

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. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: [www.ndscorp.com/sales/](http://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 : LSA Title Agency - NV, as Agent

Anselmo Pagkaliwangan

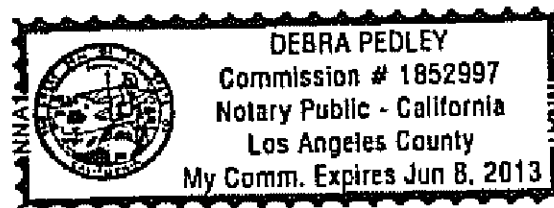
State of: California  
County of: Orange

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 D**

**EXHIBIT D**

**EXHIBIT D**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> 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

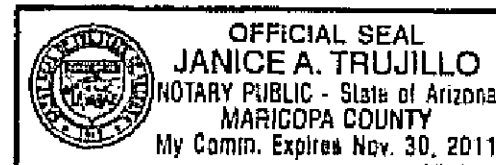
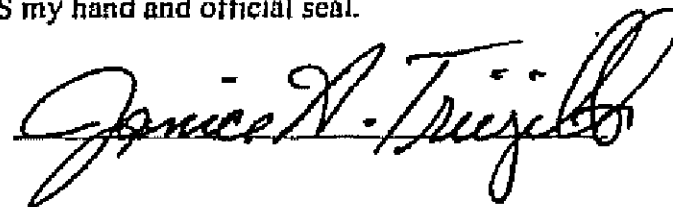
By:  Olivia A. Todd  
Its: President

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





**EXHIBIT E**

**EXHIBIT E**

**EXHIBIT E**

Inst #: 201007120002706

Fees: \$14.00

N/C Fee: \$25.00

07/12/2010 01:13:25 PM

Receipt #: 421777

Requestor:

FIDELITY NATIONAL DEFAULT S

Recorded By: ARO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**  
LPS Title Company - NV

**WHEN RECORDED MAIL TO:**  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 10-40866-WFR-NV  
Loan No. : 0061777934

APN: 178-19-712-012

100126213

**SUBSTITUTION OF TRUSTEE**

WHEREAS, LUCIA PARKS, A MARRIED PERSON was the original Trustor(s), UNITED TITLE OF NEVADA was the original Trustee and WELLS FARGO BANK, N.A. was the original Beneficiary under that certain Deed of Trust dated 12/30/2005 and recorded on 01/05/2006 as instrument No. 20060105-0004275 in Book, Page, of Official Records of CLARK County, State of NV and  
WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and  
WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,  
NOW, THEREFORE, the undersigned hereby substitutes NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16<sup>th</sup> Street, Suite 300, Phoenix, Arizona 85020, as Trustee under said Deed of Trust.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

U.S. Bank National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR4 by its attorney in fact Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc.

Dated : 7/1/10

By : Olivia A. Todd, President  
By: Limited Power of Attorney

Olivia A.

State of Arizona  
County of Maricopa

On 7/1, 2010, 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 F**

**EXHIBIT F**

**EXHIBIT F**

APN: 178-19-712-012

100126213  
Recording requested by:National Default Servicing Corp  
7720 N 16th Street, Suite 300  
Phoenix, AZ 85020

When recorded, mail to:

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

Inst #: 201007120002707

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

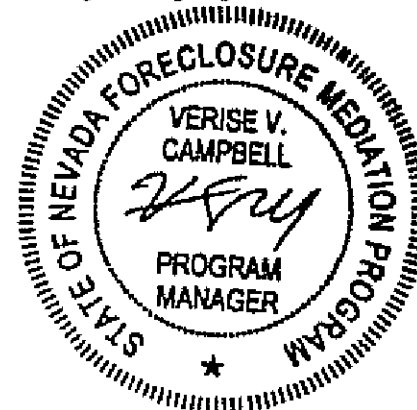
**CERTIFICATE**STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAMProperty Owners:  
Lucia ParksProperty Address:  
2270 Nashville Avenue  
Henderson, NV 89052Trustee: 10-210866-WF12-NV  
National Default Servicing Corporation  
7720 N 16th St, Suite 300, Phoenix AZ 85020

Deed of Trust Document Number

Doc. #

Book: Page:

- ☒ No request for mediation was made or the Grantor has waived mediation. As a result no mediation is required in this matter. The Beneficiary may proceed with the foreclosure process.
- ☐ A Foreclosure Mediation Conference was held on N/A. The parties were unable to agree to a resolution of this matter. As a result, the mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.
- ☐ The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference or failed to produce the necessary disclosure forms. As a result, no mediation is required in this matter. The Beneficiary may proceed with the foreclosure process.

Dated: 06/10/2010**FMP CERT: 2010-06-10-0242**

**EXHIBIT G**

**EXHIBIT G**

**EXHIBIT G**

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. 16<sup>th</sup> 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. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020  
602-264-6101  
Sales Line : 714-259-7850 Sales Website: [www.ndscorp.com/sales](http://www.ndscorp.com/sales)

By:   
Nichole Afford, 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.

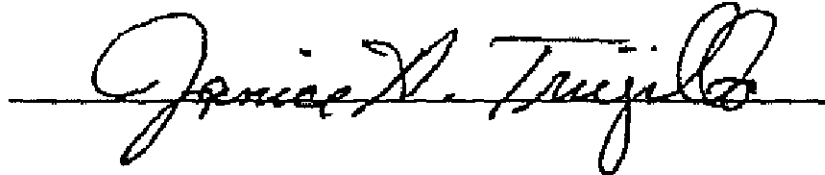


STATE OF ARIZONA  
COUNTY OF MARICOPA

On 7/9, 2010, before me, Janice A. Trujillo, a Notary Public for said State, personally appeared Nichole Afford 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 H**

**EXHIBIT H**

**EXHIBIT H**

Inst #: 201106270002062

Fees: \$17.00

N/C Fee: \$0.00

06/27/2011 01:32:52 PM

Receipt #: 825483

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. 16<sup>th</sup> 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. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020  
602-264-6101  
Sales Line : 714-730-2727 Sales Website: [www.ndscorp.com/sales](http://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 :**

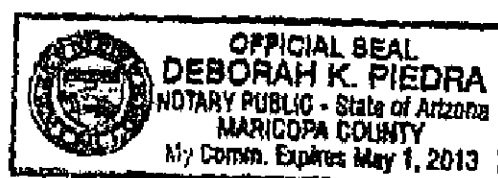
LOT FIVE (5) IN BLOCK FIVE (5) OF FINAL MAP OF PARCEL 40, A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 71 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED DECEMBER 18, 1996 AS INSTRUMENT/FILE 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



**EXHIBIT I**

**EXHIBIT I**

**EXHIBIT I**

Inst #: 201205240002436

Fees: \$17.00

N/C Fee: \$0.00

05/24/2012 09:31:06 AM

Receipt #: 1174169

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN # 178-19-712-012

**Accommodation**

# N71222

**NOTICE OF DELINQUENT ASSESSMENT LIEN**

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 1, 1997, as instrument number 01212 Book 970701, of the official records of Clark County, Nevada, the Copper Ridge Community has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 2270 Nashville Ave Henderson, NV 89052 particularly legally described as: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Lucia Parks

Mailing address(es):

P.O. Box 7029 Capistrano Beach, CA 92624

\*Total amount due as of today's date is \$1,063.00.

This amount includes late fees, collection fees and interest in the amount of \$803.00

\* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: May 21, 2012

  
By Yolanda Erskine, of Nevada Association Services, Inc., as agent for Copper Ridge Community

When Recorded Mail To:

Nevada Association Services

TS # N71222

6224 W. Desert Inn Rd, Suite A

Las Vegas, NV 89146

Phone: (702) 804-8885

Toll Free: (888) 627-5544



**EXHIBIT J**

**EXHIBIT J**

**EXHIBIT J**

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

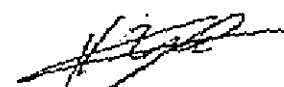
For Value Received, the undersigned holder of a Mortgage, WELLS FARGO BANK, N.A. (herein "Assignor") whose address is 1 HOME CAMPUS DES MOINES, IA 50328, does hereby grant, sell, assign, transfer, and convey, unto US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, 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

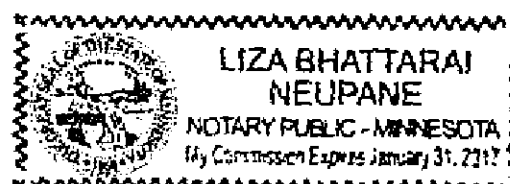
STATE OF MN  
COUNTY OF Dakota } s.s.

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 K**

**EXHIBIT K**

**EXHIBIT K**

APN # 178-19-712-012

NAS # N71222

North American Title #

Property Address: 2270 Nashville Ave

37570

(2)

Inst #: 201207190001226

Fees: \$18.00

N/C Fee: \$0.00

07/19/2012 09:30:32 AM

Receipt #: 1240017

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**Accommodation****NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN****IMPORTANT NOTICE****WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

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 your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$1,912.50 as of July 16, 2012 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, or as required under your Covenants Conditions and Restrictions. 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 your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, Copper Ridge Community (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association 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 request, this office will mail 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 Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 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 Association 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 Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Copper Ridge Community, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N71222

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.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Lucia Parks, dated May 21, 2012, and recorded on May 24, 2012 as instrument number 0002436 Book 20120524 in the official records of Clark County, Nevada, executed by Copper Ridge Community, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 1, 1997, as instrument number 01212 Book 970701, as security has occurred in that the payments have not been made of homeowner's assessments due from 2/1/2012 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5 in the County of Clark

Dated: July 16, 2012



By: Autumn Fesel, of Nevada Association Services, Inc.  
on behalf of Copper Ridge Community

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544

**EXHIBIT L**

**EXHIBIT L**

**EXHIBIT L**

Inst #: 201302070000910

Fees: \$18.00

N/C Fee: \$0.00

02/07/2013 09:34:04 AM

Receipt #: 1488994

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

## RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 178-19-712-012  
11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

## TITLE OF DOCUMENT (DO NOT Abbreviate)

NOTICE OF FORECLOSURE SALE

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANYAddress 8485 W. SUNSET ROAD #111City/State/Zip LAS VEGAS, NV 89113

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12\_2010

APN # 178-19-712-012  
Copper Ridge Community

NAS # N71222

**~~Accommodation~~ NOTICE OF FORECLOSURE SALE**

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, May 21, 2012. 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 PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 3/1/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on July 1, 1997 as instrument number 01212 Book 970701 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on May 24, 2012 as document number 0002436 Book 20120524 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 2270 Nashville Ave, Henderson, NV 89052. Said property is legally described as: GREEN VALLEY RANCH PHASE 3, PARCEL 40, PLAT BOOK 71, PAGE 68, LOT 5, BLOCK 5, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Lucia Parks

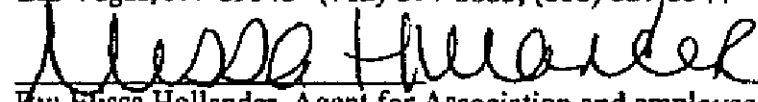
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The 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 publication of the Notice of Sale is \$3,132.52. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 7/19/2012 as instrument number 0001226 Book 20120719 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

February 5, 2013

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

  
By: Elissa Hollander, Agent for Association and employee of  
Nevada Association Services, Inc.



**EXHIBIT M**

**EXHIBIT M**

**EXHIBIT M**

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

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

### 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

**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 \_\_\_\_\_ Escrow # 37570 / N71222  
8485 W. Sunset Road #111 \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Las Vegas, NV 89113 \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

**EXHIBIT N**

**EXHIBIT N**

**EXHIBIT N**

Branch :FLV,User :CON1

Comment:

Station Id :N7EX

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. 16<sup>th</sup> 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.**

**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 O**

**EXHIBIT O**

**EXHIBIT O**

Not Reported in F.Supp.2d, 2012 WL 3730528 (D.Nev.)  
(Cite as: 2012 WL 3730528 (D.Nev.))

**C**  
Only the Westlaw citation is currently available.

United States District Court,  
D. Nevada.

Martin CENTENO, Plaintiff,  
v.

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.; Bank of America, N.A.; MTC  
Financial, Inc., d/b/a Trustee Corps; Nevada Legal  
News; et al., Defendants.

No. 2:11-cv-02105-GMN-RJJ.  
Aug. 28, 2012.

Martin Centeno, Las Vegas, NV, pro se.

Ariel E. Stern, Steven G. Shevorsk, Akerman Sen-  
terfelt, LLP, Las Vegas, NV, Diana S. Clue, Howard  
Kim & Associates, Henderson, NV, Richard J. Reyn-  
olds, Turner Reynolds Greco & O'Hara, Irvine, CA,  
Michael E. Sullivan, Robison Belaustegui Sharp &  
Low, Reno, NV, for Defendants.

#### ORDER

GLORIA M. NAVARRO, District Judge.

\*1 This action, filed by *pro se* Plaintiff Martin Centeno, arises out of foreclosure proceedings initiated against the property located at 5966 Spanish Mustang Ct., Las Vegas, NV 89122, APN #: 161-15-410-057 ("the property"). Before the Court are the Motion to Dismiss (ECF No. 8) filed by Defendant MTC Financial, Inc. ("MTC Financial"), and the Motion to Dismiss and to Expunge Lis Pendens (ECF No. 36) filed by Defendant Bank of America, N.A. ("Bank of America"). Plaintiff's Motions for Consolidation (ECF No. 35), Temporary Restraining Order (ECF No. 39), and Preliminary Injunction (ECF No. 40) are also pending.

#### 1. BACKGROUND

The February 2008 Deed of Trust on the property indicates that the Lender was Bank of America, the Trustee was PRLAP, Inc., and the Borrowers were Lateef Durosini and Ramya Durosini. (Ex. A to RJN, ECF No. 8-2.) On April 22, 2010, Bank of America, as Beneficiary, signed a Substitution of

Trustee naming MTC Financial as trustee in place of the original trustee, PRLAP, Inc. (Ex. C to RJN, ECF No. 8-4.) The next day, on April 23, 2010, MTC Financial (dba "Trustee Corps") recorded a Notice of Default as trustee and agent for Bank of America, as beneficiary. (Ex. B. to RJN, ECF No. 8-3.) In July 2011, a Certificate of Mediation was issued by the State of Nevada Foreclosure Mediation Program stating that the property was a "Non-Applicable Property" and that the "Beneficiary may proceed with the foreclosure process." (Ex. D. to RJN, ECF No. 8-5.) In November 2011, MTC Financial issued the Notice of Trustee's Sale, and recorded it on December 1, 2011, setting a sale date of December 27, 2011. (Ex. E to RJN, ECF No. 8-6.) The Trustee's Deed Upon Sale was issued the next day, on December 28, 2011, and recorded January 3, 2012. (Ex. F to RJN, ECF No. 8-7.)

On December 23, 2011, Plaintiff filed the instant action and a Notice of Lis Pendens on the property, claiming to be "a co-owner beneficiary of the property subject of this case having acquired the same in a HOA Trustee Sale on or about June 7, 2011." (Compl., 4: ¶ 13; Notice of Lis Pendens, ECF No. 1-2.) Attached to his Complaint, Plaintiff submits MTC Financial's November 2011 Notice of Trustee's Sale, and a Trustee's Deed Upon Sale recorded June 8, 2011 ("HOA Trustee's Deed Upon Sale"). (ECF No. 1-1.)

The HOA Trustee's Deed Upon Sale submitted by Plaintiff refers to an August 2010 Notice of Delinquent Assessment Lien and an October 2010 Notice of Default in which Absolute Collection Services, LLC, was named as trustee. (*Id.*) The amount of the unpaid debt is listed as \$5,150.00. (*Id.*) The document purports to transfer all of Absolute Collection Services, LLC's "right, title and interest" in the property to Mustang Family Trust, "pursuant to the powers granted to Estates at Stallion Mountain HOA." (*Id.*)

Plaintiff's Complaint alleges the following causes of action: (1) Defendants are not real-parties-in-interest and they have no legal standing in court; (2) The Defendants' lien, if any, has been cancelled or wiped out by the HOA trustee sale in favor of Plaintiff; (3) Quieting of title of Plaintiff; (4) Defendants have violated the unfair lending practice



Not Reported in F.Supp.2d, 2012 WL 3730528 (D.Nev.)  
(Cite as: 2012 WL 3730528 (D.Nev.))

law; and (5) Issuance of temporary restraining order and/or injunction. (Compl., ECF No. 1-1.) Plaintiff voluntarily dismissed Defendant Mortgage Electronic Registration Systems, Inc. (ECF No. 28.) Defendant Nevada Legal News, LLC, was dismissed by the Court for Plaintiff's failure to effect timely service. (ECF No. 34.)

## II. LEGAL STANDARD

\*2 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. See North Star Int'l. v. Arizona Corp. Comm'n., 720 F.2d 578, 581 (9th Cir.1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In considering whether the complaint is sufficient to state a claim, the Court will take all material allegations as true and construe them in the light most favorable to the plaintiff. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.1986).

The Court, however, is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.2001). A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is *plausible*, not just possible. Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (citing Twombly, 550 U.S. at 555) (emphasis added).

A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with Federal Rule of Civil Procedure 8(a). Hearns v. San Bernardino Police Dept., 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). "Prolix, confusing complaints" should be dismissed because "they impose unfair burdens on litigants and us." McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir.1996). Mindful of the fact that the Supreme Court has "instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants," Eldridge v.

Block, 832 F.2d 1132, 1137 (9th Cir.1987), the Court will view Plaintiff's pleadings with the appropriate degree of leniency.

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.... However, material which is properly submitted as part of the complaint may be considered on a motion to dismiss." Hol Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir.1990) (citations omitted). Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. Branch v. Tummell, 14 F.3d 449, 454 (9th Cir.1994). Under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record." Atack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir.1986). Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. See Arvin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir.2001).

\*3 If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. The court should "freely give" leave to amend when there is no "undue delay, bad faith[,] dilatory motive on the part of the movant ... undue prejudice to the opposing party by virtue of ... the amendment, [or] futility of the amendment...." Fed.R.Civ.P. 15(a); Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir.1992).

## III. DISCUSSION

As an initial matter, Plaintiff's standing to bring suit is unclear, since the Durosinnis were the borrowers on the Deed of Trust, and the HOA Trustee's Deed Upon Sale names Mustang Family Trust as the purchaser.<sup>FNI</sup> Plaintiff's Response to MTC Financial's motion includes a document dated June 10, 2011, and styled as "Appointment of Co-Trustee" in which Plaintiff is purportedly appointed co-trustee of the Mustang Family Trust by "the current beneficiaries," who are un-named. (Ex. 1 to Pl.'s Resp., ECF No. 11.)

Not Reported in F.Supp.2d, 2012 WL 3730528 (D.Nev.)  
(Cite as: 2012 WL 3730528 (D.Nev.))

The signature of the purported authorizing beneficiary is illegible, the document is not notarized, and Plaintiff does not allege that the document was publicly recorded. (*Id.*) However, as discussed below, even if Plaintiff is authorized to represent the Mustang Family Trust as trustee, the Court finds that his claims fail to meet the required pleading standard, and the Complaint will be dismissed.

FN1. In another case filed by Plaintiff, a virtually identical complaint also refers to Mustang Family Trust, but with a different property and different borrowers on the Deed of Trust. See *Centeno v. Mortgage Electronic Registration System*, No. 2:12-cv-00056-KJD-RJJ (D.Nev.2012).

In his first cause of action, styled as "Defendants are not real-parties-in-interest and they have no legal standing in court," Plaintiff alleges that Defendants colluded and conspired with each other to foreclose or sell the property at the trustee sale. (Compl., 3: ¶ 8.) Plaintiff alleges that "Defendants have no legal standing or power to do so because they have not shown that they are in possession of the pertinent Promissory Note and/or Deed of Trust and the various transfers thereof to prove that they are the present owners or beneficiaries who have the right to conduct said foreclosure." (Compl., 3: ¶ 8.) The publicly recorded documents submitted by Defendants establish that Defendants conducted foreclosure proceedings in accordance with Nevada statutes, and Plaintiff states no valid claim that Defendants were required to produce a promissory note or deed of trust in order to foreclose. Accordingly, Plaintiff's claim for collusion and conspiracy against Defendants must fail, and will be dismissed.

In his second cause of action, styled as "the Defendants' lien, if any, has been cancelled or wiped out by the HOA trustee sale favor of Plaintiff," Plaintiff cites NRS 116.3116 and NRS 116.31166 and alleges that Defendants have no right to foreclose on the property because an "HOA Trustee Sale" occurred "in favor of plaintiff," which "has cancelled or wiped out other junior liens, including the lien, if any, of the defendants over the subject property." (Compl., 5: ¶ 15.) This statute provides that liens against HOA units for assessments are prior to all other liens and encumbrances on a unit except those recorded before the recordation of the declaration [creating the com-

mon-interest community]. NRS 116.3116(2), 116.037. However, Plaintiff does not submit a copy of the assessment lien on which the HOA Trustee's Deed Upon Sale is based, and does not allege that it chronologically precedes the 2008 Deed of Trust. Without such an allegation, Plaintiff cannot state a valid claim based upon this statute. To the extent that Plaintiff is alleging a cause of action based on NRS 116.31166, his cause of action fails as well. This statute provides that the "sale of a unit pursuant to NRS 116.31162, 116.31163, and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166, Plaintiff does not allege that the property was sold pursuant to these statutes, and the Court finds no basis on which to make such an inference. Accordingly, this cause of action must be dismissed.

\*4 In his third cause of action, styled as "quieting of title of Plaintiff," Plaintiff alleges that he "has acquired subject property free from any right or equity of redemption in a public Trustee Sale as evidenced by the Trustee's Deed Upon Sale," and that therefore "the title of subject property must be quieted in the name of plaintiff and/or MUSTANG FAMILY TRUST." (Compl., 5: ¶ 19.) As discussed above, Plaintiff's reliance upon the HOA Trustee's Deed Upon Sale appears to be invalid. Accordingly, this cause of action must be dismissed.

In his fourth cause of action, styled as "Defendants have violated the unfair lending practice law," Plaintiff alleges that "Defendants have violated the Unfair Lending Practice Law because they did not make a study if the owner-borrower can afford to pay the monthly amortization in 30 years considering that the owner-borrowers will be retired in the near future and will have no means to pay amortization." (Compl., 5-6: ¶ 21.) Plaintiff also alleges that "[Defendants] did not give an opportunity to make a loan modification by reducing the interest and/or the principal in violation of their agreement with the Office of the Attorney General or other government entity considering that they have received bail out money for this purpose." (Compl., 6: ¶ 21.) Finally, Plaintiff alleges that "[Defendants] also have not shown to be in possession of the pertinent Promissory Note and pertinent assignments of the subject loan as now required by the Supreme Court of Nevada." (Compl., 6: ¶ 21.) As discussed above, Plaintiff has not alleged any law or statute requiring Defendants to produce the promis-

Not Reported in F.Supp.2d, 2012 WL 3730528 (D.Nev.)  
(Cite as: 2012 WL 3730528 (D.Nev.))

sory note, and the publicly recorded documents submitted by the parties demonstrate Defendants' compliance with statutory foreclosure requirements. Also, since Plaintiff does not allege that he has standing to assert violations of lending practices laws on behalf of the borrowers, the Durosianis, Plaintiff's cause of action for unfair lending practices fails as well.

Plaintiff's fifth cause of action, for "issuance of temporary restraining order and/or injunction," is a remedy, not a cause of action, (*See* Compl., 6: ¶¶ 23-25.) Accordingly, it will be dismissed.

Because Plaintiff's standing to assert claims on behalf of Mustang Family Trust is unclear, and because the allegations contained in the Complaint do not appear to support a likelihood that the Complaint's deficiencies may be cured, the Court will not grant leave to amend.

#### **IV. CONCLUSION**

**IT IS HEREBY ORDERED** that Defendant MTC Financial, Inc.'s Motion to Dismiss (ECF No. 8) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant Bank of America, N.A.'s Motion to Dismiss and to Expunge Lis Pendens (ECF No. 36) is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Consolidation (ECF No. 35), Emergency Ex Parte Motion for Temporary Restraining Order (ECF No. 39), and Motion for Preliminary Injunction (ECF No. 40) are **DENIED**.

**\*5 IT IS FURTHER ORDERED** that Plaintiff's Complaint is **DISMISSED**. The Clerk shall enter judgment accordingly, and thereafter close the case.

D.Nev.,2012.  
Centeno v. Mortgage Electronic Registration Systems, Inc.  
Not Reported in F.Supp.2d, 2012 WL 3730528 (D.Nev.)

END OF DOCUMENT

**EXHIBIT P**

**EXHIBIT P**

**EXHIBIT P**

Slip Copy, 2013 WL 531092 (D.Nev.)  
(Cites: 2013 WL 531092 (D.Nev.))

Only the Westlaw citation is currently available.

United States District Court,  
D. Nevada,  
DIAKONOS HOLDINGS, LLC, Plaintiff,  
v.  
COUNTRYWIDE HOME LOANS, INC., et al., De-  
fendants.

No. 2:12-CV-00943-KJD-RJJ.  
Feb. 11, 2013.

Ryan D. Hastings, Sean L. Anderson, Leach Johnson  
Song & Grubow, Las Vegas, NV, for Plaintiff.

Kevin Hahn, Malcolm & Cisneros, Irvine, CA, Mi-  
chael E. Sullivan, Robinson Belousiegui Sharp & Low,  
Reno, NV, Richard J. Reynolds, Burke, Williams &  
Sorenson, LLP, Santa Ana, CA, for Defendants.

#### ORDER

KENT J. DAWSON, District Judge.

\*1 Before the Court is the Motion to Dismiss (# 17) filed by Defendants Bank of America, Inc., Countrywide Home Loans, Inc., and Mortgage Elec-  
tronic Registration Systems, Inc. (Collectively "De-  
fendants"). Plaintiff Diakonos Holdings, LLC filed an  
opposition and Counter-motion to Remand (# 23, #  
24). Defendants responded (# 25) and Plaintiff replied  
(# 27). The Court directed Defendants to file a further  
reply (# 37).

#### I. Background

Luis and Milma Alfaro owned a property at 2704  
Coventry Green Avenue, Henderson, Nevada 89074  
(the "Property"). In 2007, the Alfaro's took out a  
mortgage on the Property and secured it with a Deed  
of Trust. Defendant Bank of America subsequently  
obtained all beneficial interest in under the Deed of  
Trust.

The Alfaro's defaulted on their HOA dues and the  
HOA recorded a lien (the "Assessment Lien") on Jan-  
uary 24, 2011. The Alfaro's did not pay off the Lien  
and the property was sold to Plaintiff at a foreclosure  
auction on March 9, 2012. Defendants did not appear  
at the foreclosure sale.

On April 14, 2012, Defendants filed a Notice of  
Trustee's sale pursuant to the Deed of Trust. The  
Foreclosure Sale was scheduled for May 21, 2012.  
Plaintiff filed this action in state court seeking an  
injunction precluding the May 21, foreclosure sale and  
quieting title in its favor. Judge Adair entered a pre-  
liminary injunction prohibiting Defendants from  
conducting the sale. Defendants then removed the  
action here.

#### II. Motion to Remand

Plaintiff asks this court to use its discretion to  
remand this case to state court. Plaintiff acknowledges  
that no articulated abstention doctrine applies in this  
case. However, Plaintiff urges that the Court remand  
this case based on "principles identified by the United  
States Supreme Court in *Auerford v. Sun Oil*, 319 U.S.  
315 (1943)." Specifically, Plaintiff claims that federal  
adjudication would be disruptive to Nevada's efforts to  
establish a cohesive policy of interpretation and ap-  
plication of NRS 116.3116.

The Court declines to exercise its discretion to  
remand this case. District courts regularly predict how  
state courts would rule on issues of statutory inter-  
pretation. As discussed below, NRS 116.3116 is clear  
and the Court sees no reason that the issues in this case  
cannot be properly adjudicated here. Accordingly, the  
Counter-motion to remand is denied.

#### III. Motion to Dismiss

##### A. Legal Standard

A court may dismiss a plaintiff's complaint for  
"failure to state a claim upon which relief can be  
granted." Fed.R.Civ.P. 12(b)(6). A properly pled  
complaint must provide "a short and plain statement of  
the claim showing that the pleader is entitled to relief."  
Fed.R.Civ.P. 8(a)(2); Bell Atlantic Corp. v. Twombly,  
550 U.S. 544, 555 (2007). While Rule 8 does not  
require detailed factual allegations, it demands "more  
than labels and conclusions" or a "formulaic recitation  
of the elements of a cause of action." Aschcroft v. Iqbal,  
556 U.S. 662, 678 (2009) (citations omitted). "Factual  
allegations must be enough to rise above the specula-

Slip Copy, 2013 WL 531092 (D.Nev.)  
(Cite as: 2013 WL 531092 (D.Nev.))

live level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted).

\*2 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

NRS 116.3116

N.R.S. 116.3116(2)(b) relates to liens by homeowner's associations and reads as follows:

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent 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...

The statute also provides that:

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...

Plaintiff argues that this statute operates so that foreclosure of a delinquent assessment lien by the HOA extinguishes the first security interest on the property.<sup>FN1</sup> According to Plaintiff, because Defendants were provided with notice of the foreclosure sale and chose not to take any action, their lien was extinguished when the HOA completed its non-judicial foreclosure. Plaintiff argues that foreclosure by the HOA must extinguish all other liens, including the first security interest, or else HOAs would be unable to initiate foreclosure and would not be able to recover any deficiencies until the holder of the first deed of trust foreclosed. In support of this argument, Plaintiff cites *Summerhill Village Homeowners Ass'n v. Roughly*, 270 P.3d 639 (Wash.App.Div.1, Feb. 21, 2012) (opinion corrected and superseded by *Summerhill Village Homeowners Ass'n v. Roughly*, 289 P.3d 645 (Wash.App.Div.1, Feb. 21, 2012)). In *Summerhill*, the court held that a judicial foreclosure had the effect of extinguishing the interest held by the first deed of trust. However, *Summerhill* does not support Plaintiff's contention. The Washington statute at issue in that case specifically provides that when an association pursues nonjudicial foreclosure, it is not entitled to lien priority which would extinguish the first security interest. Nevada's statutory scheme does not draw such a distinction, and even if it did, the foreclosure in this case was nonjudicial.

FN1. Plaintiff does not address the language of subsection 2(b) which specifically states that HOA liens do not extinguish a first security interest recorded prior to the time the assessment became delinquent.

\*3 NRS 116.3116(2)(c) creates a limited super priority lien for 9 months of HOA assessments leading up to the foreclosure of the first mortgage, but it does not eliminate the first security interest. Contrary to Plaintiff's assertion, the statutory scheme does not require an HOA to wait until the holder of the deed of trust forecloses. Instead, as in this case, the HOA may initiate a nonjudicial foreclosure to recover delinquent assessments and the purchaser at the sale takes the property subject to the security interest. There is no

Slip Copy, 2013 WL 531092 (D.Nev.)  
(Cite as: 2013 WL 531092 (D.Nev.))

dispute that the Deed of Trust was recorded on August 30, 2007, and the Assessment Lien was recorded on January 24, 2011. Accordingly, the Deed is prior to the Assessment Lien and Plaintiff's claims for quiet title and declaratory relief fail as a matter of law.

*IV. Conclusion*

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (# 17) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Countermotion to Remand (# 24) is DENIED.

D.Nev., 2013.  
Dialconos Holdings, LLC v. Countrywide Home  
Loans, Inc.  
Slip Copy, 2013 WL 531092 (D.Nev.)

END OF DOCUMENT

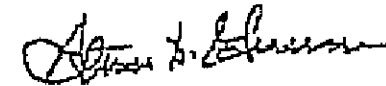
**EXHIBIT Q**

**EXHIBIT Q**

**EXHIBIT Q**



Electronically Filed  
06/03/2011 10:04:46 AM



CLERK OF THE COURT

CLERK OF THE COURT

1 ORD  
2 JAMES R. ADAMS, ESQ.  
3 Nevada Bar No. 6874  
4 JAMES R. ADAMS, ESQ.  
5 Nevada Bar No. 6874  
6 ASSELY SAYYAR, ESQ.  
7 Nevada Bar No. 9178  
8 ADAMS LAW GROUP, LTD.  
9 8681 W. Sahara Ave., Suite 280  
10 Las Vegas, Nevada 89117  
11 Tel: 702-838-7200  
12 Fax: 702-838-3600  
13 james@adamslawnevada.com  
14 assely@adamslawnevada.com  
15 Attorneys for Plaintiffs

16 PUOY K. PREMSIRUT, ESQ., INC.  
17 Puoy K. Premsirut, Esq.  
18 Nevada Bar No. 7141  
19 520 S. Fourth Street, 2nd Floor  
20 Las Vegas, NV 89101  
21 (702) 384-5563  
22 (702)-385-1752 Fax  
23 ppkpremsirut@hrcwqlawlv.com  
24 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

15 WINGBROOK CAPITAL, LLC.,

16 Plaintiff,

17 vs.

18 PEPPERTREE HOMEOWNERS  
19 ASSOCIATION; and DOES 1-10 and ROE  
20 ENTITIES 1-10, INCLUSIVE

21 Defendants.

Case No. A-11-636948-B

Dept No. XI

ORDER

22 This matter came before the Court on May 24, 2011 at 9:00 a.m., upon the Plaintiff's Motion  
23 for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law  
24 Group, Ltd., and Puoy K. Premsirut, Esq., of Puoy K. Premsirut, Esq., Inc., appeared on behalf of  
25 the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortenson & Sanders appeared on behalf of  
26 the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument,  
27 and for good cause appearing hereby rules:  
28

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  
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 contending 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 ///

27

28

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

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

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

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

///

///

///

///

///

///

///

///

///

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

IT IS SO ORDERED.

DISTRICT COURT JUDGE

June 2, 2011

Date

OC

Submitted by:

Approved as to Form and Content:

JAMES R. ADAMS, ESQ.  
Nevada Bar No. 6874  
ASSLY SAYYAR, ESQ.  
Nevada Bar No. 9178  
ADAMS LAW GROUP, LTD.  
8330 W. Sahara Ave., Suite 290  
Las Vegas, Nevada 89117  
Tel: 702-838-7200  
Fax: 702-838-3600  
james@adamslawnevada.com  
assly@adamslawnevada.com  
Attorneys for Plaintiff

MARLA DAVEE, ESQ.  
Nevada Bar No. 11098  
KURT BONDS, ESQ.  
Nevada Bar No. 6228  
Alverson, Taylor, Mortensen & Sanders  
7401 West Charleston Blvd.  
Las Vegas, NV 89117  
Attorney for Defendant  
Tel: 702-384-7000  
Fax: 702-385-7000

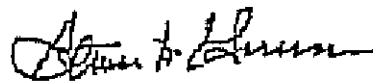
PUQY K. PREMSIRUT, ESQ., INC.  
Puoy K. Premsirut, Esq.  
Nevada Bar No. 7141  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, NV 89101  
(702) 384-5563  
(702)-385-1752 Fax  
ppremsirut@brownlawlv.com  
Attorneys for Plaintiff

**EXHIBIT R**

**EXHIBIT R**

**EXHIBIT R**

Electronically Filed  
05/13/2011 03:46:07 PM  
05/13/2011 03:48:17 PM



CLERK OF THE COURT

OGM/JUDGE  
MARTIN & ALLISON LTD.  
Debra L. Pieruschka (#10185)  
Noah G. Allison (#6202)  
3191 East Warm Springs Road  
Las Vegas, Nevada 89120-3147  
Tel (702) 933-4444  
Fax (702) 933-4445  
[dpieruschka@battlebornlaw.com](mailto:dpieruschka@battlebornlaw.com)  
[nallison@battlebornlaw.com](mailto:nallison@battlebornlaw.com)  
Attorneys for Nevada Association Services, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

JP MORGAN CHASE BANK, N.A. a  
National Association,

Plaintiff,

vs.

COUNTRYWIDE HOME LOANS, INC., a  
New York corporation; COUNTRYWIDE  
WAREHOUSE LENDING, INC., a California  
corporation; CITIMORTGAGE, INC., a New  
York corporation; NV MORTGAGE, INC., a  
Nevada corporation d/b/a SOMA FINANCIAL;  
SOMA FINANCIAL, INC., a Nevada  
corporation; NEVADA ASSOCIATION  
SERVICES, INC., a Nevada corporation;  
JOHNATHAN D. AMOS, an individual;  
MELISSA SMILEY a/k/a MELISSA AMOS,  
an individual, DOES 1 through 10, ROE  
CORPORATIONS 1 through 10, inclusive,

Defendants.

ALL RELATED CLAIMS.

CASE NO.: 08-A562678

DEPT.: XVI

ORDER AND JUDGMENT

Date: April 7, 2011  
Time: 9:00 a.m.

Defendant Nevada Association Service, Inc.'s Motion for Determination of Priority Amount  
Including Attorney's Fees and Costs ("Motion") came on for rehearing on April 7, 2011. Debra L.  
Pieruschka, Esq. of Martin & Allison Ltd. appeared on behalf of Nevada Association Services, Inc.  
("NAS"), Jason D. Smith, Esq. of Santoro, Driggs, Walsh, Kearney, Holley & Thompson appeared on  
behalf of JP Morgan Chase Bank ("Chase"), and no other party or counsel having appeared at the

05-10-11

MARTIN & ALLISON LTD.  
3191 E. Warm Springs Road  
Las Vegas, Nevada 89120-3147



MARTIN & ALLISON LTD.  
3191 E. Warm Springs Road  
Las Vegas, Nevada 89121-3147

1 rehearing of this matter. The Court having reviewed the moving papers, opposition papers and reply  
2 papers submitted by counsel and hearing oral argument, good cause appearing, the Court issued a  
3 decision on April 8, 2011, and enters the following findings of fact and conclusions of law:

4 FINDINGS OF FACT & CONCLUSIONS OF LAW

5 1. On August 27, 2010, this Court issued an order denying Chase's Motion for Summary  
6 Judgment and granting NAS's Counter-motion for Summary Judgment in part, determining that NAS  
7 has a "super priority" position for no more than nine (9) months of assessments senior to Chase's  
8 equitable lien finding that:

9 a. The Property at issue in this matter is part of a common-interest ownership  
10 community. As such, NRS 116 governs the priority of NAS's lien over Chase's equitable lien.

11 b. NRS 116.3116(1) establishes NAS's statutory right to a lien for any assessments  
12 from the time they become due.

13 c. Pursuant to NRS 116.3116, recording of the Declaration by the Association  
14 constitutes record notice and perfection of the lien — no further recordation of any claim of lien is  
15 required.

16 d. NRS 116.3116(2) establishes the priority of NAS's liens against the Property.  
17 Specifically, NRS 116.3116(2) provides that NAS's lien is prior to all other liens and encumbrances  
18 except:

19 (1) a lien or encumbrance recorded prior to the recording of the Declaration  
20 of the association;

21 (2) a first security interest recorded before the date on which the assessment  
22 sought to be enforced became delinquent; and

23 (3) liens for real estate taxes and other governmental assessments.

24 e. NRS 116.3116(2) further provides NAS with a limited priority even over a first  
25 security interest recorded against the property for nine (9) months of assessments that would have  
26 become due immediately preceding institution of an action to enforce the lien.

27 f. Chase's equitable lien attached to the property on August 9, 2007 when its Deed  
28 of Trust was recorded against the property.

MARTIN & ALLISON LTD.  
5191 N. Warm Springs Road  
Las Vegas, Nevada 89120-3107

1           2.    The Court further directed NAS to submit further briefing to the Court to determine the  
2    extent and amount of NAS' "super priority" lien that it has against the subject property, including the  
3    issue of attorney's fees and costs.

4           3.    After briefing by both parties, on September 16, 2010 this Court held oral arguments  
5    regarding the amount of NAS' "super priority" lien amount and granted NAS' Motion in part and  
6    denied it in part.

7           4.    The Court found that pursuant to NRS 116.3116(2) an association has a "super priority"  
8    position over a first security interest recorded against the property for nine (9) months of assessments  
9    immediately preceding institution of an action to enforce the lien.

10          5.    The Court further found that pursuant to NRS 116.310313 an association can recover as  
11    part of its collection costs reasonable attorney's fees and costs associated with enforcement of its  
12    assessment lien. The Court noted, however, that an analysis must be performed by the Court to  
13    determine the reasonableness of the attorney's fees using the factors articulated in Brunzell v. Gold  
14    Gale National Bank, 85 Nev. 345, 349 (1969).

15          6.    The Court further found that pursuant to NRS 116.3116(2) an association can recover as  
16    part of its "super priority" lien amount collection costs associated with enforcement of its assessment  
17    lien.

18          7.    As such, the Court granted NAS' Motion, in part, and awarded, as part of its "super  
19    priority" lien amount pursuant to NRS 116.3116(2), NAS \$5,909.91 out of the \$23,480.16 requested in  
20    delinquent assessments. The Court further awarded, as part of its "super priority" lien amount pursuant  
21    to NRS 116.3116(2), NAS \$6,000.00 out of the \$49,035.28 for reasonable attorney's fees and costs as  
22    part of its collection costs.

23          8.    The Court, however, denied NAS the following requested portions of its "super priority"  
24    lien amount because it failed to provide adequate documentation to support the claim:

25               (a)   \$135.00 out of the total amount of \$525.00 in late fees relating to the nine (9)  
26    months of delinquent assessments as permitted by NRS 116.3116;

27               (b)   \$1,352.00 for collection costs related to the nine (9) months of delinquent  
28    assessments as permitted by NRS 116.310313 and NRS 116.3116; and

MAHON & ALISON LTD.  
3191 E. Warm Springs Road  
Las Vegas, Nevada 89120-3147

1 (c) \$43,035.28 in legal fees as part of its collection costs related to the collection of  
2 the "super priority" amount as permitted by NRS 116.310313 and NRS 116.3116.

3 9. On October 28, 2010, NAS filed a Motion for Partial Reconsideration of the Court's  
4 October 4, 2010 Order denying NAS its full collection costs including attorney's fees and costs  
5 pursuant to NRS 116.3116.

6 10. After supplemental briefing by the parties, on February 17, 2011, the Court granted  
7 NAS' Motion for Partial Reconsideration.

8 11. On April 7, 2011, after further supplemental briefing by the parties, the Court entertained  
9 oral arguments by Counsel.

10 12. The Court concluded that NAS can recover as part of its "super priority" its costs  
11 associated with enforcement of the Association's assessment lien including late fees and collection  
12 costs pursuant to NRS 116.3116(1) and (2).

13 13. The Court found that NAS properly supported its claim for \$135.00 in late fees relating  
14 to the nine (9) months of delinquent assessments, pursuant to NRS 116.3116(1).

15 14. The Court further found that NAS properly supported its claim for \$1,352.00 in  
16 collection costs relating to the nine (9) months of delinquent assessments but disallowed \$743.00 of the  
17 requested \$1,352.00 because \$743.00 related to costs incurred by NAS after the lawsuit was filed to  
18 enforce any past due obligation and are, thus, precluded by statute.

19 15. The Court further found that NAS properly supported its claim for \$49,035.28 in  
20 attorney's fees and costs through August 27, 2010 comprised of \$1,635.28 in costs and \$47,400.00 in  
21 attorney's fees in defending and protecting its statutory right to an assessment lien, pursuant to NRS  
22 116.3116(7).

23 16. NAS's documented attorney's fees in the amount of \$47,400.00 meet the Brunzell v.  
24 Golden Gate National Bank, 85 Nev. 345, 349 (1969) factors. That based on the qualities of the  
25 advocate, the character of the work to be done, the work actually performed by the lawyer, and the  
26 result obtained, the amount of attorney's fees and costs to be included as part of NAS' collection costs  
27 relating to its "super priority" lien amount are reasonable and necessary.

28 ///

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that NAS' Motion for Determination of NAS' Priority Amount Including Attorney's Fees and Cost is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that NAS's "super priority" lien amount totals \$55,689.19 comprised as follows:

(1) An award of \$5,909.91 for nine (9) months of delinquent assessments, pursuant to NRS 116.3116;

(2) An award of \$135.00 in late fees relating to the nine (9) of delinquent assessments, pursuant to NRS 116.3116;

(3) An award of \$609.00 in collection costs, pursuant to NRS 116.310313 and NRS 116.3116;

(4) An award of for \$49,035.28 in attorney's fees and costs through August 27, 2010 comprised of \$1,635.28 in costs and \$47,400.00 in attorney's fees in defending and protecting its statutory right to an assessment lien as collection costs, pursuant to NRS 116.3115(7), NRS 116.310313, and NRS 116.3116.

///

///

///

///

///

///

///

///

///

///

///

///

///

MARTIN & ALIBON LTD.  
9191 E. Warm Springs Road  
Las Vegas, Nevada 89120-3147

1 IT IS FURTHER ORDERED ADJUDGED AND DECREED that NAS shall recover  
2 \$45,689.19 plus statutory interest from Plaintiff JP Morgan Chase Bank, N.A., a National Association  
3 the judgment amount as follows:

- 4 1. \$6,653.91 for delinquent assessments and partial collection costs; and  
5 2. \$49,035.28 for reasonable attorney's fees and costs comprised of \$1,635.28 in costs and  
6 \$47,400.00 in attorney's fees as part of NAS' collection costs.

7 IT IS FURTHER ORDERED ADJUDGED AND DECREED that the judgment will accrue  
8 interest in the manner permitted by Nevada law until the judgment has been satisfied.

9 IT IS SO ORDERED.

10 Dated this 11<sup>th</sup> day of May, 2011.

11  
12   
13 DISTRICT COURT JUDGE  
14


15  
16 Submitted by:

17 MARTIN & ALLISON LTD.

Approved/Disapproved as to form and content:

SANTORO, DRUGGS, WALCH, KEARNEY, HOLLEY  
& THOMPSON

18  
19 By

  
20 Debra L. Pieruschka (Bar No. 10185)  
21 3191 East Warm Springs Road  
22 Las Vegas, Nevada 89120-3147  
23 Attorneys for Nevada Association  
24 Services, Inc.  
25  
26  
27  
28

By

Jeffrey R. Albrechts, Esq. (Bar No. 0066)  
Jason D. Smith, Esq. (Bar No. 9691)  
400 S. Fourth Street, Third Floor  
Las Vegas, NV 89101  
Attorneys for JP Morgan Chase Bank, N.A.

MARTIN & ALLISON LTD.  
3191 E. Warm Springs Road  
Las Vegas, Nevada 89120-3147

**EXHIBIT S**

**EXHIBIT S**

**EXHIBIT S**

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101  
Tel: 702/791-0308 - Fax: 702/791-1912

CLERK OF DISTRICT COURT

DEC 22 2006

FILED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORD  
JOHN E. LEACH, ESQ.  
Nevada Bar No. 1225  
TRACY A. GALLEGOS, ESQ.  
Nevada Bar No. 1223  
TRACY A. GALLEGOS, ESQ.  
Nevada Bar No. 9023  
SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

Attorneys for Spring Mountain Ranch Master Association

DISTRICT COURT

CLARK COUNTY, NEVADA

KORBEL FAMILY TRUST  
Plaintiff,

v.

SPRING MOUNTAIN RANCH MASTER  
ASSOCIATION; BAY CAPITAL CORP.,  
Defendants.

Case No.: 06-A-523959-C  
Dept. No.: V

ORDER

Hearing Date: November 20, 2006  
Time: 9:00 A.M.

ORDER

The above-referenced matter having come before this Court, the Plaintiff being represented by Marty G. Baker, Esq. of The Cooper Castle Law Firm, and Defendant Spring Mountain Ranch Master Association (the "Association") being represented by John E. Leach, Esq. of the law firm of Santoro, Driggs, Welch, Kearney, Johnson & Thompson, each party having briefed the issues, good cause appearing therefore and thereby no just reason for delay;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Nevada Revised Statutes 116.3116(2), a portion of the Association's assessment lien has priority over the first deed of trust. This portion of the Association's assessment lien comprises the super-priority portion of the lien. The Association's assessment lien, with the exception of the super-priority portion of the lien, is extinguished by a foreclosure of the first deed of trust.

02035-07/127711\_2

FILED

DEC 22 8 33 AM '06

CLERK

SANDERS, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
1000 South Fourth Street, Suite 1000, Las Vegas, Nevada 89101  
(702) 701-0308 - fax (702) 701-1012

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of the Association's super-priority claim shall include the following amounts:

Association's super-priority claim shall include the following amounts:

- (a) Six (6) months of the assessments for common expenses;
- (b) Six (6) months of late fees imposed for non-payment of the assessments for common expenses;
- (c) Interest on the principal amount of six (6) months of the unpaid assessments for common expenses, as set forth in the Association's governing documents;
- (d) The Association's costs of collection, which may include legal fees and costs, that accrue prior to the date of foreclosure of the first deed of trust; and
- (e) The transfer fee for conveyance and change of ownership of the property foreclosed pursuant to the first deed of trust.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant Association's assessment lien has priority over the second deed of trust and any claims originating from the second deed of trust. See NRS 116.3116(2).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's super-priority claim, in the case at hand, to be paid by the Plaintiff to the Defendant Association is \$1,963.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remaining balance of the Association's claim is \$5,565.07, and that said claim has priority over all other claimants in this action.

...



SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101  
(702) 701-0508 - fax (702) 701-1012

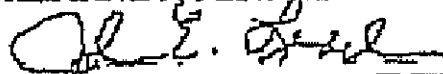
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court shall issue a check payable to the Spring Mountain Ranch Master Association, in the amount of \$5,565.07, which payment shall be issued from the funds previously deposited with the Court on October 4, 2006, by Miles, Bauer, Bergstrom & Winters, LLP, on behalf of the Intervenor, Reconstruct Company, N.A.

Dated this 20 day of December, 2006

DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON



JOAN E. LEACH, ESQ.

Nevada Bar No. 1225

TRACY A. GALLEGOS, ESQ.

Nevada Bar No. 9023


400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Defendant Spring Mountain Ranch Master Association*

Approved as to Form and Content:

THE COOPER CASTLE LAW FIRM



Anita K.H. McFarland, Esq.

Merty G. Baker, Esq.

820 S. Valley View Blvd.

Las Vegas, NV 89107

*Attorneys for Korbel Family Trust*

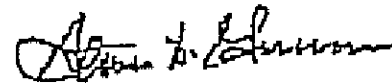
**EXHIBIT T**

**EXHIBIT T**

**EXHIBIT T**

GREENE INFUSO, LLP  
3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146  
(702) 570-6000

Electronically Filed  
01/24/2013 03:11:53 PM  
01/24/2013 03:11:53 PM



CLERK OF THE COURT

1 ORDER

2 Michael V. Infuso, Esq., Nevada Bar No. 7388  
3 Zachary P. Takos, Esq., Nevada Bar No. 11293  
4 GREENE INFUSO, LLP  
5 3030 South Jones Boulevard, Suite 101  
6 Las Vegas, Nevada 89146  
7 Telephone: (702) 570-6000  
8 Facsimile: (702) 463-8401  
9 E-mail: minfuso@greeneinfusolaw.com  
10 ztakos@greeneinfusolaw.com

11 Attorneys for Plaintiff

12 EIGHTH JUDICIAL DISTRICT COURT FOR  
13 CLARK COUNTY, NEVADA

14 VILLA PALMS COURT 102 TRUST

15 Plaintiff,

16 v.

17 WILLIAM L. RILEY, an individual;  
18 DEUTSCHE BANK NATIONAL TRUST  
19 COMPANY; an expired Nevada  
20 Corporation, in its capacity as indenture  
21 trustee for the Noteholders of AAMES  
22 MORTGAGE INVESTMENT TRUST  
23 2005-3, a Delaware Statutory Trust; and any  
24 and all other persons unknown claiming any  
25 right, title, estate, lien or interest in the  
26 Property adverse to the Plaintiff's ownership,  
27 or any cloud upon Plaintiff's title thereto  
28 (DOES 1 through 10, inclusive);

Defendants.

Case No. A-13-674595-C

Dept. No. XVI

ORDER DENYING PLAINTIFF'S  
APPLICATION FOR PRELIMINARY  
INJUNCTION

21 Plaintiff Villa Palms Court 102 Trust's ("Plaintiff") Application for Preliminary  
22 Injunction ("Application") having come on for hearing on the 17<sup>th</sup> day of January, 2013 before the  
23 above-referenced Court, the Court having considered Plaintiff's Application, Deutsche Bank  
24 National Trust Company's ("Deutsche") opposition to the Application, and all statements made  
25 by counsel at the hearing, and good cause appearing,

26 IT IS HEREBY ORDERED that Plaintiff's Application is DENIED. Specifically, the  
27 Court finds that Plaintiff failed to demonstrate a reasonable likelihood of success on the merits  
28

GREENE INFUSED, LLP  
3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146  
(702) 570-6000

1 because the Court holds that the homeowner's association's foreclosure of its super-priority lien  
2 under NRS Chapter 116 did not impact or extinguish Deutsche's first security interest on the  
3 subject property.

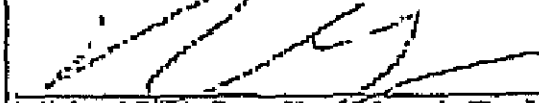
4  
5 DATED this 12<sup>th</sup> day of January, 2013.

6  
7   
8 DISTRICT COURT JUDGE

E.P.

9 Respectfully submitted by:

10 GREENE INFUSED, LLP

11   
12 Michael V. Infuso, Esq., Nevada Bar No. 7388  
13 Zachary P. Takos, Esq., Nevada Bar No. 11293  
14 3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146  
Attorneys for Plaintiff

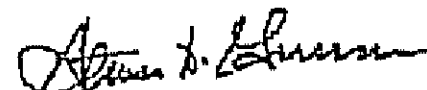
**EXHIBIT U**

**EXHIBIT U**

**EXHIBIT U**

ORIGINAL  
ORIGINAL

Electronically Filed  
03/20/2013 03:59:21 PM  
03/20/2013 03:59:21 PM

  
CLERK OF THE COURT

1    **ORDER**  
2    GARY E. SCHNITZER, ESQ.  
3    Nevada Bar No. 395  
4    MELANIE D. MORGAN, ESQ.  
5    Nevada Bar No. 8215  
6    CHASON COHAN, ESQ.  
7    Nevada Bar No. 12349  
8    KRAVITZ, SCHNITZER, SLOANE &  
9    JOHNSON, CHTD.  
10    8985 South Eastern Avenue, Suite 200  
11    Las Vegas, Nevada 89123  
12    (702) 362-6666 Telephone  
13    (702) 362-2203 Facsimile  
14    Attorneys for *BANK OF AMERICA, N.A.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

11    SANUCCI CT TRUST,

12    Plaintiff,

13    vs.

14    JOSEPH ELEVADO, an individual; MELANIE  
15    ELEVADO, an individual; BANK OF  
16    AMERICA, NATIONAL ASSOCIATION; and  
17    DOES 1 through 10, inclusive,

18    Defendants.

Case No. A-12-670423-C  
Dept. No. 30

Date of Hearing: February 21, 2013

Time of Hearing: 9:00 a.m.

ORDER

19    The matter of Defendant, Bank of America, N.A.'s Motion to Dismiss having come  
20    before this Honorable Court on February 21, 2013, at 9:00 a.m.; Plaintiff appearing by and  
21    through MICHAEL V. INFUSO, ESQ. of GREENE INFUSO, LLP, and Defendant, Bank of  
22    America, N.A., appearing by and through MELANIE D. MORGAN, ESQ., of KRAVITZ,  
23    SCHNITZER, SLOANE & JOHNSON, CHTD.

24    After reviewing the moving papers and hearing oral argument, the Court hereby makes  
25    the following findings:

- 26    1. Plaintiff's Complaint for quiet title and declaratory relief fails to state a claim

KRAVITZ, SCHNITZER, SLOANE &  
JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

KRAVITZ, SCHNITZER, SLOANE &  
JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1 upon which relief may be granted pursuant to Nev. Rule Civ. Pro. 12(b)(5). Specifically, the  
2 allegations in the Complaint are not legally sufficient to constitute the elements of the claim  
3 asserted.

4         2. The "super priority" lien established by NRS §116.3116(2) is not a standalone  
5 lien that a homeowners association can foreclose upon constituting a senior position to all prior  
6 first security interests.. Rather, the "super priority" lien establishes a payment priority relative to  
7 a first security interest, meaning that the homeowners association is entitled to payment of the  
8 "super priority" amount prior to payment of a foreclosing first security interest lienholder.  
9

10         3. Foreclosure by a homeowners association of its "super priority" lien does not  
11 extinguish a first security interest on the property recorded before the date on which the  
12 assessment sought to be enforced became delinquent.

13         4. Because there are multiple defendants in this matter, the Court finds that there is  
14 no just reason to delay entry of final judgment as to Defendant Bank of America, N.A.  
15

16 In consideration of the above findings,

17 **IT IS HEREBY ORDERED** that Defendant Bank of America, N.A.'s Motion to  
18 Dismiss is **GRANTED**.

19 ///

20 ///

KRAVITZ, SCHNITZER, SLOANE &  
JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1  
2 IT IS FURTHER HEREBY ORDERED that, there being no just reason for delay, this  
3 Order of Dismissal is certified as final pursuant to Nev. Rule Civ. Pro. 54(b).

4 DATED this 18<sup>th</sup> day of March, 2013.

5  
6   
7 DISTRICT COURT JUDGE

8 Submitted by:

9 KRAVITZ, SCHNITZER,  
SLOANE & JOHNSON, CHTD.

10 By: 

11 GARY E. SCHNITZER, ESQ.  
Nevada Bar No. 395  
12 MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
13 8985 South Eastern Avenue, Suite 200  
Las Vegas, Nevada 89123  
14 (702) 362-6666 Telephone  
(702) 362-2203 Facsimile  
15 Attorneys for Plaintiff  
BANK OF AMERICA, N.A.

16  
17 Reviewed as to form and content:

18 GREENE INFUSO, LLP

19 By: 

20 Michael V. Infuso, Esq.  
Zachary P. Takos, Esq.  
21 3030 South Jones Boulevard, Suite 101  
Las Vegas, Nevada 89146  
22 (702) 570-6000 - Telephone  
(702) 463-8401 - Facsimile  
23 Attorneys for Plaintiff  
24 SANUCCI CT TRUST



**EXHIBIT V**

**EXHIBIT V**

**EXHIBIT V**

[Skip to Main Content](#)
[Logout My Account](#)
[Search Menu](#)
[New District Civil/Criminal](#)  
[Search](#)
[Refine Search](#)
[Close](#)

[Location](#) : District Court Civil/Criminal
 [Help](#)

## REGISTER OF ACTIONS

### CASE NO. A-10-621628-C

Design 3.2 LLC, Plaintiff(s) vs. Bank of New York Mellon,  
Defendant(s)

5  
1  
5  
2  
8  
5

Case Type: Title to Property  
 Subtype: Quiet Title  
 Date Filed: 07/25/2010  
 Location: Department 15  
 Conversion Case Number: A521628

#### PARTY INFORMATION

Defendant Bank of New York Mellon

Lead Attorneys  
 Kevin Hahn  
 Retained  
 9152529400(W)

Plaintiff Design 3.2 LLC

James S. Kent  
 Retained  
 702-385-1100(W)

#### EVENTS & ORDERS OF THE COURT

05/15/2011 Motion for Summary Judgment (0:30 AM) (Judicial Officer Salvar, Abby)  
 Bank of New York Mellon's Motion for Summary Judgment

#### Minutes

05/15/2011 8:30 AM

Mr. Hahn present through Court Call. Matter argued and submitted. COURT ORDERED, ruling is deferred and the Court will issue a decision through minute order today. Following the hearing, COURT FURTHER ORDERED, pursuant to NRCF 56, NRS 116.3116, Brophy Mtn. Co. v. Brophy & Dale Gold & Silver Mtn. Co., 15 Nev. 101 (1880), Leasepartners Corp. v. Robert L. Brooks Trust, 113 Nev. 747 (1997), and Industrial Dev. v. Benedetti, 103 Nev. 360 (1987), Bank of New York Mellon's Motion for Summary Judgment is GRANTED. Defendant Bank of New York Mellon ("BNYM") seeks summary judgment on the two claims in Plaintiff's Complaint: quiet title and unjust enrichment. Defendant has put forth evidence that it has a priority lien on the property sufficient to warrant summary judgment. Furthermore, Defendant submits it has gained nothing unfairly such that a claim for unjust enrichment in favor of Plaintiff is appropriate. NRS 116.3116 governs liens against units for assessments. It states that an assessment lien by a homeowner's or unit-owner's association "is prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recordation of the declaration and . . . (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent. . . ." NRS 116.3116(2) (a)-(b). Here, Defendant's first security interest Deed was recorded on August 16, 2005. The assessment lien was recorded on June 6, 2008 two years later. Therefore, the security lien is first in time prior to the assessment lien of the Homeowner's association. Plaintiff was on notice of the recorded 2005 secured lien on the property at the 2009 foreclosure sale in which it purchased the property. The security interest and priority lien was not extinguished by the foreclosure sale of the HOA and the plaintiff's loan. Title of the property subject to the lien pursuant to NRS 116.3116. Accordingly, there are no genuine issues of material fact as a matter of law, and Defendant is entitled to judgment as a matter of law. Further, a bona fide purchaser for value must show that "the purchase was made in good faith, for a valuable consideration; that the purchase price was wholly paid, and that the conveyance of the legal title was received before notice of the equities of [other parties]." Brophy, 15 Nev. at 106. Here, because

BNYM's interest in the property was duly recorded prior to Design 3.2's purchase, Design 3.2 purchased with actual or constructive notice of BNYM's interest. Furthermore, Design 3.2 did not pay valuable consideration to qualify as a bona fide purchaser for value. In 2006, McInight purchased the property and executed a promissory note secured by a deed of trust encumbering the property in the amount of \$578,000. In 2009, Plaintiff purchased real property, a residence in Las Vegas, at a foreclosure sale by the HOA for only \$3,743.84. Accordingly, plaintiff cannot be deemed a bona fide purchaser for value in this case because Plaintiff took title in the property with knowledge of the Defendant's priority lien which remains in place. Finally, BNYM is entitled to summary judgment on its unjust enrichment claim. The doctrine of unjust enrichment or recovery in quasi contract "applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but deliver to another. . . ." *Leasepartners, 113 Nev. at 756* (internal citations omitted). Furthermore, "unjust enrichment is the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." *Industrial, 103 Nev. at 353 n. 2*. Here, there is no evidence BNYM received a benefit which in equity and good conscience belongs to Design 3.2. As a result of this Court granting Summary Judgment in favor of Defendant in this case, it follows that Plaintiff's claim for unjust enrichment must fail. COURT FURTHER ORDERED, pursuant to NRCP 37, Plaintiff's Motion for Sanctions and Defendant's Counter-motion for Sanctions are advanced and DENIED. NRCP 37 states that for failure to comply with discovery, the Court may compel disclosure or sanction a party. The request must be accompanied by a certification that the movant in good faith conferred or attempted to confer with the other party to secure the discovery prior to court action. NRCP 37(a) (2) (A). Under NRCP 37(a) (4) (A), a prevailing movant is entitled to fees and costs unless Plaintiff did not first make a good faith effort to obtain the discovery without court action. Under NRCP 37(a) (4) (B), if the motion is denied, the Court shall, after affording an opportunity to be heard, require the movant to pay the defending party the reasonable expenses incurred in opposing the motion, unless the Court finds the motion was substantially justified or that other circumstances make an award of expenses unjust. Here, Plaintiff has failed to comply with the requirement of NRCP 37(a) (2) (A) by providing a certification that it conferred or attempted to confer with the Defendant in an effort to secure the disclosure without court action. Furthermore, none of the claims rises to the level of sanctionable behavior. Accordingly, the motion is advanced and denied. The Defendant has requested sanctions pursuant to NRCP 37(a) (4) (B). Although the Court finds that Plaintiff failed to comply with the certification requirement of NRCP 37(a) (2) (A) and that the Defendant's actions do not rise to the level of sanctionable behavior, the Court finds that because of the vagueness of some of the Defendant's submitted discovery, the Plaintiff's motion was substantially justified. Accordingly, Defendant's Counter-motion is advanced and denied. Accordingly, COURT FURTHER ORDERED, the June 29, 2011 hearing on Plaintiff's Motion for Sanctions and Defendant's Counter-motion for Sanctions before the Discovery Commissioner is advanced and VACATED. The December 7, 2011 Pre-Trial Conference, December 21, 2011 Calendar Call, and January 3, 2012 Bench Trial are VACATED. Attorney Hahn is directed to prepare and submit the written order.

Perles Present  
Return to Register of Actions

**EXHIBIT W**

**EXHIBIT W**

**EXHIBIT W**



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

Subject: The Super Priority Lien	Advisory No. <b>13-01</b>	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.

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.<sup>1</sup> 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."<sup>2</sup> In other words, costs of collecting includes more than "charges for late payment of assessments."<sup>3</sup> 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.<sup>4</sup> "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

---

<sup>1</sup> Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).

<sup>2</sup> NRS 116.310313.

<sup>3</sup> "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).

<sup>4</sup> 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.<sup>5</sup> 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

---

<sup>5</sup> See NRS 116.310312(4) and (6).



of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.<sup>6</sup>

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.”<sup>7</sup> 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;

---

<sup>6</sup> See <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423>.

<sup>7</sup> Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

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

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

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

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

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

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

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

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

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

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

NRS 116.3116(2) states:

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

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

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

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

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

(emphasis added)

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

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

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

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

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

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

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

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

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

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

---

<sup>8</sup> 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.<sup>9</sup> It can include fines, interest, and late charges.<sup>10</sup> 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.<sup>11</sup> 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

---

<sup>9</sup> See *id.* at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).

<sup>10</sup> See *id.*

<sup>11</sup> See <http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416>.

include the association's costs and attorneys' fees.<sup>12</sup> 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).<sup>13</sup>

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:

---

<sup>12</sup> See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

<sup>13</sup> See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.



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

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

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

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

~~(ii)~~(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

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

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

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

Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

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

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

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

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

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

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

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

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

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

assessment as provided in NRS 116.3116(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.<sup>14</sup> 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

---

<sup>14</sup> NRS 116.31164.

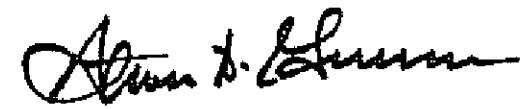
make it all the more impossible for the owner to come current or for a short sale to close.

This situation does not benefit the association or its members.

**EXHIBIT X**

**EXHIBIT X**

**EXHIBIT X**



CLERK OF THE COURT

McCARTHY & HOLTHUS, LLP  
Kristin Schuler-Hintz, Esq. (SBN: 7171)  
Christopher Hunter, Esq. (SBN: 8127 )  
9510 West Sahara, Suite 130  
Las Vegas, Nevada 89117  
Telephone: (702) 685-0329  
Facsimile: (866) 339-5691

Attorney for Defendant, Quality Loan Service Corporation

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

9320 POKEWOOD CT TRUST,

Plaintiff

vs.

WELLS FARGO BANK, N.A.; QUALITY  
LOAN SERVICE CORPORATION; JOSEPH  
A. ZWIJAC; and JESSICA ZWIJAC,

Defendants

CASE NO. A-13-677406-C

DEPT. NO: XVII

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff, 9320 POKEWOOD CT TRUST's Motion for Preliminary Injunction came on for hearing before the Court at 9:00 a.m. on April 3, 2013. Michael F. Bohn, Esq., appeared on behalf of Plaintiff and Christopher M. Hunter, Esq., appeared on behalf of QUALITY LOAN SERVICE The Court, having considered the moving papers, its own files, and good cause appearing, finds that the super priority lien reference in NRS 116.3116 is merely a priority of payment lien and does not permit the foreclosure of a first deed of trust. As a result, Plaintiff is unlikely to succeed on the merits in this action.

ACCORDINGLY, THE COURT ORDERS that Plaintiff's Motion for Preliminary Injunction is denied.

McCARTHY & HOLTHUS, LLP  
ATTORNEYS AT LAW  
1770 FOURTH AVENUE  
SAN DIEGO, CALIFORNIA 92104  
TELEPHONE (619) 835-4800 FACSIMILE (619) 838-4041

RECEIVED BY  
DEPT. 17 ON

APR - 3 2013

JA218



McCARTHY & HOLTHUS, LLP  
ATTORNEYS AT LAW  
1770 FOURTH AVENUE  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 685-4800 FACSIMILE (619) 685-4811

2 THE COURT FURTHER ORDERS that a stay of any action by Defendant to continue its  
3 foreclosure is stayed for a period of 30 days from notice of entry of this Order.

4  
5 DATED this 5 day of April, 2013.



DISTRICT COURT JUDGE



6  
7 Respectfully submitted by:  
8 McCarthy & Holthus, LLP



9  
10 Christopher M. Hunter, Esq.  
11 Nevada SBN 8127  
12 9510 W. Sahara, Suite 110  
13 Las Vegas, Nevada 89117

**EXHIBIT Y**

**EXHIBIT Y**

**EXHIBIT Y**



A-12-671671-C

DISTRICT COURT  
CLARK COUNTY, NEVADA

---

Title to Property COURT MINUTES March 12, 2013

---

A-12-671671-C SFR Investments Pool1, LLC, Plaintiff(s)  
vs.  
US Bank, Defendant(s)

---

March 12, 2013 3:00 AM Status Check

HEARD BY: Alf, Nancy

COURTROOM:

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES

PRESENT:

## JOURNAL ENTRIES

- COURT FINDS after review Plaintiff, SFR Investments Pool1, LLC (hereinafter Plaintiff or SFR ), filed its Complaint for Quiet Title and Injunctive Relief on December 14, 2012. SFR filed an Ex Parte Application for Temporary Restraining Order (TRO) and Motion for Preliminary Injunction on December 17, 2012. A TRO enjoining foreclosure and setting hearing on the Motion for Preliminary Injunction was filed December 18, 2012. The Motion for Preliminary Injunction was originally heard by this Court on January 2, 2013, and the injunction was GRANTED for thirty (30) days to allow any of the defendants herein to respond.

COURT FURTHER FINDS after review, on January 30, 2013, the Court held a Status Check on the preliminary injunction, at which attorneys for Plaintiff, Defendant U.S. Bank, and for Defendant Southern Highlands Community Association appeared, and the Court set a briefing schedule for Defendants Oppositions and/or Countermotions and any subsequent Reply briefs on any outstanding motion(s). After all matters were fully briefed, the Court heard oral arguments again on March 6, 2013 and took the matter UNDER SUBMISSION.

COURT FURTHER FINDS after review, pursuant to NRCP 65, EDCR 2.10, NRS 33.010, and Nevada case law, in the decision to grant or deny a preliminary injunction, the Court must consider 1) the plaintiff's likelihood of success on the merits, 2) the reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage

PRINT DATE: 03/13/2013

Page 1 of 2

Minutes Date:

March 12, 2013

JA221

A-12-673671-C

is an inadequate remedy, and 3) the potential hardships to the relative parties, and others and the public interest. COURT FURTHER FINDS after review, here, Plaintiff does not enjoy a likelihood of success on the merits, for reasons set forth in the following paragraph. COURT FURTHER FINDS after review that property is considered unique and the loss of which is often not compensable by a monetary reward; however, the instant situation could be remedied by pecuniary damages. COURT FURTHER FINDS after review a balance of hardships weighs heavily in favor of Defendant U.S. Bank, which stands to lose an interest valued at or around \$885,000, whereas Plaintiff's purchase price was \$6,000.00. For these reasons, the applicable factors weigh in favor of denial of the injunction.

COURT FURTHER FINDS after review the language of NRS 116.3116(2)(c) creates, for an association, a super priority lien "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." COURT FURTHER FINDS after review that while the Court is not bound by persuasive authority from other jurisdictions which require judicial foreclosure to trigger a super priority lien, this Court is also not bound by the Advisory Opinion of the Nevada Real Estate Division, which disclaims at the end of its Opinion that the Opinion does not have the force of law. Both State and Federal constitutional due process guarantees are offended if the first security mortgagee's interest may be voided by non-judicial foreclosure for an assessment lien, relatively nominal in value, without notice to the otherwise senior interest mortgagee, and if an opportunity is not provided to the mortgagee to argue its position, or to pay the assessment amounts in order to avoid the risk of losing, in this case, an \$885,000.00 first security interest in the subject property. While the Court acknowledges Plaintiff's argument that NRS 116.311635(1)(b)(2) does not absolutely require notice to the holder of a recorded security interest, failure to provide notice is a deprivation of due process.

COURT ORDERS for good cause appearing and for the reasons stated above, Plaintiff's Motion for Preliminary Injunction is DENIED and hereby DISSOLVED; Defendant's Countermotion to Dismiss is GRANTED; Defendant to prepare the appropriate Order which shall include Findings of Fact and Conclusions of Law, and which shall REQUIRE the conduct of a Judicial Foreclosure. COURT FURTHER ORDERS the hearing set for CHAMBERS CALENDAR on March 15, 2013 is VACATED; the parties are invited to seek a stay pending appeal if they so wish.

CLERK'S NOTE: A copy of this minute order was faxed to: Kim Howard, Esq. (485-3301), Robin P. Wright, Esq. (949-477-9200), Gary S. Melton, Esq. (442-0779) and Jory Garabedian, Esq. (942-0411).

**EXHIBIT Z**

**EXHIBIT Z**

**EXHIBIT Z**

45  
Start

9 4 0 4 2 9 0 0 7 1 7

292

GREEN VALLEY RANCH

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, RESERVATIONS AND EASEMENTS

TABLE OF CONTENTS

PREAMBLE . . . . .	1
ARTICLE 1 . . . . . DEFINITIONS	3
ARTICLE 2 . . . . . PROPERTY. DEVELOPMENT, OPERATION AND EFFECT	11
ARTICLE 3 . . . . . PROPERTY: USE RESTRICTIONS AND LIMITATIONS	13
ARTICLE 4 . . . . . ASSOCIATION PROPERTY: PERMITTED USES AND RESTRICTIONS	21
ARTICLE 5 . . . . . THE ASSOCIATION: FORMATION AND MEMBERSHIP	25
ARTICLE 6 . . . . . THE ASSOCIATION. FUNCTIONS	26
ARTICLE 7 . . . . . THE ASSOCIATION: VOTING RIGHTS AND LIMITATIONS	29
ARTICLE 8 . . . . . THE ASSOCIATION: SUBASSOCIATION DISTRICTS AND DELEGATES	31
ARTICLE 9 . . . . . THE ASSOCIATION: ASSESSMENTS AND LIENS	34
ARTICLE 10 . . . . . THE ASSOCIATION: USE OF FUNDS	44

9 4 0 4 2 9 0 0 7 1 7

attorney shall, after the expiration of such sixty (60) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Default must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Owner or such Owner's successor-in-interest at his address if known, and otherwise to the address of the Lot, Parcel, Development Tract or Other Area

9.11 Curing of Default Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Association shall Record an appropriate Release of Lien, upon payment by the defaulting Member of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) members of the Board or the Manager, stating the indebtedness secured by the lien upon any Lot, Parcel, Development Tract or Other Area created hereunder, shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Member upon request at a reasonable fee to be determined by the Board.

9.12 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided

9.13 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article, nor any breach of this Declaration, nor the enforcement of any provision hereof, or of any Supplemental Declaration hereto, shall defeat or render invalid the rights of the Beneficiary or Mortgagee made in good faith and for value; provided (i) such Deed of Trust or Mortgage is Recorded prior to any notice of lien or notice of 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 and the payment of all installments of assessments, accruing subsequent to the date such Beneficiary, Mortgagee or other Person so obtains title

9.14 Priority of Lien. The lien of any of the assessments, including default interest, costs, expenses and attorneys' fees as provided for herein, shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot, Parcel, Development Tract or Area shall not affect the assessment lien nor render it invalid or void. However, the sale or transfer

**Case No. 63614**

**In the Supreme Court of Nevada**

Electronically Filed  
Jan 03 2014 08:56 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 I**

---

HOWARD C. KIM, ESQ.  
Nevada Bar No. 10386  
Email: howard@hkimlaw.com

JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@hkimlaw.com

DIANA S. CLINE, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@hkimlaw.com

A. ROMAN PACHECO, ESQ.  
Nevada Bar No. 9886  
E-mail: roman@hkimlaw.com

HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for Appellant*  
*SFR Investments Pool 1, LLC*



**ALPHABETICAL INDEX**

<b>Vol.</b>	<b>Tab</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Number</b>
2	14	4/29/2013	Affidavit of Service [Lucia Parks]	JA226 – JA227
1	6	4/1/2013	Affidavit of Service [U.S. Bank, N.A.]	JA035
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
2	17	5/2/2013	Certificate of Mailing [Defendant, U.S. Bank, N.A.'s, Motion to Expunge Lis Pendens and Motion to Dismiss]	JA255 – JA256
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
1	1	3/22/2013	Complaint for Quiet Title and Injunctive Relief	JA001 – JA011
3	26	5/17/2013	Court Minutes	JA501 – JA502
2	15	4/30/2013	Defendant, U.S. Bank, N.A.’s, Motion to Dismiss with Prejudice the Plaintiff’s Complaint	JA228 – JA247
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
2	19	5/9/2013	Exhibits in Support of Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction	JA263 – JA374

5	38	6/26/2013	Motion to Alter or Amend Judgment	JA811 – JA874
5	40	7/12/2013	Notice of Appeal	JA877 – JA878
5	35	6/11/2013	Notice of Entry of Order [Denying Plaintiff's Motion for Preliminary Injunction]	JA795 – JA801
5	37	6/12/2013	Notice of Entry of Order [for Dismissal and Cancellation of Notice of Pendency of Action]	JA805 – JA810
6	48	9/25/2013	Notice of Entry of Order [Granting in Part and Denying in Part Plaintiff's Motion to Alter or Amend Judgment]	JA1019 – JA1023
2	18	5/3/2013	Notice of Entry of Order [Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction]	JA257 – JA262
6	45	7/24/2013	Notice of Errata	JA1010 – JA1011
2	22	5/14/2013	Notice of Joinder in Defendant U.S Bank, N.A.'s Motion to Expunge Lis Pendens	JA381 – JA384
2	21	5/14/2013	Notice of Joinder in Defendant, U.S. Bank N.A.'s Motion to Dismiss with Prejudice the Plaintiff's Complaint	JA378 – JA380
2	20	5/14/2013	Notice of Joinder in Plaintiff's Motion for Preliminary Injunction	JA375 – JA377
1	2	3/22/2013	Notice of Lis Pendens	JA012 – JA013
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
1	10	4/17/2013	Notice of Remand	JA047 – JA053

3	25	5/15/2013	Opposition to Motion to Expunge Lis Pendens	JA495 – JA500
4	28	5/24/2013	Opposition to U.S. Bank, N.A.’s Motion to Dismiss	JA507 – JA656
5	34	6/10/2013	Order Denying Plaintiff’s Motion for Preliminary Injunction	JA791 – JA794
5	36	6/11/2013	Order for Dismissal and Cancellation of Notice of Pendency of Action	JA802 – JA804
6	47	9/25/2013	Order Granting in Part and Denying in Part Plaintiff’s Motion to Alter or Amend Judgment	JA1017 – JA1018
6	51	8/5/2013	Recorder’s Transcript of Proceedings [Motion to Alter or Amend Judgment heard on July 30, 2013]	JA1055 – JA1059
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
3	23	5/14/2013	Reply in Support of Motion for Preliminary Injunction	JA385 – JA492
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
5	32	5/31/2013	Supplement to Opposition to Motion to Dismiss	JA759 – JA789

6	46	7/29/2013	Supplement to Response and Opposition to Plaintiff's Motion to Alter or Amend Judgment; and Joinder in Defendant US Bank's Opposition	JA1012 – JA1016
1	4	3/28/2013	Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction	JA029 – JA031
6	49	5/29/2013	Transcript of Proceedings [Motions heard on May 16, 2013]	JA1024 – JA1045

## CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	3/22/2013	Complaint for Quiet Title and Injunctive Relief	JA001 – JA011
	2	3/22/2013	Notice of Lis Pendens	JA012 – JA013
	3	3/27/2013	Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction	JA014 – JA028
	4	3/28/2013	Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction	JA029 – JA031
	5	3/28/2013	Notice of Posting and Acceptance of Bond	JA032 – JA034
	6	4/1/2013	Affidavit of Service [U.S. Bank, N.A.]	JA035
	7	4/1/2013	Affidavit of Service [U.S. Bank, N.A.]	JA036
	8	4/3/2013	Affidavit of Service [U.S. Bank, N.A.]	JA037
	9	4/10/2013	Notice of Petition for Removal	JA038 – JA046
	10	4/17/2013	Notice of Remand	JA047 – JA053
	11	4/19/2013	Answer to Complaint for Quiet Title and Injunctive Relief	JA054 – JA062
	12	4/25/2013	Defendant, U.S. Bank, N.A.’s, Response to the Plaintiff’s Motion for Preliminary Injunction	JA063 – JA087

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
2	14	4/29/2013	Affidavit of Service [Lucia Parks]	JA226 – JA227
	15	4/30/2013	Defendant, U.S. Bank, N.A.'s, Motion to Dismiss with Prejudice the Plaintiff's Complaint	JA228 – JA247
	16	4/30/2013	Defendant, U.S. Bank, N.A.'s, Motion to Expunge Lis Pendens	JA248 – JA254
	17	5/2/2013	Certificate of Mailing [Defendant, U.S. Bank, N.A.'s, Motion to Expunge Lis Pendens and Motion to Dismiss]	JA255 – JA256
	18	5/3/2013	Notice of Entry of Order [Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction]	JA257 – JA262
	19	5/9/2013	Exhibits in Support of Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction	JA263 – JA374
	20	5/14/2013	Notice of Joinder in Plaintiff's Motion for Preliminary Injunction	JA375 – JA377
	21	5/14/2013	Notice of Joinder in Defendant, U.S. Bank N.A.'s Motion to Dismiss with Prejudice the Plaintiff's Complaint	JA378 – JA380
	22	5/14/2013	Notice of Joinder in Defendant U.S Bank, N.A.'s Motion to Expunge Lis Pendens	JA381 – JA384
3	23	5/14/2013	Reply in Support of Motion for Preliminary Injunction	JA385 – JA492

3	24	5/14/2013	Certificate of Service [Reply in Support of Motion for Preliminary Injunction]	JA493 – JA494
	25	5/15/2013	Opposition to Motion to Expunge Lis Pendens	JA495 – JA500
	26	5/17/2013	Court Minutes	JA501 – JA502
	27	5/23/2013	Reply in Support of Defendant, U.S. Bank, N.A.’s, Motion to Expunge Lis Pendens	JA503 – JA506
4	28	5/24/2013	Opposition to U.S. Bank, N.A.’s Motion to Dismiss	JA507 – JA656
	29	5/28/2013	Certificate of Service [Opposition to U.S. Bank, N.A.’s Motion to Dismiss]	JA657
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
	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
	32	5/31/2013	Supplement to Opposition to Motion to Dismiss	JA759 – JA789
	33	5/31/2013	Certificate of Service [Supplement to Opposition to Motion to Dismiss]	JA790
	34	6/10/2013	Order Denying Plaintiff’s Motion for Preliminary Injunction	JA791 – JA794
	35	6/11/2013	Notice of Entry of Order [Denying Plaintiff’s Motion for Preliminary Injunction]	JA795 – JA801



5	36	6/11/2013	Order for Dismissal and Cancellation of Notice of Pendency of Action	JA802 – JA804
	37	6/12/2013	Notice of Entry of Order [for Dismissal and Cancellation of Notice of Pendency of Action]	JA805 – JA810
	38	6/26/2013	Motion to Alter or Amend Judgment	JA811 – JA874
	39	6/27/2013	Certificate of Service [Motion to Alter or Amend Judgment]	JA875 – JA876
	40	7/12/2013	Notice of Appeal	JA877 – JA878
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
	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
	43	7/23/2013	Reply in Support of Motion to Alter or Amend Judgment	JA901 – JA1007
	44	7/24/2013	Certificate of Service [Reply in Support of Motion to Alter or Amend Judgment and Notice of Errata]	JA1008 – JA1009
	45	7/24/2013	Notice of Errata	JA1010 – JA1011
	46	7/29/2013	Supplement to Response and Opposition to Plaintiff’s Motion to Alter or Amend Judgment; and Joinder in Defendant US Bank’s Opposition	JA1012 – JA1016
	47	9/25/2013	Order Granting in Part and Denying in Part Plaintiff’s Motion to Alter or Amend Judgment	JA1017 – JA1018

6	48	9/25/2013	Notice of Entry of Order [Granting in Part and Denying in Part Plaintiff's Motion to Alter or Amend Judgment]	JA1019 – JA1023
	49	5/29/2013	Transcript of Proceedings [Motions heard on May 16, 2013]	JA1024 – JA1045
	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
	51	8/5/2013	Recorder's Transcript of Proceedings [Motion to Alter or Amend Judgment heard on July 30, 2013]	JA1055 – JA1059

# **TAB 1**

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

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

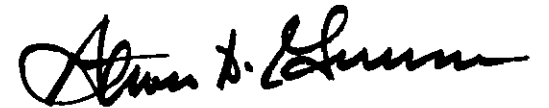
<input type="checkbox"/> NRS Chapters 78-88	<input type="checkbox"/> Investments (NRS 104 Art. 8)	<input type="checkbox"/> Enhanced Case Mgmt/Business
<input type="checkbox"/> Commodities (NRS 90)	<input type="checkbox"/> Deceptive Trade Practices (NRS 598)	<input type="checkbox"/> Other Business Court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

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

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

*Attorneys for Plaintiff*

**IAFD**

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,

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:

///

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

\$270.00

**\$270.00**

**HOWARD KIM & ASSOCIATES**

Fax: (702) 485-3301

*Attorneys for Plaintiff*

# **TAB 2**

  
CLERK OF THE COURT

APN #: 178-19-712-012

LISP

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,

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.

**NOTICE OF LIS PENDENS**

PLEASE TAKE NOTICE that the above-entitled action stating a real property claim as described in this notice, was commenced on March 22, 2013, in the above-named Court, located at 200 Lewis Avenue, Las Vegas, Nevada, 89101, by SFR INVESTMENTS POOL1, LLC against 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

**HOWARD KIM & ASSOCIATES**

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

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



Certificates, Series 2006-AR4; LUCIA PARKS; DOES I-X, ROE CORPORATIONS I-X, and any and all persons unknown, claiming any right, title, estate, lien or interest in the real property described in the Complaint, adverse to Plaintiff's ownership or any cloud upon Plaintiff's title thereto.

The action is now pending in the above-named Court.

This action effects title to specific real property and the right to possession of specific real property situated in Clark County, Nevada, commonly known as 2270 Nashville Avenue, Henderson, NV 89052 legally described as follows:

**Lot 5, Block 5, of Green Valley Ranch Phase 3, Parcel 40, 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 more particularly described as Clark County Assessor Parcel Number **178-19-712-012**.

DATED March 22<sup>nd</sup>, 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

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

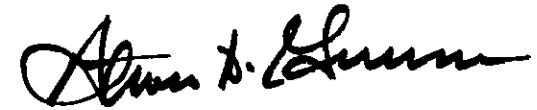
*Attorneys for Plaintiff*

# **TAB 3**

**MTRO**

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*

Electronically Filed  
03/27/2013 08:40:37 AM



CLERK OF THE COURT

**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

**APPLICATION FOR TEMPORARY  
RESTRAINING ORDER ON ORDER  
SHORTENING TIME AND MOTION FOR  
PRELIMINARY INJUNCTION**

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its counsel,  
hereby moves this Court for the issuance of a temporary restraining order ("TRO") on order  
shortening time and for a Preliminary Injunction against 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"), its successors, assigns and agents:<sup>1</sup>

To enjoin Defendant U.S. Bank, its successors, assigns and agents from foreclosing on, selling, transferring, or otherwise conveying the real property commonly known as **2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012** (the "Property").

**Plaintiff is title owner of a property that is facing an improperly noticed bank non-judicial foreclosure sale based on a deed of trust that was previously extinguished by the foreclosure of a superior lien.<sup>2</sup> Plaintiff seeks an emergency TRO to restrain Defendants from selling the Property at a trustee's sale currently scheduled for Monday, April 1, 2013 at 10:00 a.m.**

Plaintiff seeks to prevent the irreparable harm that will occur if the non-judicial foreclosure sale is allowed to go forward on April 1, 2013 and asks this Court to maintain the status quo by entering a temporary restraining order. Plaintiff requests that this Court require a *de minimis* bond of \$100 because the value of the Property will not be diminished and Defendant will not be harmed by postponing a non-judicial foreclosure sale that has been pending for over three years for a few more weeks while the parties fully brief their positions on the issuance of a preliminary injunction.

This application is made pursuant to NRCP 65(a) and (b), EDCR 2.10, and is further

<sup>1</sup> Plaintiff also names Lucia Parks as Defendant in its Complaint, but does not seek a temporary restraining order against her with this Application, as she does not appear to be attempting to sell or otherwise transfer the Property at this time.

<sup>2</sup> Plaintiff purchased the Property at an auction based on an HOA super-priority lien. See HOA Foreclosure Deed, attached as **Exhibit 1**. The HOA foreclosure sale extinguished the deed of trust that Defendant is attempting to foreclose on next week. See NRS 116.3116(2); *The Super Priority Lien*, NV Real Estate Div. Advisory Op. 13-01, pp. 8-9 (Dec. 12, 2012) ("An association can foreclose its super priority lien[,] and the first security interest holder will either pay the super priority lien or lose its security") (attached as **Exhibit 2**); *Wingbrook Capital, LLC v. Peppertree Homeowners Assoc.*, Case No A-11-636948-B, June 2, 2011 Order (Dist. Ct. Clark County, NV. June 2, 2011), at p. 3, ¶¶ 2-3 ("Homeowners' associations . . . have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit.") (attached as **Exhibit 3**); *In re Gonzalez*, Case No. BK-S-11-12044-lbr, Dkt. No. 44, unpublished order, at p. 4, ¶¶ 9-14 (Bankr. D. Nev. Dec. 13, 2012) ("Pursuant to NRS 116.3116(2), any security interest in the Property held by [a bank with a first security interest] is junior to the HOA's super-priority lien.") (attached as **Exhibit 4**); *Centeno v. MERS*, Case No. A-12-660999-C, September 12, 2012 Order, at p. 4 (Dist. Ct. Clark County, NV. September 12, 2012), ("The plain language of the statute supports [Plaintiff's] argument that [it] owns [the property] free and clear of the bank's lien." (attached as **Exhibit 5**).

based on the Complaint on file herein, the Declaration of Diana S. Cline, Esq., the following points and authorities, and such evidence and oral argument as may be presented at the time of the hearing on this matter.

DATED March 25, 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  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Phone: (702) 485-3300  
Fax: (702) 485-330  
*Attorneys for Plaintiff*

**ORDER SHORTENING TIME**

This matter came before the Court on Plaintiff's Application for Temporary Restraining Order on an Order Shortening Time. ~~The Court, having read and considered Plaintiff's Application for Temporary Restraining Order on an Order Shortening Time 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 April 1, 2013, justifying the shortening of time.~~

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

IT IS HEREBY ORDERED THAT Plaintiff's Motion for an Order Shortening Time is granted.

THE COURT HEREBY sets the hearing for Plaintiff's <sup>Application for TRO and</sup> motion for a preliminary injunction on the 28th day of March, 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,

///

Plaintiff shall immediately serve a copy of the Application for Temporary Restraining Order and Motion for Preliminary Injunction on Defendant.

Dated this 26<sup>th</sup> day of March, 2013.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

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

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

*Attorneys for Plaintiff*

**NOTICE OF HEARING ON SHORTENED TIME**

PLEASE TAKE NOTICE that on the 28th day of March, 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, the undersigned will bring Plaintiff's Application for Temporary Restraining Order on

///

///

///

///

///

///

///

///

shortened time before this Court for hearing.

DATED March 25<sup>th</sup>, 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  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Phone: (702) 485-3300  
Fax: (702) 485-3301  
*Attorneys for Plaintiff*

**DECLARATION OF COUNSEL IN SUPPORT OF**  
**ORDER SHORTENING TIME**

I, DIANA S. CLINE, declare as follows:

1. I have personal knowledge of the facts set forth below, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

2. I make this declaration in support of Plaintiff's Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction.

3. I am counsel for Plaintiff SFR Investments Pool 1, LLC in this action.

4. The TRO is sought to prevent the foreclosure and sale of the real property commonly known as **2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012** (the "Property").

5. Upon information and belief, the Property is currently scheduled to be sold at a public auction on April 1, 2013 at 10:00 a.m.

6. Plaintiff is legal title holder of the Property. 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").

1           7.       The resulting HOA foreclosure deed was recorded on March 6, 2013, in the  
2 Official Records of the Clark County Recorder as Instrument Number 201303060001614 ("HOA  
3 Foreclosure Deed").

4           8.       According to the Clark County Recorder's records, before the HOA foreclosure  
5 sale, the Property was subject to a 2006 deed of trust securing a loan originated by Wells Fargo  
6 Bank, N.A.. The deed of trust was recorded in the Official Records of the Clark County  
7 Recorder as Instrument No. 200601050004275 ("First Deed of Trust"). It appears from the  
8 public records that the beneficial interest in the First Deed of Trust was transferred to U.S. Bank  
9 through one of two assignments recorded in July of 2010 or June of 2012 in the Official Records  
10 of the Clark County Recorder as Instrument Nos. 201007120002705 and 201206070002928.

11           9.       Before the recorded assignment of the deed of trust to U.S. Bank and before it  
12 was substituted as trustee, National Default Servicing Corporation ("NDSC") recorded a Notice  
13 of Default and Election to Sell against the Property on or about February 24, 2010 for amounts  
14 due and owing beginning on November 1, 2009.

15           10.      After recording but not following through on two Notices of Trustee's Sale in  
16 2010 and 2011, on or about March 11, 2013, NDSC, recorded another Notice of Trustee's Sale in  
17 the Official Records of the Clark County Recorder as Instrument Number 201303110003086  
18 stating that the Property would be sold at a public auction pursuant to the terms of the First Deed  
19 of Trust on March 26, 2013 at 10:00 a.m.

20           11.      Upon information and belief, U.S. Bank failed to comply with all of the notice  
21 requirements of NRS 107.080 including mailing a copy of the Notice of Trustee's Sale to  
22 Plaintiff.

23           12.      If Plaintiff's Application for TRO is not heard on order shortening time, the  
24 upcoming sale will irreparably harm Plaintiff, divesting it of the unique Property, clouding title  
25 to the Property and by increasing costs through the addition of a third-party purchaser before the  
26 matter could be heard in the ordinary course.

27           13.      If this order shortening time is granted, Plaintiff will serve and notice the hearing  
28 for its application for temporary restraining order immediately.



I make this declaration under penalty of perjury under the laws of the State of Nevada this 25th day of March, 2013.

/s/ Diana S. Cline  
DIANA S. CLINE, ESQ.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff is title owner of a property that is facing an improperly noticed bank foreclosure sale based on a deed of trust that was previously extinguished by the foreclosure of a superior lien. **A homeowners association's super-priority lien has priority over a first security interest on a property if it is not paid; a foreclosure sale extinguishes the first security interest.** See NRS 116.3116(2); *The Super Priority Lien*, NV Real Estate Div. Advisory Op. 13-01, pp. 8-9 (Dec. 12, 2012) (“An association can foreclose its super priority lien[,] and the first security interest holder will either pay the super priority lien or lose its security”); see also *Wingbrook Capital, LLC v. Peppertree Homeowners Assoc.*, Case No A-11-636948-B, June 2, 2011 Order (Dist. Ct. Clark County, NV. June 2, 2011), at p. 3, ¶¶ 2-3 (“Homeowners’ associations . . . have a Super Priority Lien which has priority over the First Security Interest on a homeowners’ unit.”); *In re Gonzalez*, Case No. BK-S-11-12044-lbr, Dkt. No. 44, unpublished order, at p. 4, ¶¶ 9-14 (Bankr. D. Nev. Dec. 13, 2012) (“Pursuant to NRS 116.3116(2), any security interest in the Property held by [a bank with a first security interest] is junior to the HOA’s super-priority lien.”); and *Centeno v. MERS*, Case No. A-12-660999-C, September 12, 2012 Order, at p. 4 (Dist. Ct. Clark County, NV. September 12, 2012), (“The plain language of the statute supports [Plaintiff’s] argument that [it] owns [the property] free and clear of the bank’s lien.”).

Plaintiff purchased its property at an HOA foreclosure sale after Defendant U.S. Bank failed to cure the super-priority portion of an HOA lien. Defendant U.S. Bank is attempting to foreclose on a deed of trust that was extinguished through the HOA foreclosure sale. Defendant

1 U.S. Bank should be restrained from conducting a foreclosure sale which will further cloud title  
2 to Plaintiff's property and complicate Plaintiff's ability to clear title by adding a third-party  
3 purchaser to the mix. Plaintiff is entitled to injunctive relief, because, as set forth in more detail  
4 below, Plaintiff has demonstrated the requirements of likelihood of success on the merits and a  
5 showing of irreparable injury if the sale is allowed to proceed.

## 6 II. SUMMARY OF FACTS

7 SFR acquired the real property commonly known as 2270 Nashville Avenue, Henderson,  
8 Nevada 89052, Parcel No. 178-19-712-012 (the "Property") on March 1, 2013 by successfully  
9 bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116,  
10 *et. seq.* ("HOA foreclosure sale"). The HOA foreclosure deed was recorded on March 6, 2013.  
11 *See* HOA Foreclosure Deed, **Ex. 1**. As recited in the HOA Foreclosure Deed, the HOA  
12 foreclosure sale complied with all requirements of law, including but not limited to, the elapsing  
13 of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of  
14 Default, and the recording, posting and publication of the Notice of Sale. **Defendant had notice**  
15 **of the HOA foreclosure sale but failed to act to preserve its rights.**

16 Parks obtained title to the Property in January of 2006. Shortly thereafter, Wells Fargo  
17 recorded a deed of trust against the Property. *See* First Deed of Trust, attached as **Exhibit 6**.  
18 The beneficial interest in the First Deed of Trust appears to have been transferred to U.S. Bank  
19 through one of two assignments recorded in July of 2010 or June of 2012. *See* 2010 and 2012  
20 Assignments, attached as **Exhibits 7 and 8**. Before the recorded assignment of the deed of trust  
21 to U.S. Bank and before it was substituted as trustee, National Default Servicing Corporation  
22 ("NDSC") recorded a Notice of Default and Election to Sell against the Property on or about  
23 February 24, 2010 for amounts due as of November 1, 2009. *See* Notice of Default, attached as  
24 **Exhibit 9**.

25 After recording but not following through on two Notices of Trustee's Sale in 2010 and  
26 2011, on or about March 11, 2013, NDSC, recorded another Notice of Trustee's Sale stating that  
27 the Property would be sold at a public auction pursuant to the terms of the First Deed of Trust on  
28 March 26, 2013 at 10:00 a.m. *See* Notices of Sale, attached as **Exhibits 10, 11, and 12**. Upon

information and belief, U.S. Bank failed to comply with all of the notice requirements of NRS 107.080 including mailing a copy of the Notice of Trustee's Sale to Plaintiff.

On March 22, 2013, Plaintiff initiated the above-captioned action by filing a Complaint seeking to quiet title in its favor, a declaration that Defendants have no right, title or interest in the Property, and a preliminary and a permanent injunction preventing Defendant U.S. Bank from continuing foreclosure proceedings on the Property. See Complaint, attached as **Exhibit 13**.

## II. LEGAL ARGUMENT

### A. Legal Standards

#### 1. *Temporary Restraining Order Standard*

A Temporary Restraining Order provides emergency relief for 15 days to preserve the status quo. See *Sefton v. Am. Broker Conduit*, 2010 WL 2595290, 1 (D. Nev. 2010). In order to obtain a temporary restraining order, Plaintiff must establish that: (1) Plaintiff is likely to succeed on the merits, (2) Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest. *Id.*

#### 2. *Preliminary Injunction Standard*

In *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978), the Nevada Supreme Court held that a preliminary injunction is to preserve the status quo:

A preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy.

In determining whether to issue a preliminary injunction, this Court should consider the following factors: (1) the applicant's likelihood of success on the merits; (2) the threat of irreparable harm to the applicant if the injunction is not granted. *Pickett v. Comanche Const., Inc.*, 108 Nev. 422, 426 (1992).

NRS 33.010 additionally provides that injunctive relief may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining commission or continuance of the act complained of, either for a limited period or perpetually.
2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiffs rights respecting the subject of the action, and tending to render the judgment ineffectual.

Applying the foregoing factors, Plaintiff is entitled to injunctive relief against Defendant in the form requested.

**B. Plaintiff Enjoys a Substantial Likelihood of Success on the Merits**

Plaintiff's request for injunctive relief should be granted because it has a reasonable probability of success on the merits based on the plain language of NRS 116.3116 and the authority interpreting that statute. A reasonable probability of success, not an overwhelming likelihood, is all the movant need show for preliminary injunctive relief. *See Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1429 (9th Cir. 1995) ("[F]air chance of success on the merits," not certainty or even probability, is sufficient for preliminary injunction purposes.)

Here, Plaintiff has initiated an action to quiet title and to determine that any liens against the Property are junior to the super-priority portion of the HOA Lien were extinguished by the HOA foreclosure. Plaintiff enjoys a substantial likelihood of success on the merits in quieting title in its favor. In the meantime, Defendant U.S. Bank seeks to foreclose and sell a property based on a deed of trust that was extinguished by the HOA foreclosure sale.

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

As asserted in the Complaint, the HOA had a valid lien against the Property for unpaid assessments. Pursuant to NRS 116.3116(2) the entire HOA Lien is prior to all other liens and encumbrances of 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.

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

**[the HOA 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[.]

See NRS 116.3116(2).

In August of 2012, the Nevada Supreme Court recognized that the Nevada Real Estate Division of the Department of Business and Industry is responsible for interpreting NRS 116 and issuing advisory opinions relating to the extent and priority of the HOA super-priority lien. *See State, Bus. & Indus. v. Nev. Ass'n Servs.*, 128 Nev. Adv. Op. 34, 2012 WL 3127275 at 4 (Nev. Aug. 2, 2012)("We therefore determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116.")

The Nevada Supreme Court also acknowledged that courts generally give "great deference" to an agency's interpretation of a statute that the agency is charged with enforcing. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293 (2000); *see also Dutchess Business Services v. Nev. State Bd. Of Pharmacy*, 124 Nev. 701, 709 (2008) (stating that it "defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.").

In a December 12, 2012 advisory opinion, the Real Estate Division explained the extent of the statutorily-defined super-priority lien, along with the ramifications if a holder of a first security interest failed to cure it prior to an HOA foreclosure sale:

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.**

*See The Super Priority Lien*, NV Real Estate Div. Advisory Op. 13-01, pp. 8-9 (Dec. 12, 2012)(emphasis added)(attached as Ex. 2).

The Real Estate Division's interpretation is consistent with opinions issued by the Honorable Judge Elizabeth Gonzales of the Eighth Judicial District of Nevada, the Honorable Judge Linda Riegle of the United States Bankruptcy Court for the District of Nevada and the Honorable Judge Susan Scann of the Eighth Judicial District of Nevada. *See Wingbrook Capital, LLC v. Peppertree Homeowners Assoc.*, Case No A-11-636948-B, June 2, 2011 Order (Dist. Ct. Clark County, NV. June 2, 2011), at p. 3, ¶¶ 2-3 ("**Homeowners' associations . . . have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit.**"); *In re Gonzalez*, Case No. BK-S-11-12044-lbr, Dkt. No. 44, unpublished order, at p. 4, ¶¶ 9-14 (Bankr. D. Nev. Dec. 13, 2012) ("**Pursuant to NRS 116.3116(2), any security interest in the Property held by [a bank with a first security interest] is junior to the HOA's super-priority lien.**"); and *Centeno v. MERS*, Case No. A-12-660999-C, September 12, 2012 Order, at p. 4 (Dist. Ct. Clark County, NV. September 12, 2012), ("**The plain language of the statute supports [Plaintiff's] argument that [it] owns [the property] free and clear of the bank's lien.**"). .

Further, pursuant to NRS 116.31166, the HOA foreclosure sale vested title in Plaintiff "**without equity or right of redemption,**" and the HOA Foreclosure Deed is conclusive against the Property's "**former owner, his or her heirs and assigns, and all other persons.**"

Here, the super-priority portion of the HOA Lien had priority over the First Deed of

Trust. When the HOA foreclosed on the super-priority portion of its lien, the First Deed of Trust was extinguished. 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. Thus, as the First Deed of Trust is junior to the super-priority portion of the HOA Lien, it was extinguished by the HOA's foreclosure sale. With the stripping of the deed of trust, Defendant U.S. Bank lost any rights it may have had to foreclose on or otherwise sell, convey, or transfer title to the Property.

Based on the plain language of NRS 116.3116, *et. seq.*, Plaintiff is likely to succeed on the merits.

**C. Immediate and Irreparable Harm Will Occur Without the Issuance of a TRO**

Where there is a strong probability of success on the merits, like here, the movant need only demonstrate that it will suffer a degree of hardship that outweighs the hardship of the defendant. *See Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir. 1993).

Here, Defendant will suffer little, if any, harm by being restrained from holding the sale as scheduled. Specifically, the value of the Property will not be diminished in any way under the Plaintiff's care under the proposed injunction. Plaintiff is only asking that the Court restrain the Defendant from conducting the sale until such time as the Court can fully hear the matter at hearing on a motion for preliminary injunction. U.S. Bank, if it is entitled to enforce the note and foreclose on the Property, is in no danger of not being able to move forward as complete its actions after the hearing, if it prevails.

On the other hand, Plaintiff is at risk of immediate and irreparable harm. **Plaintiff's ability to use the Property for its enjoyment or to otherwise use or sell the Property for profit will be immediate and irreparable.** Any sale with further cloud title to the Property and will potentially add another third-party purchaser into the fray. Plaintiff's business will be harmed. The Nevada Supreme Court acknowledges this irreparable harm in *Sobol v. Capital Management Consultants*, 102 Nev. 444, 726 P.2d 335, 337 (1986).

Without expressing an opinion on the merits of Sobol's complaint below, we conclude that Sobol has established a reasonable

likelihood of prevailing on the merits. Furthermore, acts committed without just cause **which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize and injunction.** *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).

(Emphasis added).

Moreover, if Defendant is permitted to sell the Property, there will be nothing left for Plaintiff to argue in its impending motion for a preliminary injunction or to determine in its quiet title action. Once the Property is sold, Plaintiff will have lost the unique business asset—the Property itself.

Because Plaintiff will suffer immediate and substantial harm, as opposed to the Defendant who will merely be restrained from conducting a sale on a certain date, on a property in which it has no remaining interest, the Court should grant Plaintiff's application for a TRO and motion for preliminary injunction.

**D. A De Minimis Bond is Sufficient**

The expressed purpose of posting a security bond is to protect a party from damages incurred as a result of a wrongful injunction, not from damages existing before the injunction was issued. *See* NRCP 65; *Glens Falls Ins. v. First Nat'l Bank*, 83 Nev. 196, 427 P.2d 1 (1967).

In this case, given the likelihood of success on the merits and the lack of “harm” that will be sustained by Defendant U.S. Bank if the TRO or preliminary injunction is improperly issued, Plaintiff requests that it only be required to post a *de minimis* bond.

**E. The Balance of Hardships Weighs in Favor of Plaintiff**

In addition to a likelihood of success on the merits and an irreparable injury, the balance of hardships weighs in favor of Plaintiff. The threatened injury to Plaintiff in denying the TRO outweighs any ostensible harm threatening Defendant U.S. Bank. Failure to issue an injunction will result in Plaintiff losing title to the Property, a unique asset which cannot be replaced.

**III. CONCLUSION**

Plaintiff needs immediate assistance from this Court to avoid irreparable damage. For the reasons set forth herein, Plaintiff requests that the Court:



**HOWARD KIM & ASSOCIATES**

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

1. Enter a TRO restraining and enjoining Defendant from foreclosing on and selling the Property at the trustee's sale currently scheduled April 1, 2013 at 10:00 a.m.;

2. Enter a TRO restraining and enjoining Defendant from foreclosing on or otherwise selling, transferring, or conveying the Property until this Court can hear the motion for preliminary injunction;

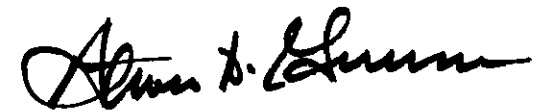
3. Grant a preliminary injunction enjoining Defendant from foreclosing on and otherwise selling, transferring, conveying, or otherwise encumbering the Property during the pendency of the above-captioned action.

DATED March 25<sup>th</sup>, 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  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Phone: (702) 485-3300  
Fax: (702) 485-330  
*Attorneys for Plaintiff*

# **TAB 4**



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.<sup>00</sup>

**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 11<sup>th</sup> 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 9<sup>th</sup> 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

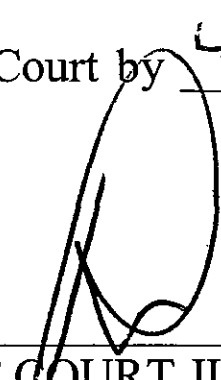
HENDERSON, NEVADA 89014

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

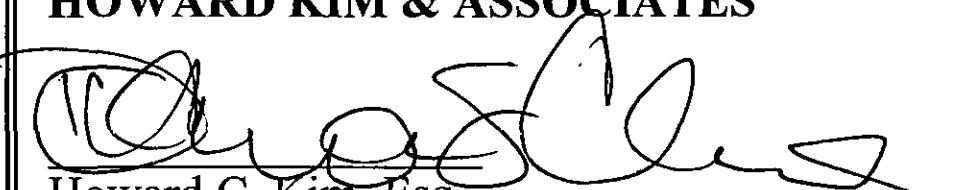
Dated this 2<sup>nd</sup> day of March, 2013.

  
DISTRICT COURT JUDGE

(4)

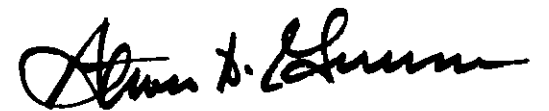
*Respectfully submitted by:*

**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 5**



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  
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**

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 POSTING AND  
ACCEPTANCE OF BOND**

**TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD**

Plaintiff SFR INVESTMENTS POOL 1, LLC, by and through its attorney of record,  
Diana C. Cline, Esq., of Howard Kim & Associates, hereby lodges with this Court a Notice of  
Posting Cash in Lieu of Bond in the amount of Five Hundred Dollars (\$500.00) with the Clerk of  
the Court pursuant to Nevada Rule Civil Procedure 65(c) and Rule 67, as security

///

///

for the Temporary Restraining Order issued by the above-entitled Court and dated March 28,  
2013.

DATED March 28<sup>th</sup> 2013.

**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

**HOWARD KIM & ASSOCIATES**

/s/ Diana C. 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

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

*Attorneys for Plaintiff*



# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
SFR Investments Pool 1, LLC

Receipt No.  
**2013-37794-CCCLK**

Transaction Date  
03/28/2013

Description	Amount Paid
On Behalf Of SFR Investments Pool 1, LLC	
A-13-678814-C	
SFR Investments Pool 1, LLC, Plaintiff(s) vs. US Bank, Defendant(s)	
TEMPORARY RESTRAINING ORDER	
TEMPORARY RESTRAINING ORDER	500.00
<b>SUBTOTAL</b>	<b>500.00</b>
<b>PAYMENT TOTAL</b>	<b>500.00</b>
Check (Ref #2008) Tendered	500.00
Total Tendered	500.00
Change	0.00
03/28/2013 01:29 PM	Cashier Station AIKO
	Audit 31201856

## OFFICIAL RECEIPT

JA034

# **TAB 6**

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)

*Alan D. Shuman*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

SFR Investment Pool I, LLC

vs

US Bank, N.A. et al

Plaintiff(s)

Defendant(s)

Case No.: A-13-678814-C

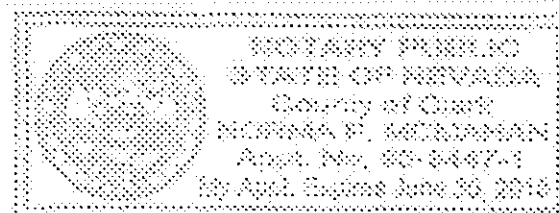
Dept. No.: XVIII

Date: March 28, 2013

Time: 8:15 am

AFFIDAVIT OF SERVICE

I, Brad Nielsen, 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; Notice of Lis Pendens; Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction on the 26th day of March, 2013 and served the same on the 26th day of March, 2013 at 4:40pm by serving the Defendant(s), 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, a Nevada non-profit corporation by personally delivering and leaving a copy at 801 E. Charleston Blvd., Las Vegas, NV 89101 with Vonda Kuster as Branch Manager 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

26th day of March 2013

*Norma P. McMahan*  
Notary Public Norma P. McMahan

*Brad Nielsen*

Affiant Brad Nielsen

# R-065985

Legal Process Service

License # 604

WorkOrderNo 1302492

JA035

Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

# **TAB 7**

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

Case No.: A-13-678814-C

Dept. No.: XVIII

Date: April 11, 2013

Time: 8:15 AM

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)

AFFIDAVIT OF SERVICE

Jack R. Latham, 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 and not a party to or interested in the proceeding in which this affidavit is made.  
The affiant received 1 copy(ies) of the 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 on the 28th day of March, 2013 and served the same  
on the 29th day of March, 2013 at 2pm by serving the Defendant(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 by personally delivering and leaving a copy at US Bank, N.A., 425  
Walnut Street, Cincinnati, OH 45202 with Zachary Bailey as Personal Banker/Authorized Agent an agent  
lawfully designated by statute to accept service of process.



CELINE M. ESTILL  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Clermont County  
My Comm. Exp. 7/11/15

State of Ohio, County of Clermont

SUBSCRIBED AND SWORN to before me on this

29th day of March, 2013

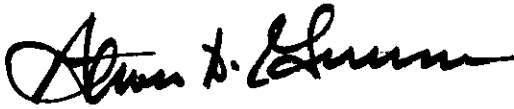
  
Notary Public  
Affiant: Jack R. Latham

WorkOrderNo 1302600

JA036

# **TAB 8**

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

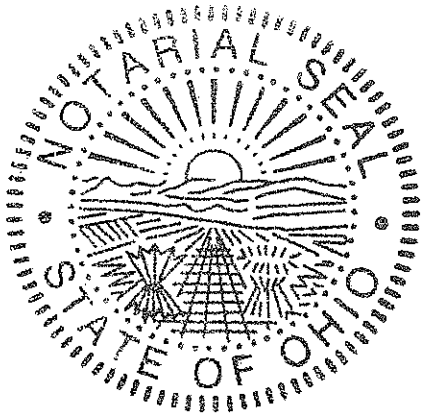
DISTRICT COURT  
CLARK COUNTY NEVADA

Case No.: A-13-678814-C  
Dept. No.: XVIII  
Date: April 3, 2013  
Time: 9:00 am

SFR Investment Pool I, LLC, a Nevada limited liability company  
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, a Nevada non-  
profit corporation and Lucia Parks, an individual, et al.  
Plaintiff(s)  
Defendant(s)

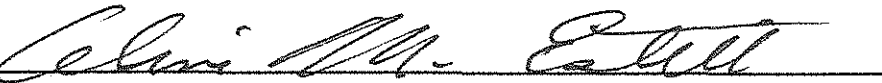
AFFIDAVIT OF SERVICE

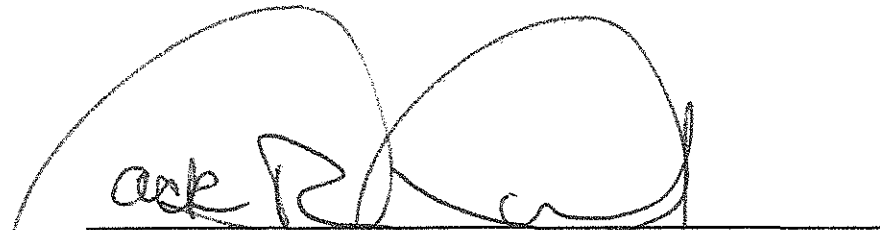
Jack R. Latham, Jr., being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons: Complaint for Quiet Title and Injunctive Relief: Civil Cover Sheet: Notice of Lis Pendens: Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction on the 27th day of March, 2013 and served the same on the 27th day of March, 2013 at 2:36pm by serving the Defendant, 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, a Nevada non-profit corporation by personally delivering and leaving a copy at 425 Walnut Street, Cincinnati, OH 45202 with Tiwanne Washington as Branch Manager an agent lawfully designated by statute to accept service of process.



CELINE M. ESTILL  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Clermont County  
My Comm. Exp. 7/11/15

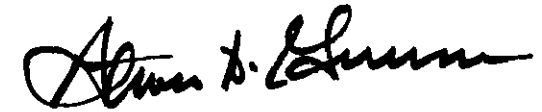
State of Ohio, County of Clermont  
SUBSCRIBED AND SWORN to before me on this  
27th day of March, 2013

  
Notary Public

  
Affiant: Jack R. Latham, Jr.

# **TAB 9**





CLERK OF THE COURT

**NOTC**

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

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

[ccrowton@wrightlegal.net](mailto: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

**NOTICE OF PETITION FOR  
REMOVAL**

**TO: EIGHTH JUDICIAL DISTRICT COURT FOR CLARK COUNTY, NEVADA;**

**TO: HOWARD C. KIM, ESQ. and DIANA S. CLINE, ESQ., COUNSELS FOR**

**PLAINTIFF**

PLEASE TAKE NOTICE that 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, has removed this action to the United States District Court,  
pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

1 A true and correct copy of the Petition for Removal, excluding Exhibits, filed in the  
2 United States District Court for the District Court of Nevada is attached hereto as Exhibit "A."  
3 DATED this 10<sup>th</sup> day of April, 2013.

4 WRIGHT, FINLAY & ZAK, LLP

5   
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 **AFFIRMATION**

16 Pursuant to NRS 239B.030

17 The undersigned does hereby affirm that the preceding **NOTICE OF PETITION FOR**  
18 **REMOVAL** filed in Case No. A-13-678814-C **does not** contain the social security number of  
19 any person.

20 DATED this 10<sup>th</sup> day of April, 2013.

21 WRIGHT, FINLAY & ZAK, LLP

22   
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*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

Chelsea Lawton

An Employee of WRIGHT, FINLAY & ZAK, LLP

**EXHIBIT A**

**EXHIBIT A**

**EXHIBIT A**

1 WRIGHT, FINLAY & ZAK, LLP

2 Chelsea A. Crowton, Esq.

3 Nevada Bar No. 11547

4 5532 South Fort Apache Road, Suite 110

5 Las Vegas, NV 89148

6 (702) 475-7964; Fax: (702) 946-1345

7 ccrowton@wrightlegal.net

8 *Attorney for Defendant,*

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

10 *Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

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

15 Plaintiff,

16 vs.

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

24 Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

**DEFENDANT, U.S. BANK, N.A., AS**  
**TRUSTEE FOR THE CERTIFICATE**  
**HOLDERS OF U.S. BANK ASSET**  
**SECURITIES CORPORATION,**  
**MORTGAGE PASS THROUGH**  
**CERTIFICATES, SERIES 2006-AR4'S,**  
**PETITION FOR REMOVAL**

25 **TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:**

26 Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, U.S. Bank, N.A., as Trustee for the  
27 Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through  
28 Certificates, Series 2006-AR4 (hereinafter "U.S. Bank"), by and through their attorney of record,  
Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby removes this  
action to the United States District Court, and in support thereof, states as follows:

1. The ground for this removal is diversity of citizenship pursuant to 28 U.S.C. § 1332.

1 2. Removal from State Court to this Court is proper in this case as this District embraces  
2 the place where the action is currently pending, 28 U.S.C. § 1441(a).

3 3. Complete diversity exists as follows:

4 a. Defendant, U.S. BANK, is a National Banking Association, and is a wholly  
5 owned subsidiary of U.S. BANCORP, which is incorporated in the State of  
6 Delaware, with its principal place of business located in Minneapolis,  
7 Minnesota.

8 b. Defendant, WELLS FARGO ASSET SECURITIES CORPORATION, is a  
9 direct, wholly owned subsidiary of Wells Fargo Bank, N.A., and an indirect  
10 wholly owned subsidiary of Wells Fargo & Company, which are incorporated  
11 in the State of Delaware, with its principal place of business located in San  
12 Francisco, California.

13 c. U.S. BANK is informed and believes that Defendant, LUCIA PARKS, is a  
14 sham Defendant and/or fraudulently joined Defendant in this case. Pursuant  
15 to N.R.S. 116.3116, the foreclosure by the Homeowner's Association vested  
16 in the Plaintiff the title of the unit's owner, without equity or right of  
17 redemption. N.R.S. 116.3116(3). In addition, the Foreclosure Deed recorded  
18 in the herein case is conclusive against the unit's former owner, his or her  
19 heirs, and assigns. N.R.S. 116.3116(2). Based on N.R.S. 116.3116 et seq.,  
20 the Plaintiff does not have any legal requirement to quiet title against the  
21 Borrower or prior titleholder of the Property. Since, the legal necessity to  
22 quiet title is lacking against the Defendant, LUCIA PARKS, the inclusion of  
23 the Defendant is fraudulent and was merely done to defeat diversity of  
24 citizenship in this case. In addition, the Complaint fails to allege any causes  
25 of action or claims specific to LUCIA PARKS, for the causes of action pled in  
26 the Complaint are premised on extinguishing U.S. BANK's Lien.

27 d. The Plaintiff, SFR INVESTMENTS POOL 1, LLC, admits in the Complaint  
28 for Quiet Title and Injunctive Relief, that the Plaintiff is a Nevada Limited

1 Liability Company, with its principal place of business located in Clark  
2 County, Nevada.

3 e. DOES and ROES are to be disregarded in the court's determination of  
4 diversity jurisdiction. McCabe v. General Foods Corporation, 811 F.2D 1336,  
5 1339 (9th Cir. 1987).

6 f. With respect to the amount in controversy requirement, the Complaint seeks  
7 in equity to extinguish any claim or interest by any Defendant with respect to  
8 that real Property commonly known as 2270 Nashville Avenue, Henderson,  
9 Nevada 89052. The Plaintiff is seeking to extinguish U.S. BANK's Lien,  
10 which was recorded on January 5, 2006 as Book and Instrument Number  
11 20060105-0004275, wherein the amount of the 2006 Note exceeds  
12 \$100,000.00. The amount in controversy is measured for jurisdictional  
13 purposes by the amount of damages or *the value of the property that is the*  
14 *subject of the action*. Hunt v. Washington State Apple Advertising Conn'n,  
15 (1977) 432 US 333, 347-348, 97 S.Ct. 2434, 2443-2444; Meisel v. Allstate  
16 Indem. Co., (E.D. CA 2005) 357 F.Supp.2d 1222, 1225. In actions seeking  
17 declaratory relief, it is well established that the amount in controversy is  
18 measured by the value of the object of the litigation. Cohn v. Petsmart, 281  
19 F.3d 837, 840 (9th Cir. 2002). Upon information and belief the Complaint  
20 seeks in excess of \$75,000.00, which is based on the fact that the amount of  
21 U.S. BANK's Lien the Plaintiff is trying to extinguish exceeds \$100,000.00.

22 4. This removal is timely. Defendant, U.S. BANK, was served on March 27, 2013.<sup>1</sup>  
23 The Petition for Removal, being filed within 30 days is timely, pursuant to 28 U.S.C.  
24 §1446(b).

25 5. One year has not elapsed from the date of the action in state court commenced.  
26  
27  
28

---

<sup>1</sup> See Summons attached hereto the Petition for Removal as Exhibits G and I.

- 1 6. Venue is proper in the unofficial Southern Division of the district pursuant to 28
- 2 U.S.C. §1441 (a) because this district embraces the place where the state court action
- 3 is pending.
- 4 7. Pursuant to 28 U.S.C. §1446(a), Defendant, U.S. BANK, has annexed all process,
- 5 pleadings, and orders served upon U.S. BANK, which are annexed hereto as Exhibits
- 6 "A"- "K."
- 7 8. Pursuant to 28 U.S.C. §1441 (c), a true copy of the original Petition for Removal has
- 8 been filed concurrently with the Eighth Judicial District Court of the State of Nevada
- 9 in and for the County of Clark and served upon the Plaintiff in this case.
- 10 9. Defendant, U.S. BANK, reserves the right to supplement this Petition for Removal
- 11 when additional information becomes available to U.S. BANK.
- 12 10. Defendant, U.S. BANK, further reserves all rights, including, but not limited to,
- 13 defenses, and objections as to venue, personal jurisdiction, and service. The filing of
- 14 this Petition for Removal is subject to and without waiver of any such defense or
- 15 objection.

16 DATED this 10<sup>th</sup> 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 U.S. BANK Asset Securities*

*Corporation, Mortgage Pass-Through Certificates,*

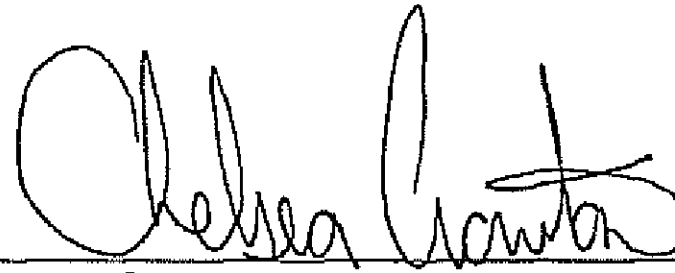
*Series 2006-AR4*



CERTIFICATE OF MAILING

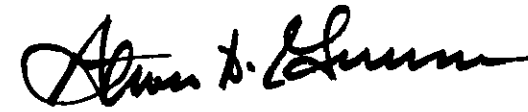
I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing DEFENDANT, U.S. BANK, N.A., AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF U.S. BANK ASSET SECURITIES CORPORATION, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2006-AR4'S, PETITION FOR REMOVAL was made on the 10<sup>th</sup> day of April, 2013, by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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



An Employee of WRIGHT, FINLAY & ZAK, LLP

# **TAB 10**



CLERK OF THE COURT

1 NOTC

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](mailto: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

**NOTICE OF REMAND**

26 **TO: THE EIGHTH JUDICIAL DISTRICT COURT FOR CLARK COUNTY, NEVADA;**

27 **TO: HOWARD C. KIM, ESQ. and DIANA S. CLINE, ESQ., COUNSELS FOR**

28 **PLAINTIFF**

PLEASE TAKE NOTICE that the United States District Court, District of Nevada has  
remanded this action back to the Eighth Judicial District Court of Clark County, Nevada.

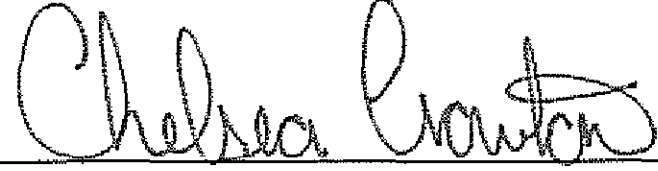
///

///

1 A true and correct copy of the Order granting the Stipulation to Remand, filed in the  
2 United States District Court, District of Nevada, is attached hereto as **Exhibit "A."**

3 DATED this 17<sup>th</sup> day of April, 2013.

4 WRIGHT, FINLAY & ZAK, LLP

5 

6 Chelsea A. Crowton, Esq.

7 Nevada Bar No. 11547

8 5532 South Fort Apache Road, Suite 110

9 Las Vegas, NV 89148

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

14 **AFFIRMATION**

15 Pursuant to NRS 239B.030

16 The undersigned does hereby affirm that the preceding **NOTICE OF REMAND** filed in  
17 Case No. A-13-678814-C **does not** contain the social security number of any person.

18 DATED this 17<sup>th</sup> day of April, 2013.

19 WRIGHT, FINLAY & ZAK, LLP

20 

21 Chelsea A. Crowton, Esq.

22 Nevada Bar No. 11547

23 5532 South Fort Apache Road, Suite 110

24 Las Vegas, NV 89148

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

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that  
3 service of the foregoing NOTICE OF REMAND was made on the 18<sup>th</sup> day of April, 2013, by  
4 depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as  
5 follows:

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

11  
12   
13 An Employee of WRIGHT, FINLAY & ZAK, LLP  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**EXHIBIT A**

**EXHIBIT A**

1 WRIGHT, FINLAY & ZAK, LLP

2 Chelsea A. Crowton, Esq.

3 Nevada Bar No. 11547

4 5532 South Fort Apache Road, Suite 110

5 Las Vegas, NV 89148

6 (702) 475-7964; Fax: (702) 946-1345

7 [ccrowton@wrightlegal.net](mailto:ccrowton@wrightlegal.net)

8 *Attorney for Defendant,*

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

10 *Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

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

15 Plaintiff,

16 vs.

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

24 Defendants.

Case No.: 2:13-cv-00617-GMN-PAL

25 **STIPULATION AND ORDER TO**  
26 **REMAND CASE BACK TO STATE**  
27 **COURT**

28 The 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, by and  
through their attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay &  
Zak, LLP, and the Plaintiff, SFR Investments Pool, LLC, by and through their attorney of record,  
Diana S. Cline, Esq. of the law firm Howard Kim & Associates, hereby stipulate and agree to  
remand the case back the Eighth Judicial District Court of Clark County, Nevada.

///

///

1 The Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo  
2 Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 and the  
3 Plaintiff, SFR Investments Pool, LLC, hereby stipulate and agree to the following terms:

4 **IT IS STIPULATED AND AGREED** that this matter be remanded back to the Eighth  
5 Judicial District Court of Clark County, Nevada, whereby the Eighth Judicial District Court of  
6 Clark County, Nevada will retain jurisdiction over this case.

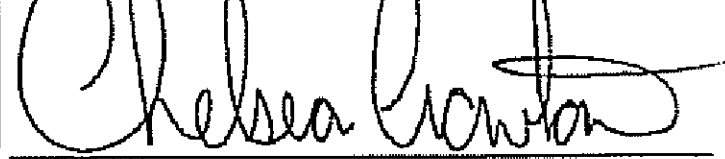
7 **IT IS FURTHER STIPULATED AND AGREED** that each of the Parties are to bear  
8 their own attorneys' fees and costs.

9  
10 DATED this 9th day of April, 2013.

DATED this 9th day of April, 2013.

11 WRIGHT, FINLAY & ZAK, LLP

HOWARD KIM & ASSOCIATIES

12 

13 /s/ Diana S. Cline, Esq.

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

Diana S. Cline, Esq.  
Nevada Bar No. 10580  
400 N. Stephanie Street, Suite 160  
Las Vegas, Nevada 89014  
*Attorney for the Plaintiff*

23 **ORDER**

24 Pursuant to the above stated Stipulations and the Court having reviewed the pleadings  
25 and papers on file, being fully advised in the premises, and good cause appearing, hereby rules as  
26 follows:

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that this matter be  
28 remanded back to the Eighth Judicial District Court of Clark County, Nevada, whereby the  
Eighth Judicial District Court of Clark County, Nevada will retain jurisdiction over this case.

///


///



1           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each of the Parties  
2 are to bear their own attorneys' fees and costs.

3           **IT IS SO ORDERED.**

4           **DATED** this 12th day of April, 2013.

5  
6   
7 \_\_\_\_\_  
8 Gloria M. Navarro  
9 United States District Judge

10 Respectfully Submitted By:

11 WRIGHT, FINLAY & ZAK, LLP

12 

13 Chelsea Crowton, Esq.

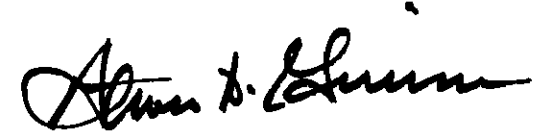
14 Nevada Bar No.11547

15 5532 South Fort Apache Road, Suite 110

16 Las Vegas, Nevada 89148

17 *Attorney for U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset*  
18 *Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **TAB 11**



CLERK OF THE COURT

1 **ANS**  
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](mailto: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;  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

**ANSWER TO COMPLAINT  
FOR QUIET TITLE AND  
INJUNCTIVE RELIEF**

20 COMES NOW Defendant LUCIA PARKS, an individual (hereinafter "Defendant Parks"), by  
21 and through her undersigned counsel, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and  
22 hereby respond to the Complaint of SFR INVESTMENTS POOL 1, LLC (hereinafter "Plaintiff") on  
23 file herein, by admitting, denying and alleging as follows:

24 **I. PARTIES**

25 1. In answering Paragraph 1 of Plaintiff's Complaint, Defendant Parks denies the  
26 allegations contained therein.

27 2. In answering Paragraph 2 of Plaintiff's Complaint, Defendant Parks is without  
28 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations

1 contained therein, and therefore denies the same.

2 3. In answering Paragraph 3 of Plaintiff's Complaint, Defendant Parks admits that  
3 Copper Ridge HOA filed a lien but denies that this was done properly under the CC&Rs.

4 4. In answering Paragraph 4 of Plaintiff's Complaint, Defendant Parks denies the  
5 allegations contained therein, and avers that, legally, she should still be treated as the property's actual  
6 owner.

7 5. In answering Paragraphs 5 and 6 of Plaintiff's Complaint, Defendant Parks is without  
8 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
9 contained therein, and therefore denies the same.

10 **II. GENERAL ALLEGATIONS**

11 6. In answering Paragraph 7 of Plaintiff's Complaint, Defendant Parks denies the  
12 allegations contained therein.

13 7. In answering Paragraph 8 of Plaintiff's Complaint, Defendant Parks admits the  
14 allegations contained therein.

15 8. In answering Paragraphs 9 through 12 of Plaintiff's Complaint, Defendant Parks denies  
16 the allegations contained therein.

17 9. In answering Paragraph 13 of Plaintiff's Complaint, Defendant Parks is without  
18 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
19 contained therein, and therefore denies the same.

20 10. In answering Paragraph 14 of Plaintiff's Complaint, Defendant Parks denies the  
21 allegations contained therein.

22 11. In answering Paragraphs 15 through 16 of Plaintiff's Complaint, Defendant Parks is  
23 without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
24 contained therein, and therefore denies the same.

25 12. In answering Paragraphs 17 through 19 of Plaintiff's Complaint, Defendant Parks  
26 denies the allegations contained therein.

27 13. In answering Paragraph 20 of Plaintiff's Complaint, Defendant Parks admits the  
28 allegations contained therein.

1           14.     In answering Paragraphs 21 through 22 of Plaintiff's Complaint, Defendant Parks is  
2 without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
3 contained therein, and therefore denies the same.

4           15.     In answering Paragraphs 23 through 25 of Plaintiff's Complaint, Defendant Parks  
5 denies the allegations contained therein.

6                               **III.   FIRST CLAIM FOR RELIEF**

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

9           16.     In answering Paragraph 26 of Plaintiff's Complaint, Defendant Parks repeats and  
10 realleges and incorporates by reference each and every response contained above as though fully set  
11 forth at length herein.

12           17.     In answering Paragraph 27 of Plaintiff's Complaint, Defendant Parks     admits the  
13 allegations contained therein.

14           18.     In answering Paragraph 28 of Plaintiff's Complaint, Defendant Parks denies the  
15 allegations contained therein.

16           19.     In answering Paragraph 29 of Plaintiff's Complaint, Defendant Parks admits that  
17 Defendant Lucia Parks will assert a claim adverse to Plaintiff, but denies that she should be treated as  
18 a "previous" rather than the current owner.

19           20.     In answering Paragraph 30 of Plaintiff's Complaint, Defendant Parks admits the  
20 allegations contained therein, upon information and belief.

21           21.     In answering Paragraphs 31 and 32 of Plaintiff's Complaint, Defendant Parks denies  
22 the allegations contained therein.

23           22.     In answering Paragraph 33 of Plaintiff's Complaint, Defendant Parks is without  
24 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
25 contained therein, and therefore denies the same.

26           23.     In answering Paragraphs 34 through 36 of Plaintiff's Complaint, Defendant Parks  
27 denies the allegations contained therein.

28           ///

1 **IV. SECOND CLAIM FOR RELIEF**

2 **(Preliminary and Permanent Injunction against US Bank and Lucia Parks)**

3 24. In answering Paragraph 37 of Plaintiff's Complaint, Defendant Parks repeats and  
4 realleges and incorporates by reference each and every response contained above as though fully set  
5 forth at length herein.

6 25. In answering Paragraph 38 and 39 of Plaintiff's Complaint, Defendant Parks denies the  
7 allegations contained therein.

8 26. In answering Paragraph 40 of Plaintiff's Complaint, Defendant Parks is without  
9 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations  
10 contained therein, and therefore denies the same.

11 27. In answering Paragraphs 41 through 43 of Plaintiff's Complaint, Defendant Parks  
12 denies the allegations contained therein.

13 **V. THIRD CLAIM FOR RELIEF**

14 **(Unjust Enrichment against Defendants)**

15 28. In answering Paragraph 44 of Plaintiff's Complaint, Defendant Parks repeats and  
16 realleges and incorporates by reference each and every response contained above as though fully set  
17 forth at length herein.

18 29. In answering Paragraphs 45 through 50 of Plaintiff's Complaint, Defendant Parks  
19 denies the allegations contained therein.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff has failed to state a claim against Defendant Parks upon which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Plaintiff has failed, refused, and neglected to take reasonable steps to mitigate its alleged  
25 damages, thus barring or diminishing Plaintiff's recovery herein.

26 **THIRD AFFIRMATIVE DEFENSE**

27 Plaintiff knowingly and intentionally assumed any and all risks inherent in entering into the  
28 relevant transactions.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has no privity of contract with this answering Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred on the basis of the grounds set forth in Lucia Parks own lawsuit against Plaintiff, Clark County District Court Case No. A-13-678794-C.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims were purchased by Plaintiff in bad faith.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of champerty.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant Park's obligations were excused by Plaintiff's own misconduct and misfeasance, or by other intervening and superseding causes.

**NINTH AFFIRMATIVE DEFENSE**

The incidents alleged in Plaintiff's Complaint, and the alleged damages and injuries to Plaintiff, if any, were proximately caused or contributed to by Plaintiff's own conduct, negligence, wrongful participation in conspiracy, or other acts or omissions.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred by the doctrines of laches, waiver, and estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred by virtue of Plaintiff's own unclean hands.

**TWELFTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred under Nevada's statute of frauds, including without limitation because this answering Defendant has signed no documentation agreeing to a sale of real estate to Plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant Park's obligations were excused by reason of breach of an implied condition by Plaintiff.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against Defendant Park are barred by equity and by its own failure to deal fairly and in good faith with Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred and its claimed interest in the subject property at issue in this litigation is invalid based on the failure of conditions precedent to an effective foreclosure sale.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claimed rights were acquired from a party who failed to comply with statutory requirements for transferring the property, and Plaintiff was not a bona fide purchaser without notice of such possibilities but acquired the property at its own risk.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The damages which are alleged to have been incurred by Plaintiff, if any in fact were suffered by said party, were the direct result, in whole or in part, of the Plaintiff's own intentional, willful, and/or negligent acts or omissions.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to name an indispensable party to the action and complete relief cannot be afforded among the parties which have been named.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff has suffered no damages attributable to Defendant Parks' actions.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendant Parks incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as though fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant Parks reserves the right to seek leave of Court to amend this Answer to specifically assert any such defense. Some defenses incorporated here, and some defenses pleaded in these affirmative defenses were pleaded for the specific purpose of not waiving any such defense.

///

///



**TWENTY-FIRST AFFIRMATIVE DEFENSE**


Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as insufficient facts were available after reasonable inquiry upon the filing of this Answer and, therefore, Defendant Parks reserves the right to amend her Answer to allege additional affirmative defenses if subsequent investigation so warrants.

**WHEREFORE**, this answering Defendant prays as follows:

- A. That Plaintiff take nothing by way of its Complaint;
- B. That Plaintiff's Complaint be dismissed as against this Defendant Parks;
- C. That Defendant Parks be awarded her attorneys fees and costs incurred in this matter;
- and
- D. Such further relief as the Court deems just and proper.

DATED this 19<sup>th</sup> day of April, 2013.

**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**



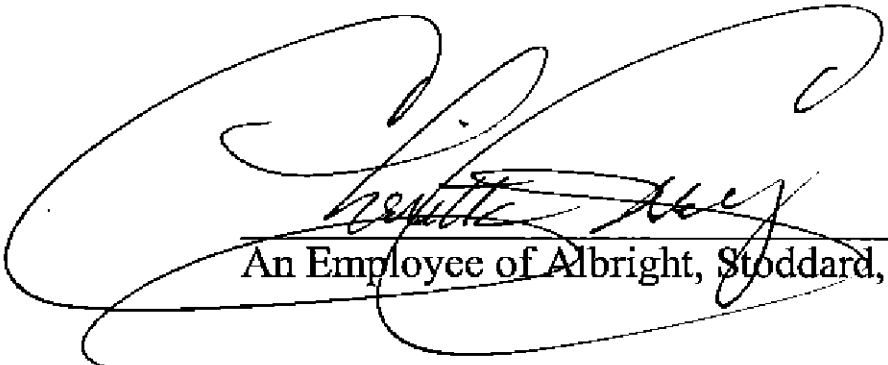
D. CHRIS ALBRIGHT, ESQ.  
Nevada Bar No. 004904  
WILLIAM H. STODDARD, JR.  
Nevada Bar No. 008679  
801 S. Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 9<sup>th</sup> day of April, 2013, I deposited a true and correct copy of the foregoing **ANSWER TO COMPLAINT FOR QUIET TITLE AND INJUNCTIVE RELIEF** 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 Defendants*

  
An Employee of Albright, Stoddard, Warnick & Albright

**IAFD**  
**D. CHRIS ALBRIGHT, ESQ.**  
 Nevada Bar No. 004904  
**WILLIAM H. STODDARD, JR.**  
 Nevada Bar No. 008679  
**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**  
 801 South Rancho Drive, Suite D-4  
 Las Vegas, NV 89106  
 Tel: (702) 384-7111  
 Fax: (702) 384-0605  
[dca@albrightstoddard.com](mailto: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

**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:

DEFENDANT: LUCIA PARKS \$223.00

TOTAL REMITTED \$223.00

DATED this 19<sup>th</sup> day of April, 2013.

**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**



D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

WILLIAM H. STODDARD, JR.

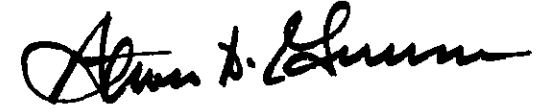
Nevada Bar No. 008679

801 S. Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

*Attorneys for Defendant Lucia Parks*

# **TAB 12**



CLERK OF THE COURT

1 **RESP**

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

26 **DEFENDANT, U.S. BANK, N.A.'S,**  
27 **RESPONSE TO THE PLAINTIFF'S**  
28 **MOTION FOR PRELIMINARY**  
**INJUNCTION**

29 The Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo  
30 Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 (hereinafter  
31 "U.S. Bank"), by and through their attorney of record, Chelsea A. Crowton, Esq. of the law firm  
32 of Wright, Finlay & Zak, LLP, hereby submits its Response to the Plaintiff's Motion for  
33 Preliminary Injunction.

34 ///

35 ///

36 ///

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

4 DATED this 25<sup>th</sup> 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

Las Vegas, NV 89148

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

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF FACTS**

16 On December 3, 2005, Lucia Parks (hereinafter "Parks") purchased the Property located  
17 at 2270 Nashville Avenue, Henderson, Nevada 89052 (hereinafter "Property").<sup>1</sup> On January 4,  
18 2006, Richard E. Parks executed a Grant, Bargain, Sale Deed, whereby Richard E. Parks sold his  
19 community property interest in the Property to Parks. On December 30, 2005, Parks executed a  
20 Deed of Trust and Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the  
21 Lender and United Title of Nevada was stated as the Trustee under the Deed of Trust.<sup>2</sup> On  
22 February 24, 2010, a Notice of Default and Election to Sell under Deed of Trust was recorded in  
23 the Clark County Recorder's Office, whereby the Notice stated that Parks defaulted on the 2005  
24 Note as early as November 2009.<sup>3</sup> 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.

25 <sup>1</sup> 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") filed  
concurrently herewith as **Exhibit A**.

26 <sup>2</sup> 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 filed concurrently herewith as **Exhibit**  
27 **B**.

28 <sup>3</sup> 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 filed concurrently herewith as **Exhibit**  
**C**.

1 transferred all beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.<sup>4</sup>  
2 On July 12, 2010, a Substitution of Trustee was recorded in the Clark County Recorder's Office,  
3 whereby U.S. Bank substituted National Default Servicing Corporation as Trustee under the  
4 December 2005 Deed of Trust.<sup>5</sup> On July 12, 2010, a Certificate from the Nevada Foreclosure  
5 Mediation Program was recorded in the Clark County Recorder's Office.<sup>6</sup> On July 12, 2010, a  
6 Notice of Trustee's Sale was recorded in the Clark County Recorder's Office.<sup>7</sup>

7 On May 24, 2012, a Notice of Delinquent Assessment Lien was recorded in the Clark  
8 County Recorder's Office.<sup>8</sup> On June 7, 2012, an Assignment of Mortgage was recorded in the  
9 Clark County Recorder's Office, clarifying the transfer of beneficial interest in the December  
10 2005 Note and Deed of Trust to U.S. Bank.<sup>9</sup> On June 27, 2011, a Notice of Trustee's Sale was  
11 recorded in the Clark County Recorder's Office.<sup>10</sup> On July 19, 2012, a Notice of Default and  
12 Election to Sell under Homeowners Association Lien was recorded in the Clark County  
13 Recorder's Office.<sup>11</sup> On February 7, 2013, a Notice of Foreclosure Sale was recorded in the  
14 Clark County Recorder's Office.<sup>12</sup> On March 6, 2013, a Foreclosure Deed was recorded in the  
15

---

16 <sup>4</sup> A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and  
17 Instrument Number 20100712-0002705 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
18 **D.**

19 <sup>5</sup> A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and  
20 Instrument Number 20100712-0002706 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
21 **E.**

22 <sup>6</sup> A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and  
23 Instrument Number 20100712-0002707 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
24 **F.**

25 <sup>7</sup> A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book  
26 and Instrument Number 20100712-002708 is attached to the Defendant's RJN filed concurrently herewith as  
27 **Exhibit G.**

28 <sup>8</sup> 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 filed concurrently herewith as **Exhibit**  
**H.**

<sup>9</sup> 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 filed concurrently herewith as **Exhibit I.**

<sup>10</sup> 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 filed concurrently herewith as  
**Exhibit J.**

<sup>11</sup> 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 filed concurrently herewith as  
**Exhibit K.**

<sup>12</sup> 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 filed concurrently herewith as  
**Exhibit L.**

1 Clark County Recorder's Office, whereby the Plaintiff purchased the Property for \$14,000.000.<sup>13</sup>  
2 On March 11, 2013, a third Notice of Trustee's Sale was recorded in the Clark County  
3 Recorder's Office.<sup>14</sup>

## 4 **II. PROCEDURAL HISTORY**

5 On March 22, 2013, the Plaintiff filed a Complaint for Quiet Title and Declaratory Relief  
6 in the herein Court. On March 22, 2013, the Plaintiff filed a Notice of Lis Pendens in the herein  
7 Court. On March 27, 2013, the Plaintiff filed an Application for Temporary Restraining Order  
8 and Motion for Preliminary Injunction. On March 28, 2013, the Plaintiff filed a Temporary  
9 Restraining Order. On April 10, 2013, U.S. Bank filed a Notice of Appearance in the case.

## 10 **III. LEGAL ARGUMENTS**

### 11 **A. MOTION FOR PRELIMINARY INJUNCTION LEGAL STANDARD.**

12 A preliminary injunction is an "extraordinary and drastic remedy, one that should not be  
13 granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v.  
14 Armstrong, 520 U.S. 968, 972 (1997).

15 The Supreme Court recently affirmed that, to obtain this "extraordinary and drastic  
16 remedy," a Petitioner must:

17 establish that he is likely to succeed on the merits, that he is likely to suffer  
18 irreparable harm in the absence of preliminary relief, that the  
19 balance of equities tips in his favor, and that an injunction is in the public interest.  
20 Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 375 (2008).

21 Prior to the Supreme Court's decision in Winter, the Ninth Circuit recognized an  
22 "alternative" test, sometimes referred to as a "sliding scale." See, Saini v. Int'l Game Tech., 434  
23 F. Supp. 2d 913, 918 (D. Nev. 2006). Under this sliding scale approach, a Petitioner could make  
24 a lesser showing of likelihood of success if he could demonstrate that the balance of hardships  
25 was significantly in his favor. Id. In Winter, however, the Supreme Court reversed the Ninth  
26 Circuit, finding that its use of a less stringent standard was "inconsistent with our

---

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

<sup>14</sup> 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 filed concurrently herewith as  
**Exhibit N.**



1 characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a  
2 clear showing that the Petitioner is entitled to such relief.” Winter, 129 S.Ct. at 375-76. The  
3 Ninth Circuit itself has since recognized that, “[i]n Winter, the Court reversed one of our  
4 decisions, which, it determined, upheld a grant of a preliminary injunction by use of a standard  
5 that was much too lenient.” Am. Trucking Ass’n., Inc. v. City of Los Angeles, 559 F.3d 1046,  
6 1052 (9th Cir. 2009) (“[t]o the extent that our cases have suggested a lesser standard, they are no  
7 longer controlling, or even viable.”); See, also, Knight v. Metro. Police Dept. of Family, No.  
8 2:08-cv-00308, 2009 WL 564214, at \*3 (D. Nev. Mar. 5, 2009) (“The Supreme Court has  
9 recently issued a decision in which it rejected the Ninth Circuit’s two prong sliding standard.”).

10 **B. THE PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE**  
11 **DENIED BECAUSE THE PLAINTIFF DOES NOT HAVE A LIKELIHOOD OF**  
12 **SUCCESS ON THE MERITS OF THE COMPLAINT.**

13 **a. THE PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**  
14 **SHOULD BE DENIED BECAUSE UNDER N.R.S. 116.3116(2)(b), U.S.**  
15 **BANK’S LIEN IS SUPERIOR TO THE ASSESSMENT LIEN RECORDED**  
16 **BY COPPER RIDGE.**

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

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

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

The specific language of N.R.S. 116.3116(2) states that the Copper Ridge Lien is prior to  
all other liens and encumbrances secured by the Property, except a first security interest on the

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

17 The Plaintiff is also required to (1) produce a copy of the assessment lien upon which the  
18 foreclosure sale was based and (2) allege that the assessment lien chronologically precedes the  
19 Deed of Trust. See Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 \* 3 (D.  
20 Nev. Aug. 28, 2012).<sup>19</sup> The Plaintiff has failed to assert a vital fact necessary to maintain a  
21 N.R.S. 116.3116 et seq. cause of action. Similar to Centeno, wherein the Court dismissed an

---

22 <sup>15</sup> A true and correct copy of the Deed of Trusts recorded in the Clark County Recorder's Office as Book and  
23 Instrument Number 20060105-0004275 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
24 **B.**

25 <sup>16</sup> A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and  
26 Instrument Number 20100712-0002705 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
27 **D.**

28 <sup>17</sup> 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 filed concurrently herewith as **Exhibit**  
**H.**

<sup>18</sup> 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 filed concurrently herewith as **Exhibit I.**

<sup>19</sup> 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 filed concurrently herewith as **Exhibit O.**

1 N.R.S. 116.3116 cause of action based on the failure of the Plaintiff to attach the Assessment  
2 Lien or factually assert that the Assessment Lien predated the first, position Deed of Trust, the  
3 Plaintiff in the herein case fails to assert that U.S. Bank's Lien was recorded after the Copper  
4 Ridge Lien and the Plaintiff fails to attach the Assessment Lien. The Centeno Court clearly  
5 relied on the chain of title recordings to determine if a First Mortgage was extinguished by an  
6 HOA sale.<sup>20</sup> The failure of the Plaintiff to assert the above-stated facts is based on the clear  
7 chain of title that establishes that the Copper Ridge Lien was recorded over six (6) years after  
8 U.S. Bank's 2005 Deed of Trust. Therefore, pursuant to N.R.S. 116.3116(2)(b) and case law, the  
9 December 2005 Deed of Trust has priority over the Assessment Lien recorded by Copper Ridge  
10 and the Plaintiff cannot state a valid claim under N.R.S. 116.3116 et seq.

11 **b. THE PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING**  
12 **ORDER SHOULD BE DENIED BECAUSE THE PLAINTIFF**  
13 **MISCONSTRUES N.R.S. 116.3116(2)(c).**

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

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

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

23 ☐ The lien is also prior to all security interests described in paragraph (b) to the extent of  
24 any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
25 extent of the assessments for common expenses based on the periodic budget adopted by  
26 the association pursuant to NRS 116.3115 which would have become due in the absence  
27 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

28 <sup>20</sup> 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 filed concurrently herewith as **Exhibit O**.

<sup>21</sup> See Motion for TRO at pgs. 10-13.

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

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

24 The proffered legal theory offered by the Plaintiff would be in direct violation of U.S.  
25 Bank's due process rights, pursuant to the properly recorded Deed of Trust in the Clark County  
26 Recorder's Office. U.S. Bank's Deed of Trust was recorded in January 2006, perfecting U.S.  
27 Bank's Lien secured against the Property. It would be a violation of U.S. Bank's due process  
28 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  
extinguished by a first, position Deed of Trust foreclosure sale. To accept the Plaintiff's theory  
is to accept a violation of the contractual and due process rights of U.S. Bank.

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

21 Based on the above, the Plaintiff's Motion for Preliminary Injunction should be denied  
22 because the Plaintiff misconstrues the language of N.R.S. 116.3116(2)(b)-(c) and falsely asserts  
23 that U.S. Bank's Lien is extinguished by the foreclosure sale by Copper Ridge.

24 c. **NEVADA COURTS HAVE CONSISTENTLY HELD THAT N.R.S.**  
25 **116.3116 ET SEQ. DOES NOT EXTINGUISH A FIRST, POSITION DEED**  
26 **OF TRUST.**

27 Nevada Courts have ruled that a foreclosure sale pursuant to N.R.S. 116.3116 et seq. does  
28 not eliminate a first, position Deed of Trust. In a recent United States District Court, District of  
Nevada case, the Federal Court rejected the analysis concerning N.R.S. 116.3116 et seq. and

1 stated that a foreclosure sale by a Homeowner's Association **does not** extinguish a first, position  
2 Deed of Trust. In Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL  
3 531092, the Court states that "N.R.S. 116.3116(2)(c) creates a limited super priority lien for 9  
4 months of HOA assessments leading up to the foreclosure of the first mortgage, but **it does not**  
5 **eliminate the first security interest.**"<sup>22</sup> Similar to Diakonos, where the Borrower defaulted on  
6 their HOA dues, the HOA foreclosed on the Assessment Lien, and the Third-Party Purchaser  
7 claims an extinguishment of a First Mortgage, Parks failed to make her HOA assessments  
8 thereby instituting the foreclosure sale on the Property, and the Plaintiff asserts that U.S. Bank's  
9 Lien was extinguished by the sale of the Property. The analysis of the Diakonos Court to  
10 determine the priority of liens focuses on N.R.S. 116.3116(2)(b) and the timing of the recording  
11 of the Deed of Trust and HOA Assessment Lien.

12 The Court in Diakonos stated that the arguments regarding the inability of an HOA to  
13 recover on a deficiency without the power to extinguish a first, position Deed of Trust are  
14 meritless, for the Court stated that N.R.S. 116.3116 et seq. provides a statutory scheme to allow  
15 for an HOA to recover delinquent assessments.<sup>23</sup> The Diakonos Court specifically emphasized  
16 N.R.S. 116.3116(2)(b)'s priority language when analyzing the lack of extinguishment of a first,  
17 position Deed of Trust.<sup>24</sup> The Diakonos Court emphasized that an HOA has two options to  
18 recover on its "Super-Priority Lien:" (1) the HOA may initiate a non-judicial foreclosure to  
19 recover the delinquent assessments and the **purchaser at the sale takes the property subject to**  
20 **the security interest** or (2) initiate a judicial action to pursue the assessments.<sup>25</sup> The Diakonos  
21 Court clearly stated that the foreclosure sale by a Homeowner's Association "**takes the property**  
22 **subject to the security interest,**" even if the Beneficiary received notice of the HOA  
23 **foreclose on the Property.**<sup>26</sup> Similar to Diakonos, U.S. Bank's Deed of Trust was recorded in

24  
25 <sup>22</sup> 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 filed concurrently herewith as **Exhibit P**.

26 <sup>23</sup> 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 filed concurrently herewith as **Exhibit P**.

27 <sup>24</sup> 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 filed concurrently herewith as **Exhibit P**.

28 <sup>25</sup> Id.

<sup>26</sup> 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 filed concurrently herewith as **Exhibit P**.

1 January 2006, which is over six (6) years prior to the recording of the Copper Ridge Lien.  
2 Therefore, based on the analysis in Diakonos, the Plaintiff took title to the Property subject to  
3 U.S. Bank's Lien.

4 The Plaintiff misstates the language in N.R.S. 116.3116 et seq. The Court in Wingbrook  
5 Capital, LLC v. Peppertree Homeowners Association, with regards to the "extinguishment"  
6 under N.R.S. 116.3116 et seq. The Wingbrook Capital, LLC v. Peppertree Homeowners  
7 Association, Case No. A-11-636948-B, case confirms that a "Super-Priority Lien" constitutes  
8 only the nine (9) months portion of an assessment lien preceding the foreclosure of a first,  
9 position Deed of Trust and the "Super-Priority Lien" does not attach until after the foreclosure of  
10 a First Mortgage. Wingbrook asserts that "Pursuant to N.R.S. 116.3116(2), the **homeowners'**  
11 **association's Statutory Lien is junior to a first security interest** on the unit recorded before  
12 the date on which the assessment sought to be enforced became delinquent ("First Security  
13 Interest") **except for a portion of the homeowner's association's Statutory Lien which**  
14 **remains prior to the First Security Interest (the "Super-Priority Lien").**<sup>27</sup> "Homeowner's  
15 Associations, therefore, have a Super Priority Lien which has priority over the First Security  
16 Interest on a homeowners' unit. However, the **Super Priority Lien amount is not without**  
17 **limits** and N.R.S. 116.3116 provides that the amount of the Super Priority Lien (i.e. the amount  
18 of a homeowners' associations' Statutory Lien which retains priority status over the First  
19 Security Interest) is limited "to the extent" of those assessments for common expenses based  
20 upon the associations' periodic budget that would have become due in the nine (9) month period  
21 immediately preceding an associations' institution of an action to enforce its Statutory Lien and  
22 "to the extent" of external repaid costs pursuant to N.R.S. 116.310312."<sup>28</sup> "Therefore after the  
23 foreclosure by a First Security Interest holder of a unit located within a homeowners'  
24 association, pursuant to N.R.S. 116.3116 the monetary limit of a homeowners' association's  
25 Super Priority Lien is limited to a maximum amount equaling nine (9) times the homeowners'

26  
27 <sup>27</sup> See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is  
attached to the Defendant's RJN filed concurrently herewith as **Exhibit Q**.

28 <sup>28</sup> See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is  
attached to the Defendant's RJN filed concurrently herewith as **Exhibit Q**.

1 association's monthly assessment amount to unit owners for common expenses based on the  
2 periodic budget which would have become due immediately preceding the institution of an  
3 action to enforce the lien plus external repair costs pursuant to N.R.S. 116.310312."<sup>29</sup>

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

17 In JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No. A-08-  
18 562678, Dept. XVI, and Korbel Family Trust v. Spring Mountain Ranch Master Association et  
19 al, Case No. 06-A-523959-C, the Courts reinforced the legal analysis of N.R.S. 116.3116(2),  
20 whereby the Courts stated that a junior assessment lien does not eliminate a First Mortgage and  
21 the Super-Priority Lien under N.R.S. 116.3116(2)(c) is limited to the charges and assessments  
22 incurred by an HOA during the nine (9) months **preceding the foreclosure of the First**  
23 **Mortgage.**<sup>31</sup> In Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-  
24 C, Dept. XVI, the Court denied a Motion for Preliminary Injunction, based on the fact that the

25  
26 <sup>29</sup> See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is  
attached to the Defendant's RJN filed concurrently herewith as **Exhibit Q**.

27 <sup>30</sup> Id.

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



1 Court analyzed N.R.S. 116.3116 et seq. in the context of a foreclosure sale and determined that a  
2 “Super-Priority Lien” under N.R.S. 116.3116 et seq. does not impact or extinguish a first,  
3 position Deed of Trust.<sup>32</sup>

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

16 In Korbel, the Court analyzed the interaction between N.R.S. 116.3116(2)(b) and N.R.S.  
17 116.3116(2)(c), whereby the Court emphasized that **a foreclosure by the first, position Deed of**  
18 **Trust would extinguish the “Super-Priority Lien.”** The Court in Korbel analyzed N.R.S.  
19 116.3116 et seq. in the context of an HOA sale **not** extinguishing a first, position Deed of  
20 Trust.<sup>35</sup> In Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, the Court  
21 specifically stated that an HOA foreclosure sale **does not** extinguish a first, position Deed of  
22 Trust.

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>32</sup> 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 filed concurrently herewith as **Exhibit T**.

27 <sup>33</sup> See Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30, Order attached to the  
Defendant’s RJN filed concurrently herewith as **Exhibit U**.

28 <sup>34</sup> Id.

<sup>35</sup> 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 filed concurrently herewith as **Exhibit S**.

1 The Court stated that,

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

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

24 In 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C, Dept.  
25 XVII, the Court denied a Motion for Preliminary Injunction based on the fact that N.R.S.  
26 116.3116 is merely a priority of payment lien and does not extinguish a first, position Deed of  
27 Trust.<sup>39</sup> In SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept.  
28 XXVII, the Court denied a Motion for Preliminary Injunction based on the fact that the Court

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 filed concurrently herewith 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 filed concurrently herewith 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 filed concurrently herewith as **Exhibit T**.

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 filed concurrently herewith as **Exhibit X**.

1 found that the “extinguishment” theory proffered by the Plaintiff would violate both State and  
2 Federal constitutional due process guarantees if the first mortgage’s interest may be voided by a  
3 non-judicial foreclosure for an assessment lien, relatively nominal in value . . .<sup>40</sup> Based on the  
4 above, the Nevada Courts have clearly interpreted N.R.S. 116.3116 et seq. to state that a sale by  
5 a Homeowner’s Association is subject to a first, position Deed of Trust and the sale **does not**  
6 extinguish a first, position Deed of Trust.

7 Based on Nevada case law, the Plaintiff’s Motion for Preliminary Injunction should be  
8 denied because Nevada Case shows a trend whereby the Courts are dismissing the  
9 “extinguishment” theory proffered by the Plaintiff and the Plaintiff took title to the Property  
10 subject to U.S. Bank’s Lien.

11 **d. THE PLAINTIFF MISCONTRUES THE NEVADA REAL ESTATE**  
12 **OPINION CITED IN THE MOTION FOR PRELIMINARY INJUNCTION.**

13 The Plaintiff misconstrues the language in the Real Estate Division Advisory Opinion 13-  
14 01 to falsely imply that a Homeowner’s Association foreclosure sale extinguishes a first, position  
15 Deed of Trust. First, the Advisory Opinion specifically states at the end of the Opinion that the  
16 Opinion is not a rule, regulation, or final legal determination. The Advisory Opinion disclaims  
17 the legal enforcement of the contents of the Opinion and specifically states that the Opinion is  
18 merely the views of the Real Estate Division. Second, the Advisory Opinion does not focus on  
19 the interaction of “priority” liens under N.R.S. 116.3116(2)(b) and (2)(c), for the Advisory  
20 Opinion focuses on the amount of costs and fees that an HOA can incur against the Property.

21 Third, the Advisory Opinion from the Real Estate Division of the State of Nevada,  
22 Department of Business and Industry fails to lend support to the Motion for Preliminary  
23 Injunction, for the Advisory Opinion reaffirms the language in N.R.S. 116.3116 and reaffirms  
24 the assertions by U.S. Bank as to the attachment of the first position priority Deed of Trust to the  
25 Property subsequent to the foreclosure by the Plaintiff in this case. The Advisory Opinion states  
26 that the Plaintiff merely has a “Super-Priority Lien” against the Subject Property as to nine (9)

27  
28 <sup>40</sup> 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 filed concurrently herewith as **Exhibit Y**.

1 months of assessments of expenses and charges incurred against a Homeowner's Association.<sup>41</sup>  
2 The Advisory Opinion specifically limits the "priority" status of the Plaintiff to a "portion of an  
3 association's lien."<sup>42</sup> The Advisory Opinion references the very action being undertaken by U.S.  
4 Bank with the second foreclosure on the first position Deed of Trust.

5 The Advisory Opinion states that the "priority" of nine (9) months of assessments is  
6 premised on the potential loss by the Homeowner's Association of unpaid assessments that  
7 would be eliminated by an imminent foreclose of the first security interest.<sup>43</sup> The Advisory  
8 Opinion treats the "priority" status of the Plaintiff has a monetary status that entitles the Plaintiff  
9 to assessments and charges in lieu of a "priority" status of extinguishment of all junior liens  
10 secured by the Property. Plus, the Advisory Opinion specifically states that "each portion of the  
11 super priority lien is limited to the specific charge state and nothing else" and payment to the  
12 Plaintiff of the charges under N.R.S. 116.3116(1) and N.R.S. 116.310312 "relieves [the  
13 Plaintiff's] super priority lien status."<sup>44</sup> The Advisory Opinion's language is tempered by the  
14 implication that a first, position Deed of Trust survives the Homeowner's Association  
15 foreclosure, for the Advisory Opinion discusses the eventuality of the second foreclosure by the  
16 first position Lender.<sup>45</sup> Based on the above, U.S. Bank's Lien maintained its first position status  
17 in the chain of title of the Property.

18 The Advisory Opinion specifically states that N.R.S. 116.3116 is a means for a party to  
19 only determine the starting point and amounts of the nine (9) months of assessments owed to the  
20 Plaintiff in this case. The Advisory Opinion never states nor mentions that a foreclosure under  
21 N.R.S. 116.3116 extinguishes a first position priority Deed of Trust. The Advisory Opinion  
22 contemplates the eventual foreclosure by a first position priority Deed of Trust, thereby implying  
23 that the Plaintiff's theory regarding U.S. Bank's Lien is false and should be disregarded by the  
24 Court. Plus, the Advisory Opinion is premised on a recommendation for the Homeowner's  
25 Association to collect on unpaid assessments prior to the extinguishment of any fees owed to the  
26

<sup>41</sup> See Advisory Opinion at pg. 8-14 attached to the Defendant's RJN filed concurrently herewith as **Exhibit W**.

<sup>42</sup> Id. at pg. 8.

<sup>43</sup> Id.

<sup>44</sup> See Advisory Opinion at pg. 11 attached to the Defendant's RJN filed concurrently herewith as **Exhibit W**.

<sup>45</sup> See Advisory Opinion in general.

1 Homeowner's Association by a subsequent foreclosure by the first position priority Deed of  
2 Trust.<sup>46</sup> Based on the language in the Advisory Opinion and the nature of U.S. Bank's Lien,  
3 U.S. Bank's Lien survived the foreclosure sale conducted by Copper Ridge.

4 e. **THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**  
5 **SHOULD BE DENIED BECAUSE THE CC&RS ATTESTS TO THE**  
6 **PRESERVATION OF U.S. BANK'S LIEN AFTER THE FORECLOSURE**  
7 **SALE.**

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

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

15 Section 9.13. Mortgage Protection

16 Notwithstanding all other provision hereof, no lien created under this Article, nor any breach of  
17 this Declaration, nor the enforcement of any provision hereof, or of any Supplemental  
18 Declaration hereto, shall defect or render invalid the rights of the Beneficiary under any Recorded  
19 First Deed of Trust encumbering a Lot or Condominiums, made in good faith and for value;  
20 provided (i) such Deed of Trust or Mortgage is Recorded prior to any notice of lien or notice of  
21 noncompliance Recorded pursuant to this Declaration and (ii) after such Beneficiary, Mortgagee  
22 or other such Person obtains title to such Lot, Parcel, Development Tract or Other Area by  
23 foreclosure, deed or assignment in lieu thereof same shall remain subject to this Declaration . . .<sup>47</sup>

24 Section 9.14 Priority of Lien.

25 The lien of any of the assessments, including default interest, costs, expenses and attorneys' fees  
26 as provided for herein, shall be subordinate to the lien of any First Mortgage.<sup>48</sup>

27 Section 9.13 and Section 9.14 of the Declaration of Covenants, Condition, Restrictions,  
28 Reservations, and Easements for Green Valley Ranch clearly establishes that the Homeowner's  
Association intended the sale of the Property, pursuant to N.R.S. 116.3116, to be subject to the

<sup>46</sup> See Advisory Opinion at pg. 19 attached to the Defendant's RJN filed concurrently herewith as Exhibit W.

<sup>47</sup> A true and correct copy of Section 9.13 of the CC&Rs is attached to the Defendant's RJN as Exhibit Z.

<sup>48</sup> A true and correct copy of Section 9.14 of the CC&Rs is attached to the Defendant's RJN as Exhibit Z.

1 First Mortgage secured against the Property.<sup>49</sup> Sections 9.13 and 9.14 of the Declaration of  
2 Covenants, Condition, Restrictions, Reservations, and Easements for Green Valley Ranch clearly  
3 states that an HOA Lien does not extinguish U.S. Bank's Lien.<sup>50</sup> Section 9.13 states that the  
4 HOA Assessment Lien is subordinate to the lien of any previously recorded First Mortgage.<sup>51</sup>  
5 The December 2005 Deed of Trust was properly perfected and recorded in the Clark County  
6 Recorder's Office over six (6) years prior to the recording of the Notice of Delinquent  
7 Assessment Lien by Copper Ridge Community.

8 The guidelines and rules governing the entity that initiated the sale refute the claims by  
9 the Plaintiff with regards to the extinguishment of a first, position Deed of Trust. The Plaintiff is  
10 bound by the Declaration of Covenants, Condition, Restrictions, Reservations, and Easements  
11 for Green Valley Ranch, due to the CC&Rs governing the manner and method of the sale  
12 wherein title was purchased by the Plaintiff in this case. The Plaintiff can only acquire as much  
13 of an interest as is being sold by the CC&Rs. The CC&Rs clearly state that the Plaintiff acquired  
14 title to the Property, subject to U.S. Bank's Lien.<sup>52</sup> The CC&Rs clearly anticipate and allow for  
15 a "second" foreclosure by U.S. Bank and payment of the "Super-Priority Lien" through the  
16 foreclosure by U.S. Bank. The language in the CC&Rs are consistent with the above stated case  
17 law, wherein both the Nevada case law and the CC&Rs assert that the Plaintiff obtained title to  
18 the Property, subject to U.S. Bank's Lien and the subsequent foreclosure by U.S. Bank is a valid  
19 sale.

20 Therefore, the Plaintiff's Motion for Preliminary Injunction should be denied because the  
21 Plaintiff received title to the Property subject to U.S. Bank's Lien.

22 **C. THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE**  
23 **DENIED BECAUSE U.S. BANK HAS STANDING TO FORECLOSE ON THE**  
24 **PROPERTY.**

25 U.S. Bank has standing under the December 2005 Note and Deed of Trust to foreclose on  
26 the Property. The recorded land documents show a clear trail of legal authority of U.S. Bank to

---

27 <sup>49</sup> Id.

<sup>50</sup> 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**.

<sup>51</sup> Id.

28 <sup>52</sup> 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 foreclose on the Property. On December 30, 2005, Parks executed a Deed of Trust and Note for  
2 \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title of  
3 Nevada was stated as the Trustee under the Deed of Trust.<sup>53</sup> On July 12, 2010, a Corporation  
4 Assignment of Deed of Trust was recorded in the Clark County Recorder's Office, whereby  
5 Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note and Deed  
6 of Trust to U.S. Bank.<sup>54</sup> On July 12, 2010, a Substitution of Trustee was recorded in the Clark  
7 County Recorder's Office, whereby U.S. Bank substituted National Default Servicing  
8 Corporation as Trustee under the December 2005 Deed of Trust.<sup>55</sup> On July 12, 2010, a  
9 Certificate from the Nevada Foreclosure Mediation Program was recorded in the Clark County  
10 Recorder's Office.<sup>56</sup> Under N.R.S. 107.080 et seq. the "beneficiary, the successor in interest of  
11 the beneficiary, or the trustee . . . or other person authorized" has the power to initiate sale on a  
12 Property."<sup>57</sup> The December 2005 Deed of Trust expressly gives U.S. Bank, as the Beneficiary  
13 under the Deed of Trust, the power of sale upon default by Parks.<sup>58</sup> The Assignment to U.S.  
14 Bank was legally executed by the original Lender under the December 2005 Deed of Trust and  
15 Note and the Assignment was properly recorded in the Clark County Recorder's Office.<sup>59</sup> Based  
16 on the above, U.S. Bank has standing to foreclose on the Property.

17 ///

18 ///

---

19 <sup>53</sup> A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and  
20 Instrument Number 20060105-0004275 is attached to the Defendant's RJN filed concurrently herewith as **Exhibit**  
21 **B.**

22 <sup>54</sup> 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 filed concurrently herewith as **Exhibit**  
23 **D.**

24 <sup>55</sup> 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 filed concurrently herewith as **Exhibit**  
25 **E.**

26 <sup>56</sup> 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 filed concurrently herewith as **Exhibit**  
27 **F.**

28 <sup>57</sup> N.R.S. 107.080(b) and (c).

<sup>58</sup> 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 filed concurrently herewith as **Exhibit**  
29 **B.**

<sup>59</sup> 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 filed concurrently herewith as **Exhibit**  
30 **D.**

1       **D. THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE**  
2       **DENIED BECAUSE THE PLAINTIFF'S CLAIMS FOR RELIEF FAIL TO**  
3       **STATE A CLAIM AGAINST U.S. BANK.**

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

20       The Plaintiff also has failed to identify under what basis they entitled to a "permanent  
21       injunction" which would eliminate the ability of U.S. Bank to enforce a valid, legal lien secured  
22       against the Property. The Plaintiff's Complaint fails to state any genuine issues of material fact  
23       that would grant relief to the Plaintiff in this case. As a result, the Plaintiff has not provided any  
24       viable basis for the Court to grant a preliminary or permanent injunction. Plus, a claim for  
25       injunctive relief is not an independent cause of action. See Barlow v. BNC Mortg. Inc., No.  
26       3:09-cv-00677-LRH-RAM, 2011 WL 2669618, at \*3 (D. Nev. July 7, 2011) (dismissing  
27       plaintiffs' causes of action for injunctive and declaratory relief); See also In re Wal-Mart Wage  
28       & Hour Emp't Practices Litig., 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (holding that a claim  
for injunctive relief was not a cause of action or independent ground for relief).



1 Therefore, the Plaintiff's Motion for Preliminary Injunction should be denied because the  
2 Plaintiff's Complaint fails as a matter of law to establish any claim for relief against the  
3 Defendant, U.S. Bank.

4 **E. THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE**  
5 **DENIED BECAUSE THE PLAINTIFF IS NOT LIKELY TO SUFFER**  
6 **IRREPARABLE HARM BECAUSE THE PLAINTIFF TOOK TITLE TO THE**  
7 **PROPERTY SUBJECT TO U.S. BANK'S LIEN AND ANY HARM CAN BE**  
8 **COMPENSATED THROUGH A MONETARY AMOUNT.**

9 The Plaintiff alleges that the Plaintiff will suffer irreparable harm if U.S. Bank is allowed  
10 to foreclose based on the inconsequential harm to U.S. Bank and the unique nature of real  
11 property. The arguments as to the continuance of the foreclosure sale by Copper Ridge are  
12 meritless and fail to state a substantive harm to the Plaintiff in this case. The lack of payment of  
13 Copper Ridge's Lien does not equate with U.S. Bank's lack of interest in the Property. As stated  
14 above, U.S. Bank's Lien survived the foreclosure by Copper Ridge. The necessity to pay Copper  
15 Ridge's Lien is minimal in this case because U.S. Bank's Lien was not extinguished by the HOA  
16 foreclosure sale.

17 The Plaintiff took title to the Property subject to U.S. Bank's Lien, therefore the Plaintiff  
18 is only entitled to compensatory damages for any loss of title to the Property. The Plaintiff  
19 knowingly purchased a Property from a Homeowner's Association Sale that was governed by the  
20 CC&Rs and N.R.S. 116.3116. The Plaintiff had knowledge of the eventual loss of title to the  
21 Property upon the foreclosure by U.S. Bank. The Copper Ridge' CC&Rs were recorded in the  
22 Clark County Recorder's Office and provided "notice" to all interested parties of the regulations  
23 and restrictions premised on an HOA foreclosure sale.<sup>60</sup> A reasonably prudent purchaser at an  
24 HOA foreclosure sale would assume that any HOA foreclosure sale would be subject to any first,  
25 position Deeds of Trust secured against the Property. The Plaintiff purchased the Property at the  
26 Copper Ridge sale for a nominal amount of only \$14,000.00 and should have expected that any  
27 sale of a Property at an HOA foreclosure sale for a nominal amount is contingent on a potential  
28 loss of the Property through a foreclosure by a first, position Deed of Trust. The Plaintiff never

---

<sup>60</sup> 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 purchased fee simple title at the Copper Ridge foreclosure sale, therefore, the Plaintiff cannot  
2 assert any “irreparable” or “unique” harm related to the real property. The Plaintiff merely holds  
3 a possessory title interest in the Property, subject to an eventual sale by the first, position Deed of  
4 Trust. Therefore, the Plaintiff would only be entitled to a compensatory monetary amount for  
5 any loss of “title.”

6 Based on the above, the Plaintiff’s Motion for Preliminary Injunction should be denied in  
7 this case based on the lack of irreparable harm suffered by the Plaintiff if U.S. Bank is allowed to  
8 proceed with a foreclosure sale on the Property.

9 **F. THE PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE**  
10 **DENIED BECAUSE THE BALANCE OF EQUITIES FAVORS U.S. BANK**  
11 **BEING ALLOWED TO CONTINUE WITH A FORECLOSURE SALE ON THE**  
12 **PROPERTY.**

13 As stated above, case law and the language in N.R.S. 116.3116(2) anticipates the  
14 eventual foreclosure by the first, position Deed of Trust. Nevada Case law surmises that any  
15 Third-Party Purchaser at an HOA foreclosure sale will eventually lose their possessory title  
16 interest in the Property, due to the “second” foreclosure by the first, position Deed of Trust.  
17 N.R.S. 116.3116(2)(b) clearly states that U.S. Bank has a priority lien secured by the Property,  
18 thereby allowing U.S. Bank to foreclose on the Property. The “status quo” in this case is  
19 established by the Nevada Case law, which clearly states that U.S. Bank is entitled to foreclose  
20 on the first, position Deed of Trust. Nevada Case law analyzed N.R.S. 116.3116 et seq. in the  
21 context of the eventual foreclosure by the first, position Deed of Trust. The actions of U.S. Bank  
22 are consistent with the analysis by Nevada Case Law, for U.S. Bank is proceeding with a  
23 foreclosure on the Property due to Parks’ default on the December 2005 Note. The assertions by  
24 the Plaintiff regarding the “status quo” are in direct contradiction to Nevada Case law and the  
25 language in N.R.S. 116.3116(2)(b). In order to maintain the status quo, the Court should deny  
26 the Motion for Preliminary Injunction and allow U.S. Bank to proceed with a foreclosure on the  
27 Property.

28 ///

///

1       **G. IF THE COURT GRANTS THE PRELIMINARY INJUNCTION, THE COURT**  
2       **SHOULD REQUIRE THE PAYMENT BY THE PLAINTIFF OF A SIGNIFICANT**  
3       **BOND.**

4       The purpose of the bond will be to compensate the enjoined party for any damages it may  
5       suffer as a result of the stay. In this case, U.S. Bank is owed \$381,598.31 on the December 2005  
6       Note.<sup>61</sup> If a stay is issued, U.S. Bank will be prevented from selling the Property for the duration  
7       of the case, at least six months and more likely a year, thereby requiring the Plaintiff to pay a  
8       bond in order to keep title of the Property. U.S. Bank will therefore be deprived of the use of the  
9       sale proceeds, estimated at \$381,598.31, for almost one year.

10       In addition to the inability to sell the property, U.S. Bank must pay insurance and  
11       property taxes for the Property during the case, which will result in an expense of at least  
12       \$5,000.00-\$10,000.00 per year. Therefore, the minimum amount of damages U.S. Bank will  
13       suffer if the injunction is granted totals \$381,598.31. Since, the Plaintiff only has a possessory  
14       interest, subject to the foreclosure sale by U.S. Bank, any bond amount posted by the Plaintiff  
15       should be substantial to warrant the delay in U.S. Bank executing a lawful foreclosure sale.  
16       Therefore, if the Court is inclined to grant the preliminary injunction, it should be conditioned  
17       upon the Plaintiff posting a bond of at least \$381,598.31.

18       ///

19       ///

20       ///

21       ///

22       ///

23       ///

24       ///

25       ///

26       ///

27       \_\_\_\_\_  
28       <sup>61</sup>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 filed concurrently herewith as  
Exhibit N.

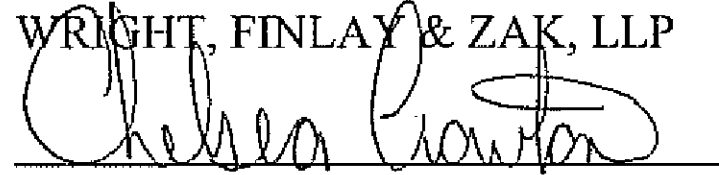
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. CONCLUSION**

Based on the above, the Plaintiff's Motion for Preliminary Injunction should be denied and the Court should allow U.S. Bank to proceed with a foreclosure on the Property.

DATED this 25<sup>th</sup> 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*

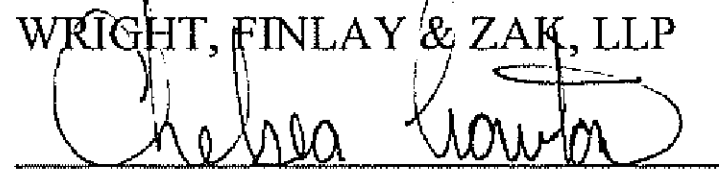
**AFFIRMATION**

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

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

DATED this 25<sup>th</sup> day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP



Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

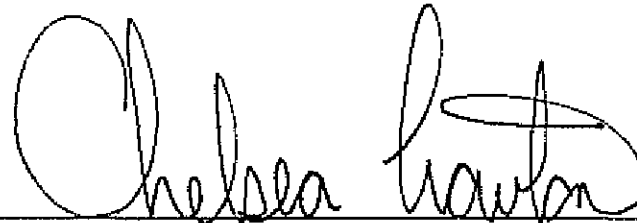
Las Vegas, NV 89148

*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*

1 CERTIFICATE OF MAILING

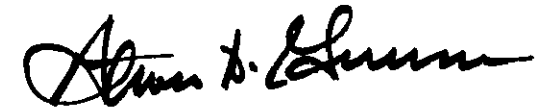
2 I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that  
3 service of the foregoing DEFENDANT, U.S. BANK, N.A.'S, RESPONSE TO THE  
4 PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION was made on the 25<sup>th</sup> day  
5 of April, 2013, by depositing a true copy of same in the United States Mail, at Las Vegas,  
6 Nevada, addressed as follows:

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

12  
13  
14 

15 An Employee of WRIGHT, FINLAY & ZAK, LLP  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **TAB 13**



CLERK OF THE COURT

RJN

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

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

[ccrowton@wrightlegal.net](mailto: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

**DEFENDANT, U.S. BANK, N.A.'S,**  
**REQUEST FOR JUDICIAL NOTICE IN**  
**SUPPORT OF THE RESPONSE TO THE**  
**PLAINTIFF'S MOTION FOR**  
**PRELIMINARY INJUNCTION**

**TO THE CLERK OF THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,  
NEVADA:**

**PLEASE TAKE NOTICE** that, in connection with the Defendant's Response to the  
Plaintiff's Motion for Preliminary Injunction, the Defendant, U.S. Bank, N.A., respectfully  
requests that, pursuant to Nevada Rules of Evidence Rule 201, this Court should take judicial  
notice of the following documents:

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

1 Defendant's Request for Judicial Notice ("RJN") filed concurrently herewith as  
2 **Exhibit A.**

- 3 2. A true and correct copy of the Deed of Trust is recorded in the Clark County  
4 Recorder's Office as Book and Instrument Number 20060105-0004275 is attached to  
5 the Defendant's RJN filed concurrently herewith as **Exhibit B.**
- 6 3. A true and correct copy of the Notice of Default is recorded in the Clark County  
7 Recorder's Office as Book and Instrument Number 20100224-0003380 is attached to  
8 the Defendant's RJN filed concurrently herewith as **Exhibit C.**
- 9 4. A true and correct copy of the Assignment is recorded in the Clark County Recorder's  
10 Office as Book and Instrument Number 20100712-0002705 is attached to the  
11 Defendant's RJN filed concurrently herewith as **Exhibit D.**
- 12 5. A true and correct copy of the Substitution is recorded in the Clark County  
13 Recorder's Office as Book and Instrument Number 20100712-0002706 is attached to  
14 the Defendant's RJN filed concurrently herewith as **Exhibit E.**
- 15 6. A true and correct copy of the Certificate is recorded in the Clark County Recorder's  
16 Office as Book and Instrument Number 20100712-0002707 is attached to the  
17 Defendant's RJN filed concurrently herewith as **Exhibit F.**
- 18 7. A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark  
19 County Recorder's Office as Book and Instrument Number 20100712-002708 is  
20 attached to the Defendant's RJN filed concurrently herewith as **Exhibit G.**
- 21 8. A true and correct copy of the Notice of Lien is recorded in the Clark County  
22 Recorder's Office as Book and Instrument Number 20120524-0002436 is attached to  
23 the Defendant's RJN filed concurrently herewith as **Exhibit H.**
- 24 9. A true and correct copy of the Assignment is recorded in the Clark County Recorder's  
25 Office as Book and Instrument Number 20120607-0002928 is attached to the  
26 Defendant's RJN filed concurrently herewith as **Exhibit I.**



- 1 10. A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark  
2 County Recorder's Office as Book and Instrument Number 20110627-0002062 is  
3 attached to the Defendant's RJN filed concurrently herewith as **Exhibit J**.
- 4 11. A true and correct copy of the Notice of Default (HOA) is recorded in the Clark  
5 County Recorder's Office as Book and Instrument Number 20120719-0001226 is  
6 attached to the Defendant's RJN filed concurrently herewith as **Exhibit K**.
- 7 12. A true and correct copy of the Notice of Foreclosure Sale is recorded in the Clark  
8 County Recorder's Office as Book and Instrument Number 20130207-0000910 is  
9 attached to the Defendant's RJN filed concurrently herewith as **Exhibit L**.
- 10 13. A true and correct copy of the Foreclosure Deed is recorded in the Clark County  
11 Recorder's Office as Book and Instrument Number 20130306-0001614 is attached to  
12 the Defendant's RJN filed concurrently herewith as **Exhibit M**.
- 13 14. A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark  
14 County Recorder's Office as Book and Instrument Number 20130311-0003086 is  
15 attached to the Defendant's RJN filed concurrently herewith as **Exhibit N**.
- 16 15. A true and correct copy of Centeno v. Mortg. Elec. Registration Systems, 2012 WL  
17 3730528 \* 3 (D. Nev. Aug. 28, 2012) is attached to the Defendant's RJN filed  
18 concurrently herewith as **Exhibit O**.
- 19 16. See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at  
20 \*3 (D. Nev. Feb. 11, 2013) attached to the Defendant's RJN filed concurrently  
21 herewith as **Exhibit P**.
- 22 17. See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-  
23 11-636948-B, Order is attached to the Defendant's RJN filed concurrently herewith  
24 as **Exhibit Q**.
- 25 18. See JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No.  
26 08-A562678, Order on Motion for Determination of Priority Amount attached to the  
27 Defendant's RJN filed concurrently herewith as **Exhibit R**.
- 28

- 1 19. See Korbel Family Trust v. Spring Mountain Ranch Master Association et al, Case  
2 No. 06-A-523959-C, Order attached to the Defendant's RJN filed concurrently  
3 herewith as **Exhibit S**.
- 4 20. See Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-C,  
5 Dept. XVI, Order on Motion for Preliminary Injunction, attached to the Defendant's  
6 RJN filed concurrently herewith as **Exhibit T**.
- 7 21. See Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30,  
8 Order attached to the Defendant's RJN filed concurrently herewith as **Exhibit U**.
- 9 22. See Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, Minutes  
10 from MSJ Hearing dated 6-15-2011 attached to Defendant's RJN filed concurrently  
11 herewith as **Exhibit V**.
- 12 23. See Advisory Opinion at pg. 8-14 attached to the Defendant's RJN filed concurrently  
13 herewith as **Exhibit W**.
- 14 24. See 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C,  
15 Dept. XVII, Order attached to the Defendant's RJN filed concurrently herewith as  
16 **Exhibit X**.
- 17 25. See SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept.  
18 XXVII, Order, attached to the Defendant's RJN filed concurrently herewith as  
19 **Exhibit Y**.
- 20 26. A true and correct copy of Section 9.13 of the CC&Rs is attached to the Defendant's  
21 RJN as **Exhibit Z**.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 The purpose of this Request for Judicial Notice is to put before the Court evidence as to  
2 the existence of undisputed material facts which are fatal to the Motion for Preliminary  
3 Injunction and show the deliberate falsity of the allegations of Plaintiff's Motion for Preliminary  
4 Injunction.

5 DATED this 25<sup>th</sup> day of April, 2013.

6 WRIGHT, FINLAY & ZAK, LLP

7 

8 Chelsea A. Crowton, Esq.

9 Nevada Bar No. 11547

10 5532 South Fort Apache Road, Suite 110

11 Las Vegas, NV 89148

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

16 **AFFIRMATION**

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

18 The undersigned does hereby affirm that the preceding **DEFENDANT, U.S. BANK,**  
19 **N.A.'S, REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THE RESPONSE TO**  
20 **THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** filed in Case No. A-  
21 13-678814-C **does not** contain the social security number of any person.

22 DATED this 25<sup>th</sup> day of April, 2013.

23 WRIGHT, FINLAY & ZAK, LLP

24 

25 Chelsea A. Crowton, Esq.

26 Nevada Bar No. 11547

27 5532 South Fort Apache Road, Suite 110

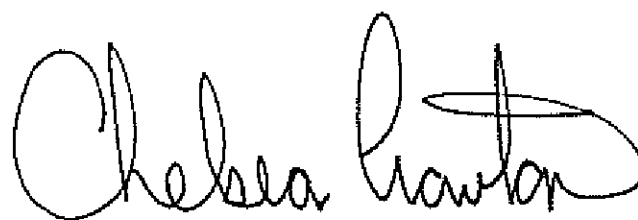
28 Las Vegas, NV 89148

*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*

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, REQUEST FOR JUDICIAL  
4 NOTICE IN SUPPORT OF THE RESPONSE TO THE PLAINTIFF'S MOTION FOR  
5 PRELIMINARY INJUNCTION was made on the 25<sup>th</sup> day of April, 2013, by depositing a  
6 true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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


12 

13  
14 An Employee of WRIGHT, FINLAY & ZAK, LLP  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**EXHIBIT A**

**EXHIBIT A**

  
20060105-0004273

APN: 178-19-712-012  
ESCROW NO: 01501113-150-KM2  
WHEN RECORDED MAIL TO and  
MAIL TAX STATEMENT TO:

Lucia Parks  
P.O. Box 7029  
Capistrano Beach, CA. 92624

Fee: \$15.00 RPTT: \$2,254.20  
N/C Fee: \$0.00

01/05/2006 13:33:52  
T20060002024

Requestor:  
LAWYERS TITLE OF NEVADA

Frances Deane KGP  
Clark County Recorder Pgs: 3

---

**GRANT, BARGAIN, SALE DEED**

R.P.T.T. \$2,254.20

THIS INDENTURE WITNESSETH: That

**Albert Brandelli and Mary Brandelli, husband and wife, as joint tenants**

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do(es) hereby  
Grant, Bargain, Sell and Convey to

**Lucia Parks, a married person**


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

See Exhibit A attached hereto and made a part hereof.

SUBJECT TO: 1. Taxes for the fiscal year 2005 - 2006  
2. Rights of Way, reservations, restrictions, easements, and conditions of record.

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

Witness my hand this 13<sup>th</sup> day of December, 2005.

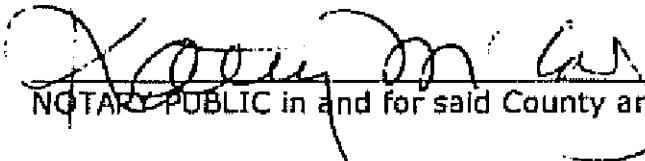
  
Albert Brandelli

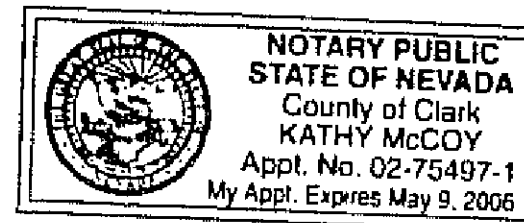
  
Mary Brandelli

STATE OF NEVADA  
COUNTY OF Clark } ss:

On 12-13-05 personally appeared before me, a Notary Public in and for said  
County and State, Albert Brandelli & Mary Brandelli,  
who acknowledged to me that they executed the same.

WITNESS my hand and official seal.

  
NOTARY PUBLIC in and for said County and State.



### **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**

# **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 RECORDER'S OPTIONAL USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

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

**\$442,000.00**

Deed in Lieu of Foreclosure Only (value of property) (\$ \_\_\_\_\_)

Transfer Tax Value per NRS 375.010, Section 2: **\$442,000.00**

Real Property Transfer Tax Due: **2,255.00**

## **4. If Exemption Claimed**

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

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

## **5. Partial Interest: Percentage being transferred: 100%**

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

Signature Albert Brandelli Capacity Seller

Signature Lucia Parks Capacity Buyer

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

Print Name: Albert Brandelli

Address: 2270 Nashville Avenue

City/State/Zip: Henderson, NV 89052

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

Print Name: Lucia Parks

Address: P.O. Box 7029

City/State/Zip: Capistrano Beach, CA. 92624

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

LAWYERS TITLE OF NEVADA, INC.

4000 S. Eastern Avenue

Las Vegas, NV 89119

Escrow #: 1501113-150-KM2

Escrow Officer: Kathy McCoy

**AN ADDITIONAL RECORDING FEE OF \$1.00 WILL APPLY FOR EACH DECLARATION OF VALUE FORM PRESENTED TO CLARK COUNTY, EFFECTIVE JUNE 1, 2004.**



**EXHIBIT B**

**EXHIBIT B**

**EXHIBIT B**

  
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

Fee: \$39.00

N/C Fee: \$0.00

01/05/2006

13:33:52

T20060002824

Requestor:

LAWYERS TITLE OF NEVADA

Frances Deane

KGP

Clark County Recorder

Pgs: 26

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.

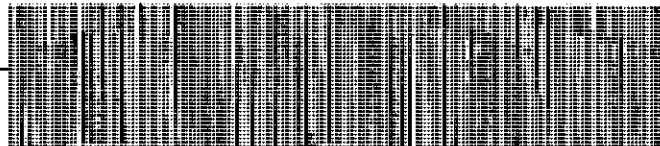
Lender is a NATIONAL ASSOCIATION  
organized and existing under the laws of THE UNITED STATES  
0061777934

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: 2  
VMP Mortgage Solutions, Inc.  
(800)521-7291



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

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is 1BITED 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

VMP-6(NV) (0507)

Page 2 of 15

Initials:   *RP*  

Form 3029 1/01

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

VMP-6(NV) (0507)

Page 3 of 15

Initials: 

Form 3029 1/01

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.

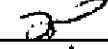
Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (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.

UMP-6(NV) (0507)

Page 8 of 15

Initials: 

Form 3029 1/01

(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.

 -6(NV) (0507)

Page 10 of 15

Initials: 

Form 3029 1/01

**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

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

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

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

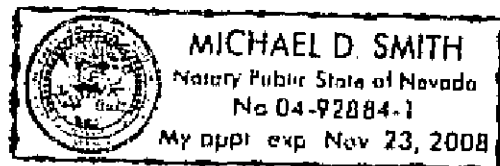
\_\_\_\_\_  
(Seal)  
-Borrower

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

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

STATE OF NEVADA  
COUNTY OF CLARK

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



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

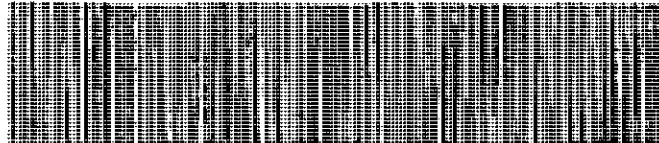
#### (A) Change Dates

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

UHF-B43R (0006) Form 3182 1/01  
Page 1 of 4 Initials:     
VMP MORTGAGE FORMS - (800)521-7291



**(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.

 \_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
LUCIA PARKS -Borrower -Borrower

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

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

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

## 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

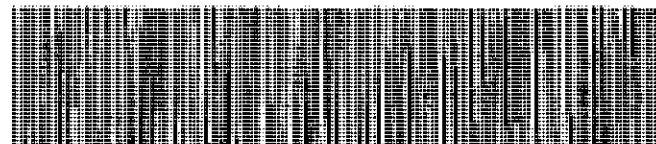
Form 3150 1/01

Page 1 of 3

Initials:   *JS*  

VMP-7R (0008)

VMP MORTGAGE FORMS - (800)521-7291



**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.

  
\_\_\_\_\_  
LUCIA PARKS (Seal)  
-Borrower

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

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

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

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

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

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

\_\_\_\_\_  
(Seal)  
-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.

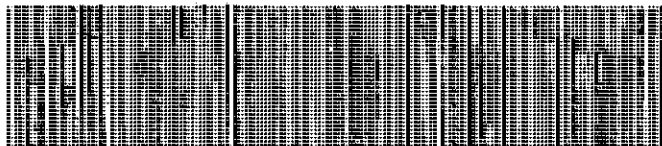
0061777934

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: *28*

VMP Mortgage Solutions  
(800)521-7291



**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.


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

 -57R (0401).01

Page 2 of 3

Initials: 22


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

 (Seal) \_\_\_\_\_ (Seal)  
LUCIA PARKS -Borrower -Borrower

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

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

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

NMFL# 3170 (14FR) Rev 11/24/2004  
-57R (0401).01

Page 3 of 3

**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**

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. 16<sup>th</sup> 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