

Case No. 63614

In the Supreme Court of Nevada

Electronically Filed
Jan 03 2014 08:57 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Appellant,

U.S. BANK, N.A., a national banking
association as Trustee for the
Certificate Holders of Wells Fargo
Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-
AR4, a Nevada non-profit corporation,

Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable SUSAN SCANN, District Judge
District Court Case No. A-13-678814-C

JOINT APPENDIX, VOLUME II

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2	14	4/29/2013	Affidavit of Service [Lucia Parks]	JA226 – JA227
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1	7	4/1/2013	Affidavit of Service [U.S. Bank, N.A.]	JA036
1	8	4/3/2013	Affidavit of Service [U.S. Bank, N.A.]	JA037
1	11	4/19/2013	Answer to Complaint for Quiet Title and Injunctive Relief	JA054 – JA062
1	3	3/27/2013	Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction	JA014 – JA028
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5	31	5/30/2013	Certificate of Mailing [Defendant, U.S. Bank, N.A.'s, Reply in Support of the Motion to Dismiss with Prejudice the Plaintiff's Complaint]	JA757 – JA758
5	39	6/27/2013	Certificate of Service [Motion to Alter or Amend Judgment]	JA875 – JA876
4	29	5/28/2013	Certificate of Service [Opposition to U.S. Bank, N.A.'s Motion to Dismiss]	JA657
3	24	5/14/2013	Certificate of Service [Reply in Support of Motion for Preliminary Injunction]	JA493 – JA494

6	44	7/24/2013	Certificate of Service [Reply in Support of Motion to Alter or Amend Judgment and Notice of Errata]	JA1008 – JA1009
5	33	5/31/2013	Certificate of Service [Supplement to Opposition to Motion to Dismiss]	JA790
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3	26	5/17/2013	Court Minutes	JA501 – JA502
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2	16	4/30/2013	Defendant, U.S. Bank, N.A.’s, Motion to Expunge Lis Pendens	JA248 – JA254
6	41	7/17/2013	Defendant, U.S. Bank, N.A.’s, Opposition to the Plaintiff’s Motion to Alter or Amend Judgment	JA879 – JA893
5	30	5/29/2013	Defendant, U.S. Bank, N.A.’s, Reply in Support of the Motion to Dismiss with Prejudice the Plaintiff’s Complaint	JA658 – JA756
1	13	4/25/2013	Defendant, U.S. Bank, N.A.’s, Request for Judicial Notice in Support of the Response to the Plaintiff’s Motion for Preliminary Injunction	JA088 – JA225
1	12	4/25/2013	Defendant, U.S. Bank, N.A.’s, Response to the Plaintiff’s Motion for Preliminary Injunction	JA063 – JA087
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2	20	5/14/2013	Notice of Joinder in Plaintiff's Motion for Preliminary Injunction	JA375 – JA377
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1	9	4/10/2013	Notice of Petition for Removal	JA038 – JA046
1	5	3/28/2013	Notice of Posting and Acceptance of Bond	JA032 – JA034
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5	36	6/11/2013	Order for Dismissal and Cancellation of Notice of Pendency of Action	JA802 – JA804
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6	50	8/5/2013	Recorder’s Transcript of Proceedings [Motion to Dismiss and Motion to Expunge Lis Pendens heard on June 4, 2013]	JA1046 – JA1054
3	27	5/23/2013	Reply in Support of Defendant, U.S. Bank, N.A.’s, Motion to Expunge Lis Pendens	JA503 – JA506
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6	43	7/23/2013	Reply in Support of Motion to Alter or Amend Judgment	JA901 – JA1007
6	42	7/18/2013	Response and Opposition to Plaintiff’s Motion to Alter or Amend Judgment; and Joinder in Defendant US Bank’s Opposition	JA894 – JA900
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	51	8/5/2013	Recorder's Transcript of Proceedings [Motion to Alter or Amend Judgment heard on July 30, 2013]	JA1055 – JA1059

TAB 14

AFFT
Howard Kim & Associates, Attorneys at Law
Diana S. Cline, Esq.
400 N. Stephanie St., Suite 160
Henderson, NV 89014
State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

SFR Investments Pool 1, LLC, a Nevada limited liability company
vs
U.S. Bank, N.A., a national banking association as Trustee for the
Certificate Holders of Wells Fargo Asset Securities Corporation,
Mortgage Pass-Through Certificates, Series 2006-AR4 and Lucia Parks,
an individual, et al.
Plaintiff(s)
Defendant(s)

Case No.: A-13-678814-C
Dept. No.: XVIII
Date: April 11, 2013
Time: 8:15 AM

AFFIDAVIT OF SERVICE

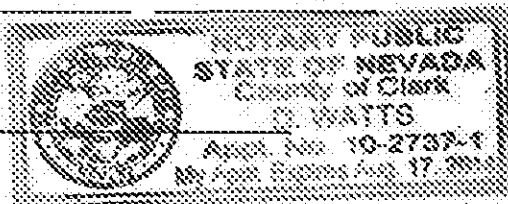
I, Victoria Addo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint for Quiet Title and Injunctive Relief; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction; Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction; Notice of Lis Pendens; Acceptance of Service on the 23rd day of April, 2013 and served the same on the 23rd day of April, 2013 at 11:58am by serving the Defendant(s), Lucia Parks, an individual by personally delivering and leaving a copy at Albright Stoddard Warnick & Albright, 801 S. Rancho Dr., #D-4, Las Vegas, NV 89106 with D. Chris Albright as Attorney an agent lawfully designated by statute to accept service of process.

State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

23rd day of April 2013

Notary Public D. Watts


Affiant Victoria Addo # R-066924

Legal Process Service License # 604

WorkOrderNo 1303148

JA226

ACSR
Howard Kim & Associates, Attorneys at Law
Diana S. Cline, Esq.
400 N. Stephanie St., Suite 160
Henderson, NV 89014
State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

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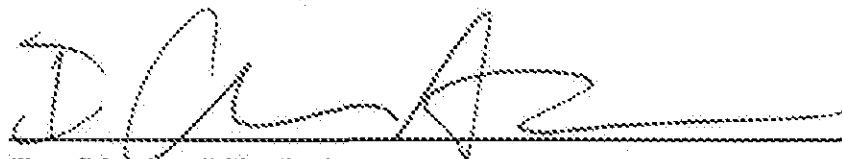
SFR Investments Pool 1, LLC, a Nevada limited liability company
vs Plaintiff(s)

U.S. Bank, N.A., a national banking association as Trustee for the
Certificate Holders of Wells Fargo Asset Securities Corporation,
Mortgage Pass-Through Certificates, Series 2006-AR4 and Lucia Parks,
an individual, et al.
Defendant(s)

Acceptance of Service

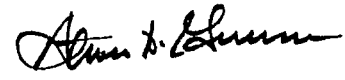
D. Chris Albright, acknowledges receipt of and hereby accepts service of 1 copy(ies) of the:
Summons; Complaint for Quiet Title and Injunctive Relief; Civil Cover Sheet; Initial Appearance
Fee Disclosure (NRS Chapter 19); Temporary Restraining Order Enjoining Sale and Order Setting
Briefing Schedule for Preliminary Injunction; Application for Temporary Restraining Order on
Order Shortening Time and Motion for Preliminary Injunction; Notice of Lis Pendens; Acceptance
of Service in the above captioned matter on behalf of the Defendant(s) : Lucia Parks, an individual.

Dated this 23 day of April, 2013



D. Chris Albright
Bar # 4904
Albright Stoddard Warnick & Albright
801 S Rancho Dr., Suite D-4
Las Vegas, NV 89106
(702) 384-7111

TAB 15


CLERK OF THE COURT

1 MTD

2 WRIGHT, FINLAY & ZAK, LLP

3 Chelsea A. Crowton, Esq.

4 Nevada Bar No. 11547

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6 Las Vegas, NV 89148

7 (702) 475-7964; Fax: (702) 946-1345

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9 Attorney for Defendant,

10 U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities
11 Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 SFR INVESTMENTS POOL, LLC, a Nevada
15 limited liability company

16 Plaintiff,

17 vs.

18 US BANK, N.A., a national banking association
19 as Trustee for the Certificate Holders of Wells
20 Fargo Asset Securities Corporation, Mortgage
21 Pass-Through Certificates, Series 2006-AR4,
22 and LUCIA PARKS, an individual; DOES I
23 through X, and ROE CORPORATIONS I
24 through X, inclusive.

25 Defendants.

Case No.: A-13-678814-C
Dept. No.: XVIII

26 DEFENDANT, U.S. BANK, N.A.'S,
27 MOTION TO DISMISS WITH
28 PREJUDICE THE PLAINTIFF'S
COMPLAINT

21 Pursuant to Nevada Rules of Civil Procedure (N.R.C.P.) 12(b)(5), the Defendant, U.S.
22 Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation,
23 Mortgage Pass-Through Certificates, Series 2006-AR4 (hereinafter "U.S. Bank"), by and
24 through their attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay &
25 Zak, LLP, hereby submits its Motion to Dismiss with Prejudice the Plaintiff's Complaint.

26 ///

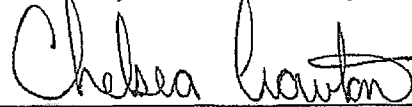
27 ///

28 ///

1 This Motion is based on the attached Memorandum of Points and Authorities, all papers
2 and pleadings on file herein, all judicially noticed facts, and on any oral or documentary
3 evidence that may be presented at a hearing on this matter.

4 DATED this 30th day of April, 2013.

5 WRIGHT, FINLAY & ZAK, LLP

6 

7 Chelsea A. Crowton, Esq.

8 Nevada Bar No. 11547

9 5532 South Fort Apache Road, Suite 110

10 Las Vegas, NV 89148

11 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
12 *for the Certificate Holders of Wells Fargo Asset*
13 *Securities Corporation, Mortgage Pass-Through*
14 *Certificates, Series 2006-AR4*

15 **NOTICE OF HEARING**

16 PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT, U.S. BANK,**
17 **N.A.'S, MOTION TO DISMISS WITH PREJUDICE THE PLAINTIFF'S COMPLAINT**

18 on the 4 day of June, 2013, at the hour of 8:15 a.m., or as soon thereafter as counsel may
19 be heard on this matter.

20 DATED this 30th day of April, 2013.

21 WRIGHT, FINLAY & ZAK, LLP

22 

23 Chelsea A. Crowton, Esq.

24 Nevada Bar No. 11547

25 5532 South Fort Apache Road, Suite 110

26 Las Vegas, Nevada 89148

27 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
28 *for the Certificate Holders of Wells Fargo Asset*
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. STATEMENT OF FACTS**

4 On December 3, 2005, Lucia Parks (hereinafter "Parks") purchased the Property located
5 at 2270 Nashville Avenue, Henderson, Nevada 89052 (hereinafter "Property").¹ On January 4,
6 2006, Richard E. Parks executed a Grant, Bargain, Sale Deed, whereby Richard E. Parks sold his
7 community property interest in the Property to Parks. On December 30, 2005, Parks executed a
8 Deed of Trust and Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the
9 Lender and United Title of Nevada was stated as the Trustee under the Deed of Trust.² On
10 February 24, 2010, a Notice of Default and Election to Sell under Deed of Trust was recorded in
11 the Clark County Recorder's Office, whereby the Notice stated that Parks defaulted on the 2005
12 Note as early as November 2009.³ On July 12, 2010, a Corporation Assignment of Deed of Trust
13 was recorded in the Clark County Recorder's Office, whereby Wells Fargo Bank, N.A.
14 transferred all beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.⁴
15 On July 12, 2010, a Substitution of Trustee was recorded in the Clark County Recorder's Office,
16 whereby U.S. Bank substituted National Default Servicing Corporation as Trustee under the
17 December 2005 Deed of Trust.⁵ On July 12, 2010, a Certificate from the Nevada Foreclosure
18 Mediation Program was recorded in the Clark County Recorder's Office.⁶ On July 12, 2010, a
19 Notice of Trustee's Sale was recorded in the Clark County Recorder's Office.⁷

20 On May 24, 2012, a Notice of Delinquent Assessment Lien was recorded in the Clark
21 County Recorder's Office.⁸ On June 7, 2012, an Assignment of Mortgage was recorded in the

22 ¹ A true and correct copy of the GBS Deed is recorded in the Clark County Recorder's Office as Book and
23 Instrument Number 20060105-0004274 is attached to the Defendant's Request for Judicial Notice ("RJN") as
24 Exhibit A.

25 ² A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
26 Instrument Number 20060105-0004275 is attached to the Defendant's RJN as Exhibit B.

27 ³ A true and correct copy of the Notice of Default is recorded in the Clark County Recorder's Office as Book and
28 Instrument Number 20100224-0003380 is attached to the Defendant's RJN as Exhibit C.

⁴ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as Exhibit D.

⁵ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002706 is attached to the Defendant's RJN as Exhibit E.

⁶ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002707 is attached to the Defendant's RJN as Exhibit F.

⁷ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20100712-002708 is attached to the Defendant's RJN as Exhibit G.

⁸ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120524-0002436 is attached to the Defendant's RJN as Exhibit H.

1 Clark County Recorder's Office, clarifying the transfer of beneficial interest in the December
2 2005 Note and Deed of Trust to U.S. Bank.⁹ On June 27, 2011, a Notice of Trustee's Sale was
3 recorded in the Clark County Recorder's Office.¹⁰ On July 19, 2012, a Notice of Default and
4 Election to Sell under Homeowners Association Lien was recorded in the Clark County
5 Recorder's Office.¹¹ On February 7, 2013, a Notice of Foreclosure Sale was recorded in the
6 Clark County Recorder's Office.¹² On March 6, 2013, a Foreclosure Deed was recorded in the
7 Clark County Recorder's Office, whereby the Plaintiff purchased the Property for \$14,000.000.¹³
8 On March 11, 2013, a third Notice of Trustee's Sale was recorded in the Clark County
9 Recorder's Office.¹⁴

10 II. PROCEDURAL HISTORY

11 On March 22, 2013, the Plaintiff filed a Complaint for Quiet Title and Declaratory Relief
12 in the herein Court. On March 22, 2013, the Plaintiff filed a Notice of Lis Pendens in the herein
13 Court. On March 27, 2013, the Plaintiff filed an Application for Temporary Restraining Order
14 and Motion for Preliminary Injunction. On March 28, 2013, the Plaintiff filed a Temporary
15 Restraining Order. On April 10, 2013, U.S. Bank filed a Notice of Appearance in the case. On
16 April 25, 2013, U.S. Bank filed a Response to the Motion for Preliminary Injunction and Request
17 for Judicial Notice in Support of the Response to the Motion for Preliminary Injunction.

18 III. LEGAL ARGUMENTS

19 A. MOTION TO DISMISS LEGAL STANDARD.

20 Pursuant to N.R.C.P. Rule 12(b)(5), "failure to state a claim upon which relief can be
21 granted," is a basis to dismiss a Complaint where the moving party can demonstrate beyond
22 doubt that the Petitioner cannot provide a set of facts in support of his claim which would entitle
23 them to relief, such that this Motion to Dismiss should be granted. Puckett v. Park Place

24 ⁹ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120607-0002928 is attached to the Defendant's RJN as Exhibit I.

25 ¹⁰ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20110627-0002062 is attached to the Defendant's RJN as Exhibit J.

26 ¹¹ A true and correct copy of the Notice of Default (HOA) is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20120719-0001226 is attached to the Defendant's RJN as Exhibit K.

27 ¹² A true and correct copy of the Notice of Foreclosure Sale is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20130207-0000910 is attached to the Defendant's RJN as Exhibit L.

28 ¹³ A true and correct copy of the Foreclosure Deed is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20130306-0001614 is attached to the Defendant's RJN as Exhibit M.

¹⁴ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20130311-0003086 is attached to the Defendant's RJN as Exhibit N.

1 Entertainment Corp., 332 F. Supp. 2d 1349, 1352 (D. Nev. 2004). In making a determination,
2 the allegations made in the Complaint are generally taken as true and viewed in the light most
3 favorable to the non-moving party. Id. While the Court should typically take the allegations as
4 alleged in the Complaint as true, "Courts do not assume the truth of legal conclusions merely
5 because they are cast in the form of factual allegations." Puckett, 332 F. Supp. 2d at 1352
6 (Quoting, Western Mining Counsel v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)). It has
7 specifically been held that "conclusory allegations of law and unwanted inferences are
8 insufficient to defend a Motion to Dismiss for failure to state a claim." In re Stac Electronics
9 Securities Litigation, 89 F.3d 1399, 1403 (9th Cir. 1996) (Quoting, In re VeriFone Securities
10 Litigation, 11 F.3d 865, 868 (9th Cir. 1993)).

11 **B. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED WITH**
12 **REGARDS TO THE COMPLAINT BECAUSE THE PLAINTIFF FAILS TO**
13 **STATE A CLAIM FOR RELIEF AGAINST U.S. BANK.**

14 a. **THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
15 **BECAUSE UNDER N.R.S. 116.3116(2)(b), U.S. BANK'S LIEN IS**
16 **SUPERIOR TO THE ASSESSMENT LIEN RECORDED BY COPPER**
17 **RIDGE.**

18 The Plaintiff misconstrues the language in N.R.S. 116.3116(2)(b) to imply that the
19 foreclosure by Copper Ridge Community (hereinafter "Copper Ridge") extinguished U.S.
20 Bank's Lien. The Nevada Supreme Court has espoused that when a statute "is clear on its face, a
21 Court may not go beyond the language of the statute in determining the legislature's intent."
22 Diaz v. Eighth Judicial District Court ex rel. County of Clark, 116 Nev. 88, 94, 993 P.2d 50, 54-
23 55 (2000). The language in N.R.S. 116.3116(2)(b) is clear as to the priority of title regarding
24 Deeds of Trust and HOA Liens. The language in N.R.S. 116.3116(2)(b) unambiguously states
25 that the Copper Ridge Lien is junior to U.S. Bank's Lien. N.R.S. 116.3116(2)(b) states,

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

27 (b) A first security interest on the unit recorded before the date on which the assessment
28 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;

1 The specific language of N.R.S. 116.3116(2) states that the Copper Ridge Lien is prior to
2 all other liens and encumbrances secured by the Property, except a first security interest on the
3 Property recorded before the date on which the assessment became delinquent in the case.
4 N.R.S. 116.3116(2). The Deed of Trust wherein U.S. Bank is a beneficiary was recorded in the
5 Clark County Recorder's Office prior to the date on which the assessments by Copper Ridge
6 became delinquent in this case. On December 30, 2005, Parks executed a Deed of Trust and
7 Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United
8 Title of Nevada was stated as the Trustee under the Deed of Trust.¹⁵ On July 12, 2010, a
9 Corporation Assignment of Deed of Trust was recorded in the Clark County Recorder's Office,
10 whereby Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note
11 and Deed of Trust to U.S. Bank.¹⁶ On May 24, 2012, a Notice of Delinquent Assessment Lien
12 was recorded in the Clark County Recorder's Office.¹⁷ On June 7, 2012, an Assignment of
13 Mortgage was recorded in the Clark County Recorder's Office, clarifying the transfer of
14 beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.¹⁸ The December
15 2005 Deed of Trust was properly perfected and recorded in the Clark County Recorder's Office
16 over six (6) years prior to the recording of the Notice of Delinquent Assessment Lien by Copper
17 Ridge. Therefore, pursuant to N.R.S. 116.3116(2)(b), the December 2005 Deed of Trust has
18 priority over the Assessment Lien recorded by Copper Ridge.

19 The Plaintiff is also required to (1) produce a copy of the assessment lien upon which the
20 foreclosure sale was based and (2) allege that the assessment lien chronologically precedes the
21 Deed of Trust. See Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D.
22 Nev. Aug. 28, 2012).¹⁹ The Plaintiff has failed to assert a vital fact necessary to maintain a
23

24 ¹⁵ A true and correct copy of the Deed of Trust recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as Exhibit B.

25 ¹⁶ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as Exhibit D.

26 ¹⁷ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120524-0002436 is attached to the Defendant's RJN as Exhibit H.

27 ¹⁸ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120607-0002928 is attached to the Defendant's RJN as Exhibit I.

28 ¹⁹ A true and correct copy of Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D. Nev. Aug.
28, 2012) is attached to the Defendant's RJN as Exhibit O.

1 N.R.S. 116.3116 et seq. cause of action. Similar to Centeno, wherein the Court dismissed an
2 N.R.S. 116.3116 cause of action based on the failure of the Plaintiff to attach the Assessment
3 Lien or factually assert that the Assessment Lien predated the first, position Deed of Trust, the
4 Plaintiff in the herein case fails to assert that U.S. Bank's Lien was recorded after the Copper
5 Ridge Lien and the Plaintiff fails to attach the Assessment Lien. The Centeno Court clearly
6 relied on the chain of title recordings to determine if a First Mortgage was extinguished by an
7 HOA sale.²⁰ The failure of the Plaintiff to assert the above-stated facts is based on the clear
8 chain of title that establishes that the Copper Ridge Lien was recorded over six (6) years after
9 U.S. Bank's 2005 Deed of Trust.

10 Therefore, pursuant to N.R.S. 116.3116(2)(b) and case law, the December 2005 Deed of
11 Trust has priority over the Assessment Lien recorded by Copper Ridge and the Plaintiff cannot
12 state a valid claim under N.R.S. 116.3116 et seq.

13 **b. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
14 **BECAUSE THE PLAINTIFF MISCONSTRUES N.R.S. 116.3116(2)(c).**

15 The Plaintiff asserts, pursuant to N.R.S. 116.3116(2)(c), that the foreclosure sale by
16 Copper Ridge extinguished U.S. Bank's first, position lien secured against the Property.²¹ The
17 language in N.R.S. 116.3116(2)(c) carves out a limited exception to N.R.S. 116.3116(2)(b),
18 wherein an HOA is entitled to only nine (9) months of HOA charges and assessments upon the
19 foreclosure of the first, position Deed of Trust or upon the initiation of a judicial action by the
20 HOA. N.R.S. 116.3116(2)(c) states,

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

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

24 The lien is also prior to all security interests described in paragraph (b) to the extent of
25 any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
26 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

27
28 ²⁰ A true and correct copy of Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D. Nev. Aug.
28, 2012) is attached to the Defendant's RJN as Exhibit O.

²¹ See Complaint in general.

1 enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage
2 Corporation or the Federal National Mortgage Association require a shorter period of
3 priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage
4 Corporation or the Federal National Mortgage Association require a shorter period of
5 priority for the lien, the period during which the lien is prior to all security interests
6 described in paragraph (b) must be determined in accordance with those federal
7 regulations, except that notwithstanding the provisions of the federal regulations, the
8 period of priority for the lien must not be less than the 6 months immediately preceding
9 institution of an action to enforce the lien. This subsection does not affect the priority of
10 mechanics' or materialmen's liens, or the priority of liens for other assessments made by
11 the association.

12 N.R.S. 116.3116(2)(c) carves out a narrow exception to N.R.S. 116.3116(2)(b), for
13 N.R.S. 116.3116(2)(c) merely states that an HOA's unpaid charges and assessments incurred
14 during the nine (9) months prior to the foreclosure of a First Mortgage continue to encumber the
15 Property after the foreclosure by the first, position Deed of Trust. The nine (9) month "Super-
16 Priority Lien" does not wipe out a first, position Deed of Trust nor does the language in N.R.S.
17 116.3116(2)(c) state that a first, position Deed of Trust is extinguished by a foreclosure on an
18 Assessment Lien. The language in N.R.S. 116.3116(2)(c) clearly states that the HOA must
19 initiate a judicial or non-judicial action to enforce the "Super-Priority Lien." N.R.S.
20 116.3116(2)(c) is a mechanism by which the Legislature ensured that an HOA will be paid the
21 assessments due on a Property upon the foreclosure by a first, position Deed of Trust. The
22 interpretation of N.R.S. 116.3116(2)(c) proffered by the Plaintiff is absurd and illogical, for its
23 absurd and illogical to assume that a Homeowner's Association foreclosure sale for \$14,000.00
24 could eliminate a Deed of Trust executed over seven (7) years prior to the foreclosure sale. The
25 "Super-Priority Lien" should be treated as a payment priority, wherein the Lien remains after a
26 foreclosure to ensure that the Homeowner's Association is paid its assessment dues.

27 The proffered legal theory offered by the Plaintiff would be in direct violation of U.S.
28 Bank's due process rights, pursuant to the properly recorded Deed of Trust in the Clark County
Recorder's Office. U.S. Bank's Deed of Trust was recorded in January 2006, perfecting U.S.
Bank's Lien secured against the Property. It would be a violation of U.S. Bank's due process
rights to allow a later-in-time recorded Lien to extinguish a first, position Deed of Trust. N.R.S.
116.3116(2)(c) is merely a means to ensure that the HOA's Lien is paid and will not be

1 extinguished by a first, position Deed of Trust foreclosure sale. To accept the Plaintiff's theory
2 is to accept a violation of the contractual and due process rights of U.S. Bank.

3 Plus, the analysis by the Plaintiff is illogical, for the Plaintiff maintains that the Statute
4 states both that a first mortgage is superior to an assessment lien and that a Trustee's Sale can
5 eliminate a first, position Deed of Trust. If the Legislature intended to allow an assessment lien
6 to extinguish a first, position Deed of Trust then the Legislature would not have included N.R.S.
7 116.3116(2)(b) in the statute. The Legislature clearly intended merely to allow assessments to
8 have a secured lien and be entitled to payment upon the foreclosure by the first, position Deed of
9 Trust. The Plaintiff knowingly purchased a Property from a Homeowner's Association Sale that
10 was governed by N.R.S. 116.3116. The Plaintiff had knowledge of the eventual loss of title to
11 the Property upon the foreclosure by U.S. Bank. A reasonably prudent purchaser at an HOA
12 foreclosure sale would assume that any HOA foreclosure sale would be subject to any first,
13 position Deeds of Trust secured against the Property. The Plaintiff purchased the Property at the
14 foreclosure sale for a nominal amount of only \$14,000.00 and should have expected that any sale
15 of a Property at an HOA foreclosure sale for a nominal amount is contingent on a potential loss
16 of the Property through a foreclosure by U.S. Bank. The Plaintiff never purchased fee simple
17 title at the HOA foreclosure sale, therefore, the Plaintiff cannot assert any "irreparable" or
18 "unique" harm related to the real property. The Plaintiff only received the title that the prior
19 owner, Parks, had possessed before the foreclosure sale. N.R.S. 116.3116(3) (providing that a
20 foreclosure sale by a Homeowner's Association "vests in the purchaser the title of the unit's
21 owner without equity or right of redemption"). The Plaintiff merely holds a possessory title
22 interest in the Property, subject to an eventual sale by the first, position Deed of Trust.

23 Based on the above, the Defendant's Motion to Dismiss should be granted because the
24 Plaintiff misconstrues the language of N.R.S. 116.3116(2)(b)-(c) and falsely asserts that U.S.
25 Bank's Lien is extinguished by the foreclosure sale by Copper Ridge.

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1 c. NEVADA COURTS HAVE CONSISTENTLY HELD THAT N.R.S.
2 116.3116 ET SEQ. DOES NOT EXTINGUISH A FIRST, POSITION DEED
3 OF TRUST.

4 Nevada Courts have ruled that a foreclosure sale pursuant to N.R.S. 116.3116 et seq. does
5 not eliminate a first, position Deed of Trust. In a recent United States District Court, District of
6 Nevada case, the Federal Court rejected the analysis concerning N.R.S. 116.3116 et seq. and
7 stated that a foreclosure sale by a Homeowner's Association does not extinguish a first, position
8 Deed of Trust. In Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL
9 531092, the Court states that "N.R.S. 116.3116(2)(c) creates a limited super priority lien for 9
10 months of HOA assessments leading up to the foreclosure of the first mortgage, but it does not
11 eliminate the first security interest."²² Similar to Diakonos, where the Borrower defaulted on
12 their HOA dues, the HOA foreclosed on the Assessment Lien, and the Third-Party Purchaser
13 claims an extinguishment of a First Mortgage, Parks failed to make her HOA assessments
14 thereby instituting the foreclosure sale on the Property, and the Plaintiff asserts that U.S. Bank's
15 Lien was extinguished by the sale of the Property. The analysis of the Diakonos Court to
16 determine the priority of liens focuses on N.R.S. 116.3116(2)(b) and the timing of the recording
17 of the Deed of Trust and HOA Assessment Lien.

18 The Court in Diakonos stated that the arguments regarding the inability of an HOA to
19 recover on a deficiency without the power to extinguish a first, position Deed of Trust are
20 meritless, for the Court stated that N.R.S. 116.3116 et seq. provides a statutory scheme to allow
21 for an HOA to recover delinquent assessments.²³ The Diakonos Court specifically emphasized
22 N.R.S. 116.3116(2)(b)'s priority language when analyzing the lack of extinguishment of a first,
23 position Deed of Trust.²⁴ The Diakonos Court emphasized that an HOA has two options to
24 recover on its "Super-Priority Lien:" (1) the HOA may initiate a non-judicial foreclosure to
25 recover the delinquent assessments and the purchaser at the sale takes the property subject to

26 ²² See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
27 attached to the Defendant's RJN as Exhibit P.

28 ²³ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as Exhibit P.

²⁴ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as Exhibit P.

1 the security interest or (2) initiate a judicial action to pursue the assessments.²⁵ The Diakonos
2 Court clearly stated that the foreclosure sale by a Homeowner's Association "takes the property
3 subject to the security interest," even if the Beneficiary received notice of the HOA
4 foreclose on the Property."²⁶ Similar to Diakonos, U.S. Bank's Deed of Trust was recorded in
5 January 2006, which is over six (6) years prior to the recording of the Copper Ridge Lien.
6 Therefore, based on the analysis in Diakonos, the Plaintiff took title to the Property subject to
7 U.S. Bank's Lien.

8 The Plaintiff misstates the language in N.R.S. 116.3116 et seq. The Court in Wingbrook
9 Capital, LLC v. Peppertree Homeowners Association, with regards to the "extinguishment"
10 under N.R.S. 116.3116 et seq. The Wingbrook Capital, LLC v. Peppertree Homeowners
11 Association, Case No. A-11-636948-B, case confirms that a "Super-Priority Lien" constitutes
12 only the nine (9) months portion of an assessment lien preceding the foreclosure of a first,
13 position Deed of Trust and the "Super-Priority Lien" does not attach until after the foreclosure of
14 a First Mortgage. Wingbrook asserts that "Pursuant to N.R.S. 116.3116(2), the homeowners'
15 association's Statutory Lien is junior to a first security interest on the unit recorded before
16 the date on which the assessment sought to be enforced became delinquent ("First Security
17 Interest") except for a portion of the homeowner's association's Statutory Lien which
18 remains prior to the First Security Interest (the "Super-Priority Lien")."²⁷ "Homeowner's
19 Associations, therefore, have a Super Priority Lien which has priority over the First Security
20 Interest on a homeowners' unit. However, the Super Priority Lien amount is not without
21 limits and N.R.S. 116.3116 provides that the amount of the Super Priority Lien (i.e. the amount
22 of a homeowners' associations' Statutory Lien which retains priority status over the First
23 Security Interest) is limited "to the extent" of those assessments for common expenses based
24 upon the associations' periodic budget that would have become due in the nine (9) month period

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26 ²⁵ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as Exhibit P.

27 ²⁶ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as Exhibit P.

28 ²⁷ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as Exhibit Q.

1 immediately preceding an associations' institution of an action to enforce its Statutory Lien and
2 "to the extent" of external repaid costs pursuant to N.R.S. 116.310312."²⁸ "Therefore after the
3 foreclosure by a First Security Interest holder of a unit located within a homeowners'
4 association, pursuant to N.R.S. 116.3116 the monetary limit of a homeowners' association's
5 Super Priority Lien is limited to a maximum amount equaling nine (9) times the homeowners'
6 association's monthly assessment amount to unit owners for common expenses based on the
7 periodic budget which would have become due immediately preceding the institution of an
8 action to enforce the lien plus external repair costs pursuant to N.R.S. 116.310312."²⁹

9 The Wingbrook Court emphasizes that an HOA "Super-Priority Lien" established
10 pursuant to N.R.S. 116.3116(2)(c) does not extinguish a first, position Deed of Trust, for the
11 Court stated that the "Super-Priority Lien" is only based upon the foreclosure by the first,
12 position Deed of Trust.³⁰ The Court analyzed the interaction between N.R.S. 116.3116 and a
13 first, position Deed of Trust in the context of a parasitic relationship, whereby the "Super-
14 Priority Lien" attaches onto the Property and is only extinguished upon the foreclosure by the
15 first, position Deed of Trust. The Court in Wingbrook never anticipates nor asserts that an HOA
16 foreclosure sale extinguishes a first, position Deed of Trust, for Court's analysis of N.R.S.
17 116.3116 is couched in the legal theory that the first, position Deed of Trust attaches to the title
18 of the Property after a foreclosure sale and will eventually foreclose on the Property. Based on
19 the analysis in Wingbrook, the Plaintiff's Complaint fails to state a claim for quiet
20 title/declaratory or injunctive relief, with regards to the extinguishment of U.S. Bank's Lien
21 against the Property.

22 In JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No. A-08-
23 562678, Dept. XVI, and Korbel Family Trust v. Spring Mountain Ranch Master Association et
24 al, Case No. 06-A-523959-C, the Courts reinforced the legal analysis of N.R.S. 116.3116(2),
25 whereby the Courts stated that a junior assessment lien does not eliminate a First Mortgage and

26
27 ²⁸ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as Exhibit Q.

28 ²⁹ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as Exhibit Q.

³⁰ Id.

1 the Super-Priority Lien under N.R.S. 116.3116(2)(c) is limited to the charges and assessments
2 incurred by an HOA during the nine (9) months preceding the foreclosure of the First
3 Mortgage.³¹ In Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-
4 C, Dept. XVI, the Court denied a Motion for Preliminary Injunction, based on the fact that the
5 Court analyzed N.R.S. 116.3116 et seq. in the context of a foreclosure sale and determined that a
6 "Super-Priority Lien" under N.R.S. 116.3116 et seq. does not impact or extinguish a first,
7 position Deed of Trust.³²

8 In Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30, the
9 Court granted a Defendant's Motion to Dismiss because the Court determined that the "Super-
10 Priority Lien" under N.R.S. 116.3116(2) "is not a standalone lien that a homeowners association
11 can foreclose upon constituting a senior position to all first security interest. Rather the "Super
12 Priority Lien" established a payment priority relative to a first security interest, meaning that the
13 homeowners association is entitled to payment . . . prior to payment of a foreclosing first security
14 interest lienholder."³³ The Court in Sanucci also stated that a foreclosure sale conducted
15 pursuant to N.R.S. 116.3116 et seq. does not extinguish a first, position Deed of Trust recorded
16 prior to the date on which the assessments sought be enforced became delinquent in the case.³⁴
17 As in this case, U.S. Bank's Lien was recorded prior to the date on which the assessments
18 became due as to Copper Ridge, thereby forestalling any extinguishment of U.S. Bank's Lien at
19 the time of the Copper Ridge's foreclosure sale.

20 In Korbel, the Court analyzed the interaction between N.R.S. 116.3116(2)(b) and N.R.S.
21 116.3116(2)(c), whereby the Court emphasized that a foreclosure by the first, position Deed of
22 Trust would extinguish the "Super-Priority Lien." The Court in Korbel analyzed N.R.S.
23 116.3116 et seq. in the context of an HOA sale not extinguishing a first, position Deed of

24
25 ³¹ See JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No. 08-A562678, Order on
26 Motion for Determination of Priority Amount attached to the Defendant's RJN as Exhibit R; and Korbel Family
27 Trust v. Spring Mountain Ranch Master Association et al, Case No. 06-A-523959-C, Order attached to the
28 Defendant's RJN as Exhibit S.

³² See Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-C, Dept. XVI, Order on Motion
for Preliminary Injunction, attached to the Defendant's RJN as Exhibit T.

³³ See Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30, Order attached to the
Defendant's RJN as Exhibit U.

³⁴ Id.

1 Trust.³⁵ In Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, the Court
2 specifically stated that an HOA foreclosure sale does not extinguish a first, position Deed of
3 Trust.

4 The Court stated that,

5 NRS 116.3116 governs liens against units for assessments. It states that an assessment lien by a
6 homeowner's or unit-owner's "is prior to all other liens and encumbrances on a unit except: (a)
7 Liens and encumbrances recorded before the recordation of the declaration and ... (b) A first
8 security interest on the unit recorded before the date on which the assessment sought to be
9 enforced became delinquent ...," NRS 116.3116(2)(a)-(b). Here Defendant's first security interest
10 Deed was recorded on August 16, 2006. The assessment lien was recorded on June 6, 2008 two
11 years later. Therefore, the security lien is first in time prior to the assessment lien of the
12 Homeowner's association. Plaintiff was on notice of the recorded 2006 secured lien on the
13 property at the 2009 foreclosure sale in which it purchased the property. The security interest and
14 priority lien was not extinguished by the foreclosure sale of the HOA and the plaintiffs took title
15 of the property subject to the lien pursuant to NRS 116.3116 (emphasis added).³⁶

16 The Court in Design 3.2 negated and dismissed the analysis regarding N.R.S. 116.3116 et
17 seq. and the extinguishment of a first, position Deed of Trust.³⁷ Similar to Design 3.2, wherein
18 the Court noted that the Third-Party Purchaser was provided notice of the recorded First
19 Mortgage, the Plaintiff had notice of the December 2005 Deed of Trust through the perfection by
20 recording of the Deed of Trust in the Clark County Recorder's Office. As with Design 3.2, due
21 to the prior knowledge of the first, position Deed of Trust, the Plaintiff does not have standing to
22 assert the necessity for a preliminary injunction or quiet title. In Villa Palms Court 102 Trust v.
23 William L. Riley et. al, Case No. A-13-674595-C, the Court analyzed N.R.S. 116.3116 et seq. in
24 the context of a foreclosure by a first, position Deed of Trust and concluded that a Motion for
25 Preliminary Injunction should be denied because the foreclosure pursuant to N.R.S. 116.3116
26 does not extinguish a first, position Deed of Trust.³⁸

27 In 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C, Dept.
28 XVII, the Court denied a Motion for Preliminary Injunction based on the fact that N.R.S.

35 See Korbel Family Trust v. Spring Mountain Ranch Master Association et al, Case No. 06-A-523959-C, Order
attached to the Defendant's RJN as Exhibit S.

36 See Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, Minutes from MSJ Hearing dated 6-15-
2011 attached to Defendant's RJN as Exhibit V.

37 See Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, Minutes from MSJ Hearing dated 6-15-
2011 attached to Defendant's RJN as Exhibit V.

38 See Villa Palms Court 102 Trust v. William L. Riley et. al, Case No. A-13-674595-C, Order attached to the
Defendant's RJN as Exhibit T.

1 116.3116 is merely a priority of payment lien and does not extinguish a first, position Deed of
2 Trust.³⁹ In SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept.
3 XXVII, the Court denied a Motion for Preliminary Injunction based on the fact that the Court
4 found that the “extinguishment” theory proffered by the Plaintiff would violate both State and
5 Federal constitutional due process guarantees if the first mortgage’s interest may be voided by a
6 non-judicial foreclosure for an assessment lien, relatively nominal in value . . .⁴⁰ Based on the
7 above, the Nevada Courts have clearly interpreted N.R.S. 116.3116 et seq. to state that a sale by
8 a Homeowner’s Association is subject to a first, position Deed of Trust and the sale does not
9 extinguish a first, position Deed of Trust.

10 Based on Nevada case law, the Defendant’s Motion to Dismiss should be granted because
11 Nevada Case Law shows a trend whereby the Courts are dismissing the “extinguishment” theory
12 proffered by the Plaintiff and the Courts are ruling that a third-party purchaser at an HOA sale
13 takes title to a Property subject to the first, position Deed of Trust.

14 **E. THE DEFENDANT’S MOTION TO DISMISS SHOULD BE GRANTED**
15 **BECAUSE THE CC&RS ATTESTS TO THE PRESERVATION OF U.S. BANK’S**
16 **LIEN AFTER THE FORECLOSURE SALE.**

17 The Declaration of Covenants, Condition, Restrictions, Reservations, and Easements for
18 Green Valley Ranch establishes that a Homeowner’s Association foreclosure sale does not
19 extinguish a first, position Deed of Trust and that title to the Property is sold subject to the first,
20 position Deed of Trust. The arguments by the Plaintiff regarding the extinguishment of U.S.
21 Bank’s Lien are negated by the rules and regulations regarding the HOA.

22 The Declaration of Covenants, Condition, Restrictions, Reservations, and Easements for
23 Green Valley Ranch clearly states that,

24 Section 9.13. Mortgage Protection

25 Notwithstanding all other provision hereof, no lien created under this Article, nor any breach of
26 this Declaration, nor the enforcement of any provision hereof, or of any Supplemental
Declaration hereto, shall defect or render invalid the rights of the Beneficiary under any Recorded

27 ³⁹ See 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C, Dept. XVII, Order attached
to the Defendant’s RJN as Exhibit X.

28 ⁴⁰ See SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept. XXVII, Order, attached to
the Defendant’s RJN as Exhibit Y.

1 First Deed of Trust encumbering a Lot or Condominiums, made in good faith and for value;
2 provided (i) such Deed of Trust or Mortgage is Recorded prior to any notice of lien or notice of
3 noncompliance Recorded pursuant to this Declaration and (ii) after such Beneficiary, Mortgagee
or other such Person obtains title to such Lot, Parcel, Development Tract or Other Area by
foreclosure, deed or assignment in lieu thereof same shall remain subject to this Declaration . . .⁴¹

4 Section 9.14 Priority of Lien.

5 The lien of any of the assessments, including default interest, costs, expenses and attorneys' fees
6 as provided for herein, shall be subordinate to the lien of any First Mortgage.⁴²

7 Section 9.13 and Section 9.14 of the Declaration of Covenants, Condition, Restrictions,
8 Reservations, and Easements for Green Valley Ranch clearly establishes that the Homeowner's
9 Association intended the sale of the Property, pursuant to N.R.S. 116.3116, to be subject to the
10 First Mortgage secured against the Property.⁴³ Sections 9.13 and 9.14 of the Declaration of
11 Covenants, Condition, Restrictions, Reservations, and Easements for Green Valley Ranch clearly
12 states that an HOA Lien does not extinguish U.S. Bank's Lien.⁴⁴ Section 9.13 states that the
13 HOA Assessment Lien is subordinate to the lien of any previously recorded First Mortgage.⁴⁵
14 The December 2005 Deed of Trust was properly perfected and recorded in the Clark County
15 Recorder's Office over six (6) years prior to the recording of the Notice of Delinquent
16 Assessment Lien by Copper Ridge Community.

17 The guidelines and rules governing the entity that initiated the sale refute the claims by
18 the Plaintiff with regards to the extinguishment of a first, position Deed of Trust. The Plaintiff is
19 bound by the Declaration of Covenants, Condition, Restrictions, Reservations, and Easements
20 for Green Valley Ranch, due to the CC&Rs governing the manner and method of the sale
21 wherein title was purchased by the Plaintiff in this case. The Plaintiff can only acquire as much
22 of an interest as is being sold by the CC&Rs. The CC&Rs clearly state that the Plaintiff acquired
23 title to the Property, subject to U.S. Bank's Lien.⁴⁶ The CC&Rs clearly anticipate and allow for
24 a "second" foreclosure by U.S. Bank and payment of the "Super-Priority Lien" through the

25 ⁴¹ A true and correct copy of Section 9.13 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

26 ⁴² A true and correct copy of Section 9.14 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

27 ⁴³ Id.

⁴⁴ A true and correct copy of Sections 9.13 and 9.14 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

28 ⁴⁵ Id.

⁴⁶ A true and correct copy of Sections 9.13 and 9.14 of the CC&Rs is attached to the Defendant's RJN filed
concurrently herewith as **Exhibit Z**.

1 foreclosure by U.S. Bank. The language in the CC&Rs are consistent with the above stated case
2 law, wherein both the Nevada case law and the CC&Rs assert that the Plaintiff obtained title to
3 the Property, subject to U.S. Bank's Lien and the subsequent foreclosure by U.S. Bank is a valid
4 sale.

5 Therefore, the Defendant's Motion to Dismiss should be granted because the Plaintiff
6 received title to the Property subject to U.S. Bank's Lien.

7 **F. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
8 **BECAUSE U.S. BANK HAS STANDING TO FORECLOSE ON THE PROPERTY.**

9 U.S. Bank has standing under the December 2005 Note and Deed of Trust to foreclose on
10 the Property. The recorded land documents show a clear trail of legal authority of U.S. Bank to
11 foreclose on the Property. On December 30, 2005, Parks executed a Deed of Trust and Note for
12 \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title of
13 Nevada was stated as the Trustee under the Deed of Trust.⁴⁷ On July 12, 2010, a Corporation
14 Assignment of Deed of Trust was recorded in the Clark County Recorder's Office, whereby
15 Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note and Deed
16 of Trust to U.S. Bank.⁴⁸ On July 12, 2010, a Substitution of Trustee was recorded in the Clark
17 County Recorder's Office, whereby U.S. Bank substituted National Default Servicing
18 Corporation as Trustee under the December 2005 Deed of Trust.⁴⁹ On July 12, 2010, a
19 Certificate from the Nevada Foreclosure Mediation Program was recorded in the Clark County
20 Recorder's Office.⁵⁰ Under N.R.S. 107.080 et seq. the "beneficiary, the successor in interest of
21 the beneficiary, or the trustee . . . or other person authorized" has the power to initiate sale on a
22 Property."⁵¹ The December 2005 Deed of Trust expressly gives U.S. Bank, as the Beneficiary
23
24

25 ⁴⁷ A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as Exhibit B.

26 ⁴⁸ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as Exhibit D.

27 ⁴⁹ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002706 is attached to the Defendant's RJN as Exhibit E.

28 ⁵⁰ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002707 is attached to the Defendant's RJN as Exhibit F.

⁵¹ N.R.S. 107.080(b) and (c).

1 under the Deed of Trust, the power of sale upon default by Parks.⁵² The Assignment to U.S.
2 Bank was legally executed by the original Lender under the December 2005 Deed of Trust and
3 Note and the Assignment was properly recorded in the Clark County Recorder's Office.⁵³ Based
4 on the above, U.S. Bank has standing to foreclose on the Property.

5 **G. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
6 **BECAUSE THE PLAINTIFF'S CLAIMS FOR RELIEF FAIL TO STATE A**
7 **CLAIM AGAINST U.S. BANK.**

8 The Plaintiff falsely bases the quiet title, declaratory, and injunctive claims for relief on
9 the legal analysis of N.R.S. 116.3116 et seq. In Nevada, a quiet title action may be brought "by
10 any person against another whom claims an estate or interest in real property, adverse to the
11 person bringing the action, for the purpose of determining such adverse claim." N.R.S. 40.010.
12 "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself."
13 Brelant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996) and Wensley v. First Nat.
14 Bank of Nevada, 2012 WL 1971773 (D. Nev. 2012). Declaratory relief is not an independent
15 cause of action, but rather is dependent on the Plaintiffs' other substantive claims. Stock West,
16 Inc. v. Confederated Tribes of Coville Reservations, 873 F.2d 1221, 1225 (9th Cir. 1989). The
17 Defendant, U.S. Bank, is not asserting an adverse claim against the Plaintiff in this case. As
18 stated above, the Plaintiff took title to the Property, subject to U.S. Bank's Lien. In addition,
19 case law and the language in N.R.S. 116.3116 et seq. clearly establishes that a foreclosure sale
20 by Copper Ridge did not extinguish U.S. Bank's Lien. The Plaintiff merely had a temporary,
21 possessory interest which was based on the eventual foreclosure by U.S. Bank. Since U.S.
22 Bank's Lien was not extinguished by the HOA sale, U.S. Bank's interest is not adverse to the
23 Plaintiff in this case, and the Plaintiff's Complaint fails as a matter of law.

24 The Plaintiff also has failed to identify under what basis they entitled to a "permanent
25 injunction" which would eliminate the ability of U.S. Bank to enforce a valid, legal lien secured
26 against the Property. The Plaintiff's Complaint fails to state any genuine issues of material fact

27 ⁵²A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as Exhibit B.

28 ⁵³ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as Exhibit D.

1 that would grant relief to the Plaintiff in this case. As a result, the Plaintiff has not provided any
2 viable basis for the Court to grant a preliminary or permanent injunction. Plus, a claim for
3 injunctive relief is not an independent cause of action. See Barlow v. BNC Mortg. Inc., No.
4 3:09-cv-00677-LRH-RAM, 2011 WL 2669618, at *3 (D. Nev. July 7, 2011) (dismissing
5 plaintiffs' causes of action for injunctive and declaratory relief); See also In re Wal-Mart Wage
6 & Hour Emp't Practices Litig., 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (holding that a claim
7 for injunctive relief was not a cause of action or independent ground for relief).

8 Plus, the Plaintiff cannot maintain an unjust enrichment cause of action against U.S.
9 Bank. To state a claim for unjust enrichment, the Plaintiff must allege that U.S. Bank has
10 retained a benefit, which in equity and good conscious, belongs to another party. Ramanathan v.
11 Saxon Mortg. Services, Inc., 2011 WL 6751373 *6 (D. Nev. 2011) (citing LeasePartners Corp. v.
12 Robert L. Brooks Trust, 113 Nev. 747, 942 182, 187 (1997)). Accordingly, unjust enrichment is
13 an equitable claim. All Direct Travel Services, Inc. v. Delta Air Lines, Inc., 120 Fed. Appx.
14 673,676, 2005 WL 23420, at *2 (C.A.9 Cal. 2005). U.S. Bank has not retained the funds paid by
15 the Plaintiff at the HOA sale nor does U.S. Bank retain a benefit belonging to the Plaintiff in this
16 case. As stated above, the Plaintiff took title subject to U.S. Bank's Lien. The Plaintiff had
17 knowledge of the recording of U.S. Bank's Lien prior to purchasing title at the HOA sale. The
18 Plaintiff has been able to retain a temporary, possessory interest in the Property based on the
19 funds expended at the HOA sale. If the Plaintiff had not paid the HOA Lien, U.S. Bank would
20 have been forced under N.R.S. 116.3116 et seq. to pay the lien upon the foreclosure by U.S.
21 Bank. Any additional money paid by the Plaintiff at the time of the HOA sale needs to be
22 directed to the HOA who retained the funds paid by the Plaintiff and not towards U.S. Bank.
23 Based on these facts, U.S. Bank has not been unjustly enriched by the actions of the Plaintiff in
24 this case and the Plaintiff cannot maintain its unjust enrichment claim for relief against U.S.
25 Bank.

26 Therefore, the Defendant's Motion to Dismiss should be granted because the Plaintiff's
27 Complaint fails as a matter of law to establish any claim for relief against the Defendant, U.S.
28 Bank.

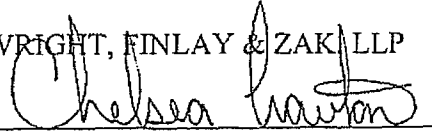
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IV. CONCLUSION

Based on the above, U.S. Bank's Motion to Dismiss the Complaint should be granted and U.S. Bank should be allowed to proceed with a foreclosure on the Property.

DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP



Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

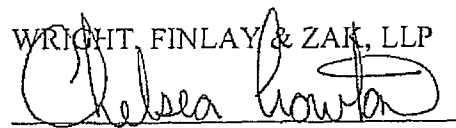
AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding DEFENDANT, U.S. BANK, N.A.'S, MOTION TO DISMISS WITH PREJUDICE THE PLAINTIFF'S COMPLAINT filed in Case No. A-13-678814-C does not contain the social security number of any person.

DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP



Chelsea A. Crowton, Esq.

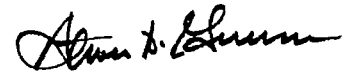
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5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

TAB 16



CLERK OF THE COURT

1 MELP

2 WRIGHT, FINLAY & ZAK, LLP

3 Chelsea A. Crowton, Esq.

4 Nevada Bar No. 11547

5 5532 South Fort Apache Road, Suite 110

6 Las Vegas, NV 89148

7 (702) 475-7964; Fax: (702) 946-1345

8 ccrowton@wrightlegal.net

9 Attorney for Defendant,

10 U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities

11 Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4

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

14 SFR INVESTMENTS POOL, LLC, a Nevada
15 limited liability company

16 Plaintiff,

17 vs.

18 US BANK, N.A., a national banking association
19 as Trustee for the Certificate Holders of Wells
20 Fargo Asset Securities Corporation, Mortgage
21 Pass-Through Certificates, Series 2006-AR4,
22 and LUCIA PARKS, an individual; DOES I
23 through X, and ROE CORPORATIONS I
24 through X, inclusive.

25 Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

DEFENDANT, U.S. BANK, N.A.'S,
MOTION TO EXPUNGE LIS PENDENS

26 The Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo
27 Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 (hereinafter
28 "U.S. Bank"), by and through their attorney of record, Chelsea A. Crowton, Esq. of the law firm
of Wright, Finlay & Zak, LLP, hereby submits its Motion to Expunge Lis Pendens.

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1 This Motion is based on the attached Memorandum of Points and Authorities, all papers
2 and pleadings on file herein, all judicially noticed facts, and on any oral or documentary
3 evidence that may be presented at a hearing on this matter.

4 DATED this 30th day of April, 2013.

5 WRIGHT, FINLAY & ZAK, LLP

6 

7 Chelsea A. Crowton, Esq.

8 Nevada Bar No. 11547

9 5532 South Fort Apache Road, Suite 110

10 Las Vegas, NV 89148

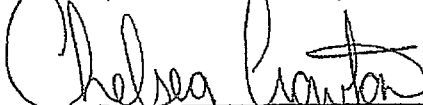
11 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
12 *for the Certificate Holders of Wells Fargo Asset*
13 *Securities Corporation, Mortgage Pass-Through*
14 *Certificates, Series 2006-AR4*

15 **NOTICE OF HEARING**

16 PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT, U.S. BANK,**
17 **N.A.'S, MOTION TO EXPUNGE LIS PENDENS** on the 16th day of May, 2013, at the
18 hour of 8:15 a.m., or as soon thereafter as counsel may be heard on this matter.

19 DATED this 30th day of April, 2013.

20 WRIGHT, FINLAY & ZAK, LLP

21 

22 Chelsea A. Crowton, Esq.

23 Nevada Bar No. 11547

24 5532 South Fort Apache Road, Suite 110

25 Las Vegas, Nevada 89148

26 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
27 *for the Certificate Holders of Wells Fargo Asset*
28 *Securities Corporation, Mortgage Pass-Through*
Certificates, Series 2006-AR4

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On December 3, 2005, Lucia Parks (hereinafter "Parks") purchased the Property located at 2270 Nashville Avenue, Henderson, Nevada 89052 (hereinafter "Property").¹ On January 4, 2006, Richard E. Parks executed a Grant, Bargain, Sale Deed, whereby Richard E. Parks sold his community property interest in the Property to Parks. On December 30, 2005, Parks executed a Deed of Trust and Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title of Nevada was stated as the Trustee under the Deed of Trust.² On February 24, 2010, a Notice of Default and Election to Sell under Deed of Trust was recorded in the Clark County Recorder's Office, whereby the Notice stated that Parks defaulted on the 2005 Note as early as November 2009.³ On July 12, 2010, a Corporation Assignment of Deed of Trust was recorded in the Clark County Recorder's Office, whereby Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.⁴ On July 12, 2010, a Substitution of Trustee was recorded in the Clark County Recorder's Office, whereby U.S. Bank substituted National Default Servicing Corporation as Trustee under the December 2005 Deed of Trust.⁵ On July 12, 2010, a Certificate from the Nevada Foreclosure Mediation Program was recorded in the Clark County Recorder's Office.⁶ On July 12, 2010, a Notice of Trustee's Sale was recorded in the Clark County Recorder's Office.⁷

On May 24, 2012, a Notice of Delinquent Assessment Lien was recorded in the Clark County Recorder's Office.⁸ On June 7, 2012, an Assignment of Mortgage was recorded in the Clark County Recorder's Office, clarifying the transfer of beneficial interest in the December

¹ A true and correct copy of the GBS Deed is recorded in the Clark County Recorder's Office as Book and Instrument Number 20060105-0004274 is attached to the Defendant's Request for Judicial Notice ("RJN") as **Exhibit A**.

² A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B**.

³ A true and correct copy of the Notice of Default is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100224-0003380 is attached to the Defendant's RJN as **Exhibit C**.

⁴ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D**.

⁵ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002706 is attached to the Defendant's RJN as **Exhibit E**.

⁶ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002707 is attached to the Defendant's RJN as **Exhibit F**.

⁷ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-002708 is attached to the Defendant's RJN as **Exhibit G**.

⁸ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and Instrument Number 20120524-0002436 is attached to the Defendant's RJN as **Exhibit H**.

1 2005 Note and Deed of Trust to U.S. Bank.⁹ On June 27, 2011, a Notice of Trustee's Sale was
2 recorded in the Clark County Recorder's Office.¹⁰ On July 19, 2012, a Notice of Default and
3 Election to Sell under Homeowners Association Lien was recorded in the Clark County
4 Recorder's Office.¹¹ On February 7, 2013, a Notice of Foreclosure Sale was recorded in the
5 Clark County Recorder's Office.¹² On March 6, 2013, a Foreclosure Deed was recorded in the
6 Clark County Recorder's Office, whereby the Plaintiff purchased the Property for \$14,000.000.¹³
7 On March 11, 2013, a third Notice of Trustee's Sale was recorded in the Clark County
Recorder's Office.¹⁴

8 **II. PROCEDURAL HISTORY**

9 On March 22, 2013, the Plaintiff filed a Complaint for Quiet Title and Declaratory Relief
10 in the herein Court. On March 22, 2013, the Plaintiff filed a Notice of Lis Pendens in the herein
11 Court. On March 27, 2013, the Plaintiff filed an Application for Temporary Restraining Order
12 and Motion for Preliminary Injunction. On March 28, 2013, the Plaintiff filed a Temporary
13 Restraining Order. On April 10, 2013, U.S. Bank filed a Notice of Appearance in the case. On
14 April 25, 2013, U.S. Bank filed a Response to the Motion for Preliminary Injunction and Request
for Judicial Notice in Support of the Response to the Motion for Preliminary Injunction.

15 **III. LEGAL ARGUMENTS**

16 **A. MOTION TO EXPUNGE LIS PENDENS LEGAL STANDARD.**

17 Pursuant to N.R.S. § 14.015, a lis pendens must be expunged if upon 15 days' notice, the
18 party that recorded the lis pendens fails to establish to the satisfaction of the court all of the
19

20 ///

21 ///

22 ///

23 ⁹ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120607-0002928 is attached to the Defendant's RJN as **Exhibit I**.

24 ¹⁰ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20110627-0002062 is attached to the Defendant's RJN as **Exhibit J**.

25 ¹¹ A true and correct copy of the Notice of Default (HOA) is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20120719-0001226 is attached to the Defendant's RJN as **Exhibit K**.

26 ¹² A true and correct copy of the Notice of Foreclosure Sale is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20130207-0000910 is attached to the Defendant's RJN as **Exhibit L**.

27 ¹³ A true and correct copy of the Foreclosure Deed is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20130306-0001614 is attached to the Defendant's RJN as **Exhibit M**.

28 ¹⁴ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20130311-0003086 is attached to the Defendant's RJN as **Exhibit N**.

1 following elements:

- 2 (a) The action is for the foreclosure of a mortgage upon the real property
3 described in the notice or affects the title or possession of the real property described
4 in the notice;
5 (b) The action was not brought in bad faith or for an improper motive;
6 (c) He will be able to perform any conditions precedent to the relief sought in
7 the action insofar as it affects the title or possession of the real property; and
8 (d) He would be injured by any transfer of an interest in the property before
9 the action is concluded.¹⁵

10 In addition to each of the four elements listed above, the party that recorded the lis
11 pendens must also establish:

- 12 (a) That he is likely to prevail in the action; or
13 (b) That he has a fair chance of success on the merits in the action and the
14 injury ... would be sufficiently serious that the hardship on him in the event of a
15 transfer would be greater than the hardship on the defendant resulting from the
16 notice of pendency, and that if he prevails he will be entitled to relief affecting the
17 title or possession of the real property.¹⁶

18 When a party fails to establish any of these elements, the lis pendens must be expunged.
19 N.R.S. § 14.015(3) provides that "the court shall order the cancellation of the notice of pendency
20 and shall order the party who recorded the notice to record with the recorder of the county a copy
21 of the order of cancellation." N.R.S. § 14.015(3). It is important to note that, like California,
22 Nevada policy is to favor a restrictive application of the lis pendens statutes. As stated in BGI
23 Associates v. Superior Court, 75 Cal. App. 4th 952, 969 (Cal. Ct. App. 1999): Courts have long
24 recognized that "because the recording of a lis pendens place[s] a cloud upon title of real
25 property until the pending action [is] ultimately resolved, the lis pendens procedure [is]
26 susceptible to serious abuse, providing unscrupulous Plaintiffs with a powerful lever to force the
27 settlement of groundless or malicious suits. Id. In Hilberg v. Superior Court, 215 Cal. App. 3d
28 539, 542, the Court stated, "We cannot ignore as judges what we know as lawyers – that the
recording of a lis pendens is sometimes made not to prevent conveyance of property that is the
subject of the lawsuit, but to coerce an opponent to settle regardless of the merits.'" Hilberg v.
Superior Court, 215 Cal. App. 3d 539, 542 (Cal. Ct. App. 1989).

¹⁵ N.R.S. § 14.015(2)

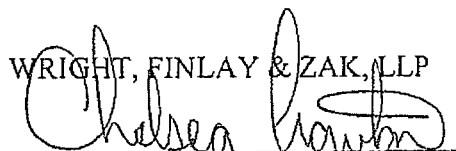
¹⁶ N.R.S. § 14.015(3)

1 In the present case, the Plaintiff's Notice of Lis Pendens must be expunged because the
2 Plaintiff has failed to state a single viable claim in the Complaint with regards to an
3 extinguishment of U.S. Bank's Lien, as stated in the Defendant, U.S. Bank's, Motion to Dismiss
4 with Prejudice the Plaintiff's Complaint. The analysis by the Plaintiff, with regards to N.R.S.
5 116.3116 et seq., is flawed and fails to state a viable claim for quiet title, declaratory relief, and
6 injunctive relief, as it relates to U.S. Bank's first, position Deed of Trust. Based on the above,
7 the Plaintiff's Notice of Lis Pendens should be expunged, due to the Complaint failing to state a
8 claim for declaratory relief, quiet title, or injunctive relief.

9 **II. CONCLUSION**

10 Based on the above, the Defendant, U.S. Bank, respectfully requests that the Court grant
11 the Defendant's Motion to Expunge Lis Pendens.

12
13 DATED this 30th day of April, 2013.

14
15 

16 Chelsea A. Crowton, Esq.
17 Nevada Bar No. 11547
18 5532 South Fort Apache Road, Suite 110
19 Las Vegas, NV 89148
20 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
21 *for the Certificate Holders of Wells Fargo Asset*
22 *Securities Corporation, Mortgage Pass-Through*
23 *Certificates, Series 2006-AR4*
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AFFIRMATION

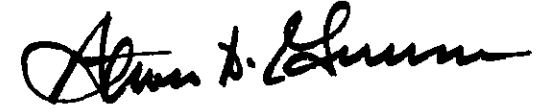
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT, U.S. BANK, N.A.'S, MOTION TO EXPUNGE LIS PENDENS** filed in Case No. A-13-678814-C does not contain the social security number of any person.

DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.
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Las Vegas, NV 89148
*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

TAB 17



CLERK OF THE COURT

CERT
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5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
(702) 475-7964; Fax: (702) 946-1345
ccrowton@wrightlegal.net

Attorney for Defendant,
U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL, LLC, a Nevada
limited liability company

Plaintiff,

vs.

US BANK, N.A., a national banking association
as Trustee for the Certificate Holders of Wells
Fargo Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-AR4,
and LUCIA PARKS, an individual; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive.

Defendants.

Case No.: A-13-678814-C
Dept. No.: XVIII

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1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that
3 service of the foregoing DEFENDANT, U.S. BANK, N.A.'S, MOTION TO EXPUNGE LIS
4 PENDENS and DEFENDANT, U.S. BANK, N.A.'S, MOTION TO DISMISS was made on
5 the 2nd day of May, 2013, by depositing a true copy of same in the United States Mail, at Las
6 Vegas, Nevada, addressed as follows:

7
8 Howard C. Kim, Esq.
9 Diana S. Cline, Esq.
10 Victoria L. Hightower, Esq.
11 HOWARD KIM & ASSOCIATES
12 400 N. Stephanie St., Suite 160
13 Henderson, NV 89014
14 *Attorneys for Plaintiff*

15 /s/ Ashley Renteria
16 An Employee of WRIGHT, FINLAY & ZAK, LLP

17 AFFIRMATION

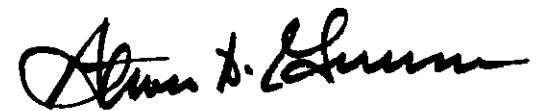
18 Pursuant to N.R.S. 239B.030

19 The undersigned does hereby affirm that the preceding CERTIFICATE OF MAILING
20 filed in Case No. A-13-678814-C **does not** contain the social security number of any person.
21 DATED this 2nd day of May, 2013.

22 WRIGHT, FINLAY & ZAK, LLP
23 

24 Chelsea A. Crowton, Esq.
25 Nevada Bar No. 11547
26 5532 South Fort Apache Road, Suite 110
27 Las Vegas, NV 89148
28 *Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

TAB 18



CLERK OF THE COURT

1 **NEO**
HOWARD C. KIM, ESQ.
2 Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
3 DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
4 E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
5 Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
6 HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
7 Henderson, Nevada 89014
Telephone: (702) 485-3300
8 Facsimile: (702) 485-3301
Attorneys for Plaintiff

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 SFR INVESTMENTS POOL1, LLC a Nevada
13 limited liability company,

14 Plaintiff,

15 vs.

16 U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
17 Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
18 Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual; DOES I through X;
19 and ROE CORPORATIONS I through X,
inclusive,
20

21 Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that a Temporary Restraining Order Enjoining Sale and Order

23 ///

24 ///

25 ///

26 ///

27 ///

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HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 ///

2 ///

3 Setting Briefing Schedule for Preliminary Injunction was entered by this Court on March 28,
4 2013. A copy of said order is attached hereto.

5 DATED May 3, 2013.

6

7

HOWARD KIM & ASSOCIATES

8

/s/ Diana S. Cline

9

Howard C. Kim, Esq.

Nevada Bar No. 10386

10

Diana S. Cline, Esq.

Nevada Bar No. 10580

11

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

12

Phone: (702) 485-3300

Fax: (702) 485-330

13

Attorneys for Plaintiff

14

15

16

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HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

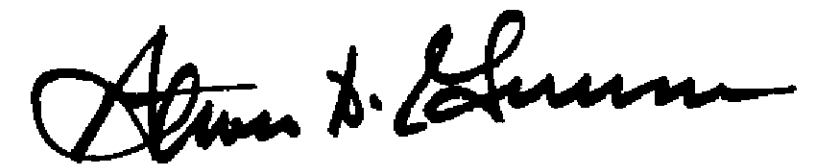
I HEREBY CERTIFY that on this 3rd day of May, 2013, pursuant to NRCP 5(b), I served the following parties listed below by depositing via U.S. mail first class a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, postage prepaid and addressed to:

Chelsea Crowton
Wright, Finlay, & Zak
5532 S. Fort Apache Rd.
Las Vegas, NV 89148

D. Chris Albright
Albright Stoddard Warnick & Albright
801 S. Rancho Dr., Suite D-4
Las Vegas, NV 89106

/s/ Tommie Dooley

An employee of Howard Kim & Associates



CLERK OF THE COURT

TRO

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

**TEMPORARY RESTRAINING ORDER
ENJOINING SALE AND ORDER SETTING
BRIEFING SCHEDULE FOR
PRELIMINARY INJUNCTION**

Hearing Date: March 28, 2013
Hearing Time: 8:15 a.m.

On March 28, 2013, the Court heard Plaintiff's application for temporary restraining order on order shortening time ("Application"). ~~The Court finds that Plaintiff served a copy of the summons, complaint, and the Application on U.S. BANK, a national banking association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4, a Nevada non-profit corporation, ("U.S. Bank" or "Defendant") in advance of the hearing.~~ The Court, having read and considered the Application

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

and the pleadings and papers on file herein, finds that Plaintiff will suffer irreparable harm if the subject property is sold at a non-judicial foreclosure sale on Monday, April 1, 2013 and that Plaintiff has a reasonable probability of success on the merits.

Therefore, with good cause appearing, the Court now orders as follows:

ORDER ENJOINING FORECLOSURE

Until such time as a hearing may be held on Plaintiff's Motion for Preliminary Injunction,

IT IS HEREBY ORDERED that Defendant U.S. Bank, its successors, assigns and agents are restrained and enjoined from foreclosing on, selling, transferring, or otherwise conveying the real property commonly known **2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012** (the "Property").

IT IS FURTHER ORDERED that Plaintiff shall be required to post a bond in the amount of \$ 500.⁰⁰

ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION

UPON CONSIDERATION of the motion filed by Plaintiff for preliminary injunction, and that a temporary restraining order restraining Defendants from foreclosing on the Property has issued pending a hearing on Plaintiff's motion for preliminary injunction, the supporting points and memorandum of authorities, the supporting declaration and evidence, the record in this case, and for good cause shown;

THE COURT HEREBY sets the hearing for Plaintiff's motion for a preliminary injunction on the 11th day of April, 2013, in Department XVIII of the above-entitled Court, at the hour of 8:15 a.m./p.m., or as soon thereafter as counsel may be heard. Further, the Court sets forth the following briefing schedule relating to Plaintiff's motion:

1. Plaintiff shall serve Defendants with a copy of this Order and a copy of its Motion for Preliminary Injunction no later than the 29th day of March, 2013; and

2. Defendants shall file and serve their opposition papers, if any, no later than 5:00 a.m./p.m. on the 9th day of April, 2013, with service of any opposition papers on Plaintiff's counsel via email or fax; and

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST., SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

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3. Plaintiff shall file and serve its reply brief no later than the 10th day of April, 2013. Plaintiff shall deliver a courtesy copy to the Court by 4 a.m./p.m. on the 10th day of April, 2013.

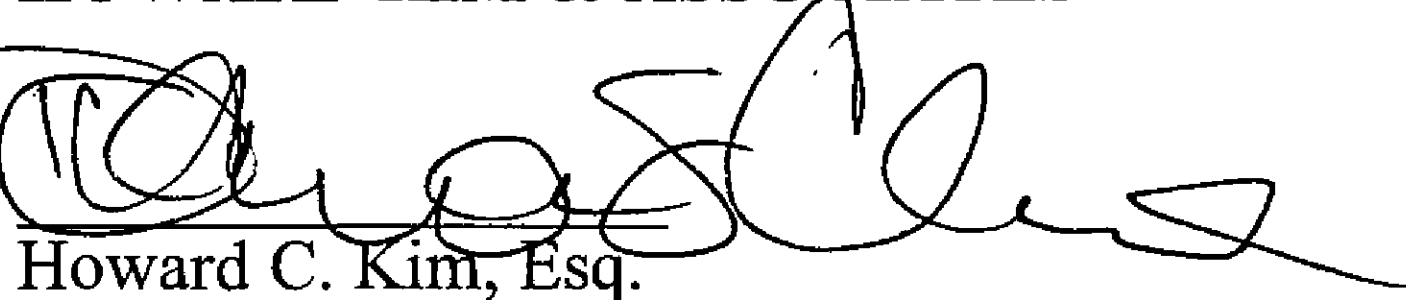
Dated this 29th day of March, 2013.


DISTRICT COURT JUDGE

(4)

Respectfully submitted by:

HOWARD KIM & ASSOCIATES



Howard C. Kim, Esq.

Nevada Bar No. 10386

Diana S. Cline, Esq.

Nevada Bar No. 10580

Victoria L. Hightower, Esq.

Nevada Bar No. 10897

400 N. Stephanie St., Suite 160

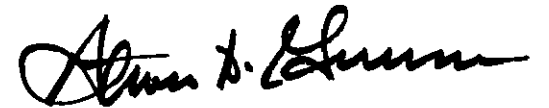
Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-330

Attorneys for Plaintiff

TAB 19



CLERK OF THE COURT

NOTC

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
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400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,
Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

**EXHIBITS IN SUPPORT OF
APPLICATION FOR TEMPORARY
RESTRAINING ORDER ON ORDER
SHORTENING TIME AND MOTION FOR
PRELIMINARY INJUNCTION**

Please see the attached Exhibits in support of Application for Temporary Restraining
Order on Order Shortening Time and Motion for Preliminary Injunction filed March 27, 2013.

DATED May 9th, 2013.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline

Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Attorneys for Plaintiff

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2013, pursuant to NRCP 5(b), I served a true and correct copy of the **Exhibits in Support of Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction** filed May 9, 2013, via U.S. Mail, postage pre-paid, to the following parties:

Chelsea A. Crowton, Esq.
WRIGHT FINLAY & ZAK
5532 S. Fort Apache Road, Suite 110
Las Vegas, Nevada 89148
Attorney for U.S. Bank, N.A.

D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Attorney for Lucia Parks

/s/ Andrew M. David
An Employee of Howard Kim & Associates

EXHIBIT 1

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Rd., B-214
Las Vegas, NV 89119

Inst #: 201303060001614
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$71.40 Ex: #
03/06/2013 11:33:13 AM
Receipt #: 1522795
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

FORECLOSURE DEED

APN # 178-19-712-012
North American Title #37570

NAS # N71222

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Copper Ridge Community), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded May 24, 2012 as instrument number 0002436 Book 20120524, in Clark County. The previous owner as reflected on said lien is Lucia Parks. Nevada Association Services, Inc. as agent for Copper Ridge Community does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (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: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Copper Ridge Community 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 7/19/2012 as instrument # 0001226 Book 20120719 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 Copper Ridge Community at public auction on 3/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$14,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 1, 2013

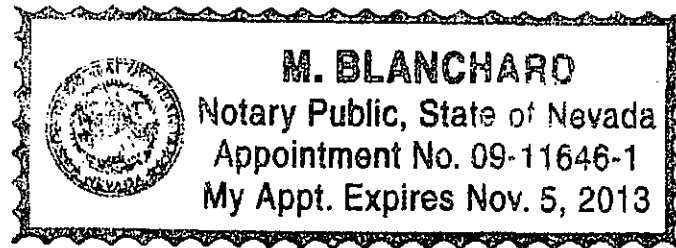


By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

On March 1, 2013, before me, M. Blanchard, personally appeared Elissa Hollander 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.

(Signature)



M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 178-19-712-012
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 14,000.00

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

c. Transfer Tax Value:

\$ 14,000.00

d. Real Property Transfer Tax Due

\$ 71.40

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature

[Signature] Capacity: Agent

Signature _____

Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Rd.

City: Las Vegas

State: NV

Zip: 89146

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: S F R Investments Pool 1, LLC

Address: 5030 Paradise Rd., B-214

City: Las Vegas

State: NV

Zip: 89119

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

North American Title Company

8485 W. Sunset Road #111

Las Vegas, NV 89113

Escrow # 37570 / N 71222

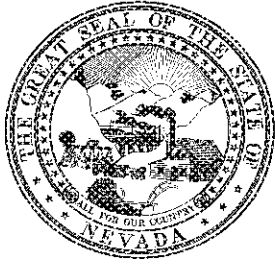
State: _____

Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

JA268

EXHIBIT 2



**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

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 Review⁸ 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:

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~~ 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 116.3116(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 3

1 **ORD**

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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 WINGBROOK CAPITAL, LLC.,

26 Plaintiff,

27 vs.

28 PEPPERTREE HOMEOWNERS
ASSOCIATION; and DOES 1-10 and ROE
ENTITIES 1-10, INCLUSIVE

Defendants.

Case No. A-11-636948-B

Dept. No. XI

ORDER

29 This matter came before the Court on May 24, 2011 at 9:00 a.m., upon the Plaintiff's Motion
30 for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law
31 Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of
32 the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of
33 the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument,
34 and for good cause appearing hereby rules:

1 WHEREAS the Parties have engaged in and have concluded a Nevada Real Estate Division
2 mediation (ADR #11-25) wherein the Parties mediated a dispute over the sum of \$13,190.33; and

3 WHEREAS the subject of the mediation was whether NRS 116.3116 permitted Defendant
4 to charge to Plaintiff \$14,037.83, or whether some lesser amount was due pursuant to NRS
5 116.3116; and

6 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
7 Defendant claims it has a right pursuant to NRS 116.3116 to charge and retain proceeds in the
8 amount \$14,037.83 from Plaintiff and Plaintiff, a purchaser of a home at foreclosure which is located
9 within the Defendant homeowners' association, contests this charge and claims that Defendant
10 exceeded the limits of NRS 116.3116 and overcharged it for the super priority lien; and

11 WHEREAS there exists in this case a controversy in which a claim of right is asserted by
12 Plaintiff against Defendant who has an interest in contesting it; and

13 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
14 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
15 Defendant charged too much for the super priority lien); and

16 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded and transferred to Defendant and it was Plaintiff's property that had been the
18 subject of a homeowners' association lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of NRS 116.3116 is ripe
20 for determination in this case as the present controversy is real, it exists now, and it affects the
21 Parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of NRS 116.3116 would terminate some of the uncertainty and
24 controversy giving rise to the present proceeding; and

25 ///

26 ///

1 WHEREAS, pursuant to NRS 30.040 Plaintiff and Defendant are parties whose rights, status
2 or other legal relations are affected by NRS 116.3116 and they may, therefore, have determined by
3 this Court any question of construction or validity arising under NRS 116.3116 and obtain a
4 declaration of rights, status or other legal relations thereunder;

5 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
6 follows:

- 7 1. NRS 116.3116 is a statute which creates for the benefit of Nevada homeowners'
8 associations a lien against a homeowner's unit for any construction penalty that is
9 imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied
10 against that unit or any fines imposed against the unit's owner from the time the
11 construction penalty, assessment or fine becomes due (the "Statutory Lien"). The
12 homeowners' associations' Statutory Lien is noticed and perfected by the recording
13 of the associations' declaration and, pursuant to NRS 116.3116(4), no further
14 recordation of any claim of lien for assessment is required.
- 15 2. Pursuant to NRS 116.3116(2), the homeowners' association's Statutory Lien is junior
16 to a first security interest on the unit recorded before the date on which the
17 assessment sought to be enforced became delinquent ("First Security Interest")
18 except for a portion of the homeowners' association's Statutory Lien which remains
19 prior to the First Security Interest (the "Super Priority Lien").
- 20 3. Homeowners' associations, therefore, have a Super Priority Lien which has priority
21 over the First Security Interest on a homeowners' unit. However, the Super Priority
22 Lien amount is not without limits and NRS 116.3116 provides that the amount of the
23 Super Priority Lien (i.e., that amount of a homeowners' associations' Statutory Lien
24 which retains priority status over the First Security Interest) is limited "to the extent"
25 of those assessments for common expenses based upon the associations' periodic
26 budget that would have become due in the 9 month period immediately preceding an
27
28

1 associations' institution of an action to enforce its Statutory Lien and "to the extent
2 of" external repair costs pursuant to NRS 116.310312.

- 3 4. The words "to the extent of" contained in NRS 116.3116(2) mean "no more than,"
4 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
5 cannot be exceeded.
- 6 5. Therefore, after the foreclosure by a First Security Interest holder of a unit located
7 within a homeowners' association, pursuant to NRS 116.3116 the monetary limit of
8 a homeowners' association's Super Priority Lien is limited to a maximum amount
9 equaling 9 times the homeowners' association's monthly assessment amount to unit
10 owners for common expenses based on the periodic budget which would have
11 become due immediately preceding the institution of an action to enforce the lien (the
12 "Assessment Cap Figure") plus external repair costs pursuant to NRS 116.310312.
- 13 6. While assessments, penalties, fees, charges, late charges, fines and interest may be
14 included within the Assessment Cap Figure, in no event can the total amount of the
15 Assessment Cap Figure exceed an amount equaling 9 times the homeowners'
16 association's monthly assessment amount to unit owners for common expenses based
17 on the periodic budget which would have become due immediately preceding the
18 association's institution of an action to enforce the lien.
- 19 7. The Super Priority Lien equals the Assessment Cap Figure plus external repair costs
20 pursuant to NRS 116.310312.
- 21 8. After providing a homeowner with notice and hearing, NRS 116.310312 permits a
22 homeowners' association to enter the grounds of a homeowners' unit and maintain
23 the exterior of the unit in accordance with the standards set forth in the association's
24 governing documents. Pursuant to NRS 116.310312(2)(b), a homeowners'
25 association may also remove or abate a public nuisance on the exterior of a unit. The
26 association may order that the costs of such maintenance or abatement, including
27 interest, inspection fees, notification fees and collection costs for such maintenance
28

1 or abatement to be charged against the unit ("Exterior Repair Costs"). NRS
2 116.310312(9)(a) provides that "Exterior" of the unit includes, without limitation,
3 all landscaping outside of a unit and the exterior of all property exclusively owned
4 by the unit owner.

5 9. Therefore, the Super Priority Lien consists solely and exclusively of the Assessment
6 Cap Figure and the Exterior Repair Costs. No other costs, fees, fines, penalties,
7 assessments, charges, late charges, or interest or any other costs may be included
8 within the Super Priority Lien.

9 10. Pursuant to NRS 116.3116, the maximum amount of the Assessment Cap Figure
10 portion of Defendant's Super Priority Lien cannot exceed \$1,552.50 which equals 9
11 times the Defendant's monthly assessments. As Defendant has assessed against
12 Plaintiff \$1,552.50 for past due assessments incurred prior to Plaintiff's ownership
13 of the property, the additional late fees of \$135.00 and accrued interest on the
14 Assessment Cap Figure are impermissible and cannot be included in the Assessment
15 Cap Figure as the addition of those costs exceed the Assessment Cap Figure of
16 \$1,552.50 and violates NRS 116.3116.

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1 11. The External Repair Costs portion of the Super Priority Lien shall be determined by
2 this Court at a later date when the Court is provided with all necessary evidence to
3 make that determination.

4
5 **IT IS SO ORDERED.**

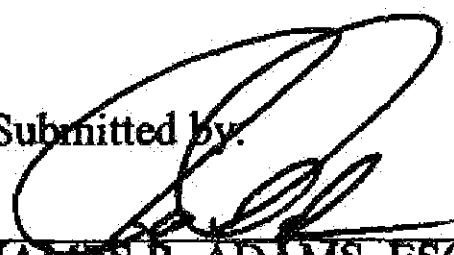
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7 DISTRICT COURT JUDGE

June 2, 2011


Date

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9 Submitted by:

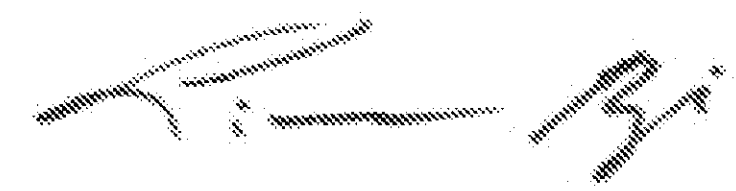
10 
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EXHIBIT 4



Honorable Linda B. Riegle
United States Bankruptcy Judge



Entered on Docket
December 13, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

Case No. BK-S-11-12044 LBR
Chapter 7

SERGIO GONZALEZ
LAURA GONZALEZ,

ORDER GRANTING

*MOTION TO SELL ASSETS OF THE ESTATE
FREE AND CLEAR OF LIENS AND
ENCUMBRANCES AND TO SURCHARGE
PROCEEDS OF SALE - REAL PROPERTY*

Debtor.

*[5705 VICTORIA REGINA, LAS VEGAS, NV
89139]*

Hearing Held: November 19, 2012 at 9:30 a.m.

ORDER GRANTING

***MOTION TO SELL ASSETS OF THE ESTATE FREE AND CLEAR OF LIENS AND
ENCUMBRANCES AND TO SURCHARGE PROCEEDS OF SALE - REAL PROPERTY***
[5705 VICTORIA REGINA, LAS VEGAS, NV 89139]

On the date and at the time set forth above, a hearing was held before the Honorable Linda B. Riegle, Bankruptcy Court Judge, District of Nevada, in the above-captioned chapter 7 case of Sergio and Laura Gonzalez ("Debtor") upon the "*Motion to Sell Assets of the Estate Free and Clear of Liens and Encumbrances and to Surcharge Proceeds of Sale - Real Property, located at 5705 Victoria Regina, Las Vegas, NV 89139*" ("Motion") filed by David Rosenberg ("Trustee"). Appearing on behalf of himself was the Trustee, also appearing in opposition was Sherry A. Moore, Esq. on behalf of Bank of America, N.A., all other appearances are as set forth in the recorded transcript of the hearing on the Motion and having given due consideration to the Motion, the declarations, and other evidence submitted in support of the Motion, and for other

1 good cause shown, the Court hereby finds, as a matter of fact, and concludes, as a matter of law,
2 that:

3 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 to approve the
4 sale of the property located at **5705 VICTORIA REGINA, LAS VEGAS, NV 89139**
5 (“Property”) which is the subject of the Motion free and clear of those liens, encumbrances,
6 claims and interests identified in this order (“Order”), and to authorize the Trustee on behalf of
7 the estate in the above-captioned case (“Estate”) to enter into and perform in accordance with the
8 Residential Purchase Agreement and HUD-1 (together, the “Agreement”) dated December 24,
9 2011, including the modifications thereto, if any, set forth in the record of the hearing on the
10 Motion. The Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N), and (O).
11 The statutory predicates for the relief requested in the Motion are 11 U.S.C. §§ 105 and 363, and
Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) 2002, 6004 and 9014.

12 2. All objections, if any, to the Motion and to the approval of the Agreement,
13 including the transactions contemplated thereby, have been withdrawn, resolved or overruled.

14 3. The Property is situated in the County of Clark, State of Nevada,
15 **LOT FORTY-SIX (46) IN BLOCK FOUR (4) OF CACTUS HILLS**
16 **ESTATES II, AS SHOWN BY MAP THEREOF ON FILE IN BOOK**
17 **135 OF PLATS, PAGE 58, AND AS AMENDED BY CERTIFICATE**
18 **OF AMENDMENT RECORDED MAY 21, 2007 IN BOOK 20070521**
19 **AS DOCUMENT NO. 0001486 IN THE OFFICE OF THE COUNTY**
20 **RECORDER OF CLARK COUNTY, NEVADA**

21 4. Record title to the Property is vested in the Debtor (the “Record Owner”).

22 5. As set forth in the declarations of service filed with this Court in connection with
23 the Motion, notice of the hearing on the approval of the Motion (the “Notice”) was duly served on
24 (a) the Debtor and Debtor’s counsel, (b) all creditors and interested parties, (c) each entity known
25 to the Trustee to assert a lien, encumbrance or other interest in, or claim to, the Property to be
26 affected by this Order, and (d) the Office of the United States Trustee, all in accordance with
Bankruptcy Rules 2002(a)(2), 2002(c)(1), 2002(i), 2002(k), 6004(a) and 6004(c). Each entity
known to the Trustee to assert a lien, encumbrance, claim or other interest in or to the Property to
be affected by this Order was also served with a complete copy of the Motion, and all supporting
declarations and pleadings filed by the Trustee in connection with the Motion.

27 6. The Notice complied in all respects with the requirements of the Bankruptcy Code
28 and the Bankruptcy Rules; fully and adequately described the relief requested in the Motion and

1 set forth the means by which the Motion, and all supporting declarations and pleadings filed by
 2 the Trustee in connection with the Motion, could be obtained promptly by a party in interest;
 3 provided fair and reasonable notice under the circumstances of this case with respect to the
 4 deadlines and procedures for objecting to the relief requested in the Motion; and set forth the
 5 time, date and place for the hearing on the Motion. The Court believes that such notice was
 6 sufficient to allow any interested parties the opportunity weigh in on the Motion and participate in
 7 the sale hearing. As such, the Court finds adequate notice of the sale has, under the particular
 8 circumstances of the case, been given.

9 7. The Property is allegedly subject to the liens, encumbrances and other interests of
 10 record as set forth in a preliminary report/title commitment (the "Title Report"), attached hereto
 11 as Exhibit "A", including, without limitation, the following:

12 **A claim of lien for \$1,428.74 by Alessi & Koenig, LLC as Agent for Cactus**
 13 **Hills Homeowners Association, recorded on August 11, 2011, as Document No.**
 14 **201108110003286 of Official Records.**

15 **A deed of trust for \$452,892.00 in favor of Bank of America, N.A., dated**
 16 **September 27, 2007, and recorded on October 4, 2007 in Book 20071004,**
 17 **Document No. 0002572, of Official Records.**

18 **A judgment in the amount of \$360.00 per month, PLUS INTERESTS AND**
 19 **COSTS, and any other amounts due, in favor of Pablo Alejandro Gonzalez**
 20 **Parada and Caesar Gonzalez-Parada by Nevada State Welfare Division, Case**
 21 **No. D-180215, recorded May 9, 1996, in Book 960509, as Document No. 01221**
 22 **of Official Records.**

23 **A claim of and notice of judgment lien for \$16,737.37, by Aargon Collection**
 24 **Agency, recorded July 3, 2008, in Book 20080703, as Document No. 0003389,**
 25 **of Official Records.**

26 **A judgment in the amount of \$1,101.25, PLUS INTEREST AND CORSTS,**
 27 **and any other amounts due, in favor of Capital One Bank (U.S.A.), N.A., Case**
 28 **No. 08C-055793, recorded June 16, 2009, in Book 20090616, as Document No.**
0002412, of Official Records.

A judgment in the amount of \$325.00 per month, and \$20,224.00 for child
support arrearages PLUS INTERESTS AND COSTS, in favor of Ana Patino,
Case No. R137248, recorded August 21, 2009, as Document No.
200908210000734, of Official Records.

1 8. Based on the moving papers, the Trustee has satisfied the requirements for a sale
2 free and clear of all liens and interests (including, but not limited to, those liens listed above in ¶7)
3 pursuant to § 363(f)(2) and § 363(f)(5).

4 9. Pursuant to NRS 116.3116(2), an HOA lien based on HOA assessments which
5 would have become due in the absence of acceleration during the 9 months immediately
6 preceding institution of an action to enforce the lien ("super-priority lien") is superior to the first
7 security interest on the Property.

8 10. Because of its super-priority lien, Cactus Hills Homeowners Association (the
9 "HOA") has the right to foreclose by consenting to sell the Property through the bankruptcy
10 Trustee's sale.

11 11. The HOA consented to the bankruptcy Trustee's sale of the Property.

12 12. Pursuant to NRS 116.3116(2), any security interest in the Property held by Bank
13 of America, N.A. is junior to the HOA's super-priority lien.

14 13. Bank of America, N.A. had not paid off the HOA's super-priority lien as of the
15 date of the hearing on the Motion.

16 14. Because it is a junior lienholder that did not cure a superior lien, Bank of
17 America, N.A. can be compelled under Nevada law to accept a money judgment and need not
18 consent to the bankruptcy Trustee's sale of the Property.

19 15. The Trustee has engaged in fair and reasonable marketing, advertising and other
20 sale efforts and procedures in connection with the sale of the Property, which efforts and
21 procedures have enabled the Estate to obtain a fair and reasonable price for the Property under
22 the circumstances of this case. In connection with the proposed sale, the Trustee has complied
23 with all sale procedures established or required by this Court.

24 16. The highest and best offer to purchase the Property was the one received from
25 Terry Pushnick ("Buyer") to buy the Property for a purchase price of \$225,000.00 ("Purchase
26 Price") on the terms and conditions set forth in the Agreement.

27 17. The Buyer is unrelated to the Debtor and the Trustee. The Agreement was
28 negotiated, proposed, and entered into by the parties without collusion, in good faith, and from
arm's-length bargaining positions. Neither the Trustee nor the Buyer have engaged in any
conduct that would cause or permit the Agreement, or the transactions contemplated thereby, to
be invalidated or avoided under 11 U.S.C. § 363(n). Accordingly, upon consummation of the

1 sale transaction contemplated by the Agreement, the Buyer will be a buyer in “good faith” within
2 the meaning of 11 U.S.C. § 363(m), and, as such, is entitled to the protections afforded thereby.

3 18. The terms and conditions of the sale transaction as provided for in the Agreement
4 are fair and reasonable; entry into the Agreement on behalf of the Estate is a sound exercise of
5 the Trustee's reasonable business judgment; and, the sale transaction contemplated by the
6 Agreement is in the best interests of creditors, interest holders and the Estate.

7 19. The Trustee originally asked the Court to waive the fourteen-day stay period
8 provided by Rule 6004(h). The Court does not agree that the sale transaction should be closed
9 prior to expiration of the fourteen-day stay period. Accordingly, the Court makes a finding that
10 it denies the waiver of Rule 6004(h).

11 20. Based on the record in this case, the findings of fact and conclusions of law set
12 forth above and stated on the record pursuant to Bankruptcy Rules 9014 and 7052, and good
13 cause appearing therefore,

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

15 A. The Motion is granted as set forth herein.

16 **IT IS FURTHER ORDERED THAT:**

17 B. Pursuant to NRS 116.3116(2)(c), an HOA lien based on HOA assessment which
18 would have become due in the absence of acceleration during the 9 months immediately
19 preceding institution of an action to enforce the lien is superior to the first security interest on the
20 Property and therefore, the HOA has right to foreclose upon its lien by consenting to the
21 bankruptcy Trustee's sale of the Property;

22 C. The terms, conditions, and transactions contemplated by the Agreement are
23 hereby approved in all respects, and the Trustee is hereby authorized under 11 U.S.C §§ 105(a);
24 363(b) or (c); and 363 (f) and (m) to sell the Property free and clear of those liens, claims,
25 encumbrances and interests set forth below to the Buyer on the terms and conditions provided in
26 the Agreement and Motion. The Court approves—in its entirety—the Trustee's Motion to Sell
27 Assets of the Estate Free and Clear of Liens and Encumbrances, as well as Trustee's Substitution
28 of Buyer provision, which allows the Trustee to assign the Buyer's purchase rights under the
RPA to a substitute buyer (“Substitute Buyer”). The Substitute Buyer may then exercise those

1 purchase rights and, like a back-up bidder, close escrow on the Property without the need for the
2 Trustee to seek Court approval for what is substantially the same sale;

3 D. The Trustee is hereby authorized, empowered, and directed to (1) perform under,
4 consummate, and implement the Agreement, (2) execute all additional instruments and
5 documents that may be reasonably necessary or desirable to implement the Agreement and the
6 transactions contemplated thereby, (3) take all further actions as may be necessary or appropriate
7 for the purposes of assigning, transferring, granting, conveying, encumbering or transferring the
8 Debtor's property as contemplated by the Agreement, and (4) take such other and further steps as
9 are contemplated by the Agreement or reasonably required to fulfill the Trustee's obligations
10 under the Agreement, all without further order of the Court. The Trustee is hereby authorized to
11 execute all documents in connection with the sale transaction approved hereby;

12 E. The sale of the Property shall be free and clear of all ownership interests and all
13 predecessors and successors in interest; any unrecorded equitable or legal interests in the
14 Property asserted by any person or entity, or their respective predecessors and successors in
15 interest, unless such interests would be superior to the rights of the Trustee under 11 U.S.C. §
16 544(a)(3); the claims or interests asserted by any person or entity, or their respective
17 predecessors and successors in interest, against the Estate which do not constitute liens against or
18 interests in the Property; and the claims or interests asserted by any person or entity, or their
19 respective predecessors and successors in interest, evidenced by the liens, encumbrances and
20 interests of record as set forth in Exhibit "A" (including, without limitation, those listed in
21 ¶7);

22 F. Except as authorized for payment hereby, each lien, encumbrance or interest
23 identified above shall attach, as adequate protection to the holder thereof pursuant to 11 U.S.C. §
24 363(e), to the net proceeds of sale (the "Proceeds"), after (i) payment of all costs of sale, and (ii)
25 satisfaction of those liens and encumbrances authorized for payment hereby, with the same
26 extent, validity and priority, if any, as such lien, encumbrance, or interest now has with respect to
27 the Property, subject to any and all defenses, offsets, counterclaims and/or other rights of any
28 party relating thereto;

G. The Trustee is hereby authorized to pay directly from the escrow all amounts due
which are provided for in the Agreement;

1 H. The Trustee is hereby authorized to pay all other reasonable and customary
2 escrow fees, recording fees, title insurance premiums, and closing costs necessary and proper to
3 conclude the sale of the Property;

4 I. At the close of escrow of the sale approved by this Order, the Trustee is
5 authorized to pay from the sale proceeds a broker's commission in an amount equal to 6% of the
6 purchase price;

7 J. The Court authorizes the escrow agent, at the closing, to disburse all remaining
8 Proceeds to the Trustee. The Court has required Bank of America to demonstrate why it is
9 entitled to any of the Proceeds, and the Trustee may not pay Bank of America until the Court
10 issues an order directing the Trustee to distribute the Proceeds (the "Order on Proceeds");

11 K. This Court shall and hereby does retain jurisdiction to (1) enforce and implement
12 the terms and provisions of the Agreement, all amendments thereto, any waivers and consents
13 thereunder, and any other supplemental documents or agreements executed in connection
14 therewith; (2) compel delivery and payment of the consideration provided for under the
15 Agreement; (3) resolve any disputes, controversies or claims arising out of or relating to the
16 Agreement; and (4) interpret, implement, and enforce the provisions of this Order;

17 L. The Court has not agreed to waive the provisions of Rule 6004(h) of the Federal
18 Rules of Bankruptcy Procedure, meaning this Order will not be effective immediately upon entry;

19 M. The Court finds that adequate notice of the sale has, under the particular
20 circumstances of the case, been given. The Court believes that such notice was sufficient to
21 allow any interested parties the opportunity weigh in on the Motion and participate in the sale
22 hearing;

23 N. Over the ninety (90) days following entry of this Order, either: a) a secured party
24 in interest may demonstrate to the Trustee that said lienholder has a valid claim to the Proceeds;
25 or b) the Trustee may file an adversary complaint to determine the priority, extent, validity, and
26 existence of liens against the Proceeds;

27 O. The Court approves the Trustee's Motion to Surcharge Proceeds of Sale Subject to
28 Liens and authorizes the Trustee, pursuant to 11 U.S.C. § 506(c), to surcharge the Proceeds to
pay any necessary and reasonable expenses incurred by the bankruptcy estate for the sale of the
Property and Distribution of Proceeds (including all actions to investigate and/or determine

1 validity of liens on the Property), including but not limited to Chapter 7 trustee fees and
 2 expenses, attorney's fees and expenses, real estate agent fees and expenses, and accountant fees
 3 and expenses. The costs and expenses that have been incurred and will be incurred by the
 4 bankruptcy estate to sell the Property will directly benefit any and all parties holding any liens on
 5 this Property and are reasonable and necessary cost pursuant to 11 U.S.C. § 506(c);

6 P. The Trustee's commission shall equal the reasonable costs which Bank of
 7 America would otherwise have to incur to foreclose on the Property, not to exceed the maximum
 8 allowable Trustee's commission under 11 U.S.C. § 326(a)(computed on all monies distributed by
 9 the Trustee, including payments to holders of secured claims). Bank of America will be
 10 responsible for presenting the Court with evidence demonstrating what its reasonable costs to
 11 foreclose would have been, after which the Trustee will have an opportunity to respond.
 12 Ultimately, the Court will make a final determination as to the amount of the Trustee's
 compensation, which will be reflected in the Order on Proceeds.

13 Q. Pursuant to 11 U.S.C. § 363(m), absent a stay of this Order pending appeal, the
 14 reversal or modification on appeal of this Order, or any provision thereof, shall not affect the
 15 validity of the sale transaction approved hereby which is consummated prior to such stay,
 16 reversal or modification on appeal; and

17 R. The validity of the sale approved hereby shall not be affected by the appointment
 18 of a trustee or successor trustee, the dismissal of the above-captioned case, or its conversion to
 19 another chapter under title 11 of the United States Code.

20 **IT IS SO ORDERED.**

21 Date: December 11, 2012

Respectfully Submitted by:

/s/ David A. Rosenberg

DAVID A. ROSENBERG

U.S. BANKRUPTCY TRUSTEE

24 ALTERNATIVE METHOD RE: RULE 9021

25 _____ The Court has waived the requirement of approval under LR 9021(b)(1).

26 _____ No Parties appeared or filed written objections.

27 X I have delivered a copy of this proposed order to all counsel who appeared at the
 28 hearing, any unrepresented parties who appeared at the hearing, and any trustee

1 appointed in this case, and each has approved or disapproved this order, or failed
2 to respond, as indicated below:

3 APPROVE / DISAPPROVE / NO RESPONSE
4

5

SHERRY A. MOORE, ESQ.

6 Attorney for: Bank of America, N.A.

7 _____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
8 order with the motion pursuant LR 9014(g), and that no party has objected to the
9 form or content of the order.
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EXHIBIT 5



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

MARTIN CENTENO)	Case No. A660999
)	Dept. No. XXIX
Plaintiff,)	
)	
vs.)	
)	
MORTGAGE ELECTRONIC)	DECISION AND ORDER
REGISTRATION SYSTEMS, INC.;)	
RECONTRUST COMPANY, N.A.;)	
BANK OF AMERICA, N.A., et al.,)	
)	
Defendant(s).)	

This matter came before the Court on July 11, 2012, on Plaintiff's Motion for Preliminary Injunction and Defendant's Motion to Expunge Lis Pendens and on August 22, 2012 for the continued hearing on those Motions and Defendant's Motion to Dismiss Complaint; Martin Centeno, ("Centeno"), appeared in Proper Person; Kevin, Hahn, Esq., of the law firm of Malcolm Cisneros appeared on behalf of Defendants; , and the Court having heard oral argument, having reviewed the Motion for Preliminary Injunction, Motion to Expunge Lis Pendens and the Motion to Dismiss Complaint; Opposition

1 thereto and Reply, being fully advised in the premises and good cause appearing
2 therefore,
3

4 THE COURT FINDS the following:

5 These motions turn on the interpretation of NRS 116.3116. The relevant portion
6 of the statute reads:

7 NRS 116.3116 Liens against units for assessments. [Effective through December 31, 2011.]

8 1. The association has a lien on a unit for ... any assessment levied against that unit ...
9 from the time the ...assessment becomes due...

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

11 (b) A first security interest on the unit recorded before the date on which the
12 assessment sought to be enforced became delinquent or, in a cooperative, the
13 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

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

15 The lien is also prior to all security interests described in paragraph (b)
16 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
17 for common expenses based on the periodic budget adopted by
the association pursuant to NRS 116.3115 which would have
18 become due in the absence of acceleration during the 9
months immediately preceding institution of an action to
19 enforce the lien, ...

20 The Homeowner's Association ("HOA") foreclosed on its entire lien. The
21 Plumeria Trust purchased the property at that sale. Centeno subsequently obtained a 15%
22 ownership interest in the property from Plumeria. Centeno argues that because the super
23 priority portion of the lien was foreclosed, the entire first deed of trust was extinguished
24 by the sale under the common law rule that the foreclosure of a senior lien eliminates all
25 junior liens from the property. The state of Washington's Condominium Act, chapter
26 64.34 RCW, contains a very similar statute. Washington case law holds that a
27 foreclosure by the Association extinguishes the first trust deed because of the super
28

1 priority. *Summerhill Vill. Homeowners Ass'n v. Roughley*, No. 66455-7-1, __ P.2d __
2 (Wash. Ct. App. February 21, 2012) (hereinafter "*Summerhill*").
3

4 Defendants argue that NRS 116.3116 should be read to interpret the word "lien"
5 at the end of the quoted section above to refer only to a foreclosure of the first trust deed.
6 With that interpretation, the first trust deed holder ("the Bank") would be required to pay
7 the nine months of dues after it completes its sale.

8 To reach this conclusion, the bank urges the Court to use the following rules in
9 interpreting NRS 116.3116:
10

11 ... if a statute "is ambiguous, the plain meaning rule of
12 statutory construction" is inapplicable, and the drafter's
13 intent "becomes the controlling factor in statutory
14 construction." An ambiguous statutory provision should
15 also be interpreted in accordance "with what reason and
16 public policy would indicate the legislature intended."
17 Additionally, we "construe statutes to give meaning to all
18 of their parts and language, and this court will read each
19 sentence, phrase, and word to render it meaningful within
20 the context of the purpose of the legislation." Further, no
21 part of a statute should be rendered meaningless and its
22 language "should not be read to produce absurd or
23 unreasonable results." *Harris Assoc. v. CCSD*, 119 Nev.
24 638, 642, 81 P.3d 532 (2003).

25 At first blush, there does appear to be an ambiguity in the statute concerning the
26 identity of the "lien" referenced at the end of (c) quoted above. An inquiry into the
27 legislative history provided no guidance as to this claimed ambiguity. *See, e.g.,* Exh. D,
28 *Minutes of the Assemb. Comm. on Judiciary: AB 221*, 66th Leg. Sess. (Nev. March 20,
1991). However, logically, the lien referred to at the end of the quote is the same one
referenced at the beginning: the lien of the HOA. The Washington statute clarifies this
by explicitly naming each type of foreclosure proceeding, which includes the HOA lien.

1 *Summerhill*, at p. 4. The Bank further argues that unless its interpretation is followed a
2 part of the statute will be negated, namely NRS 116.3116(2)(b). The statute itself
3 answers this challenge in (c): “**The lien is also prior to all security interests described**
4 **in paragraph (b)...**”

5
6 As further support, the comments to the applicable section of the Uniform
7 Common Interest Ownership Act—the very same act Nevada relied on in forming NRS
8 116 *et seq.*—specifically warns that failing to consider the existence of an HOA’s super
9 priority lien may lead to serious consequences:

10
11 As a practical matter, secured lenders will most likely pay
12 the 6 months’ assessments demanded by the association
13 rather than having the association foreclose on the unit.

14 UNIF. COMMON INTEREST OWNERSHIP ACT § 3-116 cmt. (1982) (emphasis added).

15 Defendants concede in argument that the HOA could separately foreclose on the
16 super priority portion after the Bank becomes the owner and take title free of the first
17 Trust Deed if the super priority is not paid. This concession acknowledges the super
18 priority’s superior position over the first trust deed.

19 The plain language of the statute supports Centeno’s argument that he owns 15%
20 of the property free and clear of the Bank’s lien. Accordingly, Plaintiff’s Complaint
21 states a claim for relief and the Defendants’ Motions to Dismiss under NRCP 12(b)(b) is
22 **Denied**. The Motion to Expunge Plaintiff’s Lis Pendens is also **Denied**. This is not a
23 final determination of the issues because the Bank’s defenses have neither been raised
24 nor considered.
25
26
27
28

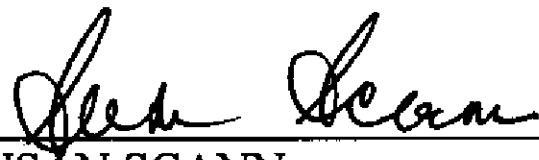
1 Centeno has failed to include an indispensable party, the Plumeria Trust, which
2 owns 85% of the property. The Court has raised this deficiency with Centeno at more
3 than one previous hearing in this case. NRCP 19 governs this issue.
4

5 RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

6 (a) Persons to Be Joined if Feasible. A person who is subject to
7 service of process and whose joinder will not deprive the court of
8 jurisdiction over the subject matter of the action shall be joined as
9 a party in the action if (1) in the person's absence complete relief
10 cannot be accorded among those already parties, or (2) the person
11 claims an interest relating to the subject of the action and is so
12 situated that the disposition of the action in the person's absence
13 may (i) as a practical matter impair or impede the person's ability
14 to protect that interest or (ii) leave any of the persons already parties
15 subject to a substantial risk of incurring double, multiple, or otherwise
16 inconsistent obligations by reason of the claimed interest. If the person
17 has not been so joined, the court shall order that the person be made a
18 party. If the person should join as a plaintiff but refuses to do so, the
19 person may be made a defendant, or, in a proper case, an involuntary
20 plaintiff.
21

22 Unless this party is joined, the Court finds that Centeno is not likely to
23 succeed on the merits to quiet title to the entire property and that the hardship to the Bank
24 outweighs that of Centeno. Unless the Plumeria Trust becomes a party in the action no
25 later September 27, 2012, the Court will enter an order denying Centeno's Motion for
26 Preliminary Injunction and Expunging his Lis Pendens.
27

28 Dated this 12th day of September, 2012.


SUSAN SCANN,
DISTRICT JUDGE

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Certificate of Service

I hereby certify that on or about the date signed, this document was copied through e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper party as follows:

Malcolm Cisneros – Kevin Hahn, ESQ.

Martin Centeno
P. O. Box 70033
Las Vegas, NV 89170

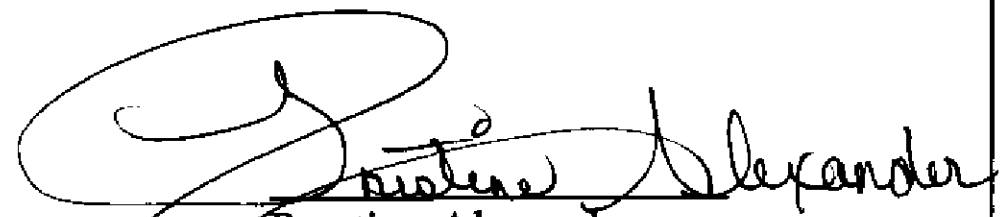

Prestine Alexander
Judicial Executive Assistant

EXHIBIT 6

20060105-0004275

Assessor's Parcel Number:
178-19-712-012
Return To: WFHM FINAL DOCS X9999-01M

1000 BLUE GENTIAN ROAD
EAGAN, MN 55121



Prepared By: WELLS FARGO BANK, N.A.

16855 WEST BERNARDO DR, SUITE 105,
SAN DIEGO, CA 921270000

~~Recording Requested By:~~ WELLS FARGO BANK,
N.A.

16855 WEST BERNARDO DR, SUITE 105,
SAN DIEGO, CA 921270000

1501113-KM [Space Above This Line For Recording Data]

DEED OF TRUST

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 **DECEMBER 30, 2005**, together with all Riders to this document.

(B) "Borrower" is **LUCIA PARKS, A MARRIED PERSON**

Borrower is the trustor under this Security Instrument.

(C) "Lender" is **WELLS FARGO BANK, N.A.**

Lender is a **NATIONAL ASSOCIATION**
organized and existing under the laws of **THE UNITED STATES**
0061777934

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
NMFL #3029 (NVCD) Rev 9/12/2005

Form 3029 1/01

-6(NV) (0507)

Page 1 of 15 Initials: BP
VMP Mortgage Solutions, Inc.
(800)521-7291



JA315

Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is **181TED TITLE OF NEVADA**

4100 W. FLAMINGO ROAD, #1000, LAS VEGAS, NV 89103

(E) "Note" means the promissory note signed by Borrower and dated **DECEMBER 30, 2005**

The Note states that Borrower owes Lender **THREE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED AND 00/100** Dollars

(U.S. \$ *****331,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JANUARY 01, 2036**

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

(G) "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.

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

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input checked="" type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(I) "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.

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "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.

(Q) "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

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of CLARK ;

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF:

APN 178-19-712-012

*SEE ADJUSTABLE RATE RIDER

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, P.O. BOX
10304, DES MOINES, IA 503060304

Parcel ID Number: 178-19-712-012

2270 NASHVILLE AVENUE

HENDERSON

which currently has the address of

[Street]

[City], Nevada 89052

[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 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. \$ 900.00

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:

LUCIA PARKS (Seal)
-Borrower

(Seal)
-Borrower

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

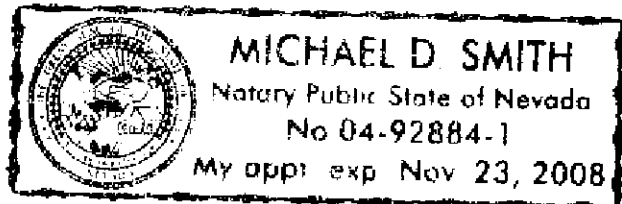
-Borrower (Seal)

-Borrower (Seal)

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on January 4, 2006
LUCIA PARKS

by



Michael D. Smith

Mail Tax Statements To:

WELLS FARGO HOME MORTGAGE, P.O. BOX 10304, DES MOINES, IA 503060304

EXHIBIT "A"

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

Lot Five (5) in Block Five (5) of Final Map of Parcel 40, a common interest community, as shown by map thereof on file in Book 71 of Plats, Page 68, in the Office of the County Recorder of Clark County, Nevada and as amended by that certain Certificate of Amendment recorded December 18, 1996 as Instrument/File No. 959 in Book 961218 and as shown on the Amended Final Map of a portion of Green Valley Rancho Parcel 40, as shown by map thereof on file in Book 77 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

Assessor's Parcel Number: **178-19-712-012**

FIXED/ADJUSTABLE RATE RIDER

(One-Year Treasury Index - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this **30TH** day of **DECEMBER, 2005**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **WELLS FARGO BANK, N.A.**

("Lender") of the same date and covering the property described in the Security Instrument and located at: **2270 NASHVILLE AVENUE, HENDERSON, NV 89052**

[Property Address]

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

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **6.125** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:


4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **JANUARY, 2016**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

0061777934

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - ONE-YEAR TREASURY INDEX- Single Family -
Fannie Mae Uniform Instrument

 **843R (0006) Form 3182 1/01**

Page 1 of 4 Initials: 

VMP MORTGAGE FORMS - (800)521-7291



JA331

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

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

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.125** % or less than **2.750** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.125** %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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

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

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

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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


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

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

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all

sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 _____ LUCIA PARKS	_____ (Seal) -Borrower	_____ (Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **30TH** day of **DECEMBER, 2005**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **WELLS FARGO BANK, N.A.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **2270 NASHVILLE AVENUE, HENDERSON, NV 89052**

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in **COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration"). The Property is a part of a planned unit development known as **GREEN VALLEY RANCH**

[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.


0061777934

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 1/01

Page 1 of 3

Initials: JS

 -7R (0008)

VMP MORTGAGE FORMS - (800)521-7291



JA335

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

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

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

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


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

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

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

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

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

 _____ (Seal)	_____ (Seal)
LUCIA PARKS -Borrower	-Borrower

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

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

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

1-4 FAMILY RIDER (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 30TH day of DECEMBER, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to WELLS FARGO BANK, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 2270 NASHVILLE AVENUE, HENDERSON, NV 89052

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

0061777934

MULTISTATE 1- 4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

NMFL# 3170 (14FR) Rev 11/24/2004

 **VMP-57R** (0401).01

Page 1 of 3 Initials: 

VMP Mortgage Solutions
(800)521-7291



JA338

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.


If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

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

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

 _____ LUCIA PARKS	(Seal) _____ -Borrower	(Seal) _____ -Borrower
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_____ _____ -Borrower	(Seal) _____ -Borrower	(Seal) _____ -Borrower
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_____ _____ -Borrower	(Seal) _____ -Borrower	(Seal) _____ -Borrower
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_____ _____ -Borrower	(Seal) _____ -Borrower	(Seal) _____ -Borrower
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EXHIBIT 7

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC NO.: 10-40866-WFR-NV

LOAN NO.: 0061777934

MIN NO.:

APN: 178-19-712-012

100120213

Inst #: 201007120002705

Fees: \$14.00

N/C Fee: \$0.00

07/12/2010 01:13:25 PM

Receipt #: 421777

Requestor:

FIDELITY NATIONAL DEFAULT S

Recorded By: ARO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

CORPORATION ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns and transfers to U.S. Bank National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR4 all beneficial interest under that certain Deed of Trust dated 12/30/2005 executed by LUCIA PARKS, A MARRIED PERSON Trustor, to UNITED TITLE OF NEVADA Trustee, and recorded on 01/05/2006, as Instrument No. 20060105-0004275 (or Book, Page) of Official Records of CLARK County, NV describing the land therein:

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust

Date : 7/1/10

WELLS FARGO BANK, N.A., successor by merger to Wells Fargo Home Mortgage, Inc. by its attorney in fact National Default Servicing Corporation


By : Olivia A. Todd
Its: President

STATE OF ARIZONA
COUNTY OF MARICOPA

On 7/1, 20 10, before me, Janice A. Trujillo, a Notary Public for said State, personally appeared OLIVIA A. TODD personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature Janice A. Trujillo



EXHIBIT 8

APN: 178-19-712-012
State of Nevada
County of Clark

RECORDING REQUESTED BY:
WELLS FARGO BANK, N.A.
2701 WELLS FARGO WAY MAC X9999-018
MINNEAPOLIS MN 55467-8000

Inst #: 201206070002928

Fees: \$17.00

N/C Fee: \$0.00

06/07/2012 01:42:56 PM

Receipt #: 1190448

Requestor:

WELLS FARGO BANK, N.A.

Recorded By: OSA Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage, **WELLS FARGO BANK, N.A.** (herein "Assignor") whose address is **1 HOME CAMPUS DES MOINES, IA 50328**, does hereby grant, sell, assign, transfer, and convey, unto **US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR4** (herein "Assignee"), whose address is **60 LIVINGSTON AVE, ST. PAUL, MN 55107**, a certain Mortgage dated **12/30/2005** and recorded **01/05/2006**, made and executed by **LUCIA PARKS, A MARRIED PERSON**, to and in favor of **WELLS FARGO BANK, N.A.** upon the following described property. Such Mortgage having been given to secure payment of **\$331500.00** which Mortgage is of record in Book, Volume or Liber No. , at Page , as Document No. **20060105-0004275**, of the Records of **Clark County, State of Nevada**, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

Legal Description:

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on **06/07/2012**.

WELLS FARGO BANK, N.A.



MATISSA ABIDE KOUBONOU, Vice President Loan Documentation

STATE OF MN
COUNTY OF Dakota } s.s.

On **06/07/2012**, before me **LIZA BHATTARAI NEUPANE**, Notary Public, personally appeared **MATISSA ABIDE KOUBONOU, Vice President Loan Documentation** personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



LIZA BHATTARAI NEUPANE

Commission #: **31048005**

My Commission Expires: **01/31/2017**

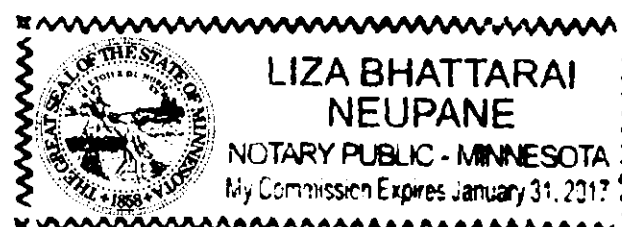


EXHIBIT 9

Inst #: 201002240003380

Fees: \$66.00

N/C Fee: \$0.00

02/24/2010 02:29:56 PM

Receipt #: 245265

Requestor:

FIDELITY NATIONAL DEFAULT S

Recorded By: SOL Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

LPS Title Company - NV

WHEN RECORDED MAIL TO:

National Default Servicing Corporation

7720 N. 16th Street, Suite 300

Phoenix, AZ 85020

NDSC File No. : 10-40866-WF-NV

Loan No. : 0061777934

Title Order No. : 100126213

APN: 178-19-712-012

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$12,036.97, as of 02/24/2010 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

NDSC File No. : 10-40866-WF-NV

Loan No. : 0061777934

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc.
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: www.ndscorp.com/sales/
HUD Approved Local Housing Counseling Agency: 800/569-4287
Loss Mitigation Contact: Steve Murphy / 803-396-4115

Property Address: 2270 NASHVILLE AVENUE , HENDERSON NV 89052

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

This is an attempt to collect a debt and any information obtained will be used for that purpose.

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee, the duly appointed substituted Trustee or acting as agent for the Trustee or Beneficiary under a Deed of Trust dated 12/30/2005, executed by LUCIA PARKS, A MARRIED PERSON, as Trustor, to secure certain obligations in favor of WELLS FARGO BANK, N.A. as beneficiary recorded 01/05/2006, as Instrument No. 20060105-0004275 (or Book, Inst.) of Official Records in the Office of the County Recorder of CLARK County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of \$331,500.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of : **FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 11/01/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES; PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEY'S FEES.**

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated : February 24, 2010
National Default Servicing Corporation, As Agent for Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc.

By : LSI Title Agency - NV, as Agent

Anselmo Pagkaliwangan

State of: California
County of: Orange

On **FEB 24 2010**, before me, **Debra Pedley**, Notary Public,
personally appeared Anselmo Pagkaliwangan, who proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the within instrument and acknowledged to me that he executed the
same in his authorized capacity and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Debra Pedley* (Seal)
Debra Pedley

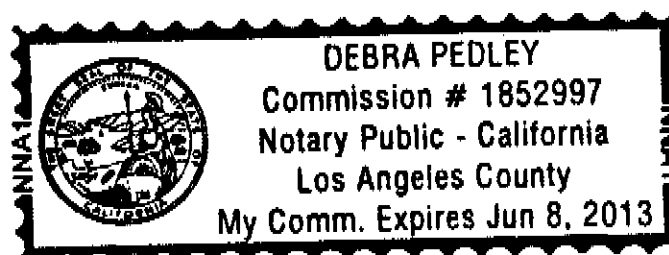


EXHIBIT 10

Inst #: 201007120002708
Fees: \$17.00
N/C Fee: \$0.00
07/12/2010 01:13:25 PM
Receipt #: 421777
Requestor:
FIDELITY NATIONAL DEFAULT S
Recorded By: ARO Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 10-40866-WFR-NV
Title Order No. : 100126213
APN No. : 178-19-712-012

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 12/30/2005 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **LUCIA PARKS, A MARRIED PERSON**, dated **12/30/2005** and recorded **01/05/2006**, as Instrument No. **20060105-0004275** in Book , Page , of Official Records in the office of the County Recorder of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **02/24/2010** as Instrument No. **201002240003380** (or Book , Page) of said Official Records, will sell on **08/03/2010** at **10:00 A.M.** at:

AT THE FRONT ENTRANCE TO THE NEVADA LEGAL NEWS 930 S. 4TH STREET, LAS VEGAS, NV 89101

at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit A attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

**2270 NASHVILLE AVENUE
HENDERSON, NV 89052**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

NDSC File No. : 10-40866-WFR-NV
APN No. : 178-19-712-012

The estimated total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **\$331,046.45**. It is possible that at the time of sale the opening bid may be less than the total indebtedness due.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 07/09/2010

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-259-7850 Sales Website: www.ndscorp.com/sales

By: 
Nichole Alford, TRUSTEE SALES REPRESENTATIVE

Exhibit A

NDSC Notice of Sale Addendum

NDSC No. : 10-40866-WFR-NV
PROP. ADDRESS : 2270 NASHVILLE AVENUE
HENDERSON, NV 89052

COUNTY : CLARK

LEGAL DESCRIPTION :

LOT FIVE (5) IN BLOCK FIVE (5) OF FINAL MAP OF PARCEL 40, A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 71 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED DECEMBER 18, 1996 AS INSTRUMENT/FILE NO. 959 IN BOOK 961218 AND AS SHOWN ON THE AMENDED FINAL MAP OF A PORTION OF GREEN VALLEY RANCHO PARCEL 40, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 77 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF ARIZONA
COUNTY OF MARICOPA

On 7/9, 2010, before me, Janice A. Trujillo, a Notary Public for said State, personally appeared Nichole Alford who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

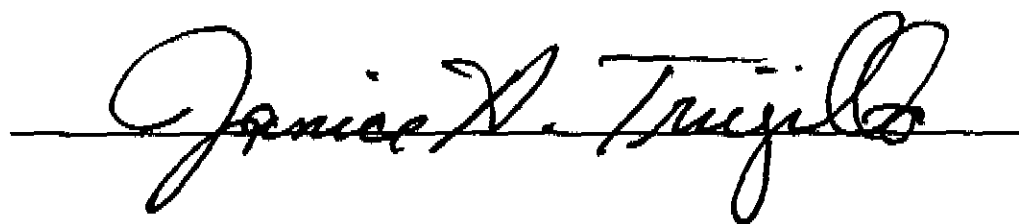




EXHIBIT 11

Inst #: 201106270002062

Fees: \$17.00

N/C Fee: \$0.00

06/27/2011 01:32:52 PM

Receipt #: 825463

Requestor:

LSI TITLE AGENCY INC.

Recorded By: MSH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 10-40866-WFR-NV
Title Order No. : 100126213
APN No. : 178-19-712-012

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 12/30/2005 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **LUCIA PARKS, A MARRIED PERSON**, dated **12/30/2005** and recorded **01/05/2006**, as Instrument No. **20060105-0004275** in Book , Page , of Official Records in the office of the County Recorder of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **02/24/2010** as Instrument No. **201002240003380** (or Book , Page) of said Official Records, will sell on **07/19/2011** at **10:00 A.M.** at:

AT THE FRONT ENTRANCE TO THE NEVADA LEGAL NEWS 930 S. 4TH STREET, LAS VEGAS, NV 89101

at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit A attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

**2270 NASHVILLE AVENUE
HENDERSON, NV 89052**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

NDSC File No. : 10-40866-WFR-NV
APN No. : 178-19-712-012

The estimated total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is \$348,136.29. It is possible that at the time of sale the opening bid may be less than the total indebtedness due.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 06/24/2011

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

By: Jan Claxton
Jan Claxton, TRUSTEE SALES REPRESENTATIVE

Exhibit A

NDSC Notice of Sale Addendum

NDSC No. : 10-40866-WFR-NV
PROP. ADDRESS : 2270 NASHVILLE AVENUE
HENDERSON, NV 89052

COUNTY : CLARK

LEGAL DESCRIPTION :

LOT FIVE (5) IN BLOCK FIVE (5) OF FINAL MAP OF PARCEL 40, A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 71 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED DECEMBER 18, 1996 AS INSTRUMENT/FILE NO. 959 IN BOOK 961218 AND AS SHOWN ON THE AMENDED FINAL MAP OF A PORTION OF GREEN VALLEY RANCHO PARCEL 40, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 77 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF ARIZONA
COUNTY OF MARICOPA

On 6/24, 2011, before me, Deborah K. Piedra, a Notary Public for said State, personally appeared Jan Claxton who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Deborah K. Piedra

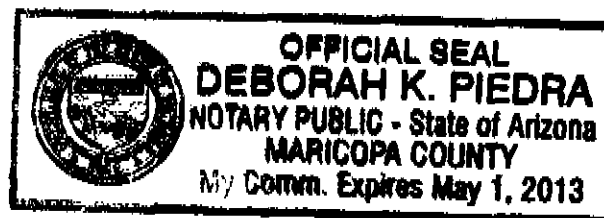


EXHIBIT 12

Inst #: 201303110003086
Fees: \$19.00
N/C Fee: \$25.00
03/11/2013 01:42:13 PM
Receipt #: 1528516
Requestor:
LSI TITLE AGENCY INC.
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 10-40866-WFR-NV
Title Order No. : 100126213
APN No. : 178-19-712-012

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 12/30/2005 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY; IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **LUCIA PARKS, A MARRIED PERSON**, dated **12/30/2005** and recorded **01/05/2006** as Instrument No. **20060105-0004275** (or Book, Page) of the Official Records of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **02/24/2010** as Instrument No. **201002240003380** (or Book , Page) of said Official Records.

Date and Time of Sale: 04/01/2013 at 10:00 A.M.

Place of Sale: At the front entrance to the Nevada Legal News 930 S. 4th St., Las Vegas, NV 89101

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

**2270 NASHVILLE AVENUE
HENDERSON, NV 89052**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **\$381,598.31**. The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and /or the fair market of the property.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

Page 2

Notice of Trustee's Sale

NDSC File No. : 10-40866-WFR-NV

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 03/08/2013

National Default Servicing Corporation

7720 N. 16th Street, Suite 300

Phoenix, AZ 85020

602-264-6101

Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

By: 
Nichole Alford, Trustee Sales Representative

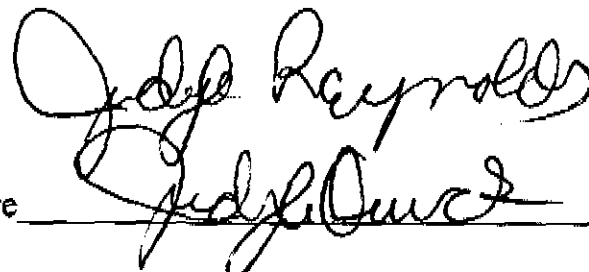
State of: Arizona

County of: Maricopa

On 3/8, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Nichole Alford personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature 

JA361

Exhibit A

NDSC Notice of Sale Addendum

NDSC No. : 10-40866-WFR-NV
PROP. ADDRESS : 2270 NASHVILLE AVENUE
HENDERSON, NV 89052

COUNTY : CLARK

LEGAL DESCRIPTION :

LOT FIVE (5) IN BLOCK FIVE (5) OF FINAL MAP OF PARCEL 40, A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 71 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED DECEMBER 18, 1996 AS INSTRUMENT/FILE NO. 959 IN BOOK 961218 AND AS SHOWN ON THE AMENDED FINAL MAP OF A PORTION OF GREEN VALLEY RANCHO PARCEL 40, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 77 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT 13

I. Party Information

Plaintiff(s) (name/address/phone): SFR INVESTMENTS POOL1, LLC	Defendant(s) (name/address/phone): US BANK, N.A., a national banking association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 and LUCIA PARKS, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive
Attorney (name/address/phone): Howard C. Kim, Esq. and Diana S. Cline, Esq., Howard Kim and Associates, 400 North Stephanie St., Suite 160, Henderson , Nevada 89014; (702) 485-3300	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases		
Real Property	Torts	
<div><input type="checkbox"/> Landlord/Tenant<div><input type="checkbox"/> Unlawful Detainer</div></div> <div><input checked="" type="checkbox"/> Title to Property<div><input type="checkbox"/> Foreclosure</div><div><input type="checkbox"/> Liens</div><div><input checked="" type="checkbox"/> Quiet Title</div><div><input type="checkbox"/> Specific Performance</div></div>		

☐ Condemnation/Eminent Domain☐ Other Real Property

☐ Partition

☐ Planning/Zoning

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

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

03/22/13

Date

/s/ Diana S. Cline

Signature of initiating party or representative



CLERK OF THE COURT

COMP

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A - 1 3 - 6 7 8 8 1 4 - C

Dept. No. X V I I I

**COMPLAINT FOR QUIET TITLE AND
INJUNCTIVE RELIEF**

Arbitration Exemptions:

1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of
records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and
request injunctive relief against the above named defendants as follows:

I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in
Clark County, Nevada and the current title owner of the property commonly known as **2270
Nashville Avenue, Henderson, Nevada, 89052; Parcel No. 178-19-712-012** (the "Property").

2. Upon information and belief, Defendant US BANK, N.A. (“US Bank”) is a national banking association and Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 that may claim an interest in the Property via a 2012 Wells Fargo deed of trust.

3. Upon information and belief, COPPER RIDGE COMMUNITY HOMEOWNERS ASSOCIATION (“Copper Ridge HOA”) is a Nevada non-profit corporation that filed a lien on the Property pursuant to NRS 116.3116 *et. seq.* and the Copper Ridge HOA governing documents (“CC&R’s”).

4. Upon information and belief, Defendant LUCIA PARKS is an individual residing in Nevada and the former title owner of the Property.

5. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

6. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien

7. Plaintiff acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“HOA foreclosure sale”). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

8. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official

1 Records of the Clark County Recorder as Instrument Number 201303060001614 (“HOA
2 Foreclosure Deed”).

3 9. The foreclosure sale was conducted by Nevada Association Services, Inc. agent for
4 Copper Ridge HOA, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
5 116.31162, 116.31163 and 116.31164, the Copper Ridge HOA governing documents (CC&R’s)
6 and a Notice of Delinquent Assessment Lien, recorded on May 24, 2012 in the Official Records
7 of the Clark County Recorder as Instrument Number 201205240002436 (“HOA Lien”).

8 10. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all
9 requirements of law, including but not limited to, recording and mailing of copies of Notice of
10 Delinquent Assessment and Notice of Default, and the recording, posting and publication of the
11 Notice of Sale.

12 11. Pursuant to NRS 116.3116(2), the entire HOA Lien

13 is prior to all other liens and encumbrances of unit except:

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

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

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

23 12. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even
24 a first security interest in the Property:

25 [the HOA Lien] is also prior to all security interests described in paragraph (b) to
26 the extent of any charges incurred by the association on a unit pursuant to NRS
27 116.310312 and to the extent of the assessments for common expenses based on
28 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[.]

13. Upon information and belief, no party still claiming an interest in the Property recorded a
lien or encumbrance prior to the declaration creating Copper Ridge HOA.

14. Upon information and belief, Plaintiff’s bid on the Property was in excess of the amount
necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

15. Upon information and belief, Copper Ridge HOA or its agent Nevada Association Services, Inc. distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

16. Upon information and belief, the excess funds paid at the HOA foreclosure sale through its winning bid were used or should have been used to satisfy any liens for real estate taxes and other governmental assessments or charges against the Property.

17. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the HOA Lien and the Notice of Default.

18. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

19. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff “without equity or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former owner, his or her heirs and assigns, and all other persons.”

Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien

20. Upon information and belief, Defendant Lucia Parks obtained title to the Property on or about January 5, 2006 through a Grant Bargain Sale Deed from Albert Brandelli and Mary Brandelli that was recorded in the Official Records of the Clark County Recorder as Instrument No. 200601050004273.

21. On or about June 7, 2012, Wells Fargo Bank, N.A. recorded an Assignment of Deed of Trust against the Property to U.S. Bank National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through, Certificates Series 2006-AR4 in the Official Records of the Clark County Recorder as Instrument No. 201007120002705 (“Wells Fargo Deed of Trust”).

22. On or about February 7, 2013, Nevada Association Services, Inc, agent for Copper Ridge HOA recorded a Notice of Trustee’s Sale in the Official Records of the Clark County Recorder

as Instrument Number 201302070000910 stating that the Property would be sold at a public auction pursuant to the terms of the on March 1, 2013 at 10:00 a.m.

23. On or about March 6, 2013, Plaintiff acquired the Property in the foreclosure sale and the Foreclosure Deed was recorded in the Official Records of Clark County Recorder as Instrument No. 201303060001614.

24. Defendant Lucia Park's ownership interest in the Property was extinguished by foreclosure of the HOA Lien.

25. Defendant US Bank's interest in the Property, if any, via the Wells Fargo Deed of Trust was extinguished by the foreclosure of the super-priority portion of the HOA Lien.

III. FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against the US Bank, Copper Ridge HOA, and Lucia Parks)

26. Plaintiff repeats and realleges the allegations of paragraphs 1-25 as though fully set forth herein and incorporate the same by reference.

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

28. Plaintiff acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 6, 2013.

29. Defendant Lucia Parks, as previous title owner of the Property may assert a claim adverse to Plaintiff.

30. Upon information and belief, Defendant US Bank is claiming an interest in the Property through the Wells Fargo Deed of Trust.

31. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

32. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority over the Wells Fargo Deed of Trust.

1 33. Upon information and belief, the Copper Ridge HOA Lien has been or should have been
2 extinguished or otherwise satisfied.

3 34. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect
4 their interests in the Property, if any legitimately existed.

5 35. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is
6 the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
7 HOA foreclosure sale extinguished Defendants' security interests in the Property; and (4)
8 Plaintiff's rights and interest in the Property are superior to any adverse interest claimed by
9 Defendants.

10 36. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

11 **IV. SECOND CLAIM FOR RELIEF**
12 **(Preliminary and Permanent Injunction against US Bank and Lucia Parks)**

13 37. Plaintiff repeats and realleges the allegations of paragraphs 1- 36 as though fully set forth
14 herein and incorporate the same by reference.

15 38. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 1,
16 2013.

17 39. Defendant US Bank may claim an interest in the Property through the Wells Fargo Deed
18 of Trust which was extinguished by the HOA foreclosure sale.

19 40. Defendant US Bank through its trustee, National Default Servicing Corporation is
20 attempting to improperly proceed with the non-judicial foreclosure of the Wells Fargo Deed of
21 Trust and sell the Property at a trustee's sale set for April 1, 2013 at 10:00 AM as evidenced by
22 the Notice of Trustee Sale recorded on March 11, 2013 in the Official Records of Clark County
23 Recorder as Instrument No. 201303110003086.

24 41. Any trustee's sale based on the Wells Fargo Deed of Trust would be invalid as
25 Defendants lost their interest in the Property, if any.

26 42. On the basis of the facts described herein, Plaintiff has a reasonable probability of
27 success on the merits of its claims and has no other adequate remedies at law.

28 43. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting

Defendants from continuing any foreclosure proceedings that would affect the title to the Property.

V. THIRD CLAIM FOR RELIEF

(Unjust Enrichment against Defendants)

44. Plaintiff repeats and realleges the allegations of paragraphs 1- 43 as though fully set forth herein and incorporate the same by reference.

45. Plaintiff has expended funds and resources in connection with the acquisition and maintenance of the Property.

46. Defendants have benefitted by the funds and resources expended by Plaintiff.

47. Should Defendants' interests in the Property be declared valid, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

48. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the Property and the benefit of the funds and resources Plaintiff expended on the Property.

49. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

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

VI. PRAYER FOR RELIEF

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing foreclosure proceedings on the Property;

3. For general and special damages in excess of \$10,000.

4. For an award of attorney's fees and costs of suit; and

///

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

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5. For any further relief that the Court may deem just and proper.
DATED March 22nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
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Attorneys for Plaintiff

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HOWARD KIM & ASSOCIATES
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Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.

Dept. No.

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
submitted for parties appearing in the above-entitled action as indicated below:

///

HOWARD KIM & ASSOCIATES
400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

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SFR INVESTMENTS POOL 1, LLC \$270.00

TOTAL \$270.00

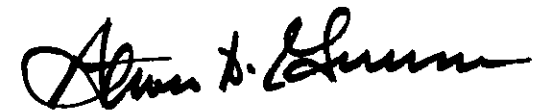
DATED March 22nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
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Attorneys for Plaintiff

TAB 20



CLERK OF THE COURT

1 **NOTC**
2 D. CHRIS ALBRIGHT, ESQ.
3 Nevada Bar No. 004904
4 WILLIAM H. STODDARD, JR.
5 Nevada Bar No. 008679
6 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
7 801 South Rancho Drive, Suite D-4
8 Las Vegas, NV 89106
9 Tel: (702) 384-7111
10 Fax: (702) 384-0605
11 dca@albrightstoddard.com
12 *Attorneys for Defendant Lucia Parks*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 SFR INVESTMENTS POOL 1, LLC, a
11 Nevada limited liability company,

12 Plaintiff,

13 vs.

14 US BANK, N.A., a national banking
15 association as Trustee for the Certificate
16 Holders of Wells Fargo Asset Securities
17 Corporation, Mortgage Pass-Through
18 Certificates, Series 2006-AR4, and LUCIA
19 PARKS, an individual, DOES I through X;
20 and ROE CORPORATIONS I through X,
21 inclusive,

22 Defendants.

CASE NO. A-13-678814-C
DEPT NO. XVIII

**NOTICE OF JOINDER
IN PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date of Hearing: May 16, 2013
Time of Hearing: 8:15 a.m.

23 COMES NOW Defendant LUCIA PARKS, an individual (hereinafter "Defendant Parks"), by
24 and through her undersigned counsel, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and
25 hereby files this notice of limited joinder solely in the relief sought by Plaintiff, SFR INVESTMENTS
26 POOL 1, LLC (hereinafter "Plaintiff"), in its Motion for Preliminary Injunction, which motion seeks
27 to enjoin Defendant U.S. Bank, its successors, assigns and agents, from foreclosing on, selling,
28 transferring, or otherwise conveying, the real property commonly known as 2270 Nashville Avenue,
Henderson, Nevada 89052 (APN 178-19-712-012) (the "Property").

For clarity and avoidance of doubt, Defendant Parks does not agree with, nor concede to, the
central position asserted by Plaintiff in this action, that it is the title owner of the Property, which has

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
801 SOUTH RANCHO DRIVE
SUITE D-4
LAS VEGAS, NEVADA 89106


1 somehow obtained title by virtue of its alleged purchase thereof in a flawed, invalid, non-judicial
2 foreclosure of a delinquent homeowner's association lien by Copper Ridge Community Association.
3 Indeed, Defendant Parks has brought her own separate action (*Lucia Parks v. Copper Ridge*
4 *Community Association, et al.*, Clark County Case No. A-13-678794-C), which, in part seeks
5 declaratory relief to quiet title to the Property, wherein it has named Plaintiff as a defendant (though
6 that case, filed first, has not yet been consolidated with this action).

7 However, Defendant Parks files this joinder in seeking the limited relief expressly requested
8 at page 15 of Plaintiff's motion, to wit, that this court "[g]rant a preliminary injunction enjoining
9 Defendant from foreclosing on and otherwise selling, transferring, conveying, or otherwise
10 encumbering the Property during the pendency of the above-captioned action." The reason for
11 Defendant Parks' limited joinder is that, prior to flawed, invalid, non-judicial foreclosure of the
12 delinquent, homeowners' association lien by which Plaintiff allegedly obtained ownership of the
13 Property, Defendant Parks had negotiated a short-sale of the Property to a third-party, which
14 negotiations were in such a position that Defendant US Bank was not planning to proceed with a
15 foreclosure sale of the Property. It is clear that US Bank's reversal of position on that issue was
16 precipitated by Plaintiff's actions in filing the instant case, causing US Bank to proceed with
17 foreclosure proceedings in an effort to wipe out Plaintiff's ownership claims herein. Halting any
18 foreclosure proceedings in this matter until there has been a resolution of (what are now three)
19 competing claims to the Property is the only way to maintain the status quo and protect Defendant
20 Parks' interests in this matter at this time.

21 As a result of all the foregoing, Defendant Parks files this limited joinder in Plaintiff's motion
22 for a preliminary injunction, as set forth above.

23 DATED this 14th day of May, 2013.

24 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

25 
26 D. CHRIS ALBRIGHT, ESQ.
27 Nevada Bar No. 004904
28 WILLIAM H. STODDARD, JR.
Nevada Bar No. 008679
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Attorneys for Defendant Parks

CERTIFICATE OF SERVICE

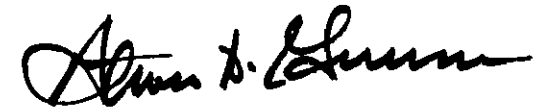
Pursuant to NRCP 5(b), I certify that on this 14th day of April, 2013, I deposited a true and correct copy of the foregoing **NOTICE OF JOINDER IN PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** for mailing in the U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Attorneys for Plaintiff

Chelsea A. Crowton, Esq.
WRIGHT FINLAY & ZAK
5532 S. Fort Apache Road, Suite 110
Las Vegas, Nevada 89148
Attorney for Defendant US Bank, N.A.


An Employee of Albright, Stoddard, Warnick & Albright

TAB 21



CLERK OF THE COURT

NOTC
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
WILLIAM H. STODDARD, JR.
Nevada Bar No. 008679
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
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dca@albrightstoddard.com
Attorneys for Defendant Lucia Parks

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

CASE NO. A-13-678814-C
DEPT NO. XVIII

**NOTICE OF JOINDER
IN DEFENDANT U.S. BANK N.A.'S
MOTION TO DISMISS WITH
PREJUDICE THE PLAINTIFF'S
COMPLAINT**

Date of Hearing: June 4, 2013
Time of Hearing: 8:15 a.m.

COMES NOW Defendant LUCIA PARKS, an individual (hereinafter "Defendant Parks"), by and through her undersigned counsel, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and hereby files this notice of joinder in Defendant U.S. Bank N.A.'s motion to dismiss with prejudice Plaintiff's (SFR Investment Pool 1, LLC) complaint in this action.

Plaintiff's complaint asserts that Plaintiff is now the owner of the real property commonly known as 2270 Nashville Avenue, Henderson, Nevada 89052 (APN 178-19-712-012) (the "Property"), as a result of its purchase at a flawed, invalid, non-judicial foreclosure of an allegedly delinquent homeowners' association lien, at which foreclosure Plaintiff claims to have purchased the Property. The Property is, in fact, owned by Defendant Parks, who purchased it in December of 2005 for

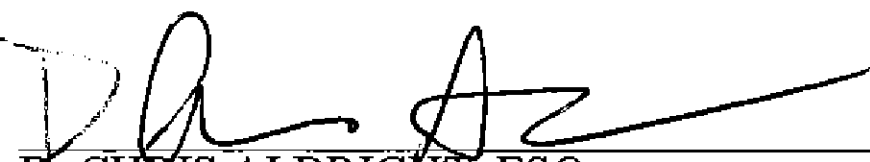
1 \$331,500). Plaintiff's winning bid at the flawed homeowners' association lien foreclosure sale was
2 \$14,000.00. This action seeks to quiet title to the Property in Plaintiff and allow it to secure a windfall,
3 free and clear of any liens and encumbrances, in the Property.

4 For clarity and avoidance of doubt, Defendant Parks has brought her own separate action
5 (*Lucia Parks v. Copper Ridge Community Association, et al.*, Clark County Case No. A-13-678794-C),
6 filed prior to the filing of this case, also contesting the validity of the non-judicial foreclosure sale by
7 which Plaintiff claims to have purchased the Property. That action has not yet been consolidated with
8 the instant action, however, the complaint in that action sets forth the problems with and deficiencies
9 in Plaintiff's theory that it legally purchased the Property through a foreclosure of a homeowners'
10 association lien. Those reasons include, without limitation, that the Notice of Delinquent Assessment
11 Lien (of the foreclosing homeowner's association, Copper Ridge Community Association) (1) did not
12 comply with the requirements of Nevada law, (2) did not comply with the applicable Covenants,
13 Conditions and Restrictions recorded against the Property and the subject subdivision, and (3) was not
14 properly mailed to or otherwise served upon Defendant Parks (which would have allowed a timely cure
15 thereof). Indeed, Defendant Parks did not even become aware of the Notice of Delinquent Assessment
16 Lien, nor the Notice of Default and Election to Sell, Foreclosure Sale, and Foreclosure Deed until
17 weeks after the Property was supposedly purchased by Plaintiff at the foreclosure sale.

18 As a result of all the foregoing, Defendant Parks joins in U.S. Bank N.A.'s motion to dismiss
19 Plaintiff's complaint since Defendant Parks disputes the central basis of Plaintiff's complaint, which
20 is that it has lawfully acquired a windfall by purchasing the Property at a delinquent homeowners'
21 association lien foreclosure sale.

22 DATED this 14 day of May, 2013.

23 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

24 
25 D. CHRIS ALBRIGHT, ESQ.
26 Nevada Bar No. 004904
27 WILLIAM H. STODDARD, JR.
28 Nevada Bar No. 008679
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Attorneys for Defendant Parks

CERTIFICATE OF SERVICE

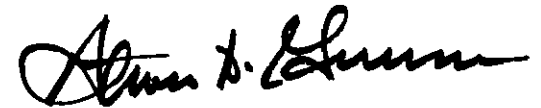
Pursuant to NRCP 5(b), I certify that on this 14th day of May, 2013, I deposited a true and correct copy of the foregoing **NOTICE OF JOINDER IN DEFENDANT U.S. BANK N.A.'S MOTION TO DISMISS WITH PREJUDICE THE PLAINTIFF'S COMPLAINT** for mailing in the U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Attorneys for Plaintiff

Chelsea A. Crowton, Esq.
WRIGHT FINLAY & ZAK
5532 S. Fort Apache Road, Suite 110
Las Vegas, Nevada 89148
Attorney for Defendant US Bank, N.A.


An Employee of Albright, Stoddard, Warnick & Albright

TAB 22



CLERK OF THE COURT

NOTC
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
WILLIAM H. STODDARD, JR.
Nevada Bar No. 008679
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
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Fax: (702) 384-0605
dca@albrightstoddard.com
Attorneys for Defendant Lucia Parks

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

CASE NO. A-13-678814-C
DEPT NO. XVIII

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

**NOTICE OF JOINDER
IN DEFENDANT U.S. BANK N.A.'S
MOTION TO EXPUNGE LIS PENDENS**

Date of Hearing: May 16, 2013

Time of Hearing: 8:15 a.m.

COMES NOW Defendant LUCIA PARKS, an individual (hereinafter "Defendant Parks"), by and through her undersigned counsel, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and hereby files this notice of joinder in Defendant U.S. Bank N.A.'s motion to expunge the lis pendens recorded by Plaintiff (SFR Investment Pool 1, LLC) against the real property commonly known as 2270 Nashville Avenue, Henderson, Nevada 89052 (APN 178-19-712-012) (the "Property").

Plaintiff's complaint asserts that Plaintiff is now the owner of the Property, as a result of its purchase at a flawed, invalid, non-judicial foreclosure of an allegedly delinquent homeowners' association lien, at which foreclosure Plaintiff claims to have purchased the Property. The Property

1 is, in fact, owned by Defendant Parks, who purchased it in December of 2005 for \$331,500. Plaintiff's
2 winning bid at the improper homeowners' association lien foreclosure sale was \$14,000.00. This
3 action seeks to quiet title to the Property in Plaintiff and allow it to secure a windfall, free and clear
4 of any liens and encumbrances, in the Property. This quiet title action, including the lis pendens filed
5 against the Property based on Plaintiff's incorrect and illegal claim of title to the Property, is adverse
6 to Plaintiff's interests in the Property, which is also being litigated at this time.

7 For clarity and avoidance of doubt, Defendant Parks has brought her own separate action
8 (*Lucia Parks v. Copper Ridge Community Association, et al.*, Clark County Case No. A-13-678794-C),
9 filed prior to the filing of this case, contesting the validity of the non-judicial foreclosure sale by which
10 Plaintiff claims to have purchased the Property. That action has not yet been consolidated with the
11 instant action, however, the complaint in that action sets forth the problems with and deficiencies in
12 Plaintiff's theory that it legally purchased the Property through a foreclosure of a homeowners'
13 association lien. Those reasons include, without limitation, that the Notice of Delinquent Assessment
14 Lien (of the foreclosing homeowner's association, Copper Ridge Community Association) (1) did not
15 comply with the requirements of Nevada law, (2) did not comply with the applicable Covenants,
16 Conditions and Restrictions recorded against the Property and the subject subdivision, and (3) was not
17 properly mailed to or otherwise served upon Defendant Parks (which would have allowed a timely cure
18 thereof). Indeed, Defendant Parks did not even become aware of the Notice of Delinquent Assessment
19 Lien, nor the Notice of Default and Election to Sell, Foreclosure Sale, and Foreclosure Deed until
20 weeks after the Property was supposedly purchased by Plaintiff at the foreclosure sale.

21 As a result of all the foregoing, Defendant Parks joins in U.S. Bank N.A.'s motion to expunge
22 the lis pendens recorded against the Property by Plaintiff, since Defendant Parks disputes the central
23 basis of Plaintiff's complaint, which is that it has lawfully acquired a windfall by purchasing the

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1 Property at a delinquent homeowners' association lien foreclosure sale, and, thus, that it has any right
2 to cloud Plaintiff's title to the Property with its lis pendens.

3 DATED this 14th day of May, 2013.

4 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

5
6 

7 D. CHRIS ALBRIGHT, ESQ.

8 Nevada Bar No. 004904

9 WILLIAM H. STODDARD, JR.

10 Nevada Bar No. 008679

11 801 S. Rancho Drive, Suite D-4

12 Las Vegas, Nevada 89106

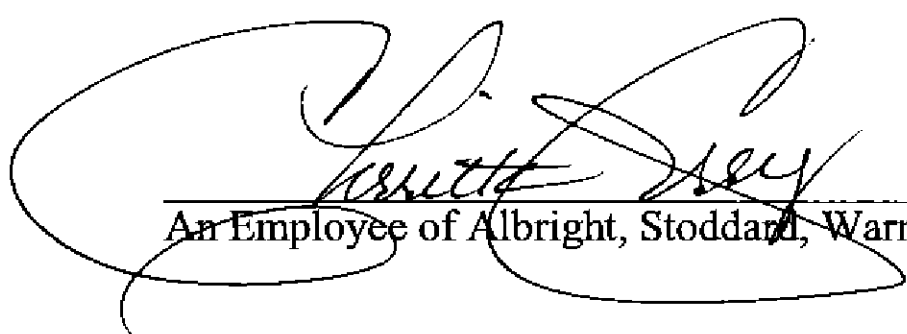
13 *Attorneys for Defendant Parks*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 14th day of May, 2013, I deposited a true and correct copy of the foregoing **NOTICE OF JOINDER IN DEFENDANT U.S. BANK N.A.'S MOTION TO EXPUNGE LIS PENDENS** for mailing in the U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Attorneys for Plaintiff

Chelsea A. Crowton, Esq.
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5532 S. Fort Apache Road, Suite 110
Las Vegas, Nevada 89148
Attorney for Defendant US Bank, N.A.


An Employee of Albright, Stoddard, Warnick & Albright