EXHIBIT 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICO BAY LLC, SERIES 6629 TUMBLEWEED RIDGE 103 TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-23CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-23B,
Respondent.

No. 63011

FILED

JUN 10 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

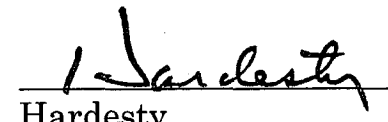
ORDER GRANTING INJUNCTION

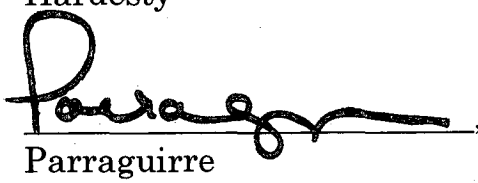
This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondent from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 19, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion.

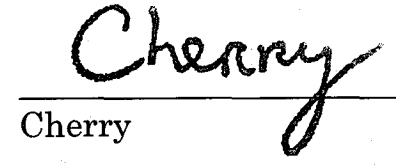
Having considered appellant's motion and the opposition in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we

enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.


, J.
Hardesty


, J.
Parraguirre


, J.
Cherry

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

9320 POKEWOOD CT TRUST,
Appellant,
vs.
WELLS FARGO BANK OF NEVADA, N.A.; AND QUALITY LOAN SERVICE CORPORATION,
Respondents.

No. 63009

FILED

JUN 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 18, 2013, we entered a temporary injunction pending our consideration of any response to the motion. Respondents have since opposed the motion.

Having considered appellant's motion and oppositions thereto in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cherry

cc: Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Wright, Finlay & Zak, LLP/Las Vegas

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVE TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE OF THE CERTIFICATE HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-24CB, MORTGAGE PASS-THROUGH CERTIFICATES,
Respondent.

No. 63077

FILED

JUN 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondent from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 29, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion.

Having considered appellant's motion and the opposition thereto in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

_____, J.
Gibbons

_____, J.
Parraguirre

_____, J.
Cherry

DT000070
13-17958

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman Senterfitt/Las Vegas
Miles, Bauer, Bergstrom & Winters, LLP
Eighth District Court Clerk

EXHIBIT 9

Chapter 2. Taxes and Assessments (07/01/99)

Part of a servicer's responsibility for protecting the priority of Fannie Mae's lien on a property securing a mortgage Fannie Mae has purchased or securitized is the maintenance of accurate records on the status of taxes, ground rents, or other assessments that could become a lien against the property—and paying the related bills if it maintains an escrow deposit account for that purpose.

Section 201 Taxes and Ground Rents (08/24/03)

The servicer must maintain accurate records on the status of real estate taxes and ground rents. The servicer of a ***first-lien mortgage loan*** usually accomplishes this by paying the bills itself using funds in the borrower's escrow deposit account. When the servicer has waived the escrow deposit account for a specific borrower, it still remains responsible for the timely payment of taxes and ground rents. Therefore, if the borrower fails to pay the taxes or ground rents, the servicer must advance its own funds to pay them, revoke the waiver, and begin escrow deposit collections to pay future bills. (Also see *Section 103.01, Waiver of Escrow Deposits (01/01/05).*)

The servicer of a ***second*** mortgage does not have to pay the bills for taxes and ground rents, but it must satisfy itself that these items are paid when due—either by the borrower or the first-lien mortgage loan servicer. If the second-lien mortgage loan servicer wishes (and the mortgage loan documents permit), it may establish an escrow deposit account to ensure that these expenses are paid promptly.

When the property securing the mortgage loan is a manufactured home, servicers must take the appropriate steps to ensure that both the manufactured home and land are taxed as real property and that a single tax bill is issued. In most cases, manufactured homes that have been converted to real property also will be taxed as real property. If this is not possible under applicable law and the dwelling must be taxed separately as personal property, the servicer's escrow systems must be adjusted to escrow for both real and personal property taxes. Further, in this event, all of Fannie Mae's requirements relating to real estate taxes apply equally to personal property taxes applicable to the dwelling.

The servicer should use the funds in the borrower's escrow deposit account to pay taxes and other related charges before any penalty date. Whenever funds are available, the servicer must pay these expenses early enough to take advantage of the maximum discounts allowed. If the deposit account balance is not sufficient to pay these obligations, the servicer should notify the borrower and then advance its own funds. The borrower may be billed for the amount the servicer advanced if (and in the manner) permitted by the mortgage loan documents, applicable law, and government regulations. If a penalty is incurred for late payments of taxes—and the borrower was a factor in delaying the payment—the servicer may bill the borrower for the penalty. Otherwise, the servicer must pay the penalty from its own funds. In such cases, Fannie Mae will reimburse the servicer for any funds it has to advance (including those for late fees and tax penalties). (Also see *Part VIII, Section 108.01, Delinquent Tax Late Fees or Penalties (01/31/03).*)

Section 202 Special Assessments (01/31/03)

Special assessments may be imposed by special tax, municipal utility, or community facilities districts in some states; by the HOA of a PUD or condo project; or by the co-op corporation of a co-op project. The servicer must maintain accurate records on the status of any special assessments that could become a lien against a property. Generally, the borrower will pay special assessments directly, but if he or she fails to do so, the servicer must advance its own funds to pay them if that is necessary to protect the priority of Fannie Mae's lien. In a few instances, deposits to pay special assessments will be collected as part of the mortgage loan payment.

When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days' delinquent in the payment of assessments or charges levied by the association, the servicer should advance the funds to pay the charges if necessary to protect the priority of Fannie Mae's mortgage lien. If the project is located in a state that has adopted the Uniform Condominium Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or a similar statute that provides for up to six months of delinquent regular condo assessments to have lien priority over the mortgage lien, Fannie Mae will reimburse the servicer for up to six months of such advances. However, Fannie Mae will not reimburse the servicer for any fees or costs related to attempts to collect the delinquent assessments.

EXHIBIT 8

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
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CARSON CITY, NEVADA 89701-4747
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Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Assembly Chair*
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Mark Krmpotic, *Fiscal Analyst*

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DONALD O. WILLIAMS, *Research Director* (775) 684-6825

December 7, 2012

Senator Scott Hammond
8408 Gracious Pine Avenue
Las Vegas, NV 89143-4608

Dear Senator Hammond:

You have asked this office certain questions relating to the foreclosure of liens under chapter 116 of NRS, the chapter which governs common-interest communities in this State. We will answer each of your questions separately below.

DISCUSSION

1. What ownership interest is obtained by the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, considering the language set forth in NRS 116.31164?

The provisions of NRS 116.31162 to 116.31168, inclusive, govern the foreclosure of a lien held by the association of a common-interest community. NRS 116.31164 sets forth the procedure for conducting the sale of real property by an association pursuant to the foreclosure of a lien on that property. With respect to the distribution and use of the proceeds of such a sale and the delivery of the property after the sale, subsection 3 of NRS 116.31164 provides:

> 3. After the sale, the person conducting the sale shall:
>
> (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;
>
> (b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and
>
> (c) Apply the proceeds of the sale for the following purposes in the following order:
>
> (1) The reasonable expenses of sale;
>
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the

extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

(Emphasis added). Additionally, subsection 3 of NRS 116.31166 provides that "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption."

In considering a provision of NRS, we are guided by several rules of statutory construction employed by the Nevada Supreme Court. As a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995); McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986) (words in a statute "should be given their plain meaning unless this violates the spirit of the act").

Applying this rule of statutory construction stated above, the plain language of subsection 3 of NRS 116.31164 provides that when property is sold pursuant to an association's foreclosure of a lien, the purchaser obtains a deed without warranty which conveys to the purchaser, as the grantee of the warranty made, executed and delivered by the person conducting the sale, all title held by the previous owner.[1] In addition, subsection 3 of NRS 116.31166 provides that the interest vested in the purchaser is that of the previous owner's title without equity or right of redemption. Thus, these two provisions of NRS clearly and unambiguously establish that when real property is sold pursuant to the foreclosure of a lien on the property held by an association, the purchaser acquires the entirety of the title held by the previous owner of the property, and such title is not subject to any claim of equity or right of redemption by the previous owner.

2. Does the ownership interest obtained by the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, survive a subsequent foreclosure on a security interest, other than an association lien, on the same property?

The order of distribution of proceeds of a sale of real property made pursuant to an association's foreclosure of a lien on the property is set forth in subsection 3 of NRS 116.31164. The order of priority for satisfying a security interest other than an association lien on such property is also set forth in subsection 3 of NRS 116.31164. Subsection 3 of NRS 116.31164 provides that proceeds from the sale of a property must be applied to "[s]atisfaction in the order

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[1] A deed without warranty, unlike a warranty deed which contains a covenant of title, may carry with it the risk of a defect in the title. 13 M.L.P. 2d Deeds § 3 (2012) (citing Corbin on Contracts § 587).

of priority of any subordinate claim of record" but only after those proceeds are first applied to: (1) the reasonable expenses of the sale; (2) the reasonable expenses of securing, maintaining and preparing the property for sale; and (3) the satisfaction of the association's lien.

Significantly, subsection 1 and 2 of NRS 116.31166 also provide that:

> 1. The recitals in a deed made pursuant to NRS 116.31164 of:
> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
> (b) The elapsing of the 90 days; and
> (c) The giving of notice of sale,
>
> are conclusive proof of the matters recited.
>
> 2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

(Emphasis added).

Based on the plain language of subsection 2 of NRS 116.31166, the receipt for the purchase money contained in a deed without warranty delivered to a purchaser pursuant to NRS 116.31164 that includes the recitals described in subsection 1 of NRS 116.31166 serves to discharge the purchaser from any obligation to ensure the proper application of the purchase money paid by the purchaser.

In the event there are insufficient proceeds to satisfy a security interest, the holder of that security interest may be able to seek recourse by pursuing a deficiency judgment against the person who was the owner of the property at the time of sale under chapter 40 of NRS.[2] However, assuming the purchaser of the property obtains a deed containing the proper recitals described in subsection 1 of NRS 116.31166 and the receipt for purchase money described in subsection 2 of NRS 116.31166, there are no other applicable statutory provisions that would otherwise authorize the holder of a security interest to whom the previous owner of the property was obligated to seek a judgment against the purchaser of the property for any deficiency resulting from the distribution of proceeds. Accordingly, the ownership interest of a purchaser who obtains title through a deed properly containing the information described above is not subject to any claim made by the holder of a security interest who forecloses on an obligation after the purchase is made pursuant to NRS 116.31164.

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[2] NRS 40.451 to 40.463, inclusive, establish procedures for the award of a deficiency judgment, and NRS 40.4631 to 40.4639, inclusive, set forth provisions relating to actions by holders of junior real mortgages after a foreclosure sale. It should be noted, however, that pursuant to Assembly Bill No. 471 of the 2009 Legislative Session (Ch. 310, Statutes of Nevada 2009, at p. 1328-31), a deficiency judgment on an obligation secured by a mortgage, deed of trust or other encumbrance on or after October 1, 2009, may not be awarded against a homeowner if certain criteria are met.

3. Can any part of an ownership interest vested in the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, be extinguished by a subsequent foreclosure on a security interest, other than an association lien, on the same property?

As explained above, any recourse sought by the holder of a security interest to whom the previous owner of the property was obligated is properly made against that previous owner and not the purchaser of the property. Therefore, no part of an ownership interest vested in the purchaser may be extinguished by a foreclosure on a security interest to which the previous owner was obligated that occurs after the purchaser obtains title to the property under NRS 116.31164.

SUMMARY

Based on the reasoning set forth above, it is the opinion of this office that: (1) the purchaser of real property sold pursuant to the foreclosure of an association lien under the provisions of NRS 116.31162 to 116.31168, inclusive, obtains all title belonging to the previous owner; and (2) if certain recitals and the receipt for purchase money are properly contained in the deed conveying such title to the purchaser, the purchaser is discharged from any obligation relating to the application of proceeds from the sale of the property to satisfy the claims described in NRS 116.31164, including any claim that may be made by the holder of an interest secured by the same property but to whom the previous owner, and not the purchaser, was obligated.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By _____
J. Daniel Yu
Principal Deputy Legislative Counsel

Bradley A. Wilkinson
Chief Deputy Legislative Counsel

DY:dtm
Encl.
Ref No. 121205082953
File No. OP_Hammond121205154959

EXHIBIT 7

LISMAN LECKERLING, P.C.

Attorneys at Law

Carl H.Lisman
Direct dial: 802 865-2500 ext. 225
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May 29, 2013

Michael E. Buckley, Esq., Co-Chair
Common-Interest Committee
Nevada State Bar Real Property Section
Fennemore Craig Jones Vargas
300 S. Fourth Street, Suite 1400
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Karen D. Dennison, Esq., Co-Chair
Common-Interest Committee
Nevada State Bar Real Property Section
Holland & Hart LLP
5441 Kietzke Lane, 2nd Floor
Reno, Nevada 89511

Ladies and Gentlemen:

You have asked whether foreclosure of its assessment lien by a Nevada common interest association extinguishes a first security interest and other junior interests.

It is my opinion that foreclosure by an association extinguishes the first security interest and all other subordinate interests if the foreclosure otherwise complies with the requirements of Nevada law.

As discussed more below, the Nevada statute is based on and incorporates, with variations not relevant to my opinion, the provisions of the Uniform Common Interest Ownership Act ("UCIOA"). My long experience in the writing of UCIOA and its predecessor laws gives me a unique perspective into the meaning and intent of Nevada's Uniform Common-Interest Ownership Act ("NUCIOA").

UCIOA and NUCIOA clearly contemplate that foreclosure by an association extinguishes a first security interest.

My Experience and Background

ULC Commissioner. The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) was established in 1892. It provides States with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

I have served as a Uniform Law Commissioner without interruption since 1976. I have been involved, almost continuously, in the drafting of substantially all of the uniform and model laws relating to condominiums, planned communities, cooperatives, time-shares, partition of real estate, land security interests and nonjudicial foreclosure.

My initial involvement in common interest ownership law was as a member of the ULC's 1976 review committee on the Uniform Condominium Act. Thereafter, I was a member of the drafting committees that produced the 1980 Uniform Planned Community Act and the 1982 Uniform Common Interest Ownership Act. I chaired the committee that amended the Uniform Common Interest Ownership Act in 1994.

I chaired the drafting committee that produced both the 2008 amended Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act.

Educator. I taught a course on real estate transactions for 18 years as an adjunct professor at Vermont Law School, with an emphasis on common interest ownership law.

I've been on the faculty of numerous courses and classes for lawyers and others involved in real estate, including chairing the American Law Institute-American Bar Association's courses on condominium, planned community and mixed use projects as well as serving on the faculty of the ALI-ABA course on resort real estate. In those classes, I emphasize the benefits and burdens of the Uniform laws for developers, lenders, merchant builders, unit purchasers and sellers, associations and managers.

I've addressed legislative committees in a number of States on the subject of the real property Uniform Laws as well as been an invited speaker at symposia and similar events.

Peer Organizations. I've chaired the Common Interest Committee of the American College

of Real Estate Lawyers and the Condominium and Planned Community Committee of the ABA Real Property Section.

I chaired, until recently, the Joint Editorial Board on Real Property, jointly sponsored by the American College of Real Estate Lawyers, the ABA Real Property Section, the Uniform Law Conference, the Community Association Institute, the American College of Mortgage Attorneys and the American Land Title Association.

UCIOA and NUCIOA

Our goals in promulgating the 1982 UCIOA[1] were many, but we believe that we achieved at least two of them:

First, we consolidated, into a single statute, the law applicable to the creation and termination of the condominium, planned community and real estate cooperative forms of real estate;[2] the operation of common interest community associations; and protections of consumers in purchases from the declarant and in resale transactions.

Second, we eliminated substantially all of the variations applicable to common interest communities attributable solely to the legal form of the community and, as to the remainder, we "harmonized" the differences.

1982 UCIOA is divided into five parts:

- Article 1 contains definitions and general provisions.
- Article 2 provides for the creation, alteration and termination of common interest

---

[1] The ULC has subsequently amended UCIOA: First, in 1994, to address minor changes and, second, in 2008, to significantly expand Part 3 to expand governance rights for owners and increased transparency of board actions, as well as other changes throughout the rest of the Act. Those changes do not affect my opinions.

[2] The important distinctions among these three forms of ownership is who owns what: In a condominium, unit owners own their units individually and, together, they own the common elements, which their association (in which they are mandatory members) manages; in a planned community, unit owners own their own units but their association (in which they are mandatory members) owns the common elements; and in a real estate cooperative, the association owns both the units and common elements but owners, by virtue of their membership in the association, have exclusive rights to particular units.

In each, the association has a lien to enforce its assessment authority.

communities.

- Article 3 concerns the administration of the community association.

- Article 4 deals with consumer protection for purchasers.

- Article 5 is an optional Article which establishes an administrative agency to supervise a developer's activities.

Nevada enacted NUCIOA in 1991. At that time, Nevada adopted, without variations not relevant to my opinion, 1982 UCIOA's Section 3-116. The Nevada version is NRS 116.3116.

The ULC proudly proclaims that roughly half the States have enacted one or more of the Uniform Condominium Act, the Uniform Planned Community Act or one of the iterations of UCIOA.[3]

Priorities

The first of the uniform laws addressing common interest communities was the Uniform Condominium Act. It was initially designed to deal with a wide range of issues including flexibility for developers, abuses by developers, the need to protect developer lenders after developer failure, separating title documentation from purchaser disclosure, appropriate disclosure for purchasers, and the powers and responsibilities of the association.[4]

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[3] UCIOA: Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, West Virginia, Vermont.

Uniform Condominium Act: Alabama, Arizona, Louisiana, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Rhode Island, Texas, Virginia, Washington.

Uniform Planned Community Act: Pennsylvania.

Uniform Common Interest Owner Bill of Rights: Kansas.

[4] Although nothing in the Uniform Condominium Act prohibited a "horizontal" condominium, the presumption that guided its drafting was that a condominium would be vertical, as with mid- and high-rise buildings.

The Uniform Planned Community Act was initially designed to deal with the "multi-unit residential 'planned community' served by common area facilities owned and operated by a homeowner association." Although nothing in the Uniform Planned Community Act prohibited a "vertical" planned community, the presumption that guided its drafting was that a planned community would be horizontal, as with traditional subdivisions in which the association owned common land.

Because the role of an association is critical to the success or failure of the great majority of common interest communities, we devoted a significant amount of time to empowering the association. One of the most important conclusions that we reached addressed the need of the association to be properly funded.

Most common interest associations raise funds for their operations by assessing their members; some associations have amenities or other assets that generate income from third parties, but they are few in comparison. Similarly, most associations begin their budgeting process by identifying their expenses and then match up total expenses with assessment revenue. The consequence of this process is that if a single unit owner fails to pay her assessment obligations, the association is forced to cut back its expenses in the same amount – to the end that not all budgeted services can be provided. For that reason, the association was given a statutory lien against the unit owner's unit; it was believed that the mere existence of the lien would be sufficient leverage to ensure the association's ability to collect and, if not so, then the association was given the statutory authority to foreclose its lien in the same manner as a security interest.

However, if the association's only realistic remedy is foreclosure,[5] the association's lien – for assessments arising after the unit owner's mortgage was recorded in the office of the recorder – would ordinarily be junior to the first security interest. As a result, a foreclosing association would take subject to the first security interest – not a practical result – or, worse, be foreclosed by the holder of the first security interest.

It was Fannie Mae and Freddie Mac that proposed a solution that would protect the association and the interests of the holder of the first security interest: Give the association a limited priority ahead of the first security interest – UCIOA chose an amount equal to six months of assessments under the annual budget; the Nevada version is nine months. As explained in the Official Comments,

> as to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes an equitable balance between the need to

---

When we were comparing Uniform Condominium Act and the Uniform Planned Community Act during the 1982 UCIOA drafting process, we immediately recognized that the condominium and planned community forms of ownership were interchangeable, so that a condominium could be created as a traditional "homes association" neighborhood and a planned community could be a high-rise building. With that recognition, we sought to eliminate variations.

[5] That would be true if pursuit of a money judgment against the unit owner would be futile.

enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders.

First embodied in the 1976 Uniform Condominium Act, this priority principle has become the law not only in States that enacted one or more of the Uniform laws and in a half dozen other States by specific legislation.

A lender faced with foreclosure by the association could be expected to protect its collateral by paying off the six month priority amount. And it could do so without advancing its own funds by requiring its borrowers to escrow for association assessments in the same manner as lenders require escrow for property taxes and casualty insurance.[6]

Foreclosure

The priority treatment of the association's lien is not limited to a first claim to proceeds from the foreclosure sale (up to an amount of unpaid assessments, fee, charges, late charges, fines and interest not exceeding six months of assessments determined by the periodic budget). It also puts the association ahead of the first security interest – and that means that foreclosure by the association extinguishes the first security interest and all junior interests.[7]

That result naturally follows from the customary rule regarding priority of interests in real estate.[8] A foreclosure sale of the association's lien is governed by the same principles generally applicable to lien foreclosure sales, so that foreclosure of a lien entitled to priority extinguishes that lien and all subordinate liens. The liens attach to the proceeds of the sale and are paid out accordingly.

---

[6] Of course, back in 1976, there were many fewer foreclosures and only a few of them required more than six months from commencement to completion. Even in a judicial foreclosure jurisdiction, foreclosure actions – in the absence of a meritorious defense – would be completed in less than 12 months. Requiring a borrower to escrow six months of association associations was seen as a minor burden.

[7] There is an exception, though very unlikely: If the first security interest is recorded before the declaration, the association's lien would be junior to it.

[8] The Restatement of Property (Mortgages) (1996) states the general rule, in the context of mortgage foreclosure, this way in Section 7.1: "A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified under applicable law." By substituting "association lien" for "mortgage," the rule in NUCIOA 116.3116 is clearly understood.

The holder of the first security interest can easily protect its position by paying the six-month priority amount to the association and taking an assignment from the association.

Conclusion

The NUCIOA follows the principles in UCIOA:

- The association enjoys a statutory limited priority ahead of a first security interest similar to the priority given to property taxes and other governmental charges.

- Because of the statutory priority, foreclosure by the association extinguishes the first security interest and all other junior interests.

- The holder of a first security interest can – and should – protect itself against an association foreclosure by requiring that its borrower escrow the full amount of the association's priority and paying it to the association to avoid extinguishment of the security interest.

Sincerely,

Carl H. Lisman

26961\001

EXHIBIT 6

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: The Super Priority Lien	Advisory No. **13-01**	21 pages
	Issued By: Real Estate Division	
	Amends/ Supersedes	N/A
Reference(s): NRS 116.3102; ; NRS 116.310312; NRS 116.310313; NRS 116.3115; NRS 116.3116; NRS 116.31162; Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01		Issue Date: December 12, 2012

QUESTION #1:

Pursuant to NRS 116.3116, may the portion of the association's lien which is superior to a unit's first security interest (referred to as the "super priority lien") contain "costs of collecting" defined by NRS 116.310313?

QUESTION #2:

Pursuant to NRS 116.3116, may the sum total of the super priority lien ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus charges incurred by the association on a unit pursuant to NRS 116.310312?

QUESTION #3:

Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

SHORT ANSWER TO #1:

No. The association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien.

SHORT ANSWER TO #2:

No. The language in NRS 116.3116(2) defines the super priority lien. The super priority lien consists of unpaid assessments based on the association's budget and NRS 116.310312 charges, nothing more. The super priority lien is limited to: (1) 9 months of assessments; and (2) charges allowed by NRS 116.310312. The super priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget, and it may not include penalties, fees, late charges, fines, or interest. References in NRS 116.3116(2) to assessments and charges pursuant to NRS 116.310312 define the super priority lien, and are not merely to determine a dollar amount for the super priority lien.

SHORT ANSWER TO #3:

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

ANALYSIS OF THE ISSUES:

This advisory opinion – provided in accordance with NRS 116.623 – details the Real Estate Division's opinion as to the interpretation of NRS 116.3116(1) and (2). The Division hopes to help association boards understand the meaning of the statute so they are better equipped to represent the interests of their members. Associations are encouraged to look at the entirety of a situation surrounding a particular deficiency and evaluate the association's best option for collection. The first step in that analysis is to understand what constitutes the association's lien, what is not part of the lien, and the status of the lien compared to other liens recorded against the unit.

Subsection (1) of NRS 116.3116 describes what constitutes the association's lien; and subsection (2) states the lien's priority compared to other liens recorded against a unit. NRS 116.3116 comes from the Uniform Common Interest Ownership Act (1982) (the "Uniform Act"), which Nevada adopted in 1991. So, in addition to looking at the language of the relevant Nevada statute, this analysis includes references to the Uniform Act's equivalent provision (§ 3-116) and its comments.

I. NRS 116.3116(1) DEFINES WHAT THE ASSOCIATION'S LIEN CONSISTS OF.

NRS 116.3116(1) provides generally for the lien associations have against units within common-interest communities. NRS 116.3116(1) states as follows:

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

(emphasis added).

Based on this provision, the association's lien includes assessments, construction penalties, and fines imposed against a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the association's lien in that such items are enforceable as if they were assessments. Assessments can be foreclosed pursuant to NRS 116.31162, but liens for fines and penalties may not be foreclosed unless they satisfy the requirements of NRS 116.31162(4). Therefore, it is important to accurately categorize what comprises each portion of the association's lien to evaluate enforcement options.

A. "COSTS OF COLLECTING" (DEFINED BY NRS 116.310313) ARE NOT PART OF THE ASSOCIATION'S LIEN

NRS 116.3116(1) does not specifically make costs of collecting part of the association's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of penalties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,

charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

> 1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...
> (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.
> **(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.**
> (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
> (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
> (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

> An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.[1] By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."[2] In other words, costs of collecting includes more than "charges for late payment of assessments."[3] Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.[4] "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

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[1] Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).
[2] NRS 116.310313.
[3] "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).
[4] NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner "reasonable fees to cover the costs of collecting any past due obligation." NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association's right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association's expenses to be a lien on the unit and provides that the lien is prior to the first security interest.[5] NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association's super priority lien.

The Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission's advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association's lien would specifically include "costs of collecting" as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act's amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed $1,950, in addition to 9 months

[5] See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.[6]

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association's lien to include attorney's fees and costs and "any other sums due to the association."[7] The bill's language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature's actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association's lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association's lien does not include "costs of collecting" as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association's ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association's expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

(1) The reasonable expenses of sale;

[6] See http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423.
[7] Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
(3) Satisfaction of the association's lien;
(4) Satisfaction in the order of priority of any subordinate claim of record; and
(5) Remittance of any excess to the unit's owner.

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosure *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

> [A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

III. THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).

NRS 116.3116(2) states:

> A lien under this section is prior to all other liens and encumbrances on a unit except:
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
> ***The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.

The second portion of the super priority lien is "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for

common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments *and* additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review[8] article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

[8] See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.[9] It can include fines, interest, and late charges.[10] The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not *costs* the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.[11] The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

[9] See id. at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).
[10] See id.
[11] See http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416.

include the association's costs and attorneys' fees.[12] Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commenting on the intent of the bill, Assemblywoman Ellen Spiegel stated:

> Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. *I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees.* The bill covers the basic monies the association uses to build its regular budgets.

(emphasis added).[13]

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

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[12] See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.
[13] See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

SECTION 3-116. LIEN FOR ~~ASSESSMENTS~~; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to~~,~~ ;

~~(ii)~~(2) except as otherwise provided in subsection (c), 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 owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent~~,~~; and

~~(iii)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A ~~The~~ lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this subsection ~~does~~ do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [~~The~~ A lien under this section is not subject to ~~the provisions of~~ [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

> Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:
>
> First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

The Uniform Act's amendment in 2008 is very telling about § 3-116's original intent. The comments state reasonable attorneys' fees and court costs are *added* to the super priority lien stating that it is currently 6 months of regular common assessments. The Uniform Act adds attorneys' fees and costs to subsection (a) which defines the association's lien. Those attorneys' fees and costs attributable to foreclosure efforts are also added to subsection (c) which defines the super priority lien amount.

If the association's lien ever included attorneys' fees and court costs as "charges for late payment of assessments" or if such sum was part of the super priority lien, there would be no reason to add this language to subsection (a) and (c). Or at a minimum, the comments would assert the amendment was simply to make the language more clear. It is also clear by the language that only what is specified as part of the super priority lien can comprise the super priority lien. The additional language defining the super priority lien provides for costs that are *incurred* by the association foreclosing the lien. This is further evidence that the super priority lien does not and never did consist of interest, fines, penalties or late charges. These charges are not incurred by the association and they should not be part of any super priority lien.

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose not to. While the revisions under the

Uniform Act may make sense to some and they may be adopted in other jurisdictions, the fact of the matter is, Nevada has not adopted those changes. The changes to the Uniform Act cannot be insinuated into the language of NRS 116.3116. Based on the plain language of NRS 116.3116, legislative intent, and the comments to the Uniform Act, the Division concludes that the super priority lien is limited to expenses stemming from NRS 116.310312 and assessments as reflected in the association's budget for the immediately preceding 9 months from institution of an action to enforce the association's lien.

IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.

NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

> One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent

assessment as provided in NRS 116.31162(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

ADVISORY CONCLUSION:

An association's lien consists of assessments, construction penalties, and fines. Unless the association's declaration provides otherwise, the association's lien also includes all penalties, fees, charges, late charges, fines and interest pursuant to NRS 116.3102(1)(j) through (n). While charges for late payment of assessments are part of the association's lien, "costs of collecting" as defined by NRS 116.310313, are not. "Costs of collecting" defined by NRS 116.310313 includes costs of collecting any *obligation*, not just assessments. Costs of collecting are not merely a charge for a late payment of assessments. Since costs of collecting are not part of the association's lien in NRS 116.3116(1), they cannot be part of the super priority lien detailed in subsection (2).

The super priority lien consists of two components. By virtue of the detail provided by the statute, the super priority lien applies to the charges incurred under NRS 116.310312 and up to 9 months of assessments as reflected in the association's regular budget. The Nevada Legislature has not adopted changes to NRS 116.3116 that were made to the Uniform Act in 2008 despite multiple opportunities to do so. In fact, the Legislative intent seems rather clear with Assemblywoman Spiegel's comments to A.B. 204 that changed 6 months of assessments to 9 months. Assemblywoman Spiegel stated that she "carefully put this bill together to make sure it did not include any

assessments for penalties, fines or late fees." This is consistent with the comments to the Uniform Act stating the priority is for assessments based on the periodic budget. In other words, when the super priority lien language refers to 9 months of assessments, assessments are the only component. Just as when the language refers to charges pursuant to NRS 116.310312, those charges are the only component. Not in either case can you substitute other portions of the entire lien and make it superior to a first security interest.

Associations need to evaluate their collection policies in a manner that makes sense for the recovery of unpaid assessments. Associations need to consider the foreclosure of the first security interest and the chances that they may not be paid back for the costs of collection. Associations may recover costs of collecting unpaid assessments if there are proceeds from the association's foreclosure.[14] But costs of collecting are not a lien under NRS 116.310313 or NRS 116.3116(1); they are the personal liability of the unit owner.

Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest. If a loan modification or short sale is worked out with the owner's lender, the association is better off limiting its expenses and more likely to recover the assessments. Adding unnecessary costs of collection – especially after a short period of delinquency – can

[14] NRS 116.31164.

make it all the more impossible for the owner to come current or for a short sale to close. This situation does not benefit the association or its members.

EXHIBIT 5

Trustee Sales Search Result

1 trustee sale listings were found matching an APN containing '126-13-818-046', from the date '01/01/13' and to the date '10/17/13'. Results are sorted by Auction date and time.
This search result is available for download in CSV format, or loaded in a print-friendly format.

Displaying page 1 of 1

Listing Status: Postponed
Auction Date: 08/16/13 09:00 AM
Sale Location: NLN
TS #: NV09006726-10-1S
APN: 126-13-818-046
Client ID: NV12-001387-2
Estimated Bid: $455,484.08
Trustee: TRUSTEE CORPS.
Contact #: (949) 252-8300
Automated #: (714) 259-7850
Date Recorded: 09/28/07
Document Number: 3141
Property Location: 10209 DOVE ROW AVE, LAS VEGAS, 89166
VIEW HISTORY

EXHIBIT 4

Electronically Filed
07/09/2013 03:48:33 PM

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

****

DAISY TRUST,

Plaintiff,

v.

WELLS FARGO BANK NA, MTC FINANCIAL, INC., dba TRUSTEE CORPS, DONALD K. BLUME and CYNTHIA S. BLUME,

Defendants.

CASE NO: A679095
DEPARTMENT XXIII

DECISION

This matter was last before the court on July 2, 2013 on Daisy Trust's Ex Parte Motion for Temporary Restraining Order; Or Alternatively for Order to Show Cause. Wells Fargo filed an Opposition and Countermotion to Dismiss, with MTC, Inc. filing a Joinder properly thereto. Daisy Trust subsequent filed an Opposition and Wells Fargo countered with a Reply in Support of their motion. At the hearing, Michael Bohn, Esq. was present for Plaintiff Daisy Trust, Richard Reynolds, Esq. appeared telephonically on behalf of Defendant MTC Financial, Inc., and Robin Perkins, Esq. and Richard Gordon, Esq. appeared on behalf of the Defendant Wells Fargo Bank, N.A.

After considering the oral argument of counsel as well as all papers and pleadings on file, the Court denied the Preliminary Injunction and the Countermotion to Dismiss was taken under advisement. The court now finds as follows.

STEFANY A. MILEY
DISTRICT JUDGE
DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

A. Statement of Facts

This matter concerns property commonly known as 10209 Dove Row Avenue, Las Vegas, NV and legally described as: Cliffs Edge POD 115 116 & 117 Unit 1B, Plat book 133, Page 56, Lot 46, Block A Clark County. COURT adopts Defendant Wells Fargo Bank, N.A.'s statement of the relevant factual background as laid out in their Countermotion to Dismiss.

B. Standard of Review for Motion to Dismiss

Defendant asserts that plaintiff's quiet title claim fails to "establish a claim upon which relief can be granted." NRCP 12(b) (5). It is well-settled that a district court order granting an NRCP 12(b) (5) motion to dismiss is subject to rigorous appellate review. *See Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citing *Lubin v. Kunin*, 117 Nev. 107, 110–11, 17 P.3d 422, 425 (2001)). This court must accept the plaintiff's factual allegations as true; however the allegations must be legally sufficient to constitute the elements of the claim asserted. *Id.*, citing *Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). Furthermore, the court must draw every reasonable inference in the plaintiff's favor. *Id.*

The law in Nevada remains that a cause of action should not be dismissed "'unless it appears beyond a doubt that the plaintiff could prove no set of facts . . . [that] would entitle him [or her] to relief.'" *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

C. Statutory Interpretation of NRS §116.3116

The question before the court is a clear-cut issue of statutory interpretation. Homeowner's association liens are governed by NRS §116.3116. Here, Plaintiff argues that a foreclosure under NRS §116.3116 extinguishes the senior deed of trust. Defendant

STEFANY A. MILEY
DISTRICT JUDGE
DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

argues that this interpretation of the statute is erroneous and would lead to absurd results.

The Court construes the statute under common methods of statutory construction. The court also considers NRS §116.3116 *in paria materia* with other foreclosure statutes. *See, e.g., Williams v. United Parcel Services,* 129 Nev. Adv. Op. 41 (2013) (stating that statutory provisions are read as a whole, with effect given to each word or phrase); *Barney v. Mt. Rose Heating & Air Conditioning,* 192 P.3d 730 (2008) (statutes must read in context, policy can be considered as an interpretive aid.); *State, Dept. of Business and Industry v. Nevada Ass'n Srvcs., Inc.*, 294 P.3d 1223 (Nev., 2012) (court considered NRS Chapter 116 and NRS Chapter 649 in a way that harmonizes them as a whole).

The statute states in relevant part that an association's lien "is prior to all other liens and encumbrances on a unit except... (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent." *NRS §116.3116 (2)(b).* The statute also creates a super priority interest for assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." *Id.* Any amounts superfluous to the nine months are not afforded a super priority. *Id.*

The Nevada Supreme Court has not addressed what an "action" means under NRS 116.3116(2)(c). Black's Law Dictionary defines action as "a lawsuit brought in a court; a formal complaint within the jurisdiction of a court of law." BLACK'S LAW DICTIONARY 28 (6th ed. 1990).Other departments in the Eighth Judicial District Court Department have held that an action, in the context of §116 means a civil action. *See*

STEFANY A. MILEY
DISTRICT JUDGE
DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

e.g., Deutsche Bank National Trust Comp. v. The Foothills at Macdonald Ranch, Case No. A-13-680505 (Nev. 2013); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A., et al,* Case No. A-13-678814, (Nev. 2013); *Daisy Trust v. Wells Fargo Bank, N.A., et al,* Case No. A-13-675183 (Nev. 2013).

Furthermore, this interpretation is consistent with Nevada federal district court decisions. *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, 2013 WL 531092, at *3 (D. Nev. Feb. 11, 2013) (holding that when an HOA holds a non-judicial foreclosure sale, the buyer takes the property subject to the first security interest); *Weeping Hollow Ave. Trust v. Spencer.*, 2013 WL 2296313, 5 (D.Nev. May 24, 2013) (stating that the super priority lien does not extinguish the first position deed of trust.); *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC.*, 2013 WL 2460452, *4 (D. Nev. June 6, 2013) (stating that foreclosure of neither a super-priority lien nor a first mortgage will extinguishes the other, but first proceeds must go to the super-priority lien); *Salvador v. National Default Servicing Corp.*, 2013 WL 3049084, at *5-6 (D. Nev. June 13, 2013) (denying preliminary injunction for failure to establish likelihood of success on the merits because statute does not eliminate the first security interest as a matter of law). Therefore, action under *NRS §116.3116* means a civil action filed by either the bank or the HOA.

COURT FINDS that the first security interest Deed of Trust was recorded on September 28, 2007 prior to the home owner's association lien which was recorded on August 5, 2010 and the notice of default filed September 30, 2010.

COURT FINDS the home owner's association super-priority lien only creates a priority to payment from foreclosure proceeds.

STEFANY A. MILEY
DISTRICT JUDGE
DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

COURT FINDS, NRS §116.3116 refers to a judicial foreclosure action and is not applicable when the home owner's association forecloses under the non-judicial foreclosure statutes.

COURT FURTHER FINDS that the home owner's association foreclosure sale of its lien, under NRS §116.3116, cannot extinguish Wells Fargo's deed of trust because it was recorded prior to the home owner association's lien and Plaintiff Daisy Trust purchased the property with notice of the first in time deed of trust.

In light of the foregoing, COURT ORDERS, Defendant Wells Fargo Bank, N.A.'s Countermotion to Dismiss with Joinder by MTC Financial Inc., GRANTED.

IT IS SO ORDERED.

DATED this 9th day of July, 2013.

HONORABLE STEFANY A. MILEY
DISTRICT COURT JUDGE

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

CERTIFICATE OF FACSIMILE & MAILING

I hereby certify that: On the 9th day of July, 2013:

☒ I faxed the foregoing Decision to:

Michael F. Bohn, Esq. at (702) 642-9766; to Richard Reynolds, Esq at (949) 863-3350 and to Richard Gordon, Esq. at (702) 784-5252.

By:
Carmen Alper
Judicial Executive Assistant

STEFANY A. MILEY
DISTRICT JUDGE
DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

EXHIBIT 3

TRO

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST

Plaintiff,

vs.

WELLS FARGO BANK NA, MTC FINANCIAL, INC., dba TRUSTEE CORPS, DONALD K. BLUME and CYNTHIA S. BLUME

Defendants.

CASE NO.: A679095
DEPT NO.: XVIII

TEMPORARY RESTRAINING ORDER

The ex parte motion of plaintiff Daisy Trust, for a temporary restraining order to stop a foreclosure sale of it's property having come before the Court, and the Court having reviewed the motion and the ~~verified~~ complaint finds as follows:

1. Plaintiff is the owner of the real property commonly known as 10209 Dove Row Avenue, Las Vegas, Nevada.

2. Plaintiff obtained title by way of foreclosure deed recorded on August 9, 2012.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Westminster at Providence Association, pursuant to NRS Chapter 116.

4. Defendant Wells Fargo Home NA is the assignee of a deed of trust which was recorded as an encumbrance to the subject property on September 28, 2007.

5. Defendant MTC Financial dba Trustee Corps is the trustee on the deed of trust.

6. Defendants Donald K. Blume and Cynthia S. Blume are the former owner of the subject real property.

7. The plaintiff contends that the interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owners, Donald K. Blume and Cynthia S. Blume to the Westminster at Providence Association, pursuant to NRS Chapter 116.

8. Defendant Wells Fargo has recorded a notice of default and election to sell under it's deed of trust pursuant to NRS 107.080.

9. Defendant has also recorded a notice of sale on March 26, 2013, with a sale date of April 26, 2013

10. If the foreclosure sale were permitted to continue, the plaintiff would be irreparably harmed.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, Wells Fargo Bank, N.A., and MTC Financial dba Trustee Corps are prohibited from conducting a foreclosure sale on the property located at 10209 Dove Row Avenue, Las Vegas, Nevada, until otherwise ordered by this Court.

IT IS FURTHER ORDERED that a hearing shall be conducted on the 2nd day of May 2013, at the hour of 8:15 a .m, in Department XVIII, on the plaintiff's application for a preliminary injunction.

IT IS FURTHER ORDERED that this temporary restraining order will expire by it's own terms in 15 days from the date of it's issuance, unless extended by order of the court.

///

///

IT IS FURTHER ORDERED that the terms of this temporary restraining order shall become effective upon the plaintiff posting security in the sum of $ 500.00 with the Clerk of the Court.

DATED this 17th day of April, 2013, at the hour of 1:15 pm.

DISTRICT COURT JUDGE

Respectfully submitted by:

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

By: _____
MICHAEL F. BOHN, ESQ.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiffs

/

EXHIBIT 2

20070928-0003141

Fee: $32.00
N/C Fee: $0.00

09/28/2007 14:21:28
T20070174444
Requestor:
NORTH AMERICAN TITLE COMPANY

Debbie Conway DHG
Clark County Recorder Pgs: 19

Assessor's Parcel Number:
126-13-818-046
Return To:
Universal American Mortgage Company, LLC
Secondary Marketing Ops
15550 Lightwave Drive, Suite 200
Clearwater, FL 33760

Prepared By: Clarise M O'Connor
Universal American Mortgage Company, LLC
1725 West Green Tree Drive
TEMPE, ARIZONA 85284

~~Recording Requested By:~~
Clarise M O'Connor
Universal American Mortgage Company, LLC
1725 West Green Tree Drive
TEMPE, ARIZONA 85284

45002-07-10681

[Space Above This Line For Recording Data]

A2699

DEED OF TRUST

MIN 100059600067676515

Loan # 0006767651

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated September 21, 2007 , together with all Riders to this document.

(B) "Borrower" is DONALD K BLUME AND CYNTHIA S BLUME, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Universal American Mortgage Company, LLC

Lender is a limited liability company organized and existing under the laws of Florida

Lender's address is 700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139

(D) "Trustee" is Stewart Title Company

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

(F) "Note" means the promissory note signed by Borrower and dated September 21, 2007. The Note states that Borrower owes Lender Four Hundred Seventeen Thousand and 00/100 Dollars (U.S. $ 417,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than October 01, 2037.

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

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

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

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

SEE ATTACHED LEGAL DESCRIPTION

Parcel ID Number: 126-13-818-046 which currently has the address of
10209 DOVE ROW AVENUE [Street]
LAS VEGAS [City], Nevada 89166 [Zip Code]
("Property Address"):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Witnesses:

_____ Donald K. Blume (Seal)
DONALD K BLUME -Borrower

_____ Cynthia S. Blume (Seal)
CYNTHIA S BLUME -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Loan # 0006767651 A2699

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 9/27/07 by
DONALD K BLUME, CYNTHIA S BLUME

Mail Tax Statements To:

Universal American Mortgage Company, LLC
Loan Servicing Department
700 NW 107th Avenue 3rd Floor, Miami, FL 33172-3139

G. YOUNG
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 04-89137-1
My Appt. Expires May 6, 2008

Loan # 0006767651 3150/FNMA

PLANNED UNIT DEVELOPMENT RIDER

MIN # 100059600067676515

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of September, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Universal American Mortgage Company, LLC, a Florida limited liability company

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 10209 DOVE ROW AVENUE, LAS VEGAS, NEVADA 89166

[Property Address]

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

Declaration of Restrictions and Protective Covenants, as recorded in, OF RECORD

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

[Name of Planned Unit Development]

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

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

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

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

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

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

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

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

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

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

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

Initials: CB OKB

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

Donald K. Blume (Seal)
DONALD K BLUME -Borrower

Cynthia S Blume (Seal)
CYNTHIA S BLUME -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

File No.: 45002-07-10681

EXHIBIT A

PARCEL ONE (1):

LOT FORTY-SIX (46) IN BLOCK "A" OF FINAL MAP OF CLIFF'S EDGE POD 115, 116, AND 117 UNIT 1B (A COMMON INTEREST COMMUNITY), AS SHOWN ON BY MAP IN BOOK 133 OF PLATS, PAGE 56 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE COMMON ELEMENTS AS DELINEATED ON SAID MAP REFERRED TO ABOVE AND FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTMINSTER AT PROVIDENCE, RECORDED NOVEMBER 3, 2006 IN BOOK 20061103 AS DOCUMENT NO. 4921, OF OFFICIAL RECORDS.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE COMMON ELEMENTS AS DELINEATED ON SAID MAP REFERRED TO ABOVE AND FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTMINSTER AT PROVIDENCE, RECORDED NOVEMBER 3, 2006 IN BOOK 20061103 AS DOCUMENT NO. 4921, OF OFFICIAL RECORDS..

EXHIBIT 1

Inst #: 20120809000673
Fees: $18.00 N/C Fee: $0.00
RPTT: $53.55 Ex: #
08/09/2012 08:52:05 AM
Receipt #: 1265766
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: MSH Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Daisy Trust
900 S. Las Vegas Blvd. #810
Las Vegas, NV 89101

FORECLOSURE DEED

APN # 126-13-818-046
North American Title #45010-10-28070

NAS # N60547

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Westminster at Providence), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 5, 2010 as instrument number 0003460 Book 20100805, in Clark County. The previous owner as reflected on said lien is Donald K Blume & Cynthia S Blume. Nevada Association Services, Inc. as agent for Westminster at Providence does hereby grant and convey, but without warranty expressed or implied to: Daisy Trust (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Cliffs Edge POD 115 116 & 117 Unit 1B, Plat book 133, Page 56, Lot 46, Block A Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Westminster at Providence governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/30/2010 as instrument # 0001822 Book 20100930 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Westminster at Providence at public auction on 8/3/2012, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $10,500.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: August 7, 2012

Misty Blanchard

By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On August 7, 2012, before me, Elissa Hollander, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal) (Signature)

ELISSA HOLLANDER
Notary Public, State of Nevada
Appointment No. 05-101835-1
My Appt. Expires Nov. 5, 2013

State of Nevada
Declaration of Value

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument #_____
Book:_____ Page:_____
Date of Recording:_____
Notes:_____

1. **Assessor Parcel Number(s)**
   a) 126-13-818-046
   b) _____
   c) _____
   d) _____

2. **Type of Property:**
   a) ☐ Vacant Land b) ☑ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other_____

3. **Total Value/Sales Price of Property:** $ 10,500.00
   Deed in Lieu of Foreclosure Only (value of property) $_____
   Transfer Tax Value per NRS 375.010, Section 2: $ 10,500.00
   Real Property Transfer Tax Due: $ 53.55

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

5. Partial Interest: Percentage being transferred: 100 %

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

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

Signature Misty Blanchard Capacity Agent

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Nevada Association Services	Print Name: Daisy Trust
Address: 6224 W. Desert Inn Road	Address: 900 S. Las Vegas Blvd # 810
City: Las Vegas	City: Las Vegas
State: Nevada Zip: 89146	State: Nevada Zip: 89101

COMPANY REQUESTING RECORDING
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: North American Title Escrow # N 60547
Address: 8485 W. Sunset #111
City: Las Vegas State: NV Zip: 89113

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff /appellant

SUPREME COURT

STATE OF NEVADA

DAISY TRUST

Appellant

vs.

WELLS FARGO BANK NA, MTC FINANCIAL, INC., dba TRUSTEE CORPS,

Respondents

CASE NO.: 63611

EMERGENCY MOTION FOR INJUNCTION TO PROHIBIT FORECLOSURE SALE SCHEDULED FOR AUGUST 16, 2013

Plaintiff/appellant Daisy Trust, by and through it's attorney, Michael F. Bohn, Esq., moves this court for an injunction to prohibit a foreclosure sale of the property which is the subject of this action scheduled for August 16, 2013. This motion is based upon the points and authorities contained herein.

FACTS

Plaintiff/appellant is the owner of the real property commonly known as 10209 Dove Row Avenue, Las Vegas, Nevada. Plaintiff/appellant/appellant obtained title by way of foreclosure deed recorded on August 9, 2012. A copy of the deed is attached as Exhibit 1. The Plaintiff/appellant's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Westminster at Providence Association, pursuant to NRS Chapter 116.

Defendant/respondent Wells Fargo Home NA is the assignee of a deed of trust which was

recorded as an encumbrance to the subject property on September 28, 2007. A copy of the trust deed is Exhibit 2. Defendant/respondent MTC Financial dba Trustee Corps is the trustee on the deed of trust. Defendants Donald K. Blume and Cynthia S. Blume are the former owner of the subject real property.

The interest of each of the defendants/respondents has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owners, Donald K. Blume and Cynthia S. Blume to the Westminster at Providence Association, pursuant to NRS Chapter 116.

Defendant/respondent Wells Fargo has recorded a notice of default and election to sell under it's deed of trust pursuant to NRS 107.080. Defendant/respondent has also recorded a notice of sale.

The district court entered a temporary restraining order on April 17, 2013, stopping the foreclosure sale. A copy of the temporary restraining order is Exhibit 3. However, after briefing and after oral argument, the court denied the motion for a preliminary injunction, and granted the defendants motion to dismiss the complaint. A copy of the decision from the district court is Exhibit4.

The foreclosure sale is currently scheduled for August13, 2013. A copy of the on line notice from Nevada Legal News is Exhibit 5.

The plaintiff /appellant now seeks an injunction from this court to stop the sale scheduled for August 13, 2013.

POINTS AND AUTHORITIES

A. An injunction is an appropriate remedy

NRS 33.010 provides in part:

> **Cases in which injunction may be granted.** An injunction may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce

great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

NRAP 8(c) provides:

(c) **Stays in Civil Cases Not Involving Child Custody.** In deciding whether to issue a stay or injunction, the Supreme Court will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

A preliminary injunction is available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits, and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy. S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403; 23 P.3d 243 (2001); This court has ruled that if real property is permitted to be sold at foreclosure sale, the plaintiff would suffer irreparable harm for which money damages would be inadequate. Pickett v. Comanche Construction, 108 Nev. 422, 836 P.2d 42 (1992). Real property is considered unique and loss of property rights generally result in irreparable harm. Dixon v. Thatcher, 103 Nev. 414, 742 P.2d 1029 (1987).

B. The defendants/respondents deed of trust has been extinguished by the foreclosure on the HOA lien

NRS 116.3116 provides in part:

Liens against units for assessments.

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

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

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates,

assumes or takes subject to;

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

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

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

When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

The 9 month period in which the associations' lien is granted priority is commonly referred to as the "super priority" lien. In the case of State Department of Business and Industry v. Nevada Association Services, 128 Nev. Adv. Op. 34 (2012) This court stated in a footnote defining "super priority" that:

> Priority status over certain types of encumbrances is granted to liens against units for delinquent assessments. NRS 116.3116(2); NRS 116.093 (defining "unit").

The plain language of the statute of the statute is this 9 months "super priority" lien of the association's has priority over trust deeds. The statute is written in the negative. It first lists three categories of liens which the associations' lien is not prior to:

"A lien under this section is prior to all other liens and encumbrances on a unit except:"

The statute then lists the three categories as

(a) liens recorded before the CC & R's,
(b) mortgage liens, and
(c) liens for taxes and other governmental assessments or charges.

In the same paragraph, the statute then states that the "super priority" lien only takes priority over the "liens described in subsection (b), which is the mortgage lien. The relevant portion of the statute states:

> The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit . . . .and to the extent of the assessments for common expenses . . . .which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien....

The statute specifies that the 9 month super priority lien is not "prior to" liens recorded before the CC&Rs or liens for real estate taxes and other governmental charges or charges. The only liens which are subject to the "super priority" exception are mortgage liens.

In the case of State Department of Business and Industry v. Nevada Association Services, 128 Nev. Adv. Op. 34 (2012), This court upheld an injunction prohibiting the State Department of Business and Industry, Financial Institutions Division from enforcing it's declaratory order and advisory opinion regarding the amount of HOA lien fees associations could collect. This court held that the Financial Institutions Division did not have jurisdiction or authority to interpret NRS Chapter 116.

This court specifically noted that the Real Estate Division had the responsibility to determine whether the fees "maintain a priority" rests with the Real Estate Division. In response to this decision, the Real Estate Division issued it's opinion interpreting NRS 116.3116. Attached as Exhibit 6 is the advisory opinion dated December 12, 2012.

Section II of the opinion, cites to a portion of Section 2 to the commentary from the drafters of the Uniform Common-Interest Ownership Act (UCIOA).

The opinion letter from the Real Estate Division states in part, beginning on page 8:

> NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an associations lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to distinguish it from the other portion of the association's lien that is subordinate to a first security interest.
>
> The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can

foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act Comments to §3-116 state:

> [A]s to prior first mortgages, the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant department from existing practice, the 6 months's priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders. As a practical matter, mortgage lenders will most likely pay the 6 months's assessments demanded by the association rather than having the association foreclose on the unit. If the mortgage lender wishes, an escrow for assessments can be required. Since this provision may conflict with the provisions of some state statutes which forbid some lending institutions from making loans not secured by first priority liens, the law of each state should be reviewed and amended when necessary.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

This court has repeatedly held that courts should attach substantial weight to an administrative body's interpretation of statutes which it is charged to enforce. Folio v. Briggs 99 Nev. 30, 656 P.2d 842 (1983); This court has frequently stated that when interpreting a statute, the court should review the legislative history to determine the Legislature's intent. State v. Tricas 128 Nev. Ad. Op. 62, 290 P.3d 255 (2012); Chapter 116 of the Nevada Revised Statutes is derived from the Uniform Common-Interest Ownership Act (UCIOA). Section 2 to the commentary from the drafters of the uniform act is the relevant portion pertaining to the "super priority" lien, and was cited in the opinion letter from the Real Estate Division. The committee notes also notes that the lender could provide for escrow for assessments. This is commonly done for taxes and insurance.

Carl Lisman, Esq., who was one of the drafters of the original model law, has recently issued an opinion letter which states, in part, that it was the intent of the drafters that the

mortgage holder's lien would be extinguished by foreclosure of the "super-priority" lien. A copy of the letter is Exhibit 7.

The Legislative Counsel Bureau has also issued an opinion letter that the effect of the statute is that foreclosure on the "super-priority" lien by an HOA extinguishes the mortgage holder's lien. A copy of that letter is Exhibit 8.

Fannie Mae REQUIRES that mortgage lenders to pay the association liens because it recognizes that the HOA lien has priority. A copy of the Servicing Guide Announcement dated June 10, 2011 is Exhibit 9.

Fannie Mae certainly recognizes that a number of states have statutes which provide limited priority for HOA assessments and is requiring it's servicers to protect the priority of it's loans.

C. A reported decision supports the plaintiff/appellant's position

The court of appeals for the state of Washington in the case of Summerhill Village Homeowners Association v. Roughly, 166 Wash.App. 625, 270 P.3d 639 (2012), modified at 289 P.3d 645 (2012) has recently ruled that under the similar Washington state version of the UCIOA that foreclosure of the priority lien of an association extinguishes the outstanding deeds of trust.

The Washington Court of Appeals ruled that the HOA lien was prior to the first mortgage holder and that the foreclosure sale of the HOA lien extinguished out the security interest of the mortgage holder. The court stated:

> As a general rule, the priority of competing lien claims depends on the order in which those claims attached to the encumbered property, subject to recording requirements. There are exceptions to this "first in time, first in right" rule. One of those is found in the Condominium Act, chapter 64.34 RCW:
>
> . . . .
>
> The term "mortgage" includes a deed of trust. Thus, a condominium association's lien for common expense assessments has limited priority over deeds of trust recorded before the lien arises. This is often termed "super priority."
>
> ¶ 10 The official comments to RCW 64.34.364 reveal the expectation of the legislature: "As a practical matter, mortgage lenders will most likely pay the assessments demanded by the association which are prior to its mortgage rather than having the association foreclose on the unit and eliminate the lender's

mortgage lien." FN6

> FN6. 2 SENATE JOURNAL, 51st Leg., Reg., 1st & 2nd Spec. Sess., at 2080 (Wash. 1990); see also 1 SENATE JOURNAL, 51st Leg. Sess., Reg. Sess., at 376 (Wash. 1990). It appears the Senate adopted the Washington State Bar Association comments, which are substantially identical to the official comments to the Uniform Condominium Act concerning this section.

> ¶ 11 Therefore, under the statute, Summerhill's 2008 assessment lien had priority over the 2006 deed of trust to the extent of Summerhill's assessments for common expenses. Deutsche Bank's predecessor, MERS, was included in and notified of the foreclosure action, but GMAC, as the loan servicer, did not facilitate payment of the assessment lien prior to the sheriff's sale. **The sale extinguished the 2006 deed of trust**. The question now is whether Deutsche Bank can redeem. (emphasis added)

This case is cited for the proposition that the foreclosure of the HOA lien extinguishes the outstanding mortgage liens. Many district court judges in Clark County, however, have interpreted this case to mean that a judicial foreclosure must be commenced for a valid foreclosure. This is not consistent with Nevada law.

D. A civil action is not required to enforce the lien to grant priority status

The district court's decision in denying the injunction and dismissing the case states that a judicial foreclosure is required to grant priority status to the HOA lien. This is erroneous for a number of reasons.

First, there is no provision for judicial foreclosure of HOA liens in NRS Chapter 116. Next foreclosure of liens under NRS Chapter 116 is specifically excepted to the statutory scheme for judicial foreclosures under Chapter 40. NRS 40.433 states:

> "**Mortgage or other lien" defined**. As used in NRS 40.430 to 40.459, inclusive, unless the context otherwise requires, a "mortgage or other lien" includes a deed of trust, but **does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.** (emphasis added).

Also included in NRS Chapter 40 is the statute commonly referred to as the "one action rule, " NRS 40.430(1) which begins "there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate...." The one action rule permits only one action for the recovery of any debt or the enforcement of any right

secured by a mortgage or other lien. The statute define a list of actions which a beneficiary may take which do not violate the one action rule, including non-judicial foreclosure. The non-judicial foreclosure is referred to as an "action" but it clearly is not a "civil action."

This court in the case of Hamm v. Arrowcreek Homeowners Association 124 Nev. 290, 183 P.3d 895 (2008) has already rejected the argument that an "action" must be a civil action.

NRS Chapter 116 provides the requirements for a foreclosure sale of an HOA lien in NRS 116.31162 through 116.31168. The procedures are similar to foreclosure under power of sale on a trust as provided in NRS 107.080. There is no provision in these statutes for a judicial foreclosure process.

The Real Estate Division Advisory Opinion, attached as Exhibit 6 also expresses the opinion that the term "action" in the statute does not mean a civil action, only that the HOA must take action to enforce it's lien.

The argument that a judicial foreclosure must be instituted in order for the HOA lien to gain it's "super priority" status is contrary to Nevada law. The legislature set up a statutory scheme in which the liens are to be foreclosed upon in a non-judicial manner. There is no provision under chapter 116 for a judicial foreclosure similar to the statutory provisions providing for judicial foreclosure of trust deeds.

E. This court has previously issued injunctions in three other pending appeals

Counsel for appellant has 11 cases pending before this court with substantially identical issues. In three other cases, this court has granted temporary injunctions, and, after full briefing, issued injunctions. Those other cases are:

9320 Pokewood Ct Trust v. Wells Fargo, docket no. 63009;

Satico Bay LLC v. Bank of New York, docket no. 63011; and

River Glider Ave Trust v. Bank of New York Mellon, docket no. 63077.

Copies of the orders in these cases are collectively attached as Exhibit 10. Counsel is bringing these cases to the court's attention and requesting that the court be consistent in it's rulings on these emergency motions.

CONCLUSION

The language of NRS 116.3116, is clear that the 9 month HOA "super priority" lien has precedence over the mortgage lien. The advisory opinion of the Real Estate Division is consistent with the plain language of the statute, the intent of the statute as demonstrated by the committee advisory notes, and the judicial decision from the state of Washington interpretation a substantially similar statute. The Plaintiff/appellants title should be found to be free and clear of any mortgage lien or encumbrances asserted by the defendants/respondents.

The real property is unique and injunctions are commonly issued to stop foreclosures pending the outcome of litigation. Accordingly, the court should grant injunctive relief to the Plaintiff/appellant and stop the pending foreclosure.

DATED this 23rd day of July 2013.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of July 2013, I served a photocopy of the foregoing EMERGENCY MOTION FOR INJUNCTION by placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

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