of Plaintiff  
Date: October 27, 2011  
Attorneys: Plaintiff attorney: Kirby Gruchow (Leach, Johnson, Song & Gruchow)  
Defendant attorney: John M. Netzorg  
Judge: Susan Johnson
- **Bank of Nevada v. Classic Productions, LLC**  
(Case # A-10-626894-C) testified on behalf of Plaintiff  
Date: August 27, 2012  
Attorneys: Plaintiff attorney: Michael D. Mazur  
Defendant attorney: Lucas M. Gjovig  
Judge: Jerry A. Wiese

- **Taylor Emanuel v. Richard Jones, et al.**  
 (Case # A-10-611339-B) testified on behalf Defendant/Counter Claimant –  
 Bank of Las Vegas  
 Date: August 28, 2012  
 Attorneys: Defendant/Counter Claimant attorney: Nicole Lovelock  
 (Holland & Hart, LLP)  
 Plaintiff attorney: David J. Winterton  
 Judge: Elizabeth Gonzalez
- **November 2005 Land Investors, LLC, et al. vs. Nevada Power Co.**  
 (Case # A-10-611150-C – testified on behalf of Defendant – Nevada Power Company  
 Date: June 28 & July 1, 2013  
 Attorneys: Defendant: William E. Peterson & Janine C. Prupas, Snell & Wilmer (Snell &  
 Wilmer, LLP)  
 Plaintiff attorney: J. Randall Jones & Eric M. Pepperman (Kemp, Jones & Coulthard,  
 LLP) & Mark E. Ferrario (Greenberg Traurig)  
 Judge: Gloria Sturman
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)  
 Date: September 9, 2013  
 Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto,  
 Sylvester & Polednak, Attorneys for Plaintiff  
 Our File No: 13-0108-000  
 Judge: Elizabeth Gonzalez
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)  
 Date: September 9, 2013  
 Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto,  
 Sylvester & Polednak, Attorneys for Plaintiff  
 Our File No: 13-0108-000  
 Judge: Elizabeth Gonzalez
- **Nevada State Bank vs. David Fandel,** (Case #A-14-697643-B)  
 Date: August 24, 2015  
 Attorneys: Erika Pike Turner, Garman Turner Gordon, LLP– Attorney for Plaintiff, John  
 Gutke, Attorney for Defendants;  
 Our File No: 134-0254-000 and 13-0255-000  
 Judge: Mark Denton



- **2010-1 CRE Venture LLC vs. OHDB, LLC., Lawrence Doyle, Joseph Lamarca, Stan Wasserkrug, John Hessling, Keith Lyon and Bonnie Chu** (Case #A-13-680017-B)  
Date: November 30, 2015  
Attorneys: Alina Shell, McLetchie Shell, LLC- Attorney for Defendant, Leslie S. Godfrey, Greenberg Traurig, LLP, Attorney for Plaintiff;  
Our File No: 15-0004-001  
Judge: Susan W. Scann

## **U.S. DISTRICT COURT**

- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC** (Case #A575592)  
Date: January 10, 2011  
Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson  
Judge: Elizabeth Gonzales  
Our File No: 09-251

## **FEDERAL BANKRUPTCY COURT**

- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)  
Date: November 9, 2010  
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer  
Chief Judge: Mike K. Nakagawa  
Our File No: 1007-001C (Residential)
- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)  
Date: January 13, 2011  
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer  
Chief Judge: Mike K. Nakagawa  
Our File No: 1007-001C (Residential)
- **Whitton Corporation** (Case #BK-S-10-32680-BAM)  
Date: June 3, 2011  
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins); David Snyder and Brett Axelrod (Fox Rothschild)  
Judge: Bruce A. Markell

- **Marion Manor, LLC** (Bankruptcy Case No. BK-S-11-28020-BAM)  
Date: February 28-29, 2011 and March 9, 2011  
Attorneys: Tenille Pereira, (David J. Winterton & Associates, Ltd.) Debtor's  
Attorneys; Lars K. Evensen, (Holland & Hart, LLP) Creditor's Attorney  
Judge: Bruce A. Markell  
Our File No: 11-272



3034 S. Durango Drive  
Suite 100  
Las Vegas, NV 89117  
702-242-9369 phone  
702-242-6391 fax  
valbridge.com

## Fee Schedule

Expert Witness Testimony	\$400/hr.
Deposition and Court Testimony	\$400/hr.
Supplemental Work, Research, Trial Preparation	\$400/hr.

Three-hour minimum for deposition and testimony.

If deposition or Court Testimony is cancelled within 24 hours of scheduled appearance, client will be billed for 50% of the three-hour minimum, in addition to any preparation time.

# **Exhibit B**

B1 (Official Form 1)(12/11)

<b>United States Bankruptcy Court</b> <b>District of Nevada</b>		<b>Voluntary Petition</b>	
Name of Debtor (if individual, enter Last, First, Middle): <b>River Glider Trust</b>		Name of Joint Debtor (Spouse) (Last, First, Middle):	
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):	
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) <b>45-5572604</b>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)	
Street Address of Debtor (No. and Street, City, and State): <b>C/O Resources Group LLC</b> <b>900 Las Vegas Blvd S. #810</b> <b>Las Vegas, NV</b> <div style="text-align: right; margin-top: 5px;">ZIP Code <b>89107</b></div>		Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right; margin-top: 5px;">ZIP Code</div>	
County of Residence or of the Principal Place of Business: <b>Clark</b>		County of Residence or of the Principal Place of Business:	
Mailing Address of Debtor (if different from street address): <div style="text-align: right; margin-top: 5px;">ZIP Code</div>		Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right; margin-top: 5px;">ZIP Code</div>	
Location of Principal Assets of Business Debtor (if different from street address above):			
<b>Type of Debtor</b> (Form of Organization) (Check one box) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)		<b>Nature of Business</b> (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:		<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding	
<b>Filing Fee</b> (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 ( <i>amount subject to adjustment on 4/01/13 and every three years thereafter</i> ). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).	
<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY	
<b>Estimated Number of Creditors</b> <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000			
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion			
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion			

AA000752

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): <b>River Glider Trust</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet)			
Location Where Filed: <b>- None -</b>	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet)			
Name of Debtor: <b>See Attachment</b>	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<b>Exhibit A</b>  (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)  <input type="checkbox"/> Exhibit A is attached and made a part of this petition.	<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).  <b>X</b> _____ Signature of Attorney for Debtor(s) (Date)		
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
<b>Exhibit D</b>			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  <div style="text-align: center;">           _____            (Name of landlord that obtained judgment)         </div>  <div style="text-align: center;">           _____            (Address of landlord)         </div>			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

AA000753



**Voluntary Petition***(This page must be completed and filed in every case)*Name of Debtor(s):  
**River Glider Trust****Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X** \_\_\_\_\_  
Signature of Debtor

**X** \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of Attorney\***

**X** **/s/ Ryan Alexander** \_\_\_\_\_  
Signature of Attorney for Debtor(s)

**Ryan Alexander 10845** \_\_\_\_\_  
Printed Name of Attorney for Debtor(s)

**The Firm, PC** \_\_\_\_\_  
Firm Name  
**200 E Charleston Blvd**  
**Las Vegas, NV 89104**

\_\_\_\_\_  
Address

**Email: ryan@thefirm-lv.com**

**(702) 222-3476 Fax: (702) 252-3476** \_\_\_\_\_  
Telephone Number

**July 3, 2012** \_\_\_\_\_  
Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X** **/s/ Eddie Haddad** \_\_\_\_\_  
Signature of Authorized Individual

**Eddie Haddad** \_\_\_\_\_  
Printed Name of Authorized Individual

**Registered Agent** \_\_\_\_\_  
Title of Authorized Individual

**July 3, 2012** \_\_\_\_\_  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

**X** \_\_\_\_\_  
Signature of Foreign Representative

\_\_\_\_\_  
Printed Name of Foreign Representative

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

**X** \_\_\_\_\_  
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.*

AA000754

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**FORM 1. VOLUNTARY PETITION**  
**Pending Bankruptcy Cases Filed Attachment**

<u>Name of Debtor / District</u>	<u>Case No. / Relationship</u>	<u>Date Filed / Judge</u>
<b>4208 Rollingstone Dr Trust District of Nevada</b>	<b>12-12363 Affiliate</b>	<b>03/01/12 Bruce T. Beesley</b>
<b>Bourne Valley Court Trust District of Nevada</b>	<b>12-16387 Affiliate</b>	<b>05/31/12 Beesely</b>
<b>Cape Jasmine Court Trust District of Nevada</b>	<b>12-17498 Affiliate</b>	<b>06/26/12 Bruce T. Beesely</b>
<b>Villa Vecchio Court Trust District of Nevada</b>	<b>12-15254 Affiliate</b>	<b>05/02/12 Beesely</b>

B4 (Official Form 4) (12/07)

**United States Bankruptcy Court**  
**District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.

Chapter

**11**

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	HOA Riverwalk HOA for 6513 Duck Hill Springs		Unknown
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	HOA Lien Lamplight Gardens HOA for 10428 Amber Night St		Unknown
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Elkhorn HOA for 7304 Roamer Place		Unknown
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	Mountain Gate HOA for 5982 Spinnaker Point Ave		Unknown
Accredited Home Lenders 15030 Avenue of Science #100 San Diego, CA 92128	Accredited Home Lenders 15030 Avenue of Science #100 San Diego, CA 92128	7304 Roamer Place Las Vegas NV 89131		230,000.00  (60,000.00 secured)
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Sahara Sunrise HOA for 2670 Early Vista		Unknown
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Madison Colony HOA for 10225 Headrick Dr		Unknown
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	Ryal Highlands HOA for 10993 Ladyburn		Unknown
Allied Trustee Services 701 North Green Valley Pkwy #200 Henderson, NV 89014	Allied Trustee Services 701 North Green Valley Pkwy #200 Henderson, NV 89014	Lamplight Gardens HOA for 10428 Amber Night		Unknown
Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	Elkhorn HOA for 7919 Horn Tail Ct		Unknown
Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	Elkhorn HOA for 7304 Roamer Place		Unknown

B4 (Official Form 4) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor(s) \_\_\_\_\_

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
<b>Argent Mortgage Company PO Box 5047 Rolling Meadows, IL 60008</b>	<b>Argent Mortgage Company PO Box 5047 Rolling Meadows, IL 60008</b>	<b>6119 Cozy Creek St. North Las Vegas NV 89031</b>		<b>224,000.00</b>  <b>(60,000.00 secured)</b>
<b>CMG Mortgage 3160 Crow Canyon Rd #240 San Ramon, CA 94583</b>	<b>CMG Mortgage 3160 Crow Canyon Rd #240 San Ramon, CA 94583</b>	<b>2670 Early Vista St Las Vegas NV 89142</b>		<b>208,000.00</b>  <b>(65,000.00 secured)</b>
<b>Evofi One 2460 Paseo Verde Parkway 125 Henderson, NV 89074</b>	<b>Evofi One 2460 Paseo Verde Parkway 125 Henderson, NV 89074</b>	<b>5982 Spinnaker Point Ave Las Vegas NV 89110</b>		<b>176,739.00</b>  <b>(80,000.00 secured)</b>
<b>Home Loan Center 18191 Von Karmen Ave #300 Irvine, CA 92612</b>	<b>Home Loan Center 18191 Von Karmen Ave #300 Irvine, CA 92612</b>	<b>336 River Glider Ave North Las Vegas NV 89084</b>		<b>149,700.00</b>  <b>(58,000.00 secured)</b>
<b>Metlife Home Loans 1555 W Walnut Hill Lane #200 Irving, TX 75038</b>	<b>Metlife Home Loans 1555 W Walnut Hill Lane #200 Irving, TX 75038</b>	<b>10225 Headrick Dr Las Vegas NV 89166</b>		<b>216,689.00</b>  <b>(80,000.00 secured)</b>
<b>Mortgage Loan Specialists 4695 MacArthur Court 11th Floor Newport Beach, CA 92660</b>	<b>Mortgage Loan Specialists 4695 MacArthur Court 11th Floor Newport Beach, CA 92660</b>	<b>7919 Horn Tail Court Las Vegas NV 89131</b>		<b>219,200.00</b>  <b>(90,000.00 secured)</b>
<b>Universal American Mortgage Company 1725 W. Green Tree Dr #104 Tempe, AZ 85284</b>	<b>Universal American Mortgage Company 1725 W. Green Tree Dr #104 Tempe, AZ 85284</b>	<b>10428 Amber Night St Las Vegas NV 89183</b>		<b>217,636.00</b>  <b>(73,000.00 secured)</b>
<b>US trust Mortgage Service Co 280 E Palmetto Park Rd Boca Raton, FL 33432</b>	<b>US trust Mortgage Service Co 280 E Palmetto Park Rd Boca Raton, FL 33432</b>	<b>8112 Lake Hills Las Vegas NV 89103</b>		<b>631,000.00</b>  <b>(235,000.00 secured)</b>
<b>Wells Fargo Bank 12550 SE 93rd Ave #400 Clackamas, OR 97015</b>	<b>Wells Fargo Bank 12550 SE 93rd Ave #400 Clackamas, OR 97015</b>	<b>6513 Duck Hill Springs Drive Las Vegas NV 89122</b>		<b>88,271.00</b>  <b>(64,000.00 secured)</b>

B4 (Official Form 4) (12/07) - Cont.

In re **River Glider Trust**

Debtor(s)

Case No. \_\_\_\_\_

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

(Continuation Sheet)

**DECLARATION UNDER PENALTY OF PERJURY  
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the Registered Agent of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date **July 3, 2012**

Signature **/s/ Eddie Haddad**

**Eddie Haddad  
Registered Agent**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

B6 Summary (Official Form 6 - Summary) (12/07)

**United States Bankruptcy Court**  
**District of Nevada**

In re **River Glider Trust**,  
 Debtor

Case No. \_\_\_\_\_

Chapter **11**

**SUMMARY OF SCHEDULES**

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	<b>Yes</b>	<b>1</b>	<b>1,015,000.00</b>		
B - Personal Property	<b>Yes</b>	<b>3</b>	<b>0.00</b>		
C - Property Claimed as Exempt	<b>No</b>	<b>0</b>			
D - Creditors Holding Secured Claims	<b>Yes</b>	<b>3</b>		<b>2,361,235.00</b>	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	<b>Yes</b>	<b>1</b>		<b>0.00</b>	
F - Creditors Holding Unsecured Nonpriority Claims	<b>Yes</b>	<b>5</b>		<b>0.00</b>	
G - Executory Contracts and Unexpired Leases	<b>Yes</b>	<b>1</b>			
H - Codebtors	<b>Yes</b>	<b>1</b>			
I - Current Income of Individual Debtor(s)	<b>No</b>	<b>0</b>			<b>N/A</b>
J - Current Expenditures of Individual Debtor(s)	<b>No</b>	<b>0</b>			<b>N/A</b>
Total Number of Sheets of ALL Schedules		<b>15</b>			
Total Assets			<b>1,015,000.00</b>		
Total Liabilities				<b>2,361,235.00</b>	



**United States Bankruptcy Court**  
**District of Nevada**

In re **River Glider Trust**,  
Debtor

Case No. \_\_\_\_\_

Chapter **11**

**STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)**

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

**This information is for statistical purposes only under 28 U.S.C. § 159.**

**Summarize the following types of liabilities, as reported in the Schedules, and total them.**

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

**State the following:**

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20 )	

**State the following:**

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

B6A (Official Form 6A) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
6513 Duck Hill Springs Drive Las Vegas NV 89122		-	64,000.00	88,271.00
10428 Amber Night St Las Vegas NV 89183		-	73,000.00	217,636.00
6119 Cozy Creek St. North Las Vegas NV 89031		-	60,000.00	224,000.00
2670 Early Vista St Las Vegas NV 89142		-	65,000.00	208,000.00
10225 Headrick Dr Las Vegas NV 89166		-	80,000.00	216,689.00
7919 Horn Tail Court Las Vegas NV 89131		-	90,000.00	219,200.00
8112 Lake Hills Las Vegas NV 89103		-	235,000.00	631,000.00
336 River Glider Ave North Las Vegas NV 89084		-	58,000.00	149,700.00
7304 Roamer Place Las Vegas NV 89131		-	60,000.00	230,000.00
5982 Spinnaker Point Ave Las Vegas NV 89110		-	80,000.00	176,739.00
10993 Ladyburn Court Las Vegas NV 89141		-	150,000.00	Unknown

Sub-Total > **1,015,000.00** (Total of this page)Total > **1,015,000.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

B6B (Official Form 6B) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	<b>X</b>			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		<b>Wells Fargo #4482</b>	<b>-</b>	<b>0.00</b>
3. Security deposits with public utilities, telephone companies, landlords, and others.	<b>X</b>			
4. Household goods and furnishings, including audio, video, and computer equipment.	<b>X</b>			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	<b>X</b>			
6. Wearing apparel.	<b>X</b>			
7. Furs and jewelry.	<b>X</b>			
8. Firearms and sports, photographic, and other hobby equipment.	<b>X</b>			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	<b>X</b>			
10. Annuities. Itemize and name each issuer.	<b>X</b>			

Sub-Total > **0.00**  
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	<b>X</b>			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	<b>X</b>			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	<b>X</b>			
14. Interests in partnerships or joint ventures. Itemize.	<b>X</b>			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	<b>X</b>			
16. Accounts receivable.	<b>X</b>			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	<b>X</b>			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	<b>X</b>			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	<b>X</b>			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	<b>X</b>			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	<b>X</b>			

Sub-Total > **0.00**  
(Total of this page)

Sheet 1 of 2 continuation sheets attached  
to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	<b>X</b>			
23. Licenses, franchises, and other general intangibles. Give particulars.	<b>X</b>			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	<b>X</b>			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	<b>X</b>			
26. Boats, motors, and accessories.	<b>X</b>			
27. Aircraft and accessories.	<b>X</b>			
28. Office equipment, furnishings, and supplies.	<b>X</b>			
29. Machinery, fixtures, equipment, and supplies used in business.	<b>X</b>			
30. Inventory.	<b>X</b>			
31. Animals.	<b>X</b>			
32. Crops - growing or harvested. Give particulars.	<b>X</b>			
33. Farming equipment and implements.	<b>X</b>			
34. Farm supplies, chemicals, and feed.	<b>X</b>			
35. Other personal property of any kind not already listed. Itemize.	<b>X</b>			

Sub-Total >	<b>0.00</b>
(Total of this page)	
Total >	<b>0.00</b>

Sheet 2 of 2 continuation sheets attached  
to the Schedule of Personal Property

(Report also on Summary of Schedules)

B6D (Official Form 6D) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D W I F E J O I N T C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.			<b>First Mortgage</b>					
<b>Accredited Home Lenders</b> <b>15030 Avenue of Science #100</b> <b>San Diego, CA 92128</b>		-	<b>7304 Roamer Place Las Vegas NV 89131</b>					
			Value \$ <b>60,000.00</b>				<b>230,000.00</b>	<b>170,000.00</b>
Account No.			<b>First Mortgage</b>					
<b>Argent Mortgage Company</b> <b>PO Box 5047</b> <b>Rolling Meadows, IL 60008</b>		-	<b>6119 Cozy Creek St. North Las Vegas NV 89031</b>					
			Value \$ <b>60,000.00</b>				<b>224,000.00</b>	<b>164,000.00</b>
Account No.			<b>First Mortgage</b>					
<b>CMG Mortgage</b> <b>3160 Crow Canyon Rd #240</b> <b>San Ramon, CA 94583</b>		-	<b>2670 Early Vista St Las Vegas NV 89142</b>					
			Value \$ <b>65,000.00</b>				<b>208,000.00</b>	<b>143,000.00</b>
Account No.			<b>First Mortgage</b>					
<b>Evofi One</b> <b>2460 Paseo Verde Parkway 125</b> <b>Henderson, NV 89074</b>		-	<b>5982 Spinnaker Point Ave Las Vegas NV 89110</b>					
			Value \$ <b>80,000.00</b>				<b>176,739.00</b>	<b>96,739.00</b>
Subtotal							<b>838,739.00</b>	<b>573,739.00</b>
(Total of this page)								

2 continuation sheets attached



B6D (Official Form 6D) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R R	H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
			DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN					
Account No.			<b>First Mortgage</b>					
<b>Home Loan Center</b> <b>18191 Von Karmen Ave #300</b> <b>Irvine, CA 92612</b>		-	<b>336 River Glider Ave North Las Vegas</b> <b>NV 89084</b>					
			Value \$ <b>58,000.00</b>				<b>149,700.00</b>	<b>91,700.00</b>
Account No.			<b>First Mortgage</b>					
<b>Meridas Capital</b> <b>990 W Atherton Dr</b> <b>Salt Lake City, UT 84123</b>		-	<b>10993 Ladyburn Court Las Vegas NV</b> <b>89141</b>					
			Value \$ <b>150,000.00</b>				<b>Unknown</b>	<b>Unknown</b>
Account No.			<b>First Mortgage</b>					
<b>Metlife Home Loans</b> <b>1555 W Walnut Hill Lane #200</b> <b>Irving, TX 75038</b>		-	<b>10225 Headrick Dr Las Vegas NV 89166</b>					
			Value \$ <b>80,000.00</b>				<b>216,689.00</b>	<b>136,689.00</b>
Account No.			<b>First Mortgage</b>					
<b>Mortgage Loan Specialists</b> <b>4695 MacArthur Court 11th Floor</b> <b>Newport Beach, CA 92660</b>		-	<b>7919 Horn Tail Court Las Vegas NV</b> <b>89131</b>					
			Value \$ <b>90,000.00</b>				<b>219,200.00</b>	<b>129,200.00</b>
Account No.			<b>First Mortgage</b>					
<b>Universal American Mortgage</b> <b>Company</b> <b>1725 W. Green Tree Dr #104</b> <b>Tempe, AZ 85284</b>		-	<b>10428 Amber Night St Las Vegas NV</b> <b>89183</b>					
			Value \$ <b>73,000.00</b>				<b>217,636.00</b>	<b>144,636.00</b>
Subtotal							<b>803,225.00</b>	<b>502,225.00</b>
(Total of this page)								

Sheet 1 of 2 continuation sheets attached to  
Schedule of Creditors Holding Secured Claims

B6D (Official Form 6D) (12/07) - Cont.

In re River Glider Trust,  
Debtor

Case No. \_\_\_\_\_

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D, N A T U R E O F L I E N, A N D D E S C R I P T I O N A N D V A L U E O F P R O P E R T Y S U B J E C T T O L I E N	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	U N S E C U R E D P O R T I O N, I F A N Y
Account No.			<b>First Mortgage</b>					
<b>US trust Mortgage Service Co</b> <b>280 E Palmetto Park Rd</b> <b>Boca Raton, FL 33432</b>		-	<b>8112 Lake Hills Las Vegas NV 89103</b>					
			Value \$ <b>235,000.00</b>				<b>631,000.00</b>	<b>396,000.00</b>
Account No.			<b>First Mortgage</b>					
<b>Wells Fargo Bank</b> <b>12550 SE 93rd Ave #400</b> <b>Clackamas, OR 97015</b>		-	<b>6513 Duck Hill Springs Drive Las Vegas NV 89122</b>					
			Value \$ <b>64,000.00</b>				<b>88,271.00</b>	<b>24,271.00</b>
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Subtotal							<b>719,271.00</b>	<b>420,271.00</b>
(Total of this page)								
Total							<b>2,361,235.00</b>	<b>1,496,235.00</b>
(Report on Summary of Schedules)								

Sheet 2 of 2 continuation sheets attached to  
Schedule of Creditors Holding Secured Claims

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6F (Official Form 6F) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M. I F C L A I M I S S U B J E C T T O S E T O F F, S O S T A T E.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M
Account No.  <b>Absolute Collection Services</b> <b>PO Box 12117</b> <b>Las Vegas, NV 89112</b>		-	<b>HOA Riverwalk HOA for 6513 Duck Hill Springs</b>				<b>Unknown</b>
Account No.  <b>Absolute Collection Services</b> <b>PO Box 12117</b> <b>Las Vegas, NV 89112</b>		-	<b>HOA Lien Lamplight Gardens HOA for 10428 Amber Night St</b>				<b>Unknown</b>
Account No.  <b>Absolute Collection Services</b> <b>PO Box 12117</b> <b>Las Vegas, NV 89112</b>		-	<b>Elkhorn HOA for 7304 Roamer Place</b>				<b>Unknown</b>
Account No.  <b>Absolute Collection Services</b> <b>PO Box 12117</b> <b>Las Vegas, NV 89112</b>		-	<b>Mountain Gate HOA for 5982 Spinnaker Point Ave</b>				<b>Unknown</b>
Subtotal (Total of this page)							<b>0.00</b>

4 continuation sheets attached

B6F (Official Form 6F) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.		<b>Sahara Sunrise HOA for 2670 Early Vista</b>				<b>Unknown</b>
<b>Alessi &amp; Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147</b>	-					
Account No.		<b>Madison Colony HOA for 10225 Headrick Dr</b>				<b>Unknown</b>
<b>Alessi &amp; Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147</b>	-					
Account No.		<b>Ryal Highlands HOA for 10993 Ladyburn</b>				<b>Unknown</b>
<b>Alessi &amp; Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147</b>	-					
Account No.		<b>Lamplight Gardens HOA for 10428 Amber Night</b>				<b>Unknown</b>
<b>Allied Trustee Services 701 North Green Valley Pkwy #200 Henderson, NV 89014</b>	-					
Account No.		<b>Elkhorn HOA for 7919 Horn Tail Ct</b>				<b>Unknown</b>
<b>Angius &amp; Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144</b>	-					
Sheet no. <u>1</u> of <u>4</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)
						<b>0.00</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.		<b>Elkhorn HOA for 7304 Roamer Place</b>				<b>Unknown</b>
<b>Angius &amp; Terry Collections</b> <b>1120 N Town Center Dr #260</b> <b>Las Vegas, NV 89144</b>	-					
Account No.		<b>Default Judgement on 10428 Amber Night St</b>				<b>Unknown</b>
<b>Callister &amp; Reynolds</b> <b>823 Las Vegas Blvd S.</b> <b>Las Vegas, NV 89101</b>	-					
Account No.		<b>Default Judgement for 2670 Early Vista</b>				<b>Unknown</b>
<b>Callister &amp; Reynolds</b> <b>823 Las Vegas Blvd S. #280</b> <b>Las Vegas, NV 89101</b>	-					
Account No.		<b>Paloma HOA for 7919 Horn Tail Ct</b>				<b>Unknown</b>
<b>Homeowner Association Services</b> <b>3513 E Russell Rd</b> <b>Las Vegas, NV 89120</b>	-					
Account No.		<b>Azure HOA for 6119 Cozy Creek</b>				<b>Unknown</b>
<b>Nevada Association Services</b> <b>TS #N67297</b> <b>6224 W Desert Inn Rd #A</b> <b>Las Vegas, NV 89146</b>	-					
Sheet no. <u>2</u> of <u>4</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)
						<b>0.00</b>



B6F (Official Form 6F) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No.		<b>Harbor Cove HOA for 8112 Lake Hills</b>				<b>Unknown</b>
<b>Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146</b>	-					
Account No.		<b>Trash Lien for 10225 Headdrick Dr</b>				<b>Unknown</b>
<b>Republic Services 7 E. Sahara Ave Las Vegas, NV 89104</b>	-					
Account No.		<b>Trash Lien for 7919 Horn Tail Ct</b>				<b>Unknown</b>
<b>Republic Services 7 E. Sahara Ave Las Vegas, NV 89104</b>	-					
Account No.		<b>Trash Lien for 8112 Lake Hills</b>				<b>Unknown</b>
<b>Republic Services 7 E. Sahara Ave Las Vegas, NV 89104</b>	-					
Account No.		<b>Default Judgement on 10428 Amber Night</b>				<b>Unknown</b>
<b>Shea &amp; Carlyon 701 Bridger Ave #850 Las Vegas, NV 89101</b>	-					
Sheet no. <u>3</u> of <u>4</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)
						<b>0.00</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No.		<b>Parks HOA for 336 River Glider</b>				<b>Unknown</b>
<b>The Parks HOA</b> <b>2300 W Sahara Ave #1130 Box #33</b> <b>Las Vegas, NV 89102</b>	-					
Account No.						
Account No.						
Account No.						
Account No.						
Account No.						
Sheet no. <b>4</b> of <b>4</b> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)
						<b>0.00</b>
						Total (Report on Summary of Schedules)
						<b>0.00</b>

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 6513 Duck Hill Springs</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 10428 Amber Night</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Maangement Agreement for 6119 Cozy Creek</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement 2670 Early Vista</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement 10225 Headdrick Dr</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 7919 Horn Tail Ct</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 8112 Lake Hills Dr</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 336 River Glider</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 7304 Roamer Place</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 5982 Spinnaker Point Ave</b>
<b>Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101</b>	<b>Property Management Agreement for 10993 Ladyburn</b>

B6H (Official Form 6H) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0

\_\_\_\_ continuation sheets attached to Schedule of Codebtors

B6 Declaration (Official Form 6 - Declaration). (12/07)

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.  
Chapter

**11**

**DECLARATION CONCERNING DEBTOR'S SCHEDULES**

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **July 3, 2012**

Signature **/s/ Eddie Haddad**

**Eddie Haddad  
Registered Agent**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.

Chapter

**11**

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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**1. Income from employment or operation of business**

None

☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

---

**2. Income other than from employment or operation of business**

None

☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE



**3. Payments to creditors**

None ☐ **Complete a. or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
------------------------------	-------------------	-------------	--------------------

None ☐ b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
------------------------------	---------------------------------	---	--------------------

None ☐ c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
--	-----------------	-------------	--------------------

**4. Suits and administrative proceedings, executions, garnishments and attachments**

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	-------------------------	---------------------------------	--------------------------

None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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**5. Repossessions, foreclosures and returns**

None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

**6. Assignments and receiverships**

- None ☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**

- None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**

- None ☒ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

- None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
The Firm, PC 200 E Charleston Blvd Las Vegas, NV 89104	7/2/12	\$6454.00

**10. Other transfers**

- None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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- None ☐ b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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### 11. Closed financial accounts

- None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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### 12. Safe deposit boxes

- None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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### 13. Setoffs

- None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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### 14. Property held for another person

- None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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### 15. Prior address of debtor

- None ☐ If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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### 16. Spouses and Former Spouses

- None ☐ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18 . Nature, location and name of business**

- None ☐ a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
River Glider Ave Trust	45-5572604	C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107	Real Estate	6/2012-Current

None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

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### 19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

**Rosie Bonilla**  
**900 Las Vegas Blvd #810**  
**Las Vegas, NV 89101**

DATES SERVICES RENDERED

**1/2012-Current**

None ☒ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None ☒ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

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### 20. Inventories

None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY

(Specify cost, market or other basis)

None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY  
 RECORDS

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### 21. Current Partners, Officers, Directors and Shareholders

None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

- None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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#### 22 . Former partners, officers, directors and shareholders

- None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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#### 23 . Withdrawals from a partnership or distributions by a corporation

- None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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#### 24. Tax Consolidation Group.

- None ☐ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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#### 25. Pension Funds.

- None ☐ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
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### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date July 3, 2012

Signature /s/ Eddie Haddad  
**Eddie Haddad**  
**Registered Agent**

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

**United States Bankruptcy Court  
District of Nevada**

In re River Glider Trust

Debtor(s)

Case No.

Chapter 11

**DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)**

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept .....	\$	<u>6,454.00</u>
Prior to the filing of this statement I have received .....	\$	<u>6,000.00</u>
Balance Due .....	\$	<u>454.00</u>

2. The source of the compensation paid to me was:

☒ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify):

4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- [Other provisions as needed]

**Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.**

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

**Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.**

**CERTIFICATION**

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: July 3, 2012

/s/ Ryan Alexander

**Ryan Alexander 10845**

**The Firm, PC**

**200 E Charleston Blvd**

**Las Vegas, NV 89104**

**(702) 222-3476 Fax: (702) 252-3476**

**ryan@thefirm-lv.com**



**United States Bankruptcy Court**  
**District of Nevada**

In re **River Glider Trust**,  
 Debtor

Case No. \_\_\_\_\_

Chapter **11**

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
<b>Eddie Haddad</b> <b>C/O Resources Group LLC</b> <b>900 Las Vegas Blvd S. #810</b> <b>Las Vegas, NV 89107</b>			<b>Owner</b>

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the Registered Agent of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date **July 3, 2012**

Signature **/s/ Eddie Haddad**  
**Eddie Haddad**  
**Registered Agent**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
 18 U.S.C §§ 152 and 3571.

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.  
Chapter

**11**

**VERIFICATION OF CREDITOR MATRIX**

I, the Registered Agent of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date: **July 3, 2012**

**/s/ Eddie Haddad**

**Eddie Haddad/Registered Agent**

Signer/Title

River Glider Trust  
C/O Resources Group LLC  
900 Las Vegas Blvd S. #810  
Las Vegas, NV 89107

Ryan Alexander  
The Firm, PC  
200 E Charleston Blvd  
Las Vegas, NV 89104

Absolute Collection Services  
PO Box 12117  
Las Vegas, NV 89112

Accredited Home Lenders  
15030 Avenue of Science #100  
San Diego, CA 92128

Alessi & Koenig LLC  
9500 W Flamingo #205  
Las Vegas, NV 89147

Allied Trustee Services  
701 North Green Valley Pkwy #200  
Henderson, NV 89014

Allied Trustee Services  
990 Reserve Dr #208  
Roseville, CA 95678

Americas Servicing Co  
1 Home Campus X2504-017  
Des Moines, IA 50328

Angius & Terry Collections  
1120 N Town Center Dr #260  
Las Vegas, NV 89144

Argent Mortgage Company  
PO Box 5047  
Rolling Meadows, IL 60008

Aurora Loan Services  
2617 College Park  
Scottsbluff, NE 69361

BAC Home Loans Servicing  
450 American St.  
Simi Valley, CA 93065

Bank of America  
400 National Way  
Simi Valley, CA 93065

Bank of America  
PO Box 2518  
Houston, TX 77252

Callister & Reynolds  
823 Las Vegas Blvd S. #280  
Las Vegas, NV 89101

Cameron Financial Group  
1065 Higuera St #102  
San Luis Obispo, CA 93401

Citimortgage  
PO Box 790005  
ATTN: M.S. 305  
Saint Louis, MO 63179

Clark County Assessor  
500 S. Grand Central Parkway  
PO Box 5511401  
Las Vegas, NV 89155

Clark County Treasurer  
500 S. Grand Central Pkwy  
PO Box 551220  
Las Vegas, NV 89155

CMG Mortgage  
3160 Crow Canyon Rd #240  
San Ramon, CA 94583

CoreLogic  
450 E Boundary St  
Chapin, SC 29036

Countrywide  
450 American St #SV416  
Simi Valley, CA 93065

DETR  
Employment Security Division  
500 E. Third St  
Carson City, NV 89713

Evofi One  
2460 Paseo Verde Parkway 125  
Henderson, NV 89074

Home Loan Center  
18191 Von Karmen Ave #300  
Irvine, CA 92612

Homeowner Association Services  
3513 E Russell Rd  
Las Vegas, NV 89120

Impac Funding Corp  
1401 Dove St #100  
Newport Beach, CA 92660

IRS  
PO Box 1303  
Charlotte, NC 28201

IRS  
PO Box 7346  
Philadelphia, PA 19101

Meridas Capital  
990 W Atherton Dr  
Salt Lake City, UT 84123

Metlife Home Loans  
1555 W Walnut Hill Lane #200  
Irving, TX 75038

Mortgage Loan Specialists  
4695 MacArthur Court 11th Floor  
Newport Beach, CA 92660

Nevada Association Services  
TS #N67297  
6224 W Desert Inn Rd #A  
Las Vegas, NV 89146

Nevada Dept of Taxation  
ATTN: Bankruptcy Division  
555 E. Washington Ave #1300  
Las Vegas, NV 89101

Nevada DMV  
ATTN: Legal Division  
555 Wright Way  
Carson City, NV 89711

North American Mortgage  
PO Box 808031  
Petaluma, CA 94975

Recontrust Company  
2380 Performance Dr TX2-984-0407  
Richardson, TX 75082

Republic Services  
7 E. Sahara Ave  
Las Vegas, NV 89104

Secretary of Treasury  
1500 Pennsylvannia Ave NW  
Washington, DC 20220

Shea & Carlyon  
701 Bridger Ave #850  
Las Vegas, NV 89101

The Parks HOA  
2300 W Sahara Ave #1130 Box #33  
Las Vegas, NV 89102

The Stonewood Group  
3937 Sunset Blvd #1  
West Columbia, SC 29169

United States Chapter 11 Trustee  
Foley Federal Building  
300 S. Las Vegas Blvd  
#4300  
Las Vegas, NV 89101

Universal American Mortgage Company  
1725 W. Green Tree Dr #104  
Tempe, AZ 85284

US Bank  
801 Larkspur Landing  
Larkspur, CA 94939

US Bank  
PO Box 5220  
Cincinnati, OH 45201

US trust Mortgage Service Co  
280 E Palmetto Park Rd  
Boca Raton, FL 33432

Wells Fargo Bank  
12550 SE 93rd Ave #400  
Clackamas, OR 97015

Wells Fargo Hm Mortgag  
3476 Stateview Blvd  
Fort Mill, SC 29715

Wf Fin Bank/Wells Fargo Financial  
Wells Fargo Financial  
4137 121st St  
Urbandale, IA 50323

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.  
Chapter**11**

**CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)**

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **River Glider Trust** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

■ None [*Check if applicable*]

**July 3, 2012**

Date

**/s/ Ryan Alexander****Ryan Alexander 10845**

Signature of Attorney or Litigant

Counsel for **River Glider Trust****The Firm, PC****200 E Charleston Blvd****Las Vegas, NV 89104****(702) 222-3476 Fax:(702) 252-3476****ryan@thefirm-lv.com**



# Exhibit C

**MOT**

**RYAN ALEXANDER**

Nevada Bar No. 10845

THE FIRM, P.C.

200 East Charleston Boulevard

Las Vegas, NV 89104

Phone: (702) 222-3476

Fax: (702) 252-3476

*Attorney for Debtor*

[ryan@thefirm-lv.com](mailto:ryan@thefirm-lv.com) (E-mail)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In Re:  
RIVER GLIDER AVE TRUST

Debtor.

Case No.: BK-S-12-17862-BTB  
Hon. Bruce T. Beesely  
Chapter 11

**MOTION TO USE CASH  
COLLATERAL *NUNC PRO TUNC***

HEARING DATE: AUGUST 7, 2012  
HEARING TIME: 1:30 PM

COME NOW **RIVER GLIDER AVE TRUST**, (“Debtors”), the debtors and debtors-in-possession in the above-captioned chapter 11 case, hereby move the Court for an Order authorizing the Debtors’ use of cash collateral *nunc pro tunc*. This Motion is based on the Memorandum of Points and Authorities incorporated hereto and the Declaration of the Debtors.

**MEMORANDUM OF POINTS OF AUTHORITIES**

**A. Background Facts**

1. Debtors filed their voluntary petition under Chapter 11 of the United States Bankruptcy Code on July 3, 2012.
2. Debtors own the real properties located at the following residences and described below:
  - i. **6513 Duck Hills Springs Dr Las Vegas, NV 89122** – Investment Property;
  - ii. **10428 Amber Night St Las Vegas, NV 89183** – Investment Property;

- iii. **6119 Cozy Creek St North Las Vegas, NV 89031** – Investment Property;
- iv. **2670 Early Vista St Las Vegas, NV 89142** – Investment Property;
- v. **10225 Headdrick Dr Las Vegas, NV 89166** – Investment Property;
- vi. **7919 Horn Tail Court Las Vegas, NV 89131** – Investment Property;
- vii. **8116 Lake Hills Las Vegas, NV 89103** – Investment Property;
- viii. **336 River Glider Ave North Las Vegas, NV 89084** – Investment Property;
- ix. **7304 Roamer Place Las Vegas, NV 89131** – Investment Property;
- x. **5982 Spinnaker Point Ave Las Vegas, NV 89110** – Investment Property
- xi. **10993 Ladyburn Court Las Vegas, NV 89141** – Investment Property and

The properties listed above are hereinafter referred to as the “Rental Properties.” The Debtor is a Trust that owns all rental properties. The Trustee for this Trust is Resources Group, LLC, and Resources Group LLC manages the collection of rental income, as well as the day-to-day operations for the rental properties for this Trust. The sole owner of Resources Group, LLC and Grantor of the Trust is Mr. Iyad (Eddie) Haddad. Mr. Haddad funds the Trust, which then purchases junior liens through the Trustee’s Sales held at Nevada Legal News, and thus acquires ownership of the properties, subject to the first mortgage lien on the properties. Once the properties are ready for occupancy, Resources Group LLC will locate a tenant and rent the properties. The rental properties are all actively leased as of the date of this motion and generate approximately \$12,825.00 gross rental income per month. Described on Exhibit “A” are Debtors’ estimated income from all sources, along with their expenses, including the proposed mortgage payments on the rental properties.

3. Each of the above-referenced properties was purchased through auction via a secondary, utility, or HOA lien, and is subject to the first mortgage. With liens totaling

\$2,361,235.00, the real properties have a combined fair market value of approximately \$1,015,000.00, leaving \$1,346,235.00 under secured debt. See Bankruptcy Schedules A and D.

**B. Proposed Use of Cash Collateral**

4. The Debtors, as debtors-in-possession, are authorized to use property of the estate in the ordinary course of business. 11 U.S.C. § 363(c). As the mortgage holder, or secured creditor, the income derived from their rental properties constitutes the mortgage companies' "cash collateral."
5. A Motion to Value Collateral, "Strip Off" and Modify Rights of Unsecured Creditors Pursuant to 11 U.S.C. Section 506(a) and Section 1123 for Debtors' investment properties will soon be filed, and will reduce Debtors proposed secured mortgage obligations to \$5143.00 per month.
6. Debtors are seeking an order authorizing them to pay the foregoing necessary operating expenses from the cash collateral pending confirmation of its plan of reorganization. These expenses are necessary to preserve their real properties, to maintain an on-going investment business concern, and to keep their rental business in good operational order.
7. The value of the Debtors' assets can only be maximized through continued operations and on-going rental of the rental properties. Without use of cash collateral, the Debtors' operations cannot continue. In addition, continuing operations will protect and preserve the position of the creditor mortgage companies.

**D. The Debtors' Reorganization Goals**

8. Like many other individual Chapter 11 debtors, Debtors' primary purpose of reorganization is to adjust the valuation of their property and modify the obligations of

1 their existing liens. The Debtors' use of cash collateral is vital to maintaining the value  
2 of the Debtors' assets until the Debtors have had a meaningful opportunity to present a  
3 Plan of Reorganization.

#### 4 LEGAL DISCUSSION

5 A. **The Debtors Should Be Authorized To Use Cash Collateral To Operate, Maintain**  
6 **and Preserve Its Business.**

7 The Debtors, as debtors-in-possession of the estate, have the duty to protect and conserve the  
8 rental properties in its possession for the benefit of creditors. *In re Devers*, 759 F.2d 751 (9th Cir.  
9 1985). The exact nature of the duty owed by a debtor-in-possession of the estate was defined in *In re*  
10 *Morning Star Ranch Resorts*, 64 B. R. 818 (Bkrtcy. D. Colo. 1986):

11 The debtor is a fiduciary and operates the property as a fiduciary for the parties in  
12 interest. He has obligations to operate the property in good fashion, to pay the  
13 expenses of operation and the cost of maintenance, to preserve and protect the  
14 property, and to account for the monies received and the expenses paid.

15  
16 64 B.R. at 822. The Debtors herein have been operating the rental properties, paying the  
17 necessary operating and maintenance expenses and they propose that, with the Court's  
18 permission, they be allowed to continue to do so. The rental income total is approximately  
19 \$12,825.00. Debtor's monthly expenses total \$11,014.00, with proposed mortgage  
20 payments on the rentals of \$5143.00. Thus, absent any unforeseen major repairs, there is  
21 sufficient income being generated to pay the monthly operating expenses, including the  
22 revalued mortgage payments as a result of the anticipated approved motion to value  
23 collateral. Further, where a secured party is adequately protected under § 363, then the  
24 debtor may use the cash collateral for expenses, not only those directly related to the  
25 operation and maintenance of but also administrative expenses.  
26  
27  
28

1 11 U.S.C. §363(c)(1). A debtor-in-possession has all of the rights and powers of a trustee with  
 2 respect to property of the estate, including the right to use property of the estate in compliance with  
 3 Section 363. See, 11 U.S.C. § 1107(a).

4  
 5 “Cash collateral” is defined as “cash, negotiable instruments, documents of  
 6 title, securities, deposit accounts or other cash equivalents in which the estate and an  
 7 entity other than the estate have an interest. . . .” 11 U.S.C. §363(a). Section 363(c)(2)  
 8 establishes a special requirement with respect to “cash collateral,” providing that the  
 9 trustee or debtor-in-possession may use “cash collateral” under subsection (c)(1) if:

10 (A) each entity that has an interest in such cash collateral consents; or

11 (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance  
 12 with the provisions of this section.

13 See, 11 U. S.C. § 363(c)(2)(A) and (B).

14 It is well settled that it is appropriate for a Chapter 11 debtor to use cash collateral for a  
 15 reasonable period of time for the purpose of maintaining and operating its property. 11 U.S.C. §  
 16 363(c)(2)(B); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981); *In re Tucson*  
 17 *Industrial Partners*, 129 B.R. 614 (9th Cir. BAP 1991). In addition, where the debtor is operating a  
 18 business, it is extremely important that the access to cash collateral be allowed in order to facilitate  
 19 the goal of reorganization: “the purpose of Chapter 11 is to rehabilitate debtors and generally access  
 20 to cash collateral is necessary to operate a business.” *In re Dynaco Corporation*, 162 B.R. 389  
 21 (Bankr. D.N.H. 1993), *quoting In re Stein*, 19 B.R. 458, 459. The Debtors run a viable and operating  
 22 entity, and believe that they will successfully reorganize and confirm a plan of reorganization. The  
 23 continued operation of their investment properties are in the overwhelming best interests of the  
 24 Debtors’ estate. If Debtors are unable to use cash collateral to operate their portfolio of investment  
 25 properties, Debtors would obviously have to shut down immediately and liquidate. As described  
 26 above, the Debtors should be permitted to operate and use cash collateral.  
 27  
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**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order: (1) granting the Motion; (2) authorizing the Debtors to use cash collateral on the conditions set forth hereinabove; and (3) granting such other and further relief as the Court deems just and proper.

Dated this 2<sup>th</sup> day of July, 2012.

Respectfully submitted,  
/s/ Ryan Alexander /s/  
Ryan Alexander, Esq.



**EXHIBIT "A"**  
**INCOME STATEMENT**  
**PROFIT AND LOSS**

Income		Expenses			
Rental	\$ 12,825.00	Proposed Mortgages	\$ 5,143.00	Insurance	\$ 750.00
TOTAL	\$ 12,825.00	Repair/Maint.	\$ 682.00	Taxes	\$ 1,409.00
		Utilities	\$ 836.00	Business Supplies	\$ 500.00
		HOA	\$ 701.00	Legal	\$ 50.00
		Management Fees	\$ 723.00	US Trustee Fee	\$ 220.00
		TOTAL:			

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(702) 252-3476 (Fax)  
ryan@thefirm-lv.com (E-mail)

*E-FILED*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

RIVER GLIDER AVE TRUST  
  
DEBTORS.

CASE NO.: 12-17862-BTB  
Hon. Bruce T. Beesley

**[PROPOSED] ORDER GRANTING  
FIRST DAY MOTION TO USE CASH  
COLLATERAL**

HEARING DATE: AUGUST 7, 2012  
HEARING TIME: 1:30 PM

The Motion to Use Cash Collateral (the “Motion”) having come before this Court and the Motion having been served as shown by the Certificate of Service , Ryan Alexander of The Firm, PC appearing for RIVER GLIDER AVE TRUST, Debtors and Debtors-in-Possession (the “Debtors”), the Court having reviewed the Motion, and finding good cause, and that there is sufficient income to pay Adequate Protection Ordered payments under 11 USC 361, it is

ORDERED that the Debtors are authorized to use the income derived from their rental properties (the "Properties"), including but not limited to rents/mortgage payments, operation expenses, and other miscellaneous expense as stated below:

Income		Expenses			
Rental	\$ 12,825.00	Proposed Mortgages	\$ 5,143.00	Insurance	\$ 750.00
TOTAL	\$ 12,825.00	Repair/Maint.	\$ 682.00	Taxes	\$ 1,409.00
		Utilities	\$ 836.00	Business Supplies	\$ 500.00
		HOA	\$ 701.00	Legal	\$ 50.00
		Management Fees	\$ 723.00	US Trustee Fee	\$ 220.00
		TOTAL:			\$ 11,014.00

ORDERED that as provided by Fed. R. Bankr. P. 7062, this Order shall be effective and enforceable immediately upon entry.

**ALTERNATIVE METHOD re: RULE 9021:**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Respectfully submitted,

/s/ Ryan Alexander /s/

Ryan Alexander, Esq.

NV Bar No. 10845

River Glider Trust  
C/O Resources Group LLC  
900 Las Vegas Blvd S. #810  
Las Vegas, NV 89107

Absolute Collection Services  
PO Box 12117  
Las Vegas, NV 89112

Accredited Home Lenders  
15030 Avenue of Science #100  
San Diego, CA 92128

Alessi & Koenig LLC  
9500 W Flamingo #205  
Las Vegas, NV 89147

Allied Trustee Services  
701 North Green Valley Pkwy #200  
Henderson, NV 89014

Angius & Terry Collections  
1120 N Town Center Dr #260  
Las Vegas, NV 89144

Argent Mortgage Company  
PO Box 5047  
Rolling Meadows, IL 60008

Callister & Reynolds  
823 Las Vegas Blvd S. #280  
Las Vegas, NV 89101

CMG Mortgage  
3160 Crow Canyon Rd #240  
San Ramon, CA 94583

Evofi One  
2460 Paseo Verde Parkway 125  
Henderson, NV 89074

Home Loan Center  
18191 Von Karmen Ave #300  
Irvine, CA 92612

Homeowner Association Services  
3513 E Russell Rd  
Las Vegas, NV 89120

Meridas Capital  
990 W Atherton Dr  
Salt Lake City, UT 84123

Metlife Home Loans  
1555 W Walnut Hill Lane #200  
Irving, TX 75038

Mortgage Loan Specialists  
4695 MacArthur Court 11th Floor  
Newport Beach, CA 92660

Nevada Association Services  
TS #N67297  
6224 W Desert Inn Rd #A  
Las Vegas, NV 89146

Republic Services  
7 E. Sahara Ave  
Las Vegas, NV 89104

Shea & Carlyon  
701 Bridger Ave #850  
Las Vegas, NV 89101

The Parks HOA  
2300 W Sahara Ave #1130 Box #33  
Las Vegas, NV 89102

Universal American Mortgage  
Company  
1725 W. Green Tree Dr #104  
Tempe, AZ 85284

US trust Mortgage Service Co  
280 E Palmetto Park Rd  
Boca Raton, FL 33432

Wells Fargo Bank  
12550 SE 93rd Ave #400  
Clackamas, OR 97015

Clark County Assessor  
500 S. Grand Central Parkway  
PO Box 5511401  
Las Vegas, NV 89155

Clark County Treasurer  
500 S. Grand Central Pkwy  
PO Box 551220  
Las Vegas, NV 89155

DETR  
Employment Security Division  
500 E. Third St  
Carson City, NV 89713

IRS  
PO Box 1303  
Charlotte, NC 28201

IRS  
PO Box 7346  
Philadelphia, PA 19101

Nevada Dept of Taxation  
ATTN: Bankruptcy Division  
555 E. Washington Ave #1300  
Las Vegas, NV 89101

Nevada DMV  
ATTN: Legal Division  
555 Wright Way  
Carson City, NV 89711

Secretary of Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

United States Chapter 11 Trustee  
Foley Federal Building  
300 S. Las Vegas Blvd  
Las Vegas, NV 89101

Wells Fargo Hm Mortgag  
3476 Stateview Blvd  
Fort Mill, SC 29715

Wf Fin Bank/Wells Fargo Financial  
Wells Fargo Financial  
4137 121st St  
Urbandale, IA 50323

Bank of America  
400 National Way  
Simi Valley, CA 93065

CoreLogic  
450 E Boundary St  
Chapin, SC 29036

Countrywide  
450 American St #SV416  
Simi Valley, CA 93065

Allied Trustee Services  
990 Reserve Dr #208  
Roseville, CA 95678

BAC Home Loans Servicing  
450 American St.  
Simi Valley, CA 93065

Impac Funding Corp  
1401 Dove St #100  
Newport Beach, CA 92660

North American Mortgage  
PO Box 808031  
Petaluma, CA 94975

The Stonewood Group  
3937 Sunset Blvd #1  
West Columbia, SC 29169

Aurora Loan Services  
2617 College Park  
Scottsbluff, NE 69361

Cameron Financial Group  
1065 Higuera St #102  
San Luis Obispo, CA 93401

Citimortgage  
PO Box 790005  
ATTN: M.S. 305  
Saint Louis, MO 63179

Americas Servicing Co  
1 Home Campus X2504-017  
Des Moines, IA 50328

US Bank  
801 Larkspur Landing  
Larkspur, CA 94939

US Bank  
PO Box 5220  
Cincinnati, OH 45201

Bank of America  
PO Box 2518  
Houston, TX 77252

Recontrust Company  
2380 Performance Dr TX2-984-0407  
Richardson, TX 75082

Foley Federal Building  
ATTN: Judge Beesely  
300 S Las Vegas Blvd  
Las Vegas, NV 89101

# Exhibit D

Ryan Alexander, Esq.  
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Phone: (702) 222-3476  
Fax: (702) 252-3476  
Email: ryan@thefirm-lv.com  
*Attorney for Debtors*

**Electronically Filed**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
  
RIVER GLIDER AVE TRUST ,  
  
DEBTORS.

Case No.: 12-17862-BTB  
Hon. Bruce T. Beesley  
Chapter 11

**MOTION TO VALUE  
COLLATERAL, "STRIP OFF"  
AND MODIFY RIGHTS OF  
UNSECURED CREDITORS  
PURSUANT TO 11 U.S.C. § 506(a)  
AND § 1123**

**Hearing Date: December 11, 2012  
Time of Hearing: 1:30 PM**

COMES NOW, Debtor and Debtor-in-Possession RIVER GLIDER AVE TRUST, by and through their attorney, Ryan Alexander of The Firm, PC, and petitions this Court, pursuant to section 506(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**") and Bankruptcy Rules 3012 and 9014 of the Federal Rules of Bankruptcy Procedure to value collateral securing certain residential loans and reclassify lenders claims as unsecured and to modify the rights of Universal American Mortgage Company, Bank of America, Corelogic, Countrywide (collectively "Secured Creditors"), Shea & Cohen, Absolute Collection Services, Allied Trustee Services, Callister & Reynolds (collectively "Unsecured Creditors"), and Debtors states as follows:



**FACTUAL BACKGROUND**

1. Debtors filed its instant Chapter 11 bankruptcy proceeding, Case No. 12-17862 on July 4, 2012.
2. On the petition date, Debtors owned real property described below that was subject to the following liens:

<b>Subject Property:</b>	<b>Value:</b>
10428 Amber Night St Las Vegas NV 89183	\$ 73,000.00

<b>Nature of Lien:</b>	<b>Creditor:</b>	<b>Amount:</b>
First Mortgage	US Trust Mortgage Service Co	\$ 217,636.00
Assignee/First Mortgage	Bank of America, Corelogic, Countrywide	\$ -
HOA Lien	Absolute Collection Services	\$ -
HOA Lien	Allied Trustee Services	\$ -
Default Judgment	Shea & Cohen	\$ -
Default Judgment	Callister & Reynolds	\$ -
<b>TOTAL:</b>		\$ 217,636.00
<b>TOTAL UNSECURED:</b>		\$ 144,636.00

3. The appraisal for this property is attached hereto as Exhibit A.
4. On the date the instant bankruptcy case was filed, no equity existed in the Subject Property.
5. Accordingly, Debtors request that this Court find that Unsecured Creditors claims are unsecured and should be reclassified as general unsecured claims to receive pro rata distribution with other general unsecured creditors through the Debtors' Chapter 11 Plan.

**MEMORANDUM OF LAW**

6. Section 506(a)(1) of the Bankruptcy Code provides that a Chapter 11 debtor may bifurcate a secured lender's claim into an allowed secured claim and an allowed unsecured claim based upon the actual value of the property securing such lender's lien. An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to set off under Section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to set off, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim.

Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest. 11 U.S.C. § 506(a)(1).

7. The Supreme Court has recognized that section 506 of the Bankruptcy Code defines the amount of the secured creditor's allowed secured claim and the conditions of his receiving post-petition interest. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988). In United Sav. Ass'n of Texas, the Supreme Court interpreting Section 506(a) of the Bankruptcy Code found that:

In subsection (a) of this provision the creditor's "interest in property" obviously means his security interest without taking account of his right to immediate possession of the collateral on default. If the latter were included, the "value of such creditor's interest" would increase, and the proportions of the claim that are secured and unsecured would alter, as the stay continues-since the value of the entitlement to use the collateral from the date of bankruptcy would rise with the passage of time.

No one suggests this was intended. The phrase "value of such creditor's interest" in § 506(a) means "the value of the collateral." *See id.* (emphasis added) (quoting H.R.Rep. No. 95-595, pp. 181, 356 (1977)).

8. The Ninth Circuit agrees with this interpretation of section 506 of the Bankruptcy Code. In re Maldonado, 46 B.R. 497, 499 (9th Cir. BAP 1984) (interpreting section 506(a), "a claim 'is a secured claim to the extent of the value of [the] creditor's interests' in the estate's interest in the property. The entire claim is not a secured claim. The claim is secured only to the extent of the value of the secured interest.")

9. In addition, this Bankruptcy Court has found that "an 'allowed secured claim' is a determination generally made under 11 U.S.C. § 506." In re BBT, 11 B.R. 224, 229 (Bankr. D. Nev. 1981). The Bankruptcy Court further stated that, with respect to a claim secured by a lien on property of the estate, "to the extent that the value of the property is less than the amount of the total allowed claim, **the claim is unsecured.**" *Id.* (emphasis added).

10. Thus, pursuant to the law of this Circuit, the amount of the allowed secured claim cannot exceed the market value of the property and the remainder of the claim must be treated as an allowed unsecured claim for purposes of the plan. In re Sagewood Manor Associates Ltd. Partnership, 223 B.R. 756, 773 (Bankr. D. Nev. 1998) (holding that the court may confirm a chapter 11 plan over the objection of a class of secured claims if the members of that class are to receive under the plan property of a value equal to the allowed amount of their secured claims, as determined under 11 U.S.C. § 506(a)).

11. Moreover, the Ninth Circuit Court of Appeals has also found that a wholly unsecured lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to section 506(a) of the Bankruptcy Code. *See In re Zimmer*, 313 F.3d 1220 (9th Cir.2002). Specifically, the Court held:

Section 506(a) divides creditors' claims into 'secured claims' and 'unsecured claims.' Although the conventional interpretation of 'secured' might include any claim in which the creditor has a security interest in the debtor's property, § 506(a) makes clear that the status of a claim depends on the valuation of the property: 'An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest... is less than the amount of such allowed claim.' 11 U.S.C. 506(a). To put it more simply, a claim such as a mortgage is not a 'secured claim' to the extent that it exceeds the value of the property that secures it. Under the Bankruptcy Code, 'secured claim' is thus a term of art; not every claim that is secured by a lien on property will be considered a 'secured claim.' Here, it is plain that PSB Lending's claim for the repayment of its loan is an unsecured claim, because its deed of trust is junior to the first deed of trust, and the value of the loan secured by the first deed of trust is greater than the value of the house. In re Zimmer, 313 F.3d at 1222 - 23.

12. Accordingly, because the first mortgages on the Properties are under-secured, those lenders claims should be bifurcated into secured and unsecured claims based on the market value of the Properties as shown in their respective appraisals as set forth in Exhibit A. The Debtors request, however, that all other items of the note and mortgage remain the same, including the interest rate and loan amortization.

13. Moreover, because several of the second mortgages are wholly unsecured (in that there is no equity above the first mortgages in any of the Properties), those unsecured claims should be reclassified as a general unsecured claims to be treated pro rata with similar unsecured creditors. The second mortgage lenders should also be stripped of their secured rights under state law since no maintainable security interest in the subject Properties exists, also as set forth in Exhibit A.

14. Finally, the filing of a motion rather than an adversary proceeding to achieve the relief requested herein is appropriate in this Court. *See In re Bonsignori*, Case No. BKS-08-11830-LBR (D. Nev. June 25, 2008) (approving the stripping off of an unsecured lien by motion); *see also In re Robert*, 313 B.R. 545 (Bankr. N.D.N.Y. 2004); *In re Bennett*, 312 B.R.843 (Bankr. W.D. Ky. 2004); *In re King*, 290 B.R. 641 (Bankr. C.D. Ill. 2003); *In re Millspaugh*, 302 B.R. 90 (Bankr. D. Idaho 2003); *Dickey v. Ben. Fin. (In re Dickey)*, 293 B.R. 360 (Bankr. M.D. Pa. 2003); *In re Hill*, 304 B.R. 800 (Bankr. S.D. Ohio 2003); *In re Sadala*, 294 B.R. 180 (Bankr. M.D. Fla. 2003); *In re Fisher*, 289 B.R. 544 (Bankr. W.D.N.Y. 2003); *In re Hoskins*, 262 B.R. 693 (Bankr. E.D. Mich. 2001); *In re Fuller*, 255 B.R. 300 (Bankr. W.D. Mich. 2000); and *In re Williams*, 166 B.R. 615 (Bankr. E.D. Va. 1994).

### CONCLUSION

15. Bankruptcy law is clear, absent sufficient equity in the Properties, the first mortgage lenders claims are only partially secured and thus must be bifurcated into secured and unsecured claims. The second mortgage lenders are wholly unsecured and should receive only their *pro rata* distribution with other general unsecured creditors through the Debtors Chapter 11 plan.

WHEREFORE, Debtors pray that this Court: (i) value the Property in accordance with the appraisal attached hereto; (ii) bifurcate the first mortgage claims of Secured Creditor into secured and unsecured claims; (iii) “Strip off” and extinguish Unsecured Creditors claims wholly unsecured liens pursuant to 11 U.S.C. Section 506(a); (iv) Reclassify Unsecured Creditors claims as general unsecured claims to be paid pro rata with other general unsecured creditors through the Debtors’ Chapter 11 plan; and (v) such other relief the Court deems just and proper.

Dated this 10<sup>th</sup> day of September, 2012.

Respectfully Submitted,  
/s/Ryan Alexander, Esq.  
 Ryan Alexander, Esq.  
 Attorney for Debtors

The Firm, PC  
200 E. Charleston Blvd. Las Vegas, NV 89104

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# **Exhibit E**

RYAN ALEXANDER  
Nevada Bar No. 10845  
THE FIRM, P.C.  
200 East Charleston Boulevard  
Las Vegas, NV 89104  
Phone: (702) 222-3476  
Fax: (702) 252-3476  
Ryan@TheFirm-LV.com  
*Attorney for Debtor*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In Re:  
BOURNE VALLEY COURT TRUST,  
OLIVER SAGEBRUSH DR TRUST,  
PARADISE HARBOR PLACE TRUST,  
RIVER GLIDER AVE TRUST,  
  
Debtors.

Case No.: 12-16387-BTB; 12-18558-BTB; 12-  
20213-BTB; 12-17862-BTB  
Hon. Bruce T. Beesley  
Chapter 11

**OMNIBUS RESPONSE TO ORDERS TO SHOW  
CAUSE**

Hearing Date: November 13, 2012  
Hearing Time: 3:00 PM

COMES NOW **BOURNE VALLEY COURT TRUST, OLIVER SAGEBRUSH DR  
TRUST, PARADISE HARBOR PLACE TRUST**, and **RIVER GLIDER AVE TRUST**,  
(collectively “Trusts,” “Debtors”), the debtors and debtors-in-possession in the above-captioned  
chapter 11, and in response to the Order To Show Cause states as follows:

The Court has asked for the Trusts to show that they are eligible to be debtors under Title 11 of  
the United States Code (the “Bankruptcy Code”). The Trusts will show the Court herein that the  
explicit and primary purpose of the trust is to be a business trust, and not to act as an estate planning  
or asset protection trust.

**RELEVANT AUTHORITY**

Section 109(a) of the Bankruptcy Code provides, in relevant part, “[n]otwithstanding any other  
provision of this section, only a person that resides or has a domicile, a place of business or property

The Firm, P.C.  
200 East Charleston Boulevard, Las Vegas, Nevada 89104

1 in the United States or a municipality, may be a debtor under this title.” 11 U.S.C. § 109(a)  
 2 (emphasis added). The term “person” is, itself, defined in section 101(41) of the Bankruptcy Code to  
 3 include a “corporation.” Delving further, section 101(9)(A)(v) defines a “corporation” to include a  
 4 “business trust.” Unfortunately, as far as the Bankruptcy Code is concerned, the definitions end  
 5 there. COLLIER ON BANKRUPTCY encapsulates the state of the case law with respect to the  
 6 eligibility of a trust to be a debtor by explaining:

7 In determining whether a particular entity constitutes a "business trust" under the  
 8 Code, and should therefore be treated as a corporation, the court will analyze both the  
 9 type of activity the trust was designed for and the authority given to the trustee to  
 undertake the activities.

10 2-101 *Collier on Bankruptcy* ¶ 101.09 (15th ed. 2011) (internal quotations and citations omitted).

11 Two Courts of Appeal have addressed the “business trust” debtor issue. The Court of Appeals  
 12 for the Sixth Circuit adopted a “primary purpose” test. *Brady-Morris v. Schilling (In re: Kenneth*  
 13 *Allen Knight Trust)*, 303 F.3d 671 (6th Cir. 2002). A trust with the primary purpose of transacting  
 14 business and conducting commercial transactions is a business trust; a trust that only protects the  
 15 trust res for the benefit of its beneficiaries is generally not. *Id.* at 680. The Kenneth Allen Knight  
 16 Trust held two assets, the settlor’s residence and an entity that held four other entities that owned  
 17 real estate investments. In that case, the Court of Appeals affirmed the determination of the District  
 18 Court (and the Bankruptcy Court before it) that the Kenneth Allen Knight Trust was a business trust,  
 19 finding “the primary purpose of the Trust was to transact business or carry on commercial  
 20 activity...” *Id.* at 680. The Sixth Circuit also rejected two requirements for business trusts imposed  
 21 by earlier bankruptcy cases: first, that to be a business trust, the trust must have transferable  
 22 certificates of ownership<sup>1</sup>; second, that the trust’s business or commercial activity must be for profit.  
 23 *Id.*, at 676-680.

24 In the Second Circuit, the Court of Appeals also found the “primary purpose” of the trust  
 25 important in determining its eligibility to be a debtor under the Bankruptcy Code. *Shawmut Bank*  
 26

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27 <sup>1</sup> “[T]he *Morrissey*, 296 U.S. 344, 80 L. Ed. 263, 56 S. Ct. 289 criteria were meant for the Internal Revenue Code, and they contradict  
 28 the 1978 liberalization of the Bankruptcy Code’s treatment of business trusts, as discussed above. We join those courts that have  
 concluded that Congress intended to dispense with the transferable-certificate-of-ownership requirement when it changed the statute  
 in 1978. See, e.g., *Treasure Island*, 2 B.R. at 334 (“In eliminating the requirement of written instruments, Congress has presumably  
 made it possible for a broader variety of trusts to obtain relief in the bankruptcy courts.”) *Brady-Morris*, 303 F.3d at 679.



1 *Connecticut, N.A. (In re Secured Equipment Trust of Eastern Air Lines, Inc.)*, 38 F.3d. 86 (2d Cir.  
2 1994). In that case, Eastern Air Lines formed the Secured Equipment Trust of Eastern Air Lines,  
3 Inc. for the exclusive purpose of segmenting part of its fleet of aircraft to stand as collateral for a  
4 credit facility. *Id.* at 87. There the court determined that the Secured Equipment Trust of Eastern Air  
5 Lines, Inc. did not conduct business and “was merely created to serve as a vehicle to facilitate a  
6 secured financing by Eastern.” *Id.* at 90. That Court of Appeals affirmed the judgment of the District  
7 Court and the Order of the Bankruptcy Court dismissing the involuntary bankruptcy case.

8 The Secured Equipment Trust case was recently examined by the Southern District of New  
9 York in *In Re General Growth Properties, Inc.* 409 B.R. 43 (S.D.N.Y. 2009). One of the debtors in  
10 that case, Lancaster Trust, was an Illinois land trust, which was defined by Illinois law to be “a legal  
11 device whose primary function is to hold legal and equitable title to real estate,” which “is not, and  
12 does not attempt to be, an active business or commercial entity.” *Id.*, citing *In re North Shore Nat’l*  
13 *Bank of Chicago, Land Trust No. 362*, 17 B.R. 867, 869 (Bankr. N.D. Ill. 1982). Despite this  
14 definition, the Southern District of New York held that the Lancaster Trust was a business trust  
15 because its purpose went merely beyond conserving trust res or holding title to land. *General*  
16 *Growth*, 409 B.R. at 71-21. The court cited as examples of its business activity the fact that it was  
17 named lessor in leases with its tenants, the borrower under a loan agreement, party to various service  
18 contracts, and explicitly authorized to conduct business in Pennsylvania. *Id.* at 71. This  
19 determination was over the moving creditor’s argument that the Lancaster Trust had no board,  
20 officers or stockholders, and restrictions of share transferability, but the Court countered that, “these  
21 are characteristics of some closely-held business entities.” *Id.* at 71.

22 The legislative history suggests that Congress intended to make bankruptcy available to all  
23 trusts that have the features of a business entity and to leave that determination to the judgment of  
24 bankruptcy courts. The Bankruptcy Reform Act of 1978 replaced the description, “any business  
25 conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by  
26 certificate or other written instrument” with the simplified “business trust” now codified in section  
27 101(9)(A)(v) of the Bankruptcy Code. The reason for the change was to eliminate arbitrary barriers  
28 to bankruptcy for trusts that function as a business. *Brady-Morris v. Schilling (In re: Kenneth Allen*

*Knight Trust*), 303 F.3d 671, 679-80 (6th Cir. 2002). *See also In re Morgantown Trust No. 1*, 155 B.R. 137, 140 (Bankr. N.D. W.Va. 1993) (“[T]he 1978 Amendment “indicates a further reduction of the trust restrictions”).

### The BOURNE VALLEY Court Trust

BOURNE VALLEY COURT TRUST was formed through the Trust Agreement of May 4, 2012. A copy of the Trust Agreement is attached hereto as “Exhibit A.” Although not perfect in drafting, the trust would almost certainly be a valid trust organized in the State of Nevada. *See Opinion Letter of Robert L. Bolick, Esq.*, attached hereto as Exhibit “B.” The Trust Agreement did not contemplate the creation of a trust designed for the sole purpose of passing property to beneficiaries; rather, it authorized the BOURNE VALLEY Trustee, Resources Group LLC, in the very first Article to create a “business trust,” to “manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit A. The trust interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to “organize, own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.

*Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents, professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410, which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically authorizes the trustee to file for reorganization:

(o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, **reorganization**.

dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

Article XI (o) (*emphasis added*). BOURNE VALLEY, consistent with its intended purpose, operates a business. Fundamentally it is not a passive vessel, liquidating investments for its beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function, BOURNE VALLEY has acquired title to ten properties and actively operates a residential rental enterprise. The trust and its trustee may negotiate lease agreements and real estate transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank account will pay taxes, create financial reports and take investment risks, including entering into agreements with lending institutions. BOURNE VALLEY filed this case to stop one of ten secured creditors from selling certain of its real property holdings that secured repayment.

#### **The OLIVER SAGEBRUSH Dr Trust**

OLIVER SAGEBRUSH DR TRUST was formed through the Trust Agreement of June 20, 2012. A copy of the Trust Agreement is attached hereto as “Exhibit C.” Although not perfect in drafting, the trust would almost certainly be a valid trust organized in the State of Nevada. *See Opinion Letter of Robert L. Bolick, Esq.*, attached hereto as Exhibit “D.” The Trust Agreement did not contemplate the creation of a trust designed for the sole purpose of passing property to beneficiaries; rather, it authorized the OLIVER SAGEBRUSH Trustee, Resources Group LLC, in the very first Article to create a “business trust,” to “manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit C. The trust interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to “organize, own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.

1 *Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment  
 2 of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents,  
 3 professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410,  
 4 which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR  
 5 AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically  
 6 authorizes the trustee to file for reorganization:

7 (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust  
 8 created herein, and to participate in or consent to any voting Trust, **reorganization**,  
 9 dissolution, liquidation, merger, or other action affecting any such shares of stock or any  
 10 corporation which has issued such shares of stock.

11 Article XI (o) (*emphasis added*). OLIVER SAGEBRUSH, consistent with its intended purpose,  
 12 operates a business. Fundamentally it is not a passive vessel, liquidating investments for its  
 13 beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function,  
 14 OLIVER SAGEBRUSH has acquired title to four properties and actively operates a residential  
 15 rental enterprise. The trust and its trustee may negotiate lease agreements and real estate  
 16 transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank  
 17 account will pay taxes, create financial reports and take investment risks, including entering into  
 18 agreements with lending institutions. OLIVER SAGEBRUSH filed this case to stop one of four  
 19 secured creditors from selling certain of its real property holdings that secured repayment.

### 20 **The PARADISE HARBOR PLACE Trust**

21 PARADISE HARBOR PLACE TRUST was formed through the Trust Agreement of June 8, 2012.  
 22 A copy of the Trust Agreement is attached hereto as “Exhibit E.” Although not perfect in drafting,  
 23 the trust would almost certainly be a valid trust organized in the State of Nevada. The Trust  
 24 Agreement did not contemplate the creation of a trust designed for the sole purpose of passing  
 25 property to beneficiaries; rather, it authorized the PARADISE HARBOR PLACE Trustee,  
 26 Resources Group LLC, in the very first Article to create a “business trust,” to “manage, administer,  
 27 collect, receive, dispose of and distribute the trust property for the benefit of such persons as have  
 28 acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit E. The trust  
 interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to “organize,

own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.

*Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents, professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410, which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically authorizes the trustee to file for reorganization:

(o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

Article XI (o) (*emphasis added*). PARADISE HARBOR PLACE, consistent with its intended purpose, operates a business. Fundamentally it is not a passive vessel, liquidating investments for its beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function, PARADISE HARBOR PLACE has acquired title to eleven properties and actively operates a residential rental enterprise. The trust and its trustee may negotiate lease agreements and real estate transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank account will pay taxes, create financial reports and take investment risks, including entering into agreements with lending institutions. PARADISE HARBOR PLACE filed this case to stop one of eleven secured creditors from selling certain of its real property holdings that secured repayment.

#### **The RIVER GLIDER AVE Trust**

RIVER GLIDER AVE TRUST was formed through the Trust Agreement of November 28, 2011. A

copy of the Trust Agreement is attached hereto as “Exhibit F.” Although not perfect in drafting, the trust would almost certainly be a valid trust organized in the State of Nevada. The Trust Agreement did not contemplate the creation of a trust designed for the sole purpose of passing property to beneficiaries; rather, it authorized the RIVER GLIDER AVE Trustee, Resources Group LLC, in the very first Article to create a “business trust,” to “manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit F. The trust interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to “organize, own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.

*Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents, professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410, which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically authorizes the trustee to file for reorganization:

(o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, **reorganization**, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

Article XI (o) (*emphasis added*). RIVER GLIDER AVE, consistent with its intended purpose, operates a business. Fundamentally it is not a passive vessel, liquidating investments for its beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function, RIVER GLIDER AVE has acquired title to eleven properties and actively operates a residential

1 rental enterprise. The trust and its trustee may negotiate lease agreements and real estate  
 2 transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank  
 3 account will pay taxes, create financial reports and take investment risks, including entering into  
 4 agreements with lending institutions. RIVER GLIDER AVE did not have any imminent foreclosures  
 5 on any of its properties when it filed for reorganization under Chapter 11.

## 7 **ARGUMENT**

8 The Trusts are profit-making enterprises. Its activity is the rental and maintenance of residential  
 9 real estate. The Trusts hold titles to residential properties, collects revenue in the form of rents from  
 10 tenants, pays utilities, pays a management company and will pay secured creditors on the properties  
 11 on Debtor holds title, pursuant to Debtor's plan of reorganization. By virtue of holding title to  
 12 various properties, which all have liens or mortgages or deeds of trust on them, the Trusts owes  
 13 secured creditors. The Debtors have revenue to pay secured creditors. No other party or entity holds  
 14 the title to the properties owned by the Debtors that could file for bankruptcy protection and  
 15 preserve the properties. The Plan will provide the creditors with the fair market value of all of the  
 16 properties and ensure the viability of the Trusts. Beyond the Plan, the Trusts will continue to own  
 17 and operate its rental properties, pay the secured creditors, buy, sell and manage real estate, and  
 18 engage in any other authorized business activity.

### 20 **I. Debtors are Eligible for Relief under the Bankruptcy Code.**

21 For the purposes of clarification it would be helpful to review notable cases that distinguish  
 22 business trusts and trusts that were not found to be business trust in a bankruptcy context. "[A]  
 23 number of court-made definitions of 'business trust' exist and indeed perhaps the only thing all cases  
 24 have in common is the recognition that they all differ." *In re Jin Suk Kim Trust d/b/a La Union Mall*,  
 25 2011 Bankr. LEXIS 3086, \*12 (Bankr. D. Md., Apr. 8, 2011) (internal citations and quotations  
 26 omitted). Further:

27 No case of which this Court is aware looked solely to the formation document in  
 28 reaching its determination. The one overriding principle that emerges from the cases is  
 that the determination of whether a trust is a business trust is fact-specific and focuses



on the purpose and operations of the trust.

*Id.* at \*16. A trust may be ineligible to be a debtor if it is only a device to preserve and distribute property to the heirs of the settlor, and if the trustee had no granted authority to run a business. *In re Nellie M. Hurst Trust*, \*7 1997 Bankr. LEXIS 997 (Bankr. Md. 1997) (“Ultimately, each decision is based on a very fact-specific analysis of the trust at issue.”) (citing *Shawmut Bank Connecticut, N.A. (In re Secured Equipment Trust of Eastern Air Lines, Inc.)*, 38 F.3d. 86, 89 (2d Cir. 1994)). See also *In the Matter of Evelyn Walker, As Trustee*, 79 B.R. 59, 62 (Bankr. M.D. Fla. 1987) (“[T]he purpose of the trust is without question to provide for support, maintenance, and comfort of the beneficiaries and *not to conduct a business for profit*.”). Despite its conclusion as to that trust, which the court determined was for inheritance purposes and not for business, the *Nellie M. Hurst Trust* case stands firmly against the proposition of a *per se* bar against any trust created through a will becoming a debtor under the Bankruptcy Code. *In re Nellie M. Hurst Trust*, \*7 1997 Bankr. LEXIS 997 (Bankr. Md. 1997). A trust can be, at once, an estate planning device and a business trust. In *In re Jin Suk Kim Trust d/b/a La Union Mall*, 2011 Bankr. LEXIS 3086, \*2 (Bankr. D. Md., Apr. 8, 2011), the trust was “established to be a generation skipping trust” that allowed for its res to be passed pursuant to the Trustee’s will. The primary asset of that trust was a shopping mall that the trustee continued to manage. *Id.* That Court determined, notwithstanding the estate-planning components of the Trust, that the Trust was intended to allow [the Trustee] to continue to manage the [shopping mall] and any other assets the Debtor acquired the same as she operated her other real estate ventures. It also allowed [the Trustee] to realize the value from the transfer if she chose while continuing to expand her real estate business as she saw fit. Despite instructions related to inheritance, the Court concluded that the Debtor was a business trust. *Id.* at \*18-19.

Some courts have addressed prohibitions or restrictions transferability of shares as an indication that a trust is not a business trust. See *In Re Parade Realty*, 134 B.R. 7, at 11 (Bankr. Hawaii, 1991). Here, the certificates of interest are transferrable. See Ex. A Trust Agreement, Articles VI, VII. There is no restriction on outside participants or owners who are not heirs.

Here, the individual Trust Agreements created each Debtor and it empowered the Debtors’ Trustee, Resources Group LLC, to continue create a “business trust” and to “manage, administer,



1 collect, receive, dispose of and distribute the trust property for the benefit of such persons as have  
2 acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit A. It specifically  
3 explains that none of the Trusts are a partnership or joint stock association. *Id.* Pursuant to Article  
4 IX, the Trustee is permitted to enter further contracts or instruments, to conduct “business” (referred  
5 to separately from administration of assets). Five pages of authority for the trustee to engage in  
6 business and management activities follow. Nothing in the trust instrument indicates that the  
7 purpose of the trust is to transfer property between a grantor and his heirs, or restricting powers of  
8 the trustee to preserve some particularly identified res for beneficiaries. Nor does it restrict transfer  
9 of ownership of the beneficial interests. Rather, the trust instrument repeatedly reinforces the  
10 commercial intentions for the trust, not like a will, but like an operating agreement or articles of  
11 incorporation. This confirms the intent of the parties in creating the Trusts.

12 The Debtors’ Trustee continues manage the Debtor’s properties, pay the utilities and bills of the  
13 trust, and maintain lease agreements on behalf of each Trust to improve its income. Each Trust  
14 owns and operates a legitimate residential rental enterprise, and exists to conduct for profit business.  
15 It would be disingenuous to argue that as part of its reorganization efforts it does not have  
16 encumbered properties and liabilities that it needs to deal with through the Bankruptcy Court. In  
17 fact, part of the necessity of bringing this matter before this Court now is that several of the secured  
18 creditors refused to recognize the Debtor’s title and rights to the homes, despite having purchased  
19 the properties from lawful auctions or foreclosures with clear title processed through title  
20 companies. It appears that the agents and employees of the secured creditors had no understanding  
21 of the rights of non-first mortgage secured creditors – such as second deeds of trust, home equity  
22 lines of credit or Home Owners’ Association liens – all of which can result in an auction transferring  
23 title while leaving the property with the first lien in tact. To the Debtors and the Trustee’s surprise,  
24 the secured creditors were nearly all in complete denial that the Trusts bought liens at foreclosure  
25 and had assumed title from the original mortgagee. Indeed, the Trusts are forced to reorganize to  
26 preserve its rights precisely because the creditors refused in bad faith [or otherwise ignored] the  
27 Debtor’s repeated communications regarding the properties in attempt to get payment information,  
28 lien information or payoff values.

**II. The Trust's Registration Status Under Nevada Business Law Does Not Determine Whether the Trusts May Be a Debtor.**

It is not necessary to make a "business trust" election under state law to determine whether a trust is a "business trust" within the meaning of 11 U.S.C. § 101(9)(a)(v). *In re Morgantown Trust No. 1*, 155 B.R. 137 (Bankr. N.D. W.Va. 1993). In that case, the Morgantown Trust No. 1 itself contained language prohibiting it from becoming a West Virginia Business Trust. *Id.* at 138. Additionally, the Trustee was prohibited from managing or operating the Trust or transacting any business and could "deal with [trust property] only when authorized to do so in writing [by]... a majority in interest of the beneficiaries..." *Id.* at 139. There, not only did the Morgantown Trust No. 1. not register with any state agency as a business trust, it lacked the authority to so register. *Id.* While *In re Morgantown Trust No. 1* weighed the nature of the state law formation of that trust as a factor in its 11 U.S.C. § 101(9)(A)(v) analysis, most courts have ruled that factor to be irrelevant:

Whether an entity is eligible for relief under title 11 of the United States Code is purely a matter of federal law. To hold otherwise would result in different results in different states and an entity would be eligible for relief in one state but not another. Clearly this is not what Congress intended...

*Brady-Morris v. Schilling (In re: Kenneth Allen Knight Trust)*, 303 F.3d 671, 678-79 (6th Cir. 2002) (internal citations and quotations omitted). Indeed, in *Brady-Morris* the trust was not a registered Kentucky Business Trust, yet the Court upheld that Trust as a business trust for Bankruptcy Court purposes.

If Congress wanted Trust eligibility to be determined by reference to state law, it knew how to do that. *See* 11 U.S.C. § 544(b) (giving the trustee authority to avoid transfers that are voidable by reference to state law). Instead of relegating trust debtor eligibility to state law, Congress intentionally broadened the types of trusts that could become debtors--and left it broad for more than thirty years. The doors of the bankruptcy courts are open to business trusts for a reason: they are discrete economic entities as much as individuals and incorporated businesses. The Trusts are an economic entity and it is entitled to relief under the Bankruptcy Code.

1  
2 WHEREFORE, the Debtor respectfully requests that this Court enter a finding that the trust is  
3 an eligible business trust.

4  
5 Dated this 4th day of November, 2012.

6 Respectfully submitted,  
7 /s/ Ryan Alexander  
8 Ryan Alexander, Esq.  
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# EXHIBIT A

**THE BOURNE VALLEY CT TRUST**

**Dated May 4th, 2012**

AA000826

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# *Trust Agreement*

OF THE

BOURNE VALLEY CT  
TRUST

This Agreement of trust made May 4th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

## **ARTICLE I**

### **DECLARATION OF TRUST**

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

## **ARTICLE II**

### **APPOINTMENT OF TRUSTEE**

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

## **ARTICLE III**

### **GENERAL DUTIES OF TRUSTEE**

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "BOURNE VALLEY CT TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.



## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

## **ARTICLE X**

### **DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

## **ARTICLE XI**

### **TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,



compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than one (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: If three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

### **ARTICLE XIII**

#### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### **ARTICLE XIV**

#### **QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:



- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s), but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

15.5 **Severability**. In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

15.6 **Headings**. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

15.7 **More Than One Original**. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation**. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**BOURNE VALLEY CT TRUST**

  
By: **RESOURCES GROUP, LLC**, Trustee  
Iyad Haddad, Manager

STATE OF NEVADA )

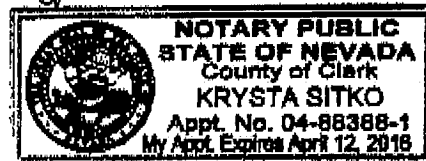
)ss.

COUNTY OF CLARK )

On JUNE 7, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared IYAD HADDAD, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

NOTARY PUBLIC *KRYSTA SITKO*



APPENDIX A  
LEGAL DESCRIPTIONS

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3621 WILD WILLOW ST LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	SAPPHIRE POINTE PLAT BOOK 80 PAGE 6 LOT 68 BLOCK 3  SEC 07 TWP 20 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	410 HORSE POINTE AVE NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	PARKS UNIT 5 PLAT BOOK 94 PAGE 26 LOT 21 BLOCK 1  SEC 22 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3171 CASTLE CANYON AVE HENDERSON
<u>ASSESSOR DESCRIPTION</u>	SEVEN HILLS LOT E UNIT-3 PLAT BOOK 75 PAGE 43 LOT 12 BLOCK 2  SEC 35 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5332 LA QUINTA HILLS ST NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	CORTEZ HGTS PLAT BOOK 113 PAGE 81 LOT 124  SEC 35 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	4254 ROLLINGSTONE DR SPRING VALLEY
<u>ASSESSOR DESCRIPTION</u>	GLENVIEW WEST TWNHS PLAT BOOK 30 PAGE 65 LOT 19  SEC 24 TWP 21 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	1452 BOURNE VALLEY CT PARADISE
<u>ASSESSOR DESCRIPTION</u>	CONCORDIA AT WIGWAM-UNIT 2 PLAT BOOK 110 PAGE 39

	LOT 43 BLOCK 14  SEC 14 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5733 LARKDALE ST PARADISE
<u>ASSESSOR DESCRIPTION</u>	CONCORDIA AT SANDHILL PLAT BOOK 105 PAGE 44 LOT 15 BLOCK 1  SEC 31 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	4449 LAGUNA GARDEN AVE NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	LAMB & TROPICAL PLAT BOOK 120 PAGE 36 LOT 148 BLOCK 5  SEC 29 TWP 19 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	8129 BACKPACKER CT LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	ELKHORN SPRINGS-PARCEL 2-UNIT 1 PLAT BOOK 80 PAGE 31 LOT 38 BLOCK 2  SEC 16 TWP 19 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5650 E SAHARA AVE 1011 SUNRISE MANOR
<u>ASSESSOR DESCRIPTION</u>	TERRASANTA UNIT 2 PLAT BOOK 93 PAGE 35 UNIT 1011 BLDG 3  SEC 04 TWP 21 RNG 62

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**BOURNE VALLEY CT TRUST**

BOURNE VALLEY CT TRUST

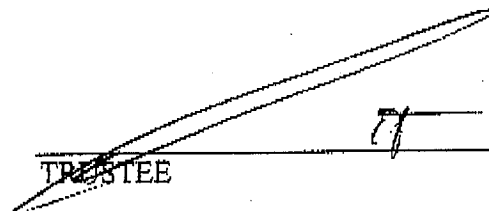
Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the **BOURNE VALLEY CT TRUST**, which it holds subject to an agreement and declaration of trust thereof, dated May 4th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the **BOURNE VALLEY CT TRUST** are of the par value of \$10.00 dollars each.

No transfer hereof will affect the **BOURNE VALLEY CT TRUST** or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof, this the 4th day of May, 2012.

  
\_\_\_\_\_  
TRUSTEE

# EXHIBIT B



D U R H A M  
J O N E S &  
P I N E G A R

Durham Jones & Pinegar, P.C.  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110  
801.415.3000  
801.415.3500 Fax  
www.djplaw.com

Robert Bolick  
Attorney at Law  
rbolick@djplaw.com

October 29, 2012

Ryan Alexander, Esq.  
THE FIRM  
200 E. Charleston Blvd.  
Las Vegas, NV 89104

Re: The Bourne Valley Ct. Trust  
Dated May 4, 2012

Dear Mr. Alexander:

You asked that I provide you with an opinion concerning the above-referenced trust.

Generally, courts are very lenient and accommodating in upholding the validity of trusts. All that is required is a grantor (person creating the trust) who delivers the property to a trustee (or can even hold it himself in a fiduciary capacity as a trustee) on behalf of the beneficiaries. There is not even a requirement that the parties be separate – a single individual can be the grantor declaring himself as the trustee on behalf of himself and/or others as the beneficiaries. If there is any way for a court to uphold a trust's validity, they tend to take that course.

In this trust the grantors are defined in the initial paragraph as the "certificate holders" referenced in Article V. Although the specific identity of the grantors is not disclosed, they could easily be identified as whoever transferred assets into the trust.

The trustee is Resources Group, LLC, a Nevada LLC. This entity appears to be a properly formed LLC under Nevada law. Mr. Haddad is both the registered agent and the manager. The owners of the LLC are not listed. Whether the owners are Mr. Haddad or someone else is completely irrelevant. The LLC is clearly indicated as the trustee of the trust. Lastly, as indicated above, the trustee could be Mr. Haddad individually instead of the LLC owned, controlled or operated by him. It would still be a valid trust under Nevada law.

Ryan Alexander, Esq.  
October 29, 2012  
Page 2

The trustee executed the document on the last page. This clearly evidences the intent to create a trust and for the LLC to hold the assets in a fiduciary capacity as trustee. It appears that Mr. Haddad's signature is notarized. This was not necessary under Nevada law.

Further indication of its viability as a trust are: the duties of the trustee are set forth in Article III, contingent beneficiaries are provided for in Article VII and distributions are set forth in Article X.

What is not clear is the declaration under Article I to create a "business trust." This does not specifically reference NRS Chapter 88A, nor has the trust, to the best of my knowledge, filed a Certificate of Trust with the Secretary of State as required under NRS 88A.210. It is not clear to me whether the term "business trust" was a term of art simply indicating the intent that the trust conducts business.

Another issue is the creation of transferable certificates under Article V of the trust. While this would not be standard under most trusts, it certainly wouldn't invalidate it as a Nevada trust. Under Nevada law, unless beneficiaries are specifically prohibited from transferring or alienating their beneficial interests (which would be contained in a typical Spendthrift provision), they are permitted to transfer their interest. Transfer of beneficial interests are specifically permitted under Article VII of the trust.

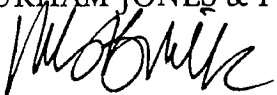
Lastly, there is an issue whether the trust could be amended. Section 15.1 specifically allows for amendments to the trust by the beneficiaries and the trustee.

All of these facts, when taken together clearly evidence the intent to create a trust under Nevada law. Most courts would find it to be valid.

Please let me know if you have any further questions or areas which you would like me to address concerning this trust.

Very truly yours,

DURHAM JONES & PINEGAR, P.C.

  
Robert L. Bolick

RLB:drl

# EXHIBIT C

**THE OLIVER SAGEBRUSH DRIVE TRUST**

**Dated June 20th, 2012**

AA000849

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# *Trust Agreement*

## OF THE

### OLIVER SAGEBRUSH DRIVE TRUST

This Agreement of trust made June 20th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

## ARTICLE I

### DECLARATION OF TRUST

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

## ARTICLE II

### APPOINTMENT OF TRUSTEE

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

## ARTICLE III

### GENERAL DUTIES OF TRUSTEE

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "OLIVER SAGEBRUSH DRIVE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.



## **ARTICLE X**

### **DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

## **ARTICLE XI**

### **TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.



## **ARTICLE XIII**

### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

## **ARTICLE XIV**

### **QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),



but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect

insofar as legally possible.

15.6 **Headings**. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

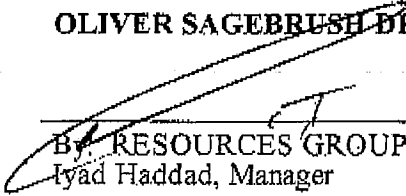
15.7 **More Than One Original**. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation**. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**OLIVER SAGEBRUSH DRIVE TRUST**

 6-20-12  
BY **RESOURCES GROUP, LLC**, Trustee  
Iyad Haddad, Manager

STATE OF NEVADA            )  
  )ss.  
COUNTY OF CLARK        )

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared IYAD HADDAD, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC

AA000863

## APPENDIX A

## LEGAL DESCRIPTION(S)

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	4085 OLIVER SAGEBRUSH DR . WHITNEY
<u>ASSESSOR DESCRIPTION</u>	DESERT INN MASTER PLAN LOT E PLAT BOOK 118 PAGE 33 LOT 14 BLOCK 1  SEC 15 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2920 BAYLINER AVE NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	SOMERSET RIDGE 3 UNIT 1 PLAT BOOK 99 PAGE 31 LOT 88 BLOCK 3  SEC 29 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3797 MONUMENT ST PARADISE
<u>ASSESSOR DESCRIPTION</u>	HERITAGE SQUARE SOUTH UNIT #2 PLAT BOOK 13 PAGE 16 LOT 47 BLOCK 12  SEC 18 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3425 E RUSSELL RD 142 PARADISE
<u>ASSESSOR DESCRIPTION</u>	SILVER CANYON CONDO AMD PLAT BOOK 78 PAGE 27 UNIT 142 BLDG K  SEC 31 TWP 21 RNG 62

**BENEFICIAL SHARE CERTIFICATE**  
**FOR THE**  
**OLIVER SAGEBRUSH DRIVE TRUST**

OLIVER SAGEBRUSH DRIVE TRUST

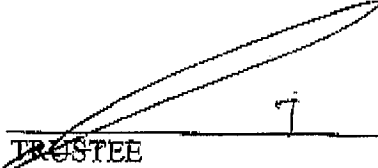
Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of 1,000 shares in the OLIVER SAGEBRUSH DRIVE TRUST, which he holds subject to an agreement and declaration of trust thereof, dated June 20th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the OLIVER SAGEBRUSH DRIVE TRUST are of the par value of \$10.00 dollars each.

No transfer hereof will affect the OLIVER SAGEBRUSH DRIVE TRUST or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof on June 20th, 2012.

  
7 6-20-12  
TRUSTEE

# EXHIBIT D

D U R H A M  
J O N E S &  
P I N E G A R

Durham Jones & Pinegar, P.C.  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110  
801.415.3000  
801.415.3500 Fax  
www.djplaw.com

Robert Bolick  
Attorney at Law  
rbolick@djplaw.com

October 29, 2012

Ryan Alexander, Esq.  
THE FIRM  
200 E. Charleston Blvd.  
Las Vegas, NV 89104

Re: The Oliver Sagebrush Drive Trust  
Dated June 20, 2012

Dear Mr. Alexander:

You asked that I provide you with an opinion concerning the above-referenced trust.

Generally, courts are very lenient and accommodating in upholding the validity of trusts. All that is required is a grantor (person creating the trust) who delivers the property to a trustee (or can even hold it himself in a fiduciary capacity as a trustee) on behalf of the beneficiaries. There is not even a requirement that the parties be separate – a single individual can be the grantor declaring himself as the trustee on behalf of himself and/or others as the beneficiaries. If there is any way for a court to uphold a trust's validity, they tend to take that course.

In this trust the grantors are defined in the initial paragraph as the "certificate holders" referenced in Article V. Although the specific identity of the grantors is not disclosed, they could easily be identified as whoever transferred assets into the trust.

The trustee is Resources Group, LLC, a Nevada LLC. This entity appears to be a properly formed LLC under Nevada law. Mr. Haddad is both the registered agent and the manager. The owners of the LLC are not listed. Whether the owners are Mr. Haddad or someone else is completely irrelevant. The LLC is clearly indicated as the trustee of the trust. Lastly, as indicated above, the trustee could be Mr. Haddad individually instead of the LLC owned, controlled or operated by him. It would still be a valid trust under Nevada law.

Ryan Alexander, Esq.  
October 29, 2012  
Page 2

The trustee executed the document on the last page. This clearly evidences the intent to create a trust and for the LLC to hold the assets in a fiduciary capacity as trustee. It appears that Mr. Haddad's signature is notarized. This was not necessary under Nevada law.

Further indication of its viability as a trust are: the duties of the trustee are set forth in Article III, contingent beneficiaries are provided for in Article VII and distributions are set forth in Article X.

What is not clear is the declaration under Article I to create a "business trust." This does not specifically reference NRS Chapter 88A, nor has the trust, to the best of my knowledge, filed a Certificate of Trust with the Secretary of State as required under NRS 88A.210. It is not clear to me whether the term "business trust" was a term of art simply indicating the intent that the trust conducts business.

Another issue is the creation of transferable certificates under Article V of the trust. While this would not be standard under most trusts, it certainly wouldn't invalidate it as a Nevada trust. Under Nevada law, unless beneficiaries are specifically prohibited from transferring or alienating their beneficial interests (which would be contained in a typical Spendthrift provision), they are permitted to transfer their interest. Transfer of beneficial interests are specifically permitted under Article VII of the trust.

Lastly, there is an issue whether the trust could be amended. Section 15.1 specifically allows for amendments to the trust by the beneficiaries and the trustee.

All of these facts, when taken together clearly evidence the intent to create a trust under Nevada law. Most courts would find it to be valid.

Please let me know if you have any further questions or areas which you would like me to address concerning this trust.

Very truly yours,

DURHAM JONES & PINEGAR, P.C.



Robert L. Bolick

RLB:drl

# EXHIBIT E



**THE PARADISE HARBOR PLACE TRUST**

**Dated June 8th, 2012**

AA000870

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# *Trust Agreement*

## OF THE

### PARADISE HARBOR PLACE TRUST

This Agreement of trust made June 8th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

#### **ARTICLE I**

#### **DECLARATION OF TRUST**

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

#### **ARTICLE II**

#### **APPOINTMENT OF TRUSTEE**

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

#### **ARTICLE III**

#### **GENERAL DUTIES OF TRUSTEE**

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "PARADISE HARBOR PLACE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

## **ARTICLE X**

### **DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

## **ARTICLE XI**

### **TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are



permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

### **ARTICLE XIII**

#### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### **ARTICLE XIV**

#### **QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),

but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect



insofar as legally possible.

15.6 **Headings.** The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

15.7 **More Than One Original.** This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation.** Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**PARADISE HARBOR PLACE TRUST**

*IT* *6-8-12*  
By **RESOURCES GROUP, LLC**, Trustee  
Iyad Haddad, Manager

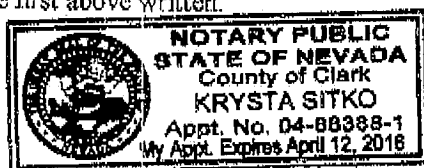
STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On July 23, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared **IYAD HADDAD**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



*[Signature]*  
NOTARY PUBLIC *Krysta Sitko*

## APPENDIX A

## LEGAL DESCRIPTION(S)

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5005 PARADISE HARBOR PL NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	TIERRA DE LAS PALMAS VILLAGE 2- UNIT 2 <u>PLAT BOOK 84 PAGE 89</u> LOT 92 BLOCK 3  SEC 32 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3728 LODINA CT ENTERPRISE
<u>ASSESSOR DESCRIPTION</u>	TRIANA UNIT 2 AT SOUTHERN HIGHLANDS <u>PLAT BOOK 111 PAGE 24</u> LOT 142  SEC 32 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2601 VENDANGE PL HENDERSON
<u>ASSESSOR DESCRIPTION</u>	PROVENCE SUB 4 <u>PLAT BOOK 122 PAGE 28</u> LOT 38 BLOCK 1  SEC 19 TWP 23 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	1704 PACIFIC BREEZE DR LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	PARCEL W IN THE CROSSING AT SUMMERLIN <u>PLAT BOOK 67 PAGE 11</u> LOT 127 BLOCK E  SEC 24 TWP 20 RNG 59
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5308 LA QUINTA HILLS ST NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	CORTEZ HGTS <u>PLAT BOOK 113 PAGE 81</u> LOT 130  SEC 35 TWP 19 RNG 61



<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	6420 INDIAN PEAK CT NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	ELDORADO R1 60 #11-TM #18 PLAT BOOK 113 PAGE 6 LOT 24 BLOCK 8  SEC 21 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	8904 GOLDSTONE AVE LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	IRON MOUNTAIN EST-UNIT 2 PLAT BOOK 92 PAGE 17 LOT 190 BLOCK 5  SEC 05 TWP 19 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2725 ECHO SPRINGS ST SUNRISE MANOR
<u>ASSESSOR DESCRIPTION</u>	YORKSHIRE HGTS-PHASE 2B PLAT BOOK 92 PAGE 98 LOT 49 BLOCK 1  SEC 15 TWP 20 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2088 CLUB CREST WAY HENDERSON
<u>ASSESSOR DESCRIPTION</u>	WARM SPRINGS RESERVE PHASE 2 UNIT 10 PLAT BOOK 41 PAGE 80 LOT 24 BLOCK 9  SEC 08 TWP 22 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	6188 STONE HOLLOW AVE SUNRISE MANOR
<u>ASSESSOR DESCRIPTION</u>	YORKSHIRE HGTS-PHASE 6 PLAT BOOK 96 PAGE 34 LOT 246 BLOCK 1  SEC 15 TWP 20 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3984 MEADOW FOXTAIL DR WHITNEY
<u>ASSESSOR DESCRIPTION</u>	DESERT INN MASTER PLAN LOT E PLAT BOOK 118 PAGE 33 LOT 67 BLOCK 2

SEC 15 TWP 21 RNG 62

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**PARADISE HARBOR PLACE TRUST**

PARADISE HARBOR PLACE TRUST

Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the **PARADISE HARBOR PLACE TRUST**, which he holds subject to an agreement and declaration of trust thereof, dated June 8th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the **PARADISE HARBOR PLACE TRUST** are of the par value of \$10.00 dollars each.

No transfer hereof will affect the **PARADISE HARBOR PLACE TRUST** or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof on June 8th, 2012.

  
TRUSTEE

AA000887

# EXHIBIT F

**THE RIVER GLIDER AVE TRUST**

**Dated Nov 28th, 2011**

AA000889

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# *Trust Agreement*

## OF THE

## RIVER GLIDER AVE TRUST

This Agreement of trust made Nov 28th, 2011, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

### **ARTICLE I**

#### **DECLARATION OF TRUST**

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

### **ARTICLE II**

#### **APPOINTMENT OF TRUSTEE**

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

### **ARTICLE III**

#### **GENERAL DUTIES OF TRUSTEE**

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "RIVER GLIDER AVE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.



## **ARTICLE X**

### **DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

## **ARTICLE XI**

### **TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.



### ARTICLE XIII

#### BOOKS, RECORDS, AND ACCOUNTING

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### ARTICLE XIV

#### QUALIFIED SUBCHAPTER S TRUSTS

14.1 S-Corporation Stock. To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),



but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect

insofar as legally possible.

15.6 **Headings.** The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

15.7 **More Than One Original.** This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation.** Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

### **ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**RIVER GLIDER AVE TRUST**

By [Signature]  
By **RESOURCES GROUP, LLC**, Trustee  
Iyad Haddad, Manager

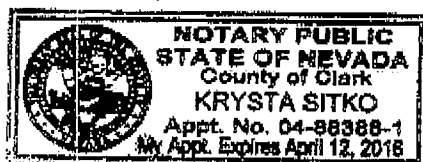
STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On June 27, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared **IYAD HADDAD**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



[Signature]  
NOTARY PUBLIC **KRYSTA SITKO**

## APPENDIX A

## LEGAL DESCRIPTION(S)

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	6513 DUCK HILL SPRINGS DR WHITNEY
<u>ASSESSOR DESCRIPTION</u>	RIVERWALK UNIT 3 PLAT BOOK 115 PAGE 91 LOT 88  SEC 15 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	10428 AMBER NIGHT ST ENTERPRISE
<u>ASSESSOR DESCRIPTION</u>	LAMPLIGHT GARDENS AT SILVERADO RANCH UNIT-4 PLAT BOOK 128 PAGE 87 LOT 214 BLOCK 1  SEC 26 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	6119 COZY CREEK ST NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	AZURE EST UNIT 3 PLAT BOOK 91 PAGE 64 LOT 90 BLOCK 1  SEC 27 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2670 EARLY VISTA ST SUNRISE MANOR
<u>ASSESSOR DESCRIPTION</u>	SAHARA SUNRISE PLAT BOOK 91 PAGE 12 LOT 70 BLOCK 1  SEC 10 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	10225 HEADRICK DR LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	MADISON COLONY AT PROVIDENCE UNIT 1 PLAT BOOK 138 PAGE 23 LOT 30 BLOCK 1  SEC 13 TWP 19 RNG 59
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	7919 HORN TAIL CT LAS VEGAS

<b><u>ASSESSOR DESCRIPTION</u></b>	ORCHARD VALLEY ELKHORN SPRINGS-CLUSTER HMS-UT 7 <u>PLAT BOOK 86 PAGE 96</u> LOT 19 BLOCK 9  SEC 16 TWP 19 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	8112 LAKE HILLS DR LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	HARBOR COVE <u>PLAT BOOK 42 PAGE 23</u> LOT 9 BLOCK 4  SEC 16 TWP 20 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	336 RIVER GLIDER AVE NORTH LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	PARKS UNIT 2 <u>PLAT BOOK 94 PAGE 27</u> LOT 139 BLOCK 3  SEC 22 TWP 19 RNG 61
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	7304 ROAMER PL LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	ELKHORN SPRINGS PARCEL 3A <u>PLAT BOOK 64 PAGE 34</u> LOT 68 BLOCK 4  SEC 16 TWP 19 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	5982 SPINNAKER POINT AVE SUNRISE MANOR
<b><u>ASSESSOR DESCRIPTION</u></b>	SPINNAKER HOMES AT SUNRISE MOUNTAIN UNIT 1 <u>PLAT BOOK 86 PAGE 32</u> LOT 1 BLOCK 1  SEC 34 TWP 20 RNG 62
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	10993 LADYBURN CT ENTERPRISE
<b><u>ASSESSOR DESCRIPTION</u></b>	ROYAL HIGHLANDS AT SOUTHERN HIGHLANDS-UNIT 1 <u>PLAT BOOK 104 PAGE 64</u> LOT 152  SEC 31 TWP 22 RNG 61

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**RIVER GLIDER AVE TRUST**

RIVER GLIDER AVE TRUST

Certificate No. 001 1,000 shares

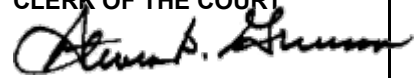
This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the RIVER GLIDER AVE TRUST, which he holds subject to an agreement and declaration of trust thereof, dated Nov 28th, 2011, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the RIVER GLIDER AVE TRUST are of the par value of \$10.00 dollars each.

No transfer hereof will affect the RIVER GLIDER AVE TRUST or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof, this the 28th day of Nov, 2011.

  
\_\_\_\_\_  
TRUSTEE



1 **OPPS**  
MICHAEL F. BOHN, ESQ.  
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LAW OFFICES OF  
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376 E. Warm Springs Rd., Ste. 140  
6 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX  
7 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

8  
9  
10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
14 AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
15 THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN TRUST 2006-OA1, MORTGAGE  
16 LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
17 CORPS

18 Defendants.

19 U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
20 AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
21 THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN TRUST 2006-OA1, MORTGAGE  
22 LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1,

23 Counterclaimant,

24 vs.

25 5316 CLOVER BLOSSOM CT TRUST

26 Counterdefendant.  
27  
28

CASE NO.: A-14-704412-C  
DEPT NO.: XXIV

**PLAINTIFF'S OPPOSITION TO U.S.  
BANK, N.A., AS TRUSTEE'S MOTION  
FOR RECONSIDERATION  
UNDER NRCP 59**

Date of Hearing: April 3, 2018  
Time of Hearing: Chambers

1 U.S. BANK, NATIONAL ASSOCIATION,  
2 SUCCESSOR TRUSTEE TO BANK OF  
3 AMERICA, N.A., SUCCESSOR BY MERGER  
4 TO LASALLE BANK, N.A., AS TRUSTEE TO  
5 THE HOLDERS OF THE ZUNI MORTGAGE  
6 LOAN TRUST 2006-OA1, MORTGAGE  
7 LOAN PASS-THROUGH CERTIFICATES  
8 SERIES 2006-OA1,

9 Cross-claimant,

10 vs.

11 5316 CLOVER BLOSSOM CT TRUST

12 Cross-defendant.

13 Plaintiff 5316 Clover Blossom Ct Trust (hereinafter “plaintiff”), by and through its counsel,  
14 Michael F. Bohn, Esq., submits the following points and authorities in opposition to the motion for  
15 reconsideration under NRCP 59, filed on February 26, 2018, by defendant, U.S. Bank, National  
16 Association, successor trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as  
17 Trustee to the Holders of Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through  
18 Certificates, Series 2006-OA1 (hereinafter “defendant”).

19 **POINTS AND AUTHORITIES**

20 **STATEMENT OF FACTS**

21 As proved by the trustee’s deed upon sale, recorded on January 24, 2013 (Exhibit H to  
22 defendant’s answer to amended complaint, counterclaims, and cross-claims, filed October 10, 2017),  
23 plaintiff acquired title to the real property located at 5316 Clover Blossom Court, North Las Vegas,  
24 Nevada (hereinafter “Property”) by entering and paying the high bid of \$8,200.00 at the public auction  
25 held on January 16, 2013.

26 As proved by the assignment of deed of trust recorded on June 20, 2011 (Exhibit B to defendant’s  
27 answer to amended complaint, counterclaims, and cross-claims, filed October 10, 2017), defendant is the  
28 assigned beneficiary of a deed of trust recorded against the Property on June 30, 2004. See Exhibit A to  
defendant’s answer to amended complaint, counterclaims, and cross-claims, filed October 10, 2017.

1 On February 22, 2012, Alessi & Koenig, LLC (hereinafter “foreclosure agent”) recorded a notice  
2 of delinquent assessment (lien) for \$1,095.50 against the Property. See Exhibit C to defendant’s answer  
3 to amended complaint, counterclaims, and cross-claims, filed October 10, 2017.

4 On April 20, 2012, the foreclosure agent recorded a notice of default and election to sell under  
5 homeowners association lien for \$3,396.00 against the Property. See Exhibit E to defendant’s answer  
6 to amended complaint, counterclaims, and cross-claims, filed October 10, 2017.

7 On October 31, 2012, the foreclosure agent recorded a notice of foreclosure sale for \$4,039.00  
8 against the Property. See Exhibit F to defendant’s answer to amended complaint, counterclaims, and  
9 cross-claims, filed October 10, 2017.

10 At page 4 of its motion, defendant states that the letter by Rock K. Jung, Esq. of Miles, Bauer,  
11 Bergstrom & Winters, LLP, dated December 6, 2012 (Exhibit G-3 to defendant’s answer to amended  
12 complaint, counterclaims, and cross-claims, filed October 10, 2017), “made clear that the payment was  
13 meant to extinguish only the super-priority portion of the HOA’s lien.” Page 2 of the letter instead states  
14 that the \$1,494.50 was a “non-negotiable amount” that “takes into account both the maximum 9 months  
15 worth of common assessments **as well as reasonable collection costs** to satisfy its obligations to the  
16 HOA as a holder of the first deed of trust against the property.” (emphasis added)

17 At page 4 of its motion, defendant states that Section 9.1 of the CC&Rs for the HOA “stated that  
18 ‘no enforcement of any lien provision [in the CC&Rs] shall defeat or render invalid’ a senior deed of  
19 trust.” See Exhibit A to defendant’s opposition to motion to dismiss counterclaim, filed on November  
20 9, 2017.

21 On the other hand, Section 4.12 of the CC&Rs is titled “Super Priority” and provide that the  
22 HOA’s assessment lien is “also prior to all Security Interests described in Sub-section 4.11(c).” Sub-  
23 section 4.11(c) describes “a First Security Interest on the Lot recorded before the date on which the  
24 assessment sought to be enforced became delinquent.”

25 **LEGAL ARGUMENT**

26 **1. The information listed in the bankruptcy schedules and other pleadings filed**  
27 **by River Glider Avenue Trust does not affect the rights obtained by plaintiff**  
28 **by entering the high bid at the public auction held on January 16, 2013.**



1 At page 7 of its motion, defendant states that “[t]he 2012 bankruptcy filings for Haddad’s River  
2 Glider Trust explicitly state that it purchased properties ‘subject to the first mortgage lien’ at HOA Lien  
3 auctions.” On the other hand, River Glider Ave Trust is not a party to this action, and River Glider Ave  
4 Trust did not enter a bid at the public auction where plaintiff purchased the Property.

5 At page 8 of its motion, defendant cites Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 248  
6 (1979), as authority that “[t]he burden of establishing bona fide purchaser status rests with the party  
7 claiming such status – here, plaintiff.” Plaintiff then states that “[p]laintiff cannot meet this burden  
8 because its Manager, Eddie Haddad, admitted that senior deeds of trust survive foreclosure sales in a  
9 bankruptcy filing **for another trust** he managed.” (emphasis added)

10 In Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev., Adv.  
11 Op. 91, 405 P.3d 641, 646 (2017) (hereinafter “Shadow Canyon”), the Nevada Supreme Court quoted  
12 from Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d 314, 318 (1996), that “there is a  
13 presumption in favor of the record titleholder.” The Court also cited the presumptions in NRS 47.250(16)  
14 and NRS 116.31166(1)-(2).

15 Defendant misstates the meaning attributed to River Glider Ave Trust listing certain creditors in  
16 Schedule D of the bankruptcy schedules attached as Exhibit B to defendant’s motion. Listing a creditor  
17 is not an admission by the debtor that the creditor’s claim is valid. 11 U.S.C. § 101(10)(A) defines a  
18 “creditor” as an “entity that has a claim against the debtor that arose at the time of or before the order for  
19 relief concerning the debtor,” and 11 U.S.C. § 101(5)(A) defines a “claim” to be a “right to payment,  
20 whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
21 unmatured, **disputed**, undisputed, legal, equitable, secured, or unsecured . . . .” (emphasis added) 11  
22 U.S.C. § 521(a)(1) requires that the debtor file “a list of creditors” and “a schedule of assets and  
23 liabilities.”

24 By complying with the requirements of the Bankruptcy Code, River Glider Ave Trust did not  
25 admit that any of the deeds of trust were not affected by the separate foreclosure of each HOA’s  
26 superpriority lien. Because no court had yet resolved the issue, the debtor was required to list each lender  
27 as a creditor even though the debtor believed that each deed of trust had been extinguished by a properly  
28

1 conducted HOA foreclosure sale.

2 Similarly, the motion filed with the bankruptcy court on July 5, 2012 (Exhibit C to defendant's  
3 motion) was necessary because on that date, the Nevada Supreme Court had not yet entered its decision  
4 in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., which adopted plaintiff's understanding that the  
5 HOA's foreclosure of its superpriority lien would extinguish a prior recorded deed of trust. The same is  
6 true regarding the motion filed on October 8, 2012. (Exhibit D to defendant's motion)

7 The Nevada Supreme Court examined the doctrine of judicial estoppel in Marcuse v. Del Webb  
8 Communities, Inc., 123 Nev. 278, 163 P.3d 462, 468-469 (2007), and NOLM, LLC v. County of Clark,  
9 120 Nev. 736, 100 P.3d 658 (2004). In NOLM, LLC v. County of Clark, the Court stated:

10 Whether judicial estoppel applies is a question of law subject to de novo review. The  
11 primary purpose of judicial estoppel is to protect the judiciary's integrity, and a court may  
12 invoke the doctrine at its discretion. However, judicial estoppel should be applied only  
13 when "a party's inconsistent position [arises] from intentional wrongdoing or an attempt  
14 to obtain an unfair advantage." Judicial estoppel does not preclude changes in position that  
15 are not intended to sabotage the judicial process.[21]

16 [T]he doctrine generally applies "when "(1) **the same party has taken**  
17 **two positions**; (2) the positions were taken in judicial or quasi-judicial  
18 administrative proceedings; (3) **the party was successful in asserting the**  
19 **first position** (i.e., the tribunal adopted the position or accepted it as true);  
20 (4) the two positions are totally inconsistent; and (5) the first position was  
21 not taken as a result of ignorance, fraud, or mistake.""

22 Here, **the judicial estoppel doctrine does not even apply, as the County never asserted**  
23 **a contrary position in a prior judicial or quasi-judicial proceeding.** (emphasis added)

24 100 P.3d at 663.

25 Defendant cannot prove the elements of judicial estoppel because all pleadings filed by the debtor  
26 consistently took the position that each subordinate deed of trust could not interfere with the debtor's use  
27 and enjoyment of the different properties (none of which are the Property involved in the present case).

28 There is also no "risk of inconsistent court determinations" because the relief requested by the  
debtor did not require that the Bankruptcy Court make a final determination that each deed of trust was  
not extinguished by the HOA foreclosure sale. Furthermore, the bankruptcy case was dismissed before  
the court ruled on the motions filed by the debtor.

Regarding the present case, defendant has not alleged or proved that plaintiff asserted a contrary

1 position relating to the Property in any prior judicial or quasi-judicial proceeding. Neither plaintiff nor  
2 the Property acquired by plaintiff on January 16, 2013 were identified in any pleading filed in the River  
3 Glider Ave Trust bankruptcy case.

4 At the top of page 10 of its motion, defendant states that Exhibit A to its motion proves that  
5 “Plaintiff knew it purchased a junior interest in the Property here, when free and clear title to the Property  
6 was worth \$105,000.”

7 Exhibit A is a retrospective residential appraisal summary report prepared by Valbridge Property  
8 Advisors based on an inspection of the Property on October 19, 2017 (more than four years after the date  
9 of the HOA foreclosure sale). At the bottom of the page 1 (LUBAWY000001), the report states:

10 As of the effective date of this appraisal, the subject property is assumed to be in average  
11 condition. At the time of inspection, there were no apparent major repairs, renovation,  
12 or remodeling evident. The effective age is based on the appraiser’s exterior inspection  
13 of the property. **An exterior inspection of the property was performed from the**  
14 **street. An extraordinary assumption is made that the interior is in similar condition**  
15 **as the exterior and that the condition was similar at the effective date of this**  
16 **appraisal. The use of the extraordinary assumption may have affected the**  
17 **assignment results.** (emphasis in original)

18 Defendant’s motion is not supported by any evidence proving that the “extraordinary  
19 assumptions” used by defendant’s appraiser are true.

20 The appraisal report also fails to mention the Detrimental Condition that distinguishes the  
21 Property in the present case from the three comparable sales (one REO, one traditional, and one short  
22 sale) listed at page 2 of the report. Unlike the three comparable sales, plaintiff did not receive insurable  
23 clear title to the Property because no title company in Southern Nevada is willing to issue title insurance  
24 following an HOA foreclosure sale. The lack of insurable clear title precludes traditional financing  
25 options to future buyers and adversely affects plaintiff’s right of disposition of the Property.

26 The Appraisal of Real Estate, 14th Edition, p. 406 (Chicago: Appraisal Institute, 2013) states:  
27 “Before a comparable sale property can be used in sales comparison analysis, the appraiser must first  
28 ensure that the sale price of the comparable property applies to **property rights that are similar** to those  
being appraised.” (emphasis added) Because the appraisal report offered by plaintiff violates this  
standard, the value assigned to the Property by plaintiff’s appraiser is merely hypothetical.

1 Furthermore, prior to the date of the foreclosure sale held on January 16, 2013, the Nevada Real  
2 Estate Division issued its Advisory Opinion No. 13-01 on December 12, 2012, which provides:

3 The ramifications of the super priority lien are significant in light of the fact that superior  
4 liens, when foreclosed, remove all junior liens. An association can foreclose its super  
5 priority lien and the first security interest holder will either pay the super priority lien  
6 amount or lose its security.

7 Id. at 9.

8 Advisory Opinion No. 13-01 was also issued after River Glider Ave Trust filed each of the  
9 pleadings attached as Exhibits B, C, D and E to defendant's motion. Even if the court assumes that  
10 plaintiff held the belief that defendant ascribes to River Glider Ave Trust before December 12, 2012,  
11 there is no reason to believe that River Glider Ave Trust or plaintiff still held that belief after the issuance  
12 of Advisory Opinion No. 13-01.

13 In addition, subjective beliefs by either plaintiff or defendant do not affect the "fundamental  
14 principle of mortgage law" that "[a] valid foreclosure as a mortgage terminates all interests in the  
15 foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly  
16 joined of notified under applicable law." Restatement (Third) of Prop.: Mortgages, § 7.1 (1997). This  
17 "fundamental principle of mortgage law" applies to the HOA foreclosure sale pursuant to NRS 116.1108.

18 In Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp. Inc., 132  
19 Nev. Adv. Op. 5, 366 P.3d 1105, 1115 (2016), the Nevada Supreme Court stated that the consideration  
20 paid by a bona fide purchaser need only be "valuable" (quoting Fair v. Howard, 6 Nev. 304, 308 (1871))  
21 and "that the fact that the foreclosure sale purchaser purchased the property for a 'low price' did not in  
22 itself put the purchaser on notice that anything was amiss with the sale." (quoting Poole v. Watts, 139  
23 Wash. App. 1018 (2007) (unpublished disposition)) The \$8,200.00 paid by plaintiff satisfies these  
24 standards.

25 Furthermore, as discussed in the supplemental authority in support of motion to dismiss  
26 counterclaim, filed on November 28, 2017, the Shadow Canyon decision requires that defendant allege  
27 and prove "some element of fraud, unfairness, or oppression as accounts for and brings about" the high  
28 bid of \$8,200.00 paid by plaintiff on January 16, 2013. Defendant has not identified any allegations in

1 its counterclaim, that even if assumed to be true, would satisfy this standard.

2 **2. The additional evidence that defendant seeks to discover cannot support granting**  
3 **equitable relief in favor of defendant against plaintiff.**

4 At page 11 of its motion, defendant quotes from NRCP 12(b) and states that “U.S. Bank was  
5 prevented from completing planned discovery, which included depositions of the HOA and HOA  
6 Trustee, and receiving subpoenaed documents from the HOA.”

7 First, defendant states that it needs time to discover “whether the HOA’s rejection of Bank of  
8 America’s check was done for a good-faith reason, so as to invalidate the tender.” As set forth at pages  
9 7 to 10 of plaintiff’s motion to dismiss counterclaim, even if the HOA and its foreclosure agent  
10 wrongfully rejected the non-negotiable offer made by Miles Bauer on December 6, 2012, defendant’s  
11 remedy is to recover damages against the HOA and its foreclosure agent and not to obtain equitable relief  
12 against plaintiff modifying the effect of the HOA foreclosure sale. Defendant’s motion for reconsideration  
13 cites no contrary authority.

14 Second, defendant states that it needs to discover “whether Plaintiff believed it was purchasing  
15 a sub-priority interest in the Property at HOA foreclosure sale.” On the other hand, Exhibits C, E and F  
16 to defendant’s answer, counterclaims, and cross-claims, filed on October 10, 2017, prove that each notice  
17 recorded by the HOA stated “the total amount of the lien” as approved by the Nevada Supreme Court in  
18 SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 418 (2014).  
19 Because the \$8,200.00 paid by plaintiff exceeds the full amount of the \$4,039.00 claimed in the notice  
20 of trustee’s sale (Exhibit F to defendant’s answer, counterclaims, and cross-claims), the HOA necessarily  
21 foreclosed the entire amount of its lien, including the superpriority portion of the lien that was not paid  
22 prior to the sale. Defendant also admits that the HOA rejected the non-negotiable offer to pay only  
23 \$1,494.50 made by Miles Bauer on December 6, 2012, so defendant cannot dispute that the superpriority  
24 lien remained unpaid on January 16, 2013.

25 Third, defendant states that it needs to discover “whether Plaintiff’s claim that the Deed of Trust  
26 was extinguished constitutes fraud or unfairness in light of the statements in Plaintiff’s other trusts’  
27 bankruptcy filings regarding the purchaser of encumbered properties.”

1 The Nevada Supreme Court has recognized that “[t]o prove a fraud claim, the plaintiff must show  
2 that the defendant made a false representation that the defendant knew or believed was false, that the  
3 defendant intended to persuade the plaintiff to act or not act based on the representation, and that the  
4 plaintiff had reason to rely on the representation and suffered damages.” Franchise Tax Board of  
5 California v. Hyatt, 133 Nev. Adv. Op. 57, 401 P.3d 1110, 1131 (2017) (citing Bulbman, Inc. v. Nevada  
6 Bell, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992)).

7 At the top of page 8 of its motion, defendant states that the pleadings filed by River Glider Ave  
8 Trust “suggest that Plaintiff’s manager is acting in bad faith in this present case when he argues that the  
9 Deed of Trust is extinguished.” Plaintiff is a separate and independent entity from the River Glider Ave  
10 Trust that filed bankruptcy, so statements made by that independent entity cannot be attributed to plaintiff.  
11 Furthermore, defendant has not alleged or proved that plaintiff made a false statement that plaintiff knew  
12 was false with the intent to persuade defendant to act or not act and that defendant reasonably relied on  
13 that false statement to its detriment.

14 As set forth above, judicial estoppel requires that defendant prove that (1) plaintiff has taken two  
15 positions; (2) that the positions were taken in judicial or quasi-judicial administrative proceedings; (3)  
16 that plaintiff was successful in asserting the first position (i.e., the tribunal adopted the position or  
17 accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken  
18 as a result of ignorance, fraud, or mistake. NOLM, LLC v. County of Clark, 120 Nev. 736, 100 P.3d 658,  
19 663 (2004). Because plaintiff and the River Glider Ave Trust are separate and independent entities, it is  
20 impossible for statements made in bankruptcy pleadings filed by River Glider Ave Trust to prove that  
21 plaintiff acted fraudulently in entering the high bid at the public auction held on January 16, 2013.

22 Defendant also states that it needs to discover “whether Plaintiff could show that it lacked all  
23 notice of Bank of America’s competing interest in the Property (so as to constitute a bona fide  
24 purchaser).” On the other hand, constructive notice of the recorded deed of trust is irrelevant because  
25 “NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish  
26 a first deed of trust.” SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d at 419.

27 Plaintiff did not acquire title to the Property “subject to” an extinguished deed of trust.  
28

1 With respect to defendant's unrecorded claim that the HOA and its foreclosure agent wrongfully  
2 rejected the conditional tender made by Miles Bauer, the law of real property (Restatement (Third) of  
3 Prop.: Mortgages, §6.4 (1997)) requires that any claim of tender be recorded. Any evidence proving that  
4 defendant made its unrecorded claim of tender known to the bidders at the public auction held on January  
5 16, 2013 would necessarily be withing defendant's possession or control. Because defendant has not  
6 alleged or proved that it provided notice of this unrecorded claim to plaintiff prior to the public auction,  
7 that unrecorded claim is void as to plaintiff pursuant to NRS 111.325.

8 DATED this 14th day of March, 2018.

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

11 By: /s/ Michael F. Bohn, Esq. /  
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16 Attorney for plaintiff

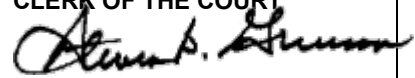
17 **CERTIFICATE OF SERVICE**

18 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
19 Offices of Michael F. Bohn., Esq., and on the 14th day of March, 2018, an electronic copy of the  
20 PLAINTIFF'S OPPOSITION TO U.S. BANK, N.A., AS TRUSTEE'S MOTION FOR  
21 RECONSIDERATION UNDER NRCP 59 was served on opposing counsel via the Court's electronic  
22 service system to the following counsel of record:

23 Darren T. Brenner, Esq.  
24 Karen A. Whelan, Esq.  
25 Rebekkah B. Bodoff, Esq.  
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29 /s/ /Marc Sameroff /  
30 An Employee of the LAW OFFICES OF  
31 MICHAEL F. BOHN, ESQ., LTD.



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12 *Attorneys for Country Garden Owners' Association*

13  
14  
15 DISTRICT COURT

16  
17 CLARK COUNTY, NEVADA

18 5316 CLOVER BLOSSOM CT TRUST;

19 Plaintiff,

20 v.

21 U.S. BANK, NATIONAL ASSOCIATION,  
22 SUCCESSOR TRUSTEE TO BANK OF  
23 AMERICA, N.A., SUCCESSOR BY MERGER TO  
24 LASALLE BANK, N.A., AS TRUSTEE TO THE  
25 HOLDERS OF THE ZUNI MORTGAGE LOAN  
26 PASS-THROUGH CERTIFICATES SERIES 2006-  
27 OA1; and CLEAR RECON CORPS,

28 Defendants.

29 U.S. BANK, NATIONAL ASSOCIATION,  
30 SUCCESSOR TRUSTEE TO BANK OF  
31 AMERICA, N.A., SUCCESSOR BY MERGER TO  
32 LASALLE BANK, N.A., AS TRUSTEE TO THE  
33 HOLDERS OF THE ZUNI MORTGAGE LOAN  
34 PASS-THROUGH CERTIFICATES SERIES 2006-  
35 OA1; and CLEAR RECON CORPS,

36 Counterclaimant,

37 v.

38 5316 CLOVER BLOSSOM CT TRUST;

Counterdefendant.

CASE NO: A-14-704412-C

DEPT NO: XXIV

**NOTICE OF ENTRY OF ORDER  
GRANTING COUNTRY GARDEN  
OWNERS' ASSOCIATION'S  
MOTION TO DISMISS THE  
CROSSCLAIMS OF U.S. BANK,  
NATIONAL ASSOCIATION,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
JUDGMENT**



1 U.S. BANK, NATIONAL ASSOCIATION,  
2 SUCCESSOR TRUSTEE TO BANK OF  
3 AMERICA, N.A., SUCCESSOR BY MERGER TO  
4 LASALLE BANK, N.A., AS TRUSTEE TO THE  
5 HOLDERS OF THE ZUNI MORTGAGE LOAN  
6 PASS-THROUGH CERTIFICATES SERIES 2006-  
7 OA1; and CLEAR RECON CORPS,

8 Cross-Claimant,  
9 v.

10 COUNTRY GARDEN OWNERS ASSOCIATION;  
11 Cross-Defendant.

12 **NOTICE OF ENTRY OF ORDER GRANTING COUNTRY GARDEN**  
13 **OWNERS' ASSOCIATION'S MOTION TO DISMISS THE**  
14 **CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION,**  
15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

16 PLEASE TAKE NOTICE that the attached Order Granting Country Garden Owners'  
17 Association's Motion To Dismiss The Crossclaims Of U.S. Bank, National Association, Findings Of  
18 Fact, Conclusions Of Law, And Judgment was entered in the above entitled action on the 13<sup>th</sup> day of  
19 April, 2018.

20 DATED this 16<sup>th</sup> day of April, 2018.

21 **PENGILLY LAW FIRM**

22 

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PENGILLY LAW FIRM



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that on the 16<sup>th</sup> day of April, 2018, a copy of  
**NOTICE OF ENTRY OF ORDER GRANTING COUNTRY GARDEN OWNERS’  
ASSOCIATION’S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK,  
NATIONAL ASSOCIATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
JUDGMENT**, was served upon those persons designated by the parties in the E-Service Master List  
for the above-referenced matter in the Eighth Judicial District Court E-Filing System in compliance  
with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada  
Electronic Filing and Conversion Rules.

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DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS,

Defendants.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS,

CASE NO: A-14-704412-C

DEPT NO: XXIV

**ORDER GRANTING COUNTRY  
GARDEN OWNERS'  
ASSOCIATION'S MOTION TO  
DISMISS THE CROSSCLAIMS OF  
U.S. BANK, NATIONAL  
ASSOCIATION, FINDINGS OF  
FACT, CONCLUSIONS OF LAW,  
AND JUDGMENT**

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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Counterclaimant,

v.

5316 CLOVER BLOSSOM CT TRUST;

Counter-Defendant.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS,

Cross-Claimant,

v.

COUNTRY GARDEN OWNERS'  
ASSOCIATION;

Cross-Defendant.

**ORDER GRANTING COUNTRY GARDEN OWNERS' ASSOCIATION'S MOTION TO  
DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION, FINDINGS  
OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

This matter was heard in Department 24, on December 12, 2017, at 9:00 am, Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott Lachman, Esq. appearing on behalf of defendant U.S. Bank, National Association, Successor Trustee to Bank of America, N.A., Successor by Merger to Lasalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-through Certificates Series 2006-OA1 ("US Bank" or the "Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners'

1 Association (the "HOA"), and the court, having reviewed COUNTRY GARDEN OWNERS'  
2 ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL  
3 ASSOCIATION, U.S. Bank's opposition and the HOA's reply in support, the attached exhibits, and  
4 having heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as  
5 follows:

6 **FINDINGS OF FACT**

7 1. The subject of this litigation is a certain foreclosure sale of residential real property  
8 located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031, APN 124-31-220-092 (the  
9 "Property"). (Compl. at ¶6.)

10 2. On January 16, 2013, the HOA foreclosed its lien for delinquent assessments against  
11 the Property ("Foreclosure Sale").

12 3. The Foreclosure Deed ("Foreclosure Deed") was recorded on January 24, 2013.

13 4. On July 25, 2014, the record owner of the Property, 5316 Blossom Ct. Trust (the  
14 "Buyer"), filed this action, seeking to quiet title in the Property against the Bank.

15 5. The Bank filed its Answer on September 25, 2014.

16 6. On September 28, 2017, the Bank and the Buyer filed a stipulation and order allowing  
17 the Bank to add its cross-claims against the HOA.

18 7. In U.S. Bank, N.A., as Trustee's Answer to 5316 Clover Blossom Trust's Amended  
19 Complaint, Counterclaims, and Cross-Claims ("Cross-Claim"), the Bank asserts the following claims  
20 against the HOA: Third Cause of Action, Unjust Enrichment, Fourth Cause of Action, Tortious  
21 Interference with Contractual Relations; Fifth Cause of Action, Breach of the Duty of Good Faith;  
22 and Sixth Cause of Action, Wrongful Defective Foreclosure.

23 8. The Cross-Claim does not contain a sworn statement pursuant to NRS 38.330 stating  
24 that the issues addressed in the Cross-Claim have been mediated pursuant to the provisions of NRS  
25 38.300 to 38.360, inclusive, but an agreement was not obtained.



## CONCLUSIONS OF LAW

1. If, in a motion under NRCP 12(b)(5), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *See* NRCP 12(b).

2. This Court finds that, by virtue of the arguments presented in the HOA's motion to dismiss, US Bank's opposition, and the HOA's reply, matters outside the cross-claims were presented and, thus, the HOA's motion to dismiss was converted into a motion for summary judgment and this court is treating it as such.

3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026 (2005).

4. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show there is some metaphysical doubt: as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1983)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* P.3d at 1130. Further, in ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008).

5. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *Harlow v. MTC Financial Inc.* 865 F. Supp.2d 1095 (D. Nev. 2012). The recorded exhibits to the HOA's motion to dismiss and US Bank's cross-claim are public records of which the Court may, and did take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.)

1 “Documents accompanied by a certificate of acknowledgment of a notary public or officer  
2 authorized by law to take acknowledgments are presumed to be authentic.” NRS 52.165.

3 **A. The Applicable Statutes of Limitation Bar the Bank's Claims**

4 6. “In determining whether a statute of limitations has run against an action, the time  
5 must be computed from the day the cause of action accrued.

6 7. A cause of action ‘accrues’ when a suit may be maintained thereon.” *Clark v.*  
7 *Robison*, 944 P.2d 788, 789 (Nev. 1997).

8 8. Pursuant to Nevada Revised Statute 111.320, a recorded document will “impart  
9 notice to all persons of the contents thereof . . . .” In addition, “[i]f the facts giving rise to the cause  
10 of action are matters of public record then ‘[t]he public record gave notice sufficient to start the  
11 statute of limitations running.’” *Job’s Peak Ranch Cmty. Ass’n, Inc. v. Douglas Cty.*, No. 55572,  
12 2015 WL 5056232, at \*3 (Nev. Aug. 25, 2015); *see also U.S. Bank Nat’l Ass’n v. Woodland Village*,  
13 3:16-cv-00501-RCJ-WGC at DE #32, page 5, lines 21-23.

14 9. Nevada Revised Statute 11.190 describes the statutes of limitations that are applicable  
15 to various causes of action. Pursuant to this statute, a six-year limitations period applies to “[a]n  
16 action upon a contract, obligation or liability founded upon an instrument in writing.” A four-year  
17 limitations period applies to a claim for unjust enrichment. A three-year limitations period applies to  
18 “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” A claim for  
19 tortious interference with contract is also “subject to the three-year statute of limitations set forth in  
20 NRS 11.190(3)(c).” *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev. 2009). Finally, pursuant to another  
21 catch-all statute that follows NRS 11.190, NRS 11.220, “[a]n action for relief, not hereinbefore  
22 provided for [within the Nevada Revised Statutes], must be commenced within 4 years after the  
23 cause of action shall have accrued.”

24 10. The Bank's cross-claims for unjust enrichment, tortious interference with contractual  
25 relations, breach of the duty of good faith, and wrongful or defective foreclosure are all barred by the

1 statute of limitations because their limitations period is either three or four years and the complaint  
2 was filed four years and nine months after the Foreclosure Deed was recorded, giving the Bank  
3 notice that its causes of action against the HOA had accrued.

4 *Unjust Enrichment*

5 11. "The statute of limitation for an unjust enrichment claim is four years." *In re Amerco*  
6 *Derivative Litig.*, 252 P.3d 681, 703 (Nev. 2011)(citing NRS 11.190(2)(c)). The Bank's claim for  
7 unjust enrichment accrued on January 24, 2013; however, the Bank did not file its claim until after  
8 the four-year limitations period, in September of 2017.

9 *Tortious Interference with Contractual Relations*

10 12. The Bank's second cross-claim against the HOA is for tortious interference with  
11 contractual relations. A claim for tortious interference with contract is also "subject to the three-year  
12 statute of limitations set forth in NRS 11.190(3)(c)." *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev.  
13 2009). Because this claim accrued on January 24, 2013, but was not filed until September of 2017 it  
14 is barred by NRS 11.190(3)(c).

15 *Breach of the Duty of Good Faith*

16 13. The fifth cause of action in the Complaint is for breach of the duty of good faith that  
17 is found within NRS 116.1113. Because this is a claim regarding a violation of a statute it is  
18 governed by NRS 11.190(3)(a) which states that "[a]n action upon a liability created by state, other  
19 than a penalty or forfeiture" must be brought within 3 years. Because this claim was not brought  
20 until September 2017, more than four years after the recording of the foreclosure deed, this cause of  
21 action is barred.

22 *Wrongful/Defective Foreclosure*

23 14. The sixth cause of action in the Complaint is for "Wrongful / Defective Foreclosure."  
24 The Complaint's allegations center primarily on a discussion of an alleged tender by the Bank to the  
25 HOA's collection company.



15. This claim should have a three-year statute of limitations.

A tortious wrongful foreclosure claim 'challenges the authority behind the foreclosure, not the foreclosure act itself.' Red Rock's authority to foreclose on the HOA lien on behalf of the HOA arose from Chapter 116, essentially rendering count three a claim for damages based on liability created by a statute. Therefore, count three is likewise time-barred under NRS 11.190(3)(a) because it was not brought within three years.

*HSBC Bank USA v. Park Ave. Homeowners' Assn.*, 216CV460JCMNJK, 2016 WL 5842845, at \*3 (D. Nev. Oct. 3, 2016) (Citing *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013) (en banc)).

16. Even assuming that a claim for wrongful foreclosure did not fall under NRS 11.190(3)(a), it would fall within the catch-all provision in NRS 11.220 and would have a four-year limitations period. Consequently, all of the bank's claims regarding violation of NRS Chapter 116 are time barred.

**B. In Addition, the Bank Lacks Standing to Bring a Claim for Violation of NRS 116.1113**

17. Nevada Revised Statute NRS 116.4117 creates a private right of action for violations of NRS 116, but specifically limits standing to bring such a claim to only specific classes of persons.

18. The relevant language of NRS 116.4117 provides as follows:

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

- (a) By the association against:
- (1) A declarant;
  - (2) A community manager; or
  - (3) A unit's owner.

- (b) By a unit's owner against:

- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

19. Nevada Revised Statute 116.095 defines "unit's owner" as "a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, **but does not include a person having an interest in a unit solely as security for an obligation.**" (emphasis added).

20. Based on this provision and on other provisions in Chapter 116, for example NRS 116.2119, the legislature knew that secured lenders had potential interests in property that could be subject to NRS Chapter 116, but chose not to include them in the list of entities with standing to bring a claim for violations of Chapter 116. Consequently, Plaintiff's claims for violation of NRS 116.1113 should also be dismissed for lack of standing.

**C. To the Extent that the Bank's Claims Concern the CC&Rs, the Claims Should Still Be Dismissed Because the Bank Has Failed to Comply with NRS 38.310**

21. Nevada Revised Statute 38.310 provides:

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property, may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

22. Furthermore, Nevada Revised Statute 38.330 states that “[a]ny complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, but an agreement was not obtained.”

23. Although the Cross-Claim does not contain allegations regarding the CC&Rs, it does contain a claim for wrongful foreclosure. It does not contain an affidavit in compliance with NRS 38.330.

24. To the extent that the wrongful foreclosure claim requires the interpretation, enforcement or application of the CC&Rs, the claim should be dismissed so the Bank can comply with NRS 38.310.

#### D. The Doctrine of Equitable Tolling Does Not Apply

25. Equitable tolling allows the suspension of the running of a statute of limitations when the claim would have been filed timely but for a procedural technicality. *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983). Even when a procedural technicality is the basis for a claim's untimely filing, the doctrine should only be applied when “the danger of prejudice to the defendant is absent” and “the interests of justice so require.” *Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 152, 111 P.3d 1107, 1112 (2005) (quoting *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir.2002)).

26. When applying the doctrine of equitable tolling, the Nevada Supreme Court has examined the following non-exclusive factors to determine whether it would be just or fair to toll the statute of limitations:

the diligence of the claimant; the claimant's knowledge of the relevant facts; the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; any deception or false assurances on the part of the employer against whom the claim is made; the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and any other equitable considerations appropriate in the particular case.

1 *Copeland v. Desert Inn Hotel*, 673 P.2d 490, 492 (Nev. 1983).

2 27. In this case, the Bank claims that it is entitled to equitable tolling of the applicable  
3 statutes; however, pursuant to the *Copeland* factors equitable tolling does not apply.

4 *The Delay in Filing Will Prejudice the HOA*

5 28. First, equitable tolling may never be applied if it will prejudice the defendant. *Seino*,  
6 121 Nev. at 152. In this case, the Bank has not argued that the HOA will not be prejudiced by the  
7 Bank's delay in filing the claims against the HOA.

8 29. Because the Bank has not come forward with specific facts to show there is a genuine  
9 issue as to whether the HOA will be prejudiced by the delay in filing with its attendant loss of  
10 memory for the potential witnesses to this matter, this factor weighs in favor of the HOA.

11 *The Bank Did Not Show that it Relied on the CC&Rs*

12 30. While the Bank argues that it relied on the mortgagee protection clause, the evidence  
13 demonstrates the opposite.

14 31. In Exhibit G-3 to the Bank's Cross-Claim, the Bank's attorney states "a portion of  
15 [the] HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of  
16 assessments for common expenses incurred before the date of [the] notice of delinquent assessment."  
17 The Bank's attorney then proceeds to take action based upon that statement, that is the Bank's  
18 attorney sent a check to the HOA Trustee, as a tender, presumably based on an intention to satisfy  
19 the portion of the HOA's lien that was "arguably prior to" the mortgage and protect the mortgage.

20 32. Had the Bank relied on the CC&Rs, it would not have taken that action. If the Bank  
21 relied on anything, it appears that the Bank relied on the legal conclusion that its tender, even if  
22 rejected, would protect its mortgage from extinguishment and obviate the need for the Bank to attend  
23 the HOA foreclosure sale and bid to protect the mortgage. Therefore, this factor weighs against the  
24 application of equitable tolling. *Copeland*, 673 P.2d at 492.

25 //

*The Bank had knowledge of the relevant facts*

31. Furthermore, as discussed in the previous section, the Bank knew all of the relevant facts that created a claim against the HOA. The only missing element was the decision in the *SFR Case*, which the Nevada Supreme Court has said was merely a declaration of what the statute had always said. *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 295 (Nev. 2017).

32. Neither the *SFR Case* nor this Court's potential award is considered a "fact" that the Bank was unaware of back in January of 2013.

Instead these two things are an application of the law; and the Bank has failed to show that the Bank's claims should be equitably tolled because the Bank lacked knowledge that it needed to make a claim against the HOA. *Copeland*, 673 P.2d at 492.

*The Bank was not diligent*

33. The sale in this case occurred on January 16, 2013. In July of 2014, the Plaintiff filed a complaint against the Bank to quiet title in the property that is the subject of this litigation. In September of 2014, just when the Bank file its response, the *SFR Case* was handed down.

34. The delay in filing the Cross-Claim weighs in favor of the HOA, because the Bank has not shown that it was diligent.

**ORDER and JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Cross-Defendant, Country Gardens Owners Association's motion to dismiss, converted to a motion for summary judgment, is GRANTED.

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IT IS FURTHER ORDERED that judgment is entered on behalf of Cross-Defendant and against Cross-Claimant US Bank on all of the cross-claims asserted by US Bank against Country Gardens Owners Association.

DATED this 16 day of April, 2018.

APPROVED BY:

AKERMAN, LLP

  
DISTRICT COURT JUDGE

(MS)

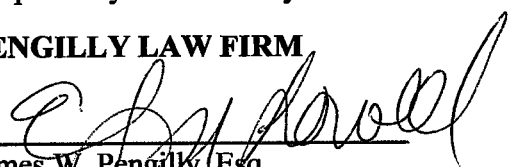
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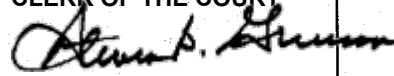
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14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 5316 CLOVER BLOSSOM CT TRUST

17 Plaintiff,

18 vs.

19 U.S. BANK, NATIONAL ASSOCIATION,  
20 SUCCESSOR TRUSTEE TO BANK OF  
21 AMERICA, N.A., SUCCESSOR BY MERGER  
22 TO LASALLE BANK, N.A., AS TRUSTEE TO  
23 THE HOLDERS OF THE ZUNI MORTGAGE  
24 LOAN TRUST 2006-OA1, MORTGAGE  
25 LOAN PASS-THROUGH CERTIFICATES  
26 SERIES 2006-OA1; and CLEAR RECON  
27 CORPS

28 Defendants.

CASE NO.: A-14-704412-C

DEPT NO.: XXIV

**ORDER DENYING U.S. BANK, N.A., AS  
TRUSTEE'S MOTION FOR  
RECONSIDERATION UNDER NRCP 59**

Date of Hearing: April 3, 2018

Time of Hearing: Chambers

1 U.S. BANK, NATIONAL ASSOCIATION,  
2 SUCCESSOR TRUSTEE TO BANK OF  
3 AMERICA, N.A., SUCCESSOR BY MERGER  
4 TO LASALLE BANK, N.A., AS TRUSTEE TO  
5 THE HOLDERS OF THE ZUNI MORTGAGE  
6 LOAN TRUST 2006-OA1, MORTGAGE  
7 LOAN PASS-THROUGH CERTIFICATES  
8 SERIES 2006-OA1,

9 Counterclaimant,

10 vs.

11 5316 CLOVER BLOSSOM CT TRUST

12 Counterdefendant.

13 U.S. BANK, NATIONAL ASSOCIATION,  
14 SUCCESSOR TRUSTEE TO BANK OF  
15 AMERICA, N.A., SUCCESSOR BY MERGER  
16 TO LASALLE BANK, N.A., AS TRUSTEE TO  
17 THE HOLDERS OF THE ZUNI MORTGAGE  
18 LOAN TRUST 2006-OA1, MORTGAGE  
19 LOAN PASS-THROUGH CERTIFICATES  
20 SERIES 2006-OA1,

21 Cross-claimant,

22 vs.

23 5316 CLOVER BLOSSOM CT TRUST

24 Cross-defendant.

25 The hearing on the defendant's U.S. Bank's motion for reconsideration under NRCP 59 having  
26 been heard in chambers and the court having reviewed the motion and plaintiff's opposition, the court  
27 finds as follows.

28 1. The information listed in the bankruptcy schedules and other pleadings filed by River Glider  
Avenue Trust after the foreclosure sale does not affect the rights obtained by plaintiff by entering the high  
bid at the public auction held on January 16, 2013.

2. By complying with the requirements of the Bankruptcy Code, River Glider Ave Trust did not  
admit that any of the deeds of trust were not affected by the separate foreclosure of each HOA's



1 superpriority lien.

2 3. The defendant has not proved fraud, oppression or unfairness regarding the foreclosure sale.

3 4. Inadequacy of sale price is not itself sufficient grounds to set aside the HOA foreclosure sale.

4 5. The additional evidence that defendant seeks to discover cannot support granting equitable  
5 relief in favor of defendant against plaintiff because the defendant's remedy is to recover damages against  
6 the HOA and its foreclosure agent if defendant's offer was wrongfully rejected.

7 6. Defendant has not alleged or proved that it provided notice of its rejected tender claim to  
8 plaintiff prior to the public auction. Pursuant to NRS 111.325, an unrecorded claim is void as to all  
9 subsequent bona fide purchasers.

10 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
11 defendant's motion for reconsideration under NRCP 59 is denied.

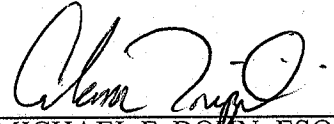
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DISTRICT COURT JUDGE  
(MS)

Respectfully submitted by:

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Trustee to Bank of America, N.A., successor by

merger to LaSalle Bank, N.A., as Trustee to the

Holders of the Zuni Mortgage Loan Trust 2006-OA1,

Mortgage Loan Pass-Through Certificates, Series

2006-OA1

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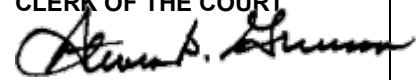
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Loan Pass-Through Certificates, Series 2006-OA1*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN TRUST 2006-OA1, MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**DEFENDANT U.S. BANK, N.A., AS  
TRUSTEE'S NOTICE OF APPEAL**

Notice is hereby given U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), appeals to the Supreme Court of Nevada from this Court's (1) Findings of Fact, Conclusions of Law, and Judgment entered on February 7, 2018, Notice of Entry of which was entered on February 8, 2018, (2) Findings of Fact, Conclusions of Law, and Judgment entered on April 13, 2018, Notice of Entry of which was entered on April 16, 2018, (3) Order Denying U.S. Bank, N.A., as Trustee's Motion for

Reconsideration under NRCP 59 entered on May 1, 2018, Notice of Entry of which was entered on May 1, 2018, and (4) all interlocutory orders incorporated therein.

DATED May 10, 2018.

**AKERMAN LLP**

/s/ Rebekkah B. Bodoff

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Bank, N.A., as Trustee to the Holders of the Zuni  
Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-  
Through Certificates Series 2006-OA1*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 10<sup>th</sup> day of May, 2018, I caused to be served a true and correct copy of the foregoing **DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S CASE APPEAL STATEMENT**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to FRCP 5(b), the above referenced document was electronically filed on the date hereof with the Clerk of the Court for the United States District Court by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List as follows:

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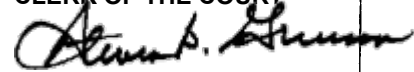
Michael F Bohn Esq

mbohn@bohnlawfirm.com

---

*/s/ Patricia Larsen*

An employee of AKERMAN LLP



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*Attorneys for Country Gardens Owners' Association*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

5316 CLOVER BLOSSOM COURT TRUST,

Plaintiff,

vs.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS.,

Defendants.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS.,

Counterclaimant,

vs.

5316 CLOVER BLOSSOM COURT TRUST,

Counterdefendant.

Case No.: A-14-704412-C

Dept. No.: XXIV

**ORDER**

1 U.S. BANK, NATIONAL ASSOCIATION,  
2 SUCCESSOR TRUSTEE TO BANK OF  
3 AMERICA, N.A., SUCCESSOR BY MERGER  
4 TO LASALLE BANK, N.A., AS TRUSTEE TO  
5 THE HOLDERS OF THE ZUNI MORTGAGE  
6 LOAN PASS-THROUGH CERTIFICATES  
7 SERIES 2006-OA1; and CLEAR RECON  
8 CORPS.,

9 Cross-Claimant,

10 vs.

11 COUNTRY GARDENS OWNERS'  
12 ASSOCIATION,

13 Cross-Defendant.

14 On December 12, 2019, a status check regarding further proceedings was held. The  
15 Court, having carefully considered all pleadings and papers on file in both the district court and  
16 appellate court and considering the oral arguments of counsel, and for good cause appearing,  
17 finds as follows:

18 1. On February 7, 2018 this Court entered summary judgment in favor of Plaintiff  
19 Clover Blossom Ct. Trust ("Clover Blossom") quieting title to the property located at 5316  
20 Clover Blossom Court, North Las Vegas, Nevada, 89031. On April 13, 2018 this Court granted  
21 summary judgment in favor of Country Gardens Owners' Association ("Association") finding  
22 that U.S. Bank's claims for unjust enrichment, tortious interference with contractual relations,  
23 breach of NRS 116.1113 and wrongful foreclosure were each time barred pursuant to NRS  
24 11.190(3)(a).

25 2. On May 10, 2018 U.S. Bank filed a notice of appeal. On October 16, 2019 the  
26 Nevada Court of Appeals issued its Order Affirming in Part, Reversing in Part and Remanding  
27 ("Order"). In its Order, the Nevada Court of Appeals found that the Bank alleged and produced  
28 evidence showing that it tendered an amount in excess of the superpriority portion of the HOA's

1 lien prior to the foreclosure sale. The Court of Appeals found that viewing that evidence in the  
2 light most favorable to the Bank, the tender would have extinguished the superpriority lien such  
3 that the buyer at the foreclosure sale took the property subject to the Bank's deed of trust.  
4 Therefore, the Court of appeals reversed and remanded the matter of the competing claims to  
5 title as between the Bank and Clover Blossom.

6 3. However, the Court of Appeals affirmed this Court's decision to grant the  
7 Association summary judgment on the Bank's claims for unjust enrichment, tortious interference  
8 with contractual relations, breach of NRS 116.1113 and wrongful foreclosure. The Court of  
9 Appeals found that each of the Bank's claims against the Association were based on an action  
10 upon a liability created by statute, thus the three year statute of limitations set forth in NRS  
11 11.190(3)(a) applied. Because these claims were brought over four years after the foreclosure  
12 deed was recorded, they were time barred.

13 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
14 Association is dismissed from any further participation in these proceedings.

15 ///

16  
17 ///

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23 ///

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28




IT IS FURTHER ORDERED that the Bank and Clover Blossom will proceed with the adjudication of their competing quiet title claims in the ordinary course. The Court anticipates the Bank and Clover Blossom will submit a new proposed discovery plan and scheduling order to provide a timeline for any further discovery and dispositive motions practice that remains in this case.

IT IS SO ORDERED this \_\_\_\_ day of December, 2019.

  
DISTRICT COURT JUDGE

Submitted by:

**LEACH KERN GRUCHOW ANDERSON SONG**

  
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Nevada Bar No. 7259  
Ryan D. Hastings, Esq.  
Nevada Bar No. 12394  
2525 Box Canyon Drive  
Las Vegas, NV 89128  
*Attorneys for Cross-Defendants Country Gardens Owners' Association*


Approved by:

**LAW OFFICE OF MICHAEL F. BOHN**

Approved by:

**AKERMAN, LLP**

  
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2 adjudication of their competing quiet title claims in the ordinary course. The Court anticipates  
3 the Bank and Clover Blossom will submit a new proposed discovery plan and scheduling order  
4 to provide a timeline for any further discovery and dispositive motions practice that remains in  
5 this case. *A STATUS CHECK: DISCOVERY PLAN SHALL IS SET FOR FEBRUARY 25, 2020 AT 9AM. THE PARTIES SHALL BE REQUIRED TO ATTEND, UNLESS AN ORDER ESTABLISHING  
6 DISCOVERY DEADLINES IS FILED IN THIS ACTION PRIOR TO THE HEARING.*  
7 IT IS SO ORDERED this 30 day of December, 2019.

  
DISTRICT COURT JUDGE

Submitted by:

  
LEACH KERN GRUCHOW ANDERSON SONG


Sean L. Anderson, Esq.,  
Nevada Bar No. 7259

Ryan D. Hastings, Esq.  
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Reviewed by:

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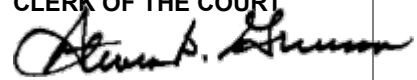
Approved by:

AKERMAN, LLP

  
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*Attorneys for Country Gardens Owners' Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

5316 CLOVER BLOSSOM COURT TRUST,

Plaintiff,

vs.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS.,

Defendants.

U.S. BANK, NATIONAL ASSOCIATION,  
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LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS.,

Counterclaimant,

vs.

5316 CLOVER BLOSSOM COURT TRUST,

Counterdefendant.

Case No.: A-14-704412-C

Dept. No.: XXIV

**NOTICE OF ENTRY OF ORDER**

1 U.S. BANK, NATIONAL ASSOCIATION,  
2 SUCCESSOR TRUSTEE TO BANK OF  
3 AMERICA, N.A., SUCCESSOR BY MERGER  
4 TO LASALLE BANK, N.A., AS TRUSTEE TO  
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6 LOAN PASS-THROUGH CERTIFICATES  
7 SERIES 2006-OA1; and CLEAR RECON  
8 CORPS.,

9 Cross-Claimant,

10 vs.

11 COUNTRY GARDENS OWNERS'  
12 ASSOCIATION,

13 Cross-Defendant.

14 PLEASE TAKE NOTICE that an Order, a true and correct copy of which is attached  
15 hereto, was entered on the January 7, 2020.

16 Dated this 7<sup>th</sup> day of January, 2020.

17 **LEACH KERN GRUCHOW ANDERSON SONG**

18 /s/ Ryan D. Hastings

19 Sean L. Anderson

20 Nevada Bar No. 7259

21 Ryan D. Hastings

22 Nevada Bar No. 12394

23 2525 Box Canyon Drive

24 Las Vegas, Nevada 89128

25 *Attorneys for Cross-Defendants Country Gardens*  
26 *Owners' Association*

**CERTIFICATE OF SERVICE**

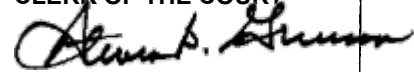
Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certifies that on the 7<sup>th</sup> day of January, 2020, service of the foregoing, **NOTICE OF ENTRY OF ORDER**, was made on all parties via the Court's CM/ECF System, as follows:

Adam Trippiedi, Esq.  
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[atrippiedi@bohnlawfirm.com](mailto:atrippiedi@bohnlawfirm.com)  
*Attorneys for Plaintiff*

Nicholas Belay, Esq.  
**AKERMAN, LLP**  
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[nicholas.belay@akerman.com](mailto:nicholas.belay@akerman.com)  
*Attorneys for U.S. Bank, N.A.*

/s/ Yalonda Dekle  
An Employee of LEACH KERN GRUCHOW  
ANDERSON SONG





**ORDR**  
**LEACH KERN GRUCHOW**  
**ANDERSON SONG**  
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Telephone: (702) 538-9074  
Facsimile: (702) 538-9113  
*Attorneys for Country Gardens Owners' Association*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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Plaintiff,

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Case No.: A-14-704412-C

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IT IS SO ORDERED this \_\_\_\_ day of December, 2019.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Submitted by:

**LEACH KERN GRUCHOW ANDERSON SONG**

  
\_\_\_\_\_  
Sean L. Anderson, Esq.,  
Nevada Bar No. 7259  
Ryan D. Hastings, Esq.  
Nevada Bar No. 12394  
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*Attorneys for Cross-Defendants Country Gardens Owners' Association*


Approved by:

**LAW OFFICE OF MICHAEL F. BOHN**

Approved by:

**AKERMAN, LLP**

  
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*Attorneys for Plaintiff*

  
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*Attorneys for U.S. Bank, N.A.*

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2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

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5 *A STATUS CHECK: DISCOVERY PLAN SHALL IS SET FOR FEBRUARY 25, 2020 AT 9AM. THE PARTIES SHALL BE REQUIRED TO ATTEND, UNLESS AN ORDER ESTABLISHING  
6 DISCOVERY DEADLINES IS FILED IN THIS ACTION PRIOR TO THE HEARING.*

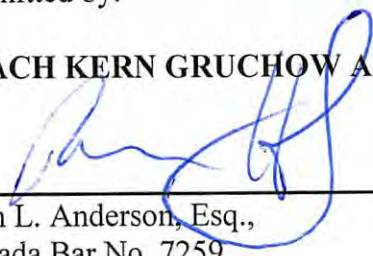
IT IS SO ORDERED this 30 day of December, 2019.



DISTRICT COURT JUDGE

Submitted by:

LEACH KERN GRUCHOW ANDERSON SONG

  
Sean L. Anderson, Esq.,  
Nevada Bar No. 7259

Ryan D. Hastings, Esq.  
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*Attorneys for Cross-Defendants Country Gardens Owners' Association*


Reviewed by:

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*Attorneys for Plaintiff*

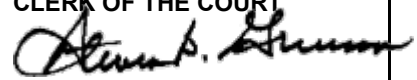
Approved by:

AKERMAN, LLP

  
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*Attorneys for U.S. Bank, N.A.*

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(702) 642-3113/ (702) 642-9766 FAX  
Attorney for plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,  
Plaintiff,

vs.

U.S. BANK, NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY MERGER  
TO LASALLE BANK, N.A., AS TRUSTEE TO  
THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN TRUST 2006-OA1, MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS,  
Defendants.

CASE NO.: A-14-704412-C  
DEPT NO.: XXIV

**ANSWER TO DEFENDANT**  
**U.S. BANK, NATIONAL ASSOCIATION'S**  
**COUNTERCLAIMS**

And all related matters.

Plaintiff/counterdefendant 5316 Clover Blossom Ct Trust (hereinafter referred to as "plaintiff"),  
by and through its attorneys, the Law Offices of Michael F. Bohn, Esq., Ltd., hereby submits its answer  
to the counterclaims filed by defendant U.S. Bank, National Association, Successor Trustee to Bank of  
America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni  
Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 on October  
10, 2017.

///

1 **COUNTERCLAIM AND CROSS-CLAIMS**

2 **GENERAL ALLEGATIONS**

3 1. Counterdefendant admits the allegations contained in paragraphs 1 through 3 of the  
4 counterclaim.

5 2. Counterdefendant denies the allegations contained in paragraphs 4 and 5 of the counterclaim.

6 **The Deed of Trust and Assignment**

7 3. Counterdefendant is without sufficient information or knowledge to admit or deny the  
8 allegations contained in paragraphs 6 through 12 of the counterclaim, and, upon that basis, denies the  
9 same.

10 **The HOA Lien and Foreclosure**

11 4. Counterdefendant denies the allegations contained in paragraphs 13 through 16 and 20 through  
12 30 of the counterclaim.

13 5. Counterdefendant is without sufficient information or knowledge to admit or deny the  
14 allegations contained in 17 through 19 of the counterclaim, and, upon that basis, denies the same.

15 **FIRST CAUSE ACTION**

16 6. Counterdefendant repeats its responses to paragraphs 1 through 30 of the counterclaim.

17 7. Counterdefendant admits the allegations contained in paragraphs 32, 33, and 40 of the  
18 counterclaim.

19 8. Counterdefendant denies the allegations contained in paragraphs 34 through 39, 41, and 42 of  
20 the counterclaim.

21 **SECOND CAUSE ACTION**

22 9. Counterdefendant repeats its responses to paragraphs 1 through 42 of the counterclaim.

23 10. Counterdefendant denies the allegations contained in paragraphs 44 through 49 of the  
24 counterclaim.

25 **THIRD CAUSE ACTION**

26 11. Counterdefendant repeats its responses to paragraphs 1 through 49 of the counterclaim.

27 12. Counterdefendant is without sufficient information or knowledge to admit or deny the  
28

1 allegations contained in 51 through 60 of the counterclaim, and, upon that basis, denies the same.

2

3

**FOURTH CAUSE ACTION**

4

13. Counterdefendant repeats its responses to paragraphs 1 through 60 of the counterclaim.

5

14. Counterdefendant is without sufficient information or knowledge to admit or deny the  
6 allegations contained in 62, and 64 through 70 of the counterclaim, and, upon that basis, denies the same.

7

15. Counterdefendant admits the allegations contained in paragraphs 63 of the counterclaim.

8

**FIFTH CAUSE OF ACTION**

9

16. Counterdefendant repeats its responses to paragraphs 1 through 70 of the counterclaim.

10

17. Counterdefendant admits the allegations contained in paragraphs 72 of the counterclaim.

11

18. Counterdefendant is without sufficient information or knowledge to admit or deny the  
12 allegations contained in 73 through 78 of the counterclaim, and, upon that basis, denies the same.

13

**FIFTH CAUSE OF ACTION**

14

19. Counterdefendant repeats its responses to paragraphs 1 through 78 of the counterclaim.

15

20. Counterdefendant is without sufficient information or knowledge to admit or deny the  
16 allegations contained in 80 through 82, 84 and 85 of the counterclaim, and, upon that basis, denies the  
17 same.

18

21. Counterdefendant denies the allegations contained in paragraphs 83 of the counterclaim.

19

**AFFIRMATIVE DEFENSES**

20

**FIRST AFFIRMATIVE DEFENSE**

21

The counterclaim fails to state a claim against counterdefendant upon which relief may be granted.

22

**SECOND AFFIRMATIVE DEFENSE**

23

Counterclaimant has failed to mitigate its damages.

24

**THIRD AFFIRMATIVE DEFENSE**

25

Counterclaimant is guilty of laches and unclean hands.

26

**FOURTH AFFIRMATIVE DEFENSE**

27

Counterclaimant's damages, if any, were caused by its own acts and omissions or by the acts or

28

1 omissions of third parties over which counterdefendant had no authority or control.

2 FIFTH AFFIRMATIVE DEFENSE

3 Counterclaimant's claims are barred by the applicable statute of limitations.

4 SIXTH AFFIRMATIVE DEFENSE

5 Counterclaimant's claims are barred by the doctrine of estoppel.

6 SEVENTH AFFIRMATIVE DEFENSE

7 Counterclaimant assumed the risk of the damages of which it now complains.

8 EIGHTH AFFIRMATIVE DEFENSE

9 Counterclaimant failed to exercise due care in its business dealings.

10 NINTH AFFIRMATIVE DEFENSE

11 Counterclaimant's claims are barred by the doctrine of waiver.

12 TENTH AFFIRMATIVE DEFENSE

13 Counterclaimant gave its consent, expressed or implied to the acts, omissions and/or conduct  
14 alleged of this answering counterdefendant.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 Counterclaimant ratified the alleged acts of this answering counterdefendant.

17 TWELFTH AFFIRMATIVE DEFENSE

18 Counterclaimant expressly, impliedly and/or equitably released all rights against this answering  
19 counterdefendant.

20 THIRTEENTH AFFIRMATIVE DEFENSE

21 The HOA Sale was conducted pursuant to statute and therefore extinguished counterclaimant's  
22 interest in the property.

23 FOURTEENTH AFFIRMATIVE DEFENSE

24 Counterdefendant is a bona fide purchaser for value without notice of any claims of any party or  
25 defects in title.

26 FIFTEENTH AFFIRMATIVE DEFENSE

27 Counterdefendant is a bona fide purchaser without knowledge of the claims of counterclaimant.



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SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimant has failed to include indispensable parties to this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimant lacks standing to prosecute this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

Counterdefendant has good title pursuant to NRS 116.31164

NINETEENTH AFFIRMATIVE DEFENSE

The foreclosure sale was conducted pursuant to statute which is valid as a matter of law.

TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimant lacks standing or grounds to assert, or is otherwise not entitled to, equitable relief.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred by the statute of frauds.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Counterdefendant reserves the right to add additional affirmative defenses as new information currently not known or available to counterdefendant becomes known or knowable during the pendency of this action.

WHEREFORE, counterdefendant prays for Judgment as follows:

- 1. That the counterclaimant take nothing by way of its counterclaim;
- 2. For a determination and declaration that counterdefendant is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the counterclaimant;
- 3. For a determination and declaration that the counterclaimant has no estate, right, title, interest or claim in the property;
- 4. For a judgment forever enjoining the counterclaimant from asserting any estate, right, title, interest or claim in the property;
- 5. For an award of attorneys fees and costs; and

///

1 6. For such other and further relief as the Court may deem just and proper.

2 DATED this 24<sup>th</sup> day of February 2020.

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

5  
6 By: /s/ /Nikoll Nikci, Esq. /  
7 Michael F. Bohn, Esq.  
8 Nikoll Nikci, Esq.  
2260 Corporate Circle, Ste. 480  
Henderson, Nevada, 89074  
Attorney for plaintiff

9 **CERTIFICATE OF SERVICE**

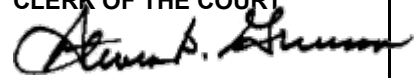
10 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
11 Offices of Michael F. Bohn., Esq., and on the 24<sup>th</sup> day of February, 2020, an electronic copy of the  
12 **ANSWER TO DEFENDANT U.S. BANK, NATIONAL ASSOCIATION'S COUNTERCLAIMS**  
13 was served on opposing counsel via the Court's electronic service system to the following counsel of  
14 record:

15 Darren T. Brenner, Esq.  
16 Nicholas E. Belay, Esq.  
17 **AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134

18 *Attorneys for U.S. Bank, N.A.*

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





1 **MSJ**  
2 MICHAEL F. BOHN, ESQ.  
3 Nevada Bar No.: 1641  
4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
5 LAW OFFICES OF  
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7 2260 Corporate Circle, Suite 480  
8 Henderson, Nevada 89074  
9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for plaintiff

11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA  
14

15 5316 CLOVER BLOSSOM CT TRUST

16 Plaintiff,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION,  
19 SUCCESSOR TRUSTEE TO BANK OF  
20 AMERICA, N.A., SUCCESSOR BY MERGER  
21 TO LASALLE BANK, N.A., AS TRUSTEE TO  
22 THE HOLDERS OF THE ZUNI MORTGAGE  
23 LOAN TRUST 2006-OA1, MORTGAGE  
24 LOAN PASS-THROUGH CERTIFICATES  
25 SERIES 2006-OA1; and CLEAR RECON  
26 CORPS

27 Defendants.  
28

CASE NO.: A-14-704412-C  
DEPT NO.: XXIV

**MOTION FOR SUMMARY JUDGMENT**

**[HEARING REQUESTED]**

29 Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohn, Esq.  
30 moves this court for summary judgment granting quiet title to the plaintiff. This motion is based

31 ///

32 ///

33 ///

1 on the points and authorities contained herein.

2 DATED this 1<sup>st</sup> day of October, 2020.

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

5 By: /s/ /Michael F. Bohn, Esq. /  
6 Michael F. Bohn, Esq.  
7 2260 Corporate Circle, Suite 480  
8 Henderson, Nevada 89074  
9 Attorney for plaintiff

10 **FACTS**

11 This case is one of the many quiet title actions filed after the plaintiff acquired property at an  
12 HOA foreclosure sale conducted pursuant to NRS Chapter 116. This case has already been appealed  
13 two times.

14 On February 7, 2018, this court entered findings of fact, conclusions of law, and a judgment in  
15 favor of the plaintiff. A copy of the findings and judgment are attached as Exhibit 1. On October 16,  
16 2019, the court of appeals entered an order affirming in part, reversing in part and remanding the case  
17 to the trial court. A copy of this order is attached as Exhibit 2.

18 The findings entered in this case which were not disturbed on appeal are:

19 1. 5316 Clover Blossom Ct Trust is the owner of real property commonly known as  
20 5316 Clover Blossom Court, North Las Vegas, Nevada (hereinafter referred to as “the  
21 Property”).

22 2. The property is encumbered by a Declaration of Covenants, Conditions, and  
23 Restrictions for Country Garden (Arbor Gate) (hereinafter referred to as the  
24 “CC&Rs”).

25 3. 5316 Clover Blossom Ct Trust acquired the Property from Country Garden  
26 Owners’ Association (hereinafter the “HOA”) at a foreclosure sale conducted on  
27 January 16, 2013.

28 4. The foreclosure sale arose from a delinquency in assessments due from the former  
owners to the HOA pursuant to NRS Chapter 116.

5. US Bank is the beneficiary of a deed of trust that was originally recorded as an  
encumbrance against the Property on June 30, 2004.

6. On June 20, 2011, an assignment of the deed of trust was recorded which assigned

1 the beneficial interest in the deed of trust to US Bank.

2 7. At some point, the former owner of the property became delinquent in paying  
3 assessments and the HOA and its foreclosure agent, Alessi & Koenig, LLC (hereinafter  
4 "the foreclosure agent"), began foreclosure proceedings based on the delinquent  
5 assessments.

6 8. On January 30, 2012, and again on February 6, 2012, the foreclosure agent served a  
7 Notice of Delinquent Assessment Lien on the former owners of the property via  
8 regular and certified mail.

9 9. On February 22, 2012, the foreclosure agent recorded a Notice of Delinquent  
10 Assessment Lien against the property.

11 10. On April 20, 2012, the foreclosure agent recorded a Notice of Default and Election  
12 to Sell under homeowners association lien against the property.

13 11. On April 30, 2012, the foreclosure agent mailed copies of the notice of default to  
14 the former owner, to MERS, to US Bank, and to other interested parties.

15 12. On October 31, 2012, a Notice of Foreclosure Sale was recorded against the property.

16 13. On October 25, 2012, the foreclosure agent mailed copies of the notice of  
17 foreclosure sale to the former owner, US Bank, and other interested parties.

18 14. The foreclosure agent also served the notice of foreclosure sale on the former  
19 owners by posting a copy of the notice in a conspicuous place on the Property, and also  
20 posted copies of the notice in three public locations throughout Clark County.

21 15. The foreclosure agent also published the notice of sale in the Nevada Legal News.

22 16. As reflected by the conclusive recitals in the foreclosure deed, 5316 Clover  
23 Blossom Ct Trust entered the high bid of \$8,200.00 at the public auction conducted on  
24 January 16, 2013, to purchase the Property.

25 17. The foreclosure agent issued a deed upon sale, which was recorded on January 24,  
26 2013, and contains the following recitals:

27 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116  
28 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.  
Default occurred as set forth in a Notice of Default and Election to Sell which was  
recorded in the office of the recorder of said county. All requirements of law regarding  
the mailing of copies of notices and the posting and publication of the copies of the  
Notice of Sale have been complied with. Said property was sold by said Trustee at  
public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

18. US Bank alleges that on November 21, 2012, US Bank, by way of its agent, sent  
correspondence to the foreclosure agent requesting an accounting of the HOA arrears.

19. In response, the foreclosure agent sent a letter to US Bank's agent. The foreclosure  
agent's letter stated that the total amount due was \$4,186.00.

1 20. On December 6, 2012, US Bank, by way of its agent, mailed a check in the  
2 amount of \$1,494.50 to the foreclosure agent, along with an accompanying letter, in an  
effort to satisfy the HOA's super-priority lien.

3 21. There is no evidence to indicate the HOA or foreclosure agent accepted or  
4 otherwise responded to the \$1,494.50 check.

5 On appeal, the appeals court remanded the case to this court for further proceedings in light of  
6 the Supreme Court's decision regarding attempted tender in Bank of America v. SFR Investments  
7 Pool 1, LLC 134 Nev. 604, 27 P.3d 113 (2018).

8 The plaintiff here contends that the defendants counterclaims are barred by the statute of  
9 limitations. For purposes of clarity, the foreclosure sale occurred on January 16, 2013. The  
10 foreclosure deed was recorded on January 24, 2013. A copy of the foreclosure deed is attached as  
11 Exhibit 3.

12 The plaintiff filed its original complaint on July 25, 2014. Defendant U.S. Bank filed its  
13 answer on September 25, 2014. This answer did not contain a counterclaim. Defendant U.S. Bank  
14 did not file its counterclaim until October 10, 2017, more than four years after the foreclosure sale  
15 and the recording of the foreclosure deed.

#### 16 POINTS AND AUTHORITIES

##### 17 **A. The statute of limitations begins to run on the date of the foreclosure sale**

18 The court of appeals in the decision in this case held that the statute of limitations begins to  
19 run on the date of the recording of the foreclosure deed, in this case, January 24, 2013. The court  
20 stated:

21 A statute of limitations period runs from the date a cause of action accrues, which is  
22 "when a suit may be maintained thereon." Clark v. Robison, 113 Nev. 949, 951, 944  
23 P.2d 788, 789 (1997). Because U.S. Bank knew or should have known as of the time  
24 the foreclosure deed was recorded that the HOA either lacked authority to foreclose on  
25 the superpriority portion of its lien or, alternatively, that it properly foreclosed and  
26 thereby extinguished U.S. Bank's interest, we conclude that the district court correctly  
27 determined the date of accrual. See Bemis v. Estate of Bemis, 114 Nev. 1021, 1024,  
28 967 P.2d 437, 440 (1998) (noting that a cause of action generally accrues when the  
wrong occurs or when the wronged party discovers or reasonably should have  
discovered the facts giving rise to the cause of action). Because U.S. Bank filed its  
crossclaims against the HOA over four years after the foreclosure deed was recorded,  
all of those claims were time-barred and thus, the district court properly granted  
summary judgment on that ground. See NRS 11.190(3)(a) (providing that the  
limitations period for "[a]n action upon a liability created by statute" is three years); In

1 re Amerco Derivative Litig., 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) (noting that  
2 the limitations period for unjust enrichment is four years); Stalk v. Mushkin, 125 Nev.  
3 21, 26-27, 199 P.3d 838, 842 (2009) (noting that the limitations period for tortious  
4 interference with contractual relations is three years); see also Clark, 113 Nev. at  
5 950-51, 944 P.2d at 789 (“Summary judgment is proper when a cause of action is  
6 barred by the statute of limitations.”)  
7 (footnotes omitted)

8 The decision from the court of appeals is the law of the case.

9 **B. The statute of limitations on a claim for declaratory relief based on tender is four years  
10 pursuant to NRS 11.220**

11 NRS 11.220 states that “[a]n action for relief, not hereinbefore provided for, must be  
12 commenced within 4 years after the cause of action shall have accrued.”

13 Because the claim for declaratory relief asserted by U.S. Bank falls within the cases described  
14 in NRS 11.190(3)(a), NRS 11.220 does not apply to U.S. Bank’s claims.

15 The four-year statute of limitations in NRS 11.220, would have expired on that  
16 four-year time period expired no later than January 24, 2017. The counterclaim was filed on  
17 October 10, 2017, several months after the expiration of the statute of limitations. The Nevada  
18 Supreme Court in the case of Nevada State Bank v. Jamison Family Partnership 106 Nev. 792, 798,  
19 801 P.2d 1377, 1381 (1990) held that the filing of a complaint does not toll the statute of limitations  
20 on a counterclaim.

21 The defendants counterclaim is therefore barred by the statute of limitations, and summary  
22 judgment should be granted in favor of the plaintiff.

23 **C. Tender cannot be asserted as a defense to the plaintiffs claims**

24 The controlling language in NRS 116.31166(1) states that the recitals in a foreclosure deed are  
25 “conclusive proof of the matters recited.” This includes the recital of “default” in NRS  
26 116.31166(1)(a). NRS 116.31166(2) states that the foreclosure deed is “conclusive against the unit’s  
27 former owner, his or her heirs and assigns, and all other persons.”

28 A lender like U.S. Bank cannot rebut these presumptions in its own mind and act as if the  
presumptions do not exist. The presumptions are true until proven otherwise, and one can only prove  
otherwise through a court action. The record titleholder does not have any duty to prove the

1 presumptions because this would obviously defeat the whole nature of the presumptions.

2 Nevada law provides that “[a] presumption not only fixes the burden of going forward with  
3 evidence, but it also shifts the burden of proof.” Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897  
4 P.2d 1093, 1095 (1995) (*citing* NRS 47.180 and Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777  
5 P.2d 366, 368 (1989)).

6 The Nevada Supreme Court also stated that each of the 21 disputable presumptions in NRS  
7 47.250 “impose[s] on the party against whom it is directed the burden of proving that the  
8 nonexistence of the presumed fact is more probable than its existence.” Yeager v. Harrah's Club, Inc.,  
9 111 Nev. at 834, n. 3, 897 P.2d at 1095, n. 3 (1995) (*citing* NRS 47.180).

10 In Flangas v. State, 104 Nev. 379, 381, 760 P.2d 112, 113 (1988), The Nevada Supreme Court  
11 discussed the difference between the “conclusive” presumptions in NRS 47.240 and the disputable  
12 presumptions in NRS 47.250. The “conclusive” presumptions provided by NRS 116.31166 fall  
13 within NRS 47.240(6).

14 In Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. 740,  
15 746, 405 P.3d 641, 646 (2017) (hereinafter “Shadow Canyon”), The Nevada Supreme Court stated  
16 that NRS 47.250(16) includes a presumption that “the law has been obeyed” and that there is “a  
17 presumption in favor of the record titleholder.” (*quoting* Breliant v. Preferred Equities Corp., 112  
18 Nev. 663, 669, 918 P.2d 314, 318 (1996)).

19 In Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132  
20 Nev. 49, 57, 366 P.3d 1105, 1110-1111 (2016)(hereinafter “Shadow Wood”), The Nevada Supreme  
21 Court discussed the effect that a conclusive recital of default could have even where no default  
22 existed, and in order to avoid what it perceived to be a “breathhtakingly broad” reading, The Nevada  
23 Supreme Court held that “courts retain the power to grant equitable relief from a defective foreclosure  
24 sale when appropriate despite NRS 116.31166.”

25 The Nevada Supreme Court stated, however, that the recitals in a foreclosure deed are  
26 “conclusive, *in the absence of grounds for equitable relief*.” 132 Nev. at 59, 366 P.3d at 1112  
27 (*quoting* Holland v. Pendleton Mortg. Co., 61 Cal. App. 2d 570, 143 P.2d 493, 496 (1943)).

28

1 The Nevada Supreme Court also concluded that the “Legislature, through NRS 116.31166’s  
2 enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when  
3 an HOA’s foreclosure deed contains conclusive recitals.” 132 Nev. at 59-60, 366 P.3d at 1112.

4 It is acknowledged that the case of Bank of America, N.A. v. SFR Investments Pool 1, LLC,  
5 134 Nev. 604, 610, 427 P.3d 113, 120 (2018)(hereinafter “Diamond Spur”), holds that the tender of  
6 the super priority portion of the lien cured the default as to the super priority portion of the lien.  
7 However, when Diamond Spur is read together with the Shadow Wood opinion, however, when a  
8 party challenges the conclusive recital of default, the only way for the court to look behind the  
9 conclusive recital is to invoke the court’s powers of equity. The fact that the court sits in equity when  
10 analyzing a tender case is further confirmed by The Nevada Supreme Court’s analysis of the “kept  
11 good” argument asserted by SFR in Diamond Spur. The Nevada Supreme Court rejected the  
12 argument, not under statute or under common law, but by quoting from the Annotation, *Necessity of*  
13 *Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921): “Generally, there is no fixed rule in equity  
14 which requires a tender to be kept good in the sense in which that phrase is used at law.” 134 Nev. at  
15 610, 427 P.3d at 120.

16 But for invoking the court’s inherent powers of equity, neither The Nevada Supreme Court,  
17 nor any other court, could ever look behind the conclusive recital of default. As a result, simply  
18 proving the delivery of a valid tender does not end the inquiry because as stated by The Nevada  
19 Supreme Court in Shadow Wood, “[w]hen sitting in equity, however, courts must consider the  
20 entirety of the circumstances that bear upon the equities.” 132 Nev. at 63, 366 P.3d at 1114 (citations  
21 omitted).

22 In Armenta-Carpio v. Nevada, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013), The Nevada  
23 Supreme Court stated that “under the doctrine of *stare decisis*, we will not overturn precedent absent  
24 compelling reasons for doing so.”

25 In Diamond Spur, The Nevada Supreme Court included a passing reference to Shadow Wood  
26 when discussing “SFR’s status as a bona fide purchaser,” but The Nevada Supreme Court did not  
27 discuss at all the legal effect of the “conclusive” recital of default on the lender’s claim that the  
28

1 rejected tender cured the default as to the superpriority portion of the lien. 134 Nev. at 612, 427 P.2d  
2 121.

3       Instead of providing any “compelling reasons” for overturning the binding interpretation of  
4 NRS Chapter 116 in Shadow Wood, U.S. Bank required that the district court interpret Diamond Spur  
5 as if it overturned the express holding in Shadow Wood regarding the “conclusive” recital of default  
6 without even mentioning that holding.

7       In Resources Group, LLC, as Trustee of E. Sunset Road Trust v. Nevada Association  
8 Services, Inc., 135 Nev. 48, 437 P.3d 154, 156 (2019), the court stated that “the burden of  
9 demonstrating that the delinquency was cured presale, rendering the sale void, was on the party  
10 challenging the foreclosure . . . .”

11       Consequently, in order to obtain equitable relief from the “conclusive” recital of default in the  
12 foreclosure deed, U.S. Bank was required to timely file an action seeking that relief.

13       Declaratory relief is not a stand-alone claim. Stock West, Inc. v. Confederated Tribes of the  
14 Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989); Nguyen v. JP Morgan Chase Bank, No.  
15 SACV 11-01908 DOC (ANx), 2012 WL 294936, at \*4 (C.D. Cal. Feb. 1, 2012) (“A claim for  
16 declaratory relief is not a stand-alone claim, but rather depends upon whether or not Plaintiff states  
17 some other substantive basis for liability.”). For a party to obtain declaratory relief, there must be an  
18 independent basis for jurisdiction. Miller–Wohl Co., Inc. v. Commissioner of Labor & Industry, 685  
19 F.2d 1088, 1091 (9th Cir.1982).

20       Because declaratory relief is not a stand-alone claim and is only derivative of some other  
21 substantive claim brought in the action, the statute of limitations that governs a request for declaratory  
22 relief is that which applies to the substantive cause of action. “A claim for declaratory relief is subject  
23 to a statute of limitations generally applicable to civil claims.” Zuill v. Shanahan, 80 F.3d 1366,  
24 1369-70 (9th Cir. 1996).

25       In Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 688 (9th Cir. 1993), the court quoted  
26 from Gilbert v. City of Cambridge, 932 F.2d 51, 58 (5th Cir.1991), that if “a claim for declaratory  
27 relief could have been resolved through another form of action which has a specific limitations  
28



1 period, the specific period of time will govern.” The statute of limitations for declaratory relief is the  
2 one applicable to an ordinary legal or equitable action based on the same claim. Mangini v.  
3 Aerojet-General Corp., 230 Cal. App. 3d 1125, 1155, 281 Cal. Rptr. 827, 846 (Cal. Ct. App. 1991).

4 In Perry v. Terrible Herbst, Inc., 132 Nev. 767, 770, 383 P.3d 257, 260 (2016), The Nevada  
5 Supreme Court stated that “[t]he nature of the claim, not its label, determines what statute of  
6 limitations applies.” (*citing* Stalk v. Mushkin, 125 Nev. 21, 25, 199 P.3d 838, 841 (2009)) The  
7 Nevada Supreme Court also stated that “[w]hen a statute lacks an express limitations period, courts  
8 look to analogous causes of action for which an express limitations period is available either by  
9 statute or by case law.” 383 P.3d at 260. (*quoting* Johnson & Higgins of Tex., Inc. v. Kenneco  
10 Energy, Inc., 962 S.W.2d 507, 518 (Tex. 1998))

11 In Diamond Spur, 134 Nev. at 610, 427 P.3d at 120, The Nevada Supreme Court discussed  
12 specific principles that apply to statutory liens:

13 Generally, the creation and release of a lien cause priority changes in a property’s  
14 interests as a result of a written legal document. But Bank of America’s tender  
15 discharged the superpriority portion of the HOA’s lien by operation of law. *See* NRS  
16 116.3116; 53 C.J.S. Liens § 14 (2017) (“A statutory lien is created and defined by the  
17 legislature. The character, operation and extent of a statutory lien are ascertained solely  
18 from the terms of the statute .”). NRS Chapter 116’s statutory scheme allows banks to  
19 tender the payment needed to satisfy the superpriority portion of the HOA lien and  
20 maintain its senior interest as the first deed of trust holder. NRS 116.3116(1)-(3).

21 In Diamond Spur, the plaintiff bank asserted its tender claim, and The Nevada Supreme Court  
22 decided the issue of satisfaction of the superpriority lien, by tender, solely under the language in NRS  
23 116.3116. In particular, The Nevada Supreme Court stated that “NRS 116.3116 governs liens against  
24 units for HOA assessments and details the portion of the lien that has superpriority status.” 134 Nev.  
25 at 606, 427 P.3d at 117.

26 The Nevada Supreme Court also stated:

27 As discussed in Section A, **a plain reading of NRS 116.3116** indicates that at the time  
28 of Bank of America’s tender, tender of the superpriority amount by the first deed of  
trust holder was sufficient to satisfy that portion of the lien. (emphasis added)

134 Nev. at 608, 427 P.3d at 118.

In Diamond Spur, The Nevada Supreme Court held that Bank of America’s delivery of a

1 check in the amount of nine months of assessments satisfied the superpriority portion of the lien, and  
2 therefore at the time when the HOA foreclosed there was no default as to and no authority to foreclose  
3 the superpriority portion of the lien. 129 Nev. at 612, 427 P.3d at 121.

4 An allegation that the superpriority portion of the lien was satisfied challenges the fact that a  
5 default existed and that the HOA had authority to foreclose. *See Collins v. Union Fed. Sav. & Loan*  
6 *Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983) (“An action for the tort of wrongful foreclosure  
7 will lie if the trustor or mortgagor can establish that at the time the power of sale was exercised or the  
8 foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor's or  
9 trustor's part which would have authorized the foreclosure or exercise of the power of sale.”) *See*  
10 *also, McKnight Family, LLP v. Adept Management Services, Inc.*, 129 Nev. 610, 616, 310 P.3d 555,  
11 559 (2013) (“A wrongful foreclosure claim challenges the authority behind the foreclosure, not the  
12 foreclosure act itself.”)

#### 13 **D. The trust deed has been extinguished**

14 NRS 116.3116 provides in part:

##### 15 **Liens against units for assessments.**

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

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

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

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

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

**The lien is also prior to all security interests described in paragraph (b) to the**

1 **extent of any charges incurred by the association on a unit pursuant to NRS**  
2 **116.310312 and to the extent of the assessments for common expenses based on**  
3 **the periodic budget adopted by the association pursuant to NRS 116.3115 which**  
4 **would have become due in the absence of acceleration during the 9 months**  
5 **immediately preceding institution of an action to enforce the lien,** unless federal  
6 regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal  
7 National Mortgage Association require a shorter period of priority for the lien. If  
8 federal regulations adopted by the Federal Home Loan Mortgage Corporation or the  
9 Federal National Mortgage Association require a shorter period of priority for the lien,  
10 the period during which the lien is prior to all security interests described in paragraph  
11 (b) must be determined in accordance with those federal regulations, except that  
12 notwithstanding the provisions of the federal regulations, the period of priority for the  
13 lien must not be less than the 6 months immediately preceding institution of an action  
14 to enforce the lien. This subsection does not affect the priority of mechanics' or  
15 materialmen's liens, or the priority of liens for other assessments made by the  
16 association. (emphasis added)

17 By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for 9 months of  
18 charges is "prior to all security interests described in paragraph (b)." The first deed of trust here falls  
19 squarely within the language of NRS 116.3116(2)(b). The statutory language does not limit the  
20 nature of this "priority" in any way.

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

23 NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an  
24 individual homeowner's property for up to nine months of unpaid HOA dues. With  
25 limited exceptions, this lien is "prior to all other liens and encumbrances" on the  
26 homeowner's property, even a first deed of trust recorded before the dues became  
27 delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien  
28 such that its foreclosure extinguishes a first deed of trust on the property and, if so,  
whether it can be foreclosed nonjudicially. We answer both questions in the  
affirmative and therefore reverse.

334 P.3d at 409.

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

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

334 P.3d at 419.

Because the facts in the present case are substantially the same as the facts in SFR

1 Investments Pool 1, LLC v. U.S. Bank, N.A., the court should reach the same conclusion that the  
2 nonjudicial foreclosure of the HOA's super priority lien at the public auction extinguished the deed of  
3 trust held by defendant bank on the date of sale. As a result, The Nevada Supreme Court should rule  
4 that the deed of trust held by defendant bank was extinguished by the HOA foreclosure sale.

5  
6 **CONCLUSION**

7 The HOA foreclosure sale extinguished the defendant's deed of trust, and therefore its interest  
8 in the Property. As conclusively evidenced by the recitals in the foreclosure deed, the HOA  
9 foreclosure sale complied with all requirements of Nevada law. Accordingly, it is respectfully  
10 requested that this Court enter its order granting plaintiff's motion for summary judgment and  
11 quieting title to the Property in plaintiff free and clear of all liens and encumbrances and forever  
12 enjoining the defendant from asserting any estate, title, right, interest, or claim to the Property adverse  
13 to the plaintiff.

14 DATED this 1<sup>st</sup> day of October, 2020

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

17  
18 By: / s / Michael F. Bohn, Esq. /  
19 Michael F. Bohn, Esq.  
20 2260 Corporate Circle, Suite 480  
21 Henderson, Nevada 89074  
22 Attorney for plaintiff  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
3 Offices of Michael F. Bohn., Esq., and on the 1<sup>st</sup> day of October, 2020, an electronic copy of the  
4 **MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic  
5 service system to the following counsel of record:

6 Nicolas E. Belay, Esq.  
7 Akerman LLP  
1635 Village Center Circle # 200  
8 Las Vegas, NV 89134

9 /s/ /Marc Sameroff/  
10 An Employee of the LAW OFFICES OF  
11 MICHAEL F. BOHN, ESQ., LTD.  
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1 **AFFT**

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6 Henderson, NV 89074

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

7 Attorney for plaintiff

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11  
12 5316 CLOVER BLOSSOM CT TRUST

13 Plaintiff,

14 vs.

15 U.S. BANK, NATIONAL ASSOCIATION,  
16 SUCCESSOR TRUSTEE TO BANK OF  
17 AMERICA, N.A., SUCCESSOR BY MERGER  
18 TO LASALLE BANK, N.A., AS TRUSTEE TO  
19 THE HOLDERS OF THE ZUNI MORTGAGE  
LOAN TRUST 2006-OA1, MORTGAGE  
LOAN PASS-THROUGH CERTIFICATES  
SERIES 2006-OA1; and CLEAR RECON  
CORPS

20 Defendants.

CASE NO.: A-14-704412-C  
DEPT NO.: XXIV

21 **AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

22 STATE OF NEVADA )  
23 ) ss:  
24 COUNTY OF CLARK )

25 IYAD HADDAD being first duly sworn, deposes and says;

26 1. Affiant is the person most knowledgeable for 5316 Clover Blossom Ct Trust, the plaintiff  
27 herein, and makes this affidavit based on personal knowledge.

28 2. Plaintiff, 5316 Clover Blossom Ct Trust, is the owner of the real property commonly known  
as 5316 Clover Blossom Ct, North Las Vegas, Nevada.

1       3. Plaintiff, 5316 Clover Blossom Ct Trust, acquired title to the property at foreclosure sale  
2 conducted on January 16, 2013 as evidenced by the foreclosure deed recorded on January 24, 2013.

3       4. The foreclosure deed reflects that valuable consideration in the sum of \$8,200.00 was paid for  
4 the property.

5       5. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments  
6 due from the former owner to the Country Garden Owners' Association pursuant to NRS Chapter 116.

7       6. Prior to and at the time of the foreclosure sale, there was nothing recorded in the public record  
8 to put me on notice of any claims or notices that any portion of the lien had been paid.

9       7. Prior to and at the time of the foreclosure sale, there is no way for myself or any other potential  
10 bidder at the foreclosure sale to research if the notices were sent to the proper parties at the proper address.  
11 I, and other potential bidders are forced to rely only on the professional foreclosure agent to have obtained  
12 a trustee's sale guarantee issued by a local title and escrow company and to serve the notices upon the  
13 parties who are entitled to notice.

14       8. As a result of the limited information available to myself and other potential bidders at  
15 foreclosure sale, I, on behalf of the plaintiff, am a bona fide purchaser of the property, for value,  
16 without notice of any claims on the title to the property or any alleged defects in the sale itself.

17       9. At no time prior to the foreclosure sale did I receive any information from the HOA or the  
18 foreclosure agent about the property or the foreclosure sale.

19       10. Neither myself or anyone associated with plaintiff, 5316 Clover Blossom Ct Trust, have  
20 any affiliation with the HOA board or the foreclosure agent.

21       11. Any attempt to contact the bank to find anything out about payment of the super priority  
22 amount would have been futile. The banks have a very long hold time, and agents will not speak to  
23 anyone except the borrower, and they require the borrowers social security number for identification.  
24 In addition, the banks have many departments, and it is impossible to get through to anyone with any  
25 information.

26 ///

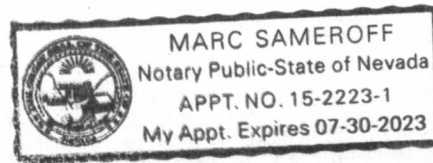
1           12. Any attempt to find out any information about a tender or payment of the super priority  
2 lien at the auction would also be a futile act. Asking questions during the auctions would be  
3 considered to be a disruption. I would not get a response and would be prohibited from bidding the  
4 rest of the day. In addition, often, the persons crying the sale are third party contractors without any  
5 knowledge of what is in the file other than what is provided to cry the sale.

6           13. If called upon to testify to the above facts, affiant could do so competently.

7  
8  
9           TYAD HADDAD

10       SUBSCRIBED and SWORN to before me  
11 this 24 day of September, 2020.

12  
13       Marc Sameroff  
14 NOTARY PUBLIC in and for said  
County and State





# EXHIBIT 1

# EXHIBIT 1

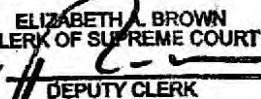
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

U.S. BANK NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A., SUCCESSOR BY  
MERGER TO LASALLE BANK, N.A., AS  
TRUSTEE TO THE HOLDERS OF THE  
ZUNI MORTGAGE LOAN TRUST 2006-  
OA1, MORTGAGE LOAN PASS-  
THROUGH CERTIFICATES SERIES  
2006-OA1,  
Appellant,  
vs.  
5316 CLOVER BLOSSOM CT. TRUST;  
AND COUNTRY GARDEN OWNERS  
ASSOCIATION,  
Respondents.

No. 75861-COA

**FILED**

OCT 16 2019

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING*

U.S. Bank National Association appeals from district court orders granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA), Country Garden Owners Association. The HOA recorded a notice of lien for, among other things, unpaid assessments and, later, a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Allegedly, prior to the sale, the servicer for U.S Bank National Association (U.S. Bank) tendered payment to the HOA foreclosure agent for an amount exceeding nine months of past due assessments, but the HOA foreclosure agent rejected the payment. The HOA then proceeded with its foreclosure sale, and 5316 Clover Blossom Ct. Trust (Clover

Blossom) purchased the property and filed the underlying action seeking to quiet title. Before the parties conducted any discovery, Clover Blossom filed a motion for summary judgment, which the district court granted. However, this court vacated the judgment and remanded for further proceedings. *See U.S. Bank, N.A. v. 5316 Clover Blossom Ct. Tr.*, Docket No. 68915-COA (Order Vacating Judgment and Remanding, June 30, 2017).

On remand, U.S. Bank counterclaimed—also seeking to quiet title to the property—and asserted crossclaims against the HOA. Both Clover Blossom and the HOA moved to dismiss U.S. Bank’s claims, but the district court construed both motions as motions for summary judgment on grounds that the parties presented matters outside the pleadings. The district court granted summary judgment in favor of Clover Blossom, concluding that U.S. Bank was required to take further actions beyond its attempted tender to satisfy the HOA’s superpriority lien. The district court also granted summary judgment in favor of the HOA, concluding that U.S. Bank’s crossclaims were time-barred. This appeal followed.

U.S. Bank argues primarily that the district court erred in converting Clover Blossom’s motion to dismiss into a motion for summary judgment without first providing notice to U.S. Bank that it was going to do so. U.S. Bank additionally contends that summary judgment in favor of Clover Blossom was inappropriate because U.S. Bank’s tender satisfied the superpriority portion of the HOA’s lien and rendered the sale void as to that portion of the lien. Finally, U.S. Bank contends that the district court erred in finding that its crossclaims were time-barred.

This court reviews a district court’s order granting summary judgment de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all

other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Assuming without deciding that the district court properly converted Clover Blossom's motion to dismiss into a motion for summary judgment, summary judgment was unwarranted because a genuine issue of material fact remained as to whether U.S. Bank's deed of trust survived the foreclosure sale. U.S. Bank alleged and produced evidence showing that it tendered an amount in excess of the superpriority portion of the HOA's lien to the HOA foreclosure agent prior to the sale. Viewing that evidence in the light most favorable to U.S. Bank, the tender would have extinguished the superpriority lien such that the buyer at the foreclosure sale took the property subject to U.S. Bank's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). Moreover, we reject Clover Blossom's arguments on appeal that the tender was impermissibly conditional, that it constituted an assignment of the HOA's superpriority rights to U.S. Bank, and that U.S. Bank was required to take further actions to preserve the tender for it to extinguish the superpriority lien. *See id.* at 607-11, 427 P.3d at 118-21 (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust; that "[t]endering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land;" and rejecting the buyer's

arguments that the bank was required to record its tender or take further actions to keep the tender good). Accordingly, the district court erred in granting summary judgment in favor of Clover Blossom.

We next consider whether the district court properly granted summary judgment in favor of the HOA on U.S. Bank's crossclaims for unjust enrichment, tortious interference with contractual relations, breach of the duty of good faith set forth in NRS 116.1113, and wrongful foreclosure. U.S. Bank argues primarily that the district court misapplied the relevant statutes of limitation because it erroneously concluded that the claims accrued as of the date the foreclosure deed was recorded. U.S. Bank contends that its crossclaims did not accrue until the district court entered a judgment extinguishing its interest in the subject property.

A statute of limitations period runs from the date a cause of action accrues, which is "when a suit may be maintained thereon." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997). Because U.S. Bank knew or should have known as of the time the foreclosure deed was recorded that the HOA either lacked authority to foreclose on the superpriority portion of its lien or, alternatively, that it properly foreclosed and thereby extinguished U.S. Bank's interest, we conclude that the district court correctly determined the date of accrual. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 440 (1998) (noting that a cause of action generally accrues when the wrong occurs or when the wronged party discovers or reasonably should have discovered the facts giving rise to the cause of action). Because U.S. Bank filed its crossclaims against the HOA over four years after the foreclosure deed was recorded, all of those claims were time-barred and thus, the district court properly granted summary judgment on that ground. *See* NRS 11.190(3)(a) (providing that the



limitations period for “[a]n action upon a liability created by statute” is three years);<sup>1</sup> *In re Amerco Derivative Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) (noting that the limitations period for unjust enrichment is four years); *Stalk v. Mushkin*, 125 Nev. 21, 26-27, 199 P.3d 838, 842 (2009) (noting that the limitations period for tortious interference with contractual relations is three years); *see also Clark*, 113 Nev. at 950-51, 944 P.2d at 789 (“Summary judgment is proper when a cause of action is barred by the statute of limitations.”).<sup>2</sup>


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<sup>1</sup>We reject U.S. Bank’s argument that adjudicating its wrongful foreclosure claim necessarily requires interpreting the CC&Rs and that the limitations period for that claim is therefore the six-year period applicable to actions upon instruments in writing. Although the Supreme Court of Nevada has previously noted that wrongful foreclosure actions can involve interpreting CC&Rs (which are instruments in writing), it also noted that “[a] wrongful foreclosure claim challenges the authority behind the foreclosure, not the foreclosure act itself.” *See McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 616, 310 P.3d 555, 559 (2013). Because the authority to foreclose in the manner the HOA did is found in NRS Chapter 116, and because U.S. Bank’s wrongful foreclosure claim as pleaded in its counterclaim was not premised upon the CC&Rs, U.S. Bank has not demonstrated that the district court erred in concluding that the wrongful foreclosure claim was subject to the three-year limitations period provided under NRS 11.190(3)(a).

<sup>2</sup>We also reject U.S. Bank’s argument that its delay in filing its crossclaims should be excused under the doctrine of equitable tolling. U.S. Bank contends that “false assurances” made by the HOA in the CC&Rs that foreclosure would have no effect on the first deed of trust justified its delay in filing the crossclaims. However, U.S. Bank’s own actions in making efforts to satisfy the HOA’s superpriority lien prior to the foreclosure sale show that it was aware of the impact that foreclosure might have on its interest in the property and the extent to which any purported superpriority foreclosure might exceed the HOA’s authority. Accordingly, U.S. Bank failed to demonstrate that it reasonably waited to file suit. *Cf. City of N.*

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. James Crockett, District Judge  
Akerman LLP/Las Vegas  
Law Offices of Michael F. Bohn, Ltd.  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk

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*Las Vegas v. State*, *EMRB*, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011) (“If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the [period] until the plaintiff can gather what information he needs.” (internal quotation marks omitted)).

<sup>3</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.