

CLERK OF THE COURT

Richard C. Gordon  
Nevada Bar No. 9036  
Paul W. Shakespear  
Nevada Bar No. 10752  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
Email: [pshakespear@swlaw.com](mailto:pshakespear@swlaw.com)

Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 350 DURANGO  
104

Plaintiff,

vs.

WELLS FARGO HOME MORTGAGE A  
DIVISION OF WELLS FARGO BANK, N.A.;  
MTC FINANCIAL dba TRUSTEE CORPS;  
RON N. SENHOLTZ and SHIRLEY P.  
SENHOLTZ as trustees for the Senholtz Family  
Trust

Defendants.

And all related actions.

CASE NO.: A-13-688410-C  
DEPT. NO.: XXVIII

**WELLS FARGO HOME  
MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A.'S  
REPLY IN SUPPORT OF RENEWED  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. ("Wells Fargo"), through its undersigned counsel, hereby files this Reply in support of its Motion to Dismiss Plaintiff's Complaint ("Reply"). The Reply is based on the Memorandum of Points and Authorities below, the Request for Judicial Notice previously filed, the papers and pleadings on file with the Court, and any oral argument that this Court may entertain.

///

///

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

SNELL & WILMER L.L.P.

By: /s/ Paul W. Shakespear

Richard C. Gordon, Nevada Bar No. 9036  
Paul W. Shakespear, Nevada Bar No. 10752  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE, A  
DIVISION OF WELLS FARGO BANK, N.A.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Wells Fargo's Motion to Dismiss seeks dismissal of Plaintiff's complaint on the following grounds. First, NRS 116.3116 *et seq.* (the "Statute") fails to provide proper notice to Wells Fargo, and thus violates its constitutionally protected due process rights. Second, the Nevada Supreme Court's interpretation of the Statute in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), *reh'g denied* (Oct. 16, 2014) ("*SFR v. U.S. Bank*"), allowing extinguishment of a lender's deed of trust, constitutes an impermissible taking. Third, *SFR v. U.S. Bank* did not address the issue of whether these HOA lien foreclosure sales are commercially unreasonable, expressly identifying this as an open question. Finally, the holding in *SFR v. U.S. Bank* frustrates significant public policies and has the potential to detrimentally impact Nevada homeowners, potential purchasers, the real estate market as a whole, and those industries intimately tied to the real estate market.

Plaintiff's Opposition fails to establish how any one, or all, of Wells Fargo's grounds for dismissal fail as a matter of law. Wells Fargo's Motion should be granted.

///

///

///

///

## II. ARGUMENT

### A. NRS 116.3116 et seq. Violates Wells Fargo's Constitutionally Protected Due Process Rights and Cannot Stand.

Although Plaintiff suggests that it has, the Nevada Supreme Court has not considered a facial challenge to NRS 116.3116 et seq., only an as-applied challenge. On its face, NRS 116.3116 et seq. does not require sufficient notice to a lender in violation of both the Nevada and United States Constitutions. As such, the foreclosure sale cannot stand. The notice provisions in the Statute require affirmative action by a party with an interest in the property before notice must be provided. Requiring Wells Fargo to “opt-in” before it is entitled to notice violates its due process rights and renders the Statute unconstitutional on its face.

This issue was recently decided in favor of Wells Fargo in another case pending in the Eighth Judicial District Court. In *Cano-Martinez v. HSBC Bank USA, et al.*, Case No. A-13-692027-C, Dept. XXV, argued on April 14, 2015, Judge Delaney granted summary judgment in favor of Wells Fargo, holding that the Statute was unconstitutional on its face because the “opt-in” or “burden shifting” notice provisions were insufficient to satisfy due process. A copy of the order granting summary judgment is attached hereto as **Exhibit 1**.

1. Plaintiff's reliance on NRS 107.090 fails because it renders the notice provisions of NRS 116.3116 et seq. meaningless and violates longstanding canons of statutory construction.

As detailed in Wells Fargo's Motion to Dismiss, the notice provisions expressly set forth in the Statute are insufficient to comport with due process. First, NRS 116.31163 only requires notice to a party “who has *requested* notice pursuant to NRS 107.090 or 116.31168” or the holder of a security interest who “*has notified the association*, 30 days before the recordation of the notice of default, of the existence of the security interest.” (emphasis added). Second, NRS 116.311635 only requires notice of the time and place of the sale to a party entitled to notice under NRS 116.31163(1)(b), and a holder of a “recorded security interest or the purchaser of the unit, *if either of them has notified the association*, before the mailing of the notice of sale.” Neither of these opt-in provisions mandate notice to a lender without some affirmative act on the

1 part of the lender, even where the lender's security interest has been recorded.

2 To circumvent the constitutional defects of the Statute, Plaintiff relies upon the Nevada  
3 Supreme Court's discussion of NRS 107.090 in *SFR v. U.S. Bank* to suggest that NRS 116.3116  
4 *et seq.* mandates actual notice to all subordinate lien holders. Plaintiff's contention is without  
5 merit and violates longstanding principles of statutory construction. Specifically, Plaintiff asserts  
6 that the Statute mandates actual notice pursuant to NRS 116.3116(1) which provides that: "[t]he  
7 provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust  
8 were being foreclosed." (Opp'n 15:15–21.) Plaintiff contends that this reference to NRS 107.090  
9 salvages the Statute by requiring actual notice to the lender.<sup>1</sup> Unfortunately for Plaintiff, reliance  
10 upon NRS 107.090 renders the specific notice provisions of NRS 116.3116 *et seq.* meaningless  
11 and effectively reads them out of the Statute. The Nevada Supreme Court did not consider this  
12 argument in *SFR v. U.S. Bank*.

13 Plaintiff considers NRS 107.090 in a statutory vacuum and relies upon the reference to  
14 NRS 107.090 to the exclusion of the express and detailed notice provisions set forth in NRS  
15 116.3116 *et seq.* Plaintiff's disregard for the Statute's notice provisions is troubling, particularly  
16 because it is the court's task to look at the statutory scheme as a whole and endeavor to give  
17 effect to every provision. "[I]t is the duty of this court, when possible, to interpret provisions  
18 within a common statutory scheme '*harmoniously with one another* in accordance with the  
19 general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving  
20 effect to the Legislature's intent." *S. Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446,  
21 449, 117 P.3d 171, 173 (2005) (emphasis added). Additionally, this Court "must give its terms  
22 their plain meaning, considering its provisions as a whole so as to read them 'in a way that would  
23 not render words or phrases superfluous or make a provision nugatory.'" *Id.* at 173; *Harris*  
24 *Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641–42, 81 P.3d 532, 534–35 (2003) (finding  
25 that "no part of a statute should be rendered meaningless").

26 If, as Plaintiff claims, the incorporation of NRS 107.090 mandates notice to the lender, the

27  
28 <sup>1</sup> NRS 107.090, titled "***Request for notice of default and sale***", requires the trustee or person authorized to record  
the notice of default and notice of sale to serve the notice via registered or certified mail to "[e]ach other person with  
an interest whose interest or claimed interest is subordinate to the deed of trust." NRS §107.090(3)(b).

1 express notice provisions set out in NRS 116.31163 and NRS 116.311635 would be superfluous  
2 and meaningless. As set forth above, NRS 116.31163 and NRS 116.311635 both require any  
3 secured creditor—either senior or subordinate—to give notice to an association before the  
4 association has an obligation to provide the notice of default or notice of sale. Nevertheless, these  
5 provisions would effectively be written out of the Statute if NRS 107.090 became the sole  
6 governing notice provision. There would simply be no reason to include the very detailed and  
7 express opt-in provisions in the Statute if all that the legislature intended was to mimic, verbatim,  
8 the notice requirements of NRS 107.090.

9 2. Plaintiff's reliance on NRS 107.090 fails because the specific provisions in NRS  
10 116.3116 *et seq.* control over the generic provisions in NRS 107.090.

11 Plaintiff asserts that NRS 107.090's notice provision trumps the express notice provisions  
12 set forth in NRS 116.3116 *et seq.* This assertion is contrary to Nevada's long-standing  
13 interpretive rule that a specific statute controls over the more general. *State Tax Comm'n v. Am.*  
14 *Home Shield of Nevada, Inc.*, 127 Nev. Adv. Op. 31, 254 P.3d 601, 605 (2011) (citing *Nevada*  
15 *Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (holding that "[a] specific  
16 statute controls over a general statute."). NRS 116 governs common-interest ownership  
17 communities, and NRS 116.3116 *et seq.* governs the foreclosure of an HOA's assessment lien.  
18 Alternatively, NRS 107.090 governs the foreclosure of a deed of trust. As discussed above, the  
19 Statute includes detailed and express provisions regarding what notice must be given and to  
20 whom. As to the lender, the Statute's notice provisions require some affirmative action by the  
21 lender to "opt in" before notice becomes mandatory. Despite Plaintiff's assertions to the  
22 contrary, this is, and remains, the Statute's primary constitutional defect.

23 There are only two references to NRS 107.090 in the Statute. First, NRS 116.31163(1)  
24 states that a notice of default and election to sell only needs to be mailed to "[e]ach person *who*  
25 *has requested notice pursuant to NRS 107.090* or 116.31168." (emphasis added.) This provision,  
26 even though referencing NRS 107.090, expressly requires a party to request notice—take  
27 affirmative action. Second, NRS 116.31168(1) makes clear that a *request must be made* pursuant  
28 to NRS 107.090, stating that "[t]he request must identify the lien by stating the names of the

unit's owner and the common-interest community." (emphasis added). Moreover, NRS 116.31168 is titled: "Foreclosure of liens: *Requests by interested persons* for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose." (emphasis added). Both of these provisions specifically identify and require a request from the interested party, even taking into account their reference to NRS 107.090. Accordingly, these provisions still mandate a request for notice as a requirement for actually receiving notice, even if NRS 107.090 governs as Plaintiff suggests.

If the Nevada Legislature intended the notice provisions in NRS 107.090 to trump the specific provisions of NRS 116.116 *et seq.*, it could have simply referred to NRS 107.090 and excluded all of the detailed and express notice provisions in the Statute. But it did not. Instead, the legislature crafted specific and direct provisions governing who is entitled to receive notice and under what circumstances—provisions that differ from, and arguably contradict, the notice requirements of NRS 107.090. In applying Nevada's rules of statutory construction, this Court cannot disregard the specific notice provisions of the Statute, in favor of a more general provision found in a different chapter and governing a different type of foreclosure. As a matter of law, the broad and generic provisions of NRS 107.090 cannot supersede or negate the detailed and express notice provisions of NRS 116.3116 *et seq.* Simply put, Plaintiff's reliance on NRS 107.090 as a catch-all provision does not correct the Statute's constitutional infirmities.

3. The Nevada Supreme Court was not presented with a facial challenge to the Statute and did not resolve that issue.

Plaintiff's suggestion that *SFR v. U.S. Bank* resolved Wells Fargo's facial challenge to the Statute is without merit. The Supreme Court was never presented with a facial challenge to the constitutionality of the Statute. Accordingly, it could not, and did not, offer any opinions on this precise legal issue. In fact, for the Court to decide an issue that was not presented to it is contrary to express precepts of judicial review. *See Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. Adv. Op. 42, 245 P.3d 542, 544 (Nev. 2010) (stating that an appellate court will not hear arguments raised for the first time on appeal on the grounds that doing otherwise would jeopardize the efficiency, fairness, and integrity of the judicial system).

1 In *SFR v. U.S. Bank*, the lender acknowledged that it received notice, but asserted that the  
2 notice it received failed to include necessary information and failed to comply with the Statute.  
3 *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014), *reh'g*  
4 *denied* (Oct. 16, 2014). Here, Wells Fargo asserts that the Statute is unconstitutional on its face.  
5 These facts alone distinguish the present case from *SFR v. U.S. Bank*. Nothing in the *SFR*  
6 opinion addresses a facial constitutional challenge to the Statute's notice provisions. Because this  
7 issue has never been presented to, let alone decided by, the Nevada Supreme Court, it is ripe for a  
8 judicial resolution in the present case.

9 **B. The Statute Violates the Takings Clauses of the United States and Nevada**  
10 **Constitutions Because It Permits the Seizure of Private Property to Further a**  
11 **Public Interest without Just Compensation.**

12 As detailed in Wells Fargo's Motion to Dismiss, permitting the extinguishment of a first-  
13 recorded deed of trust in favor of a *de minimis* homeowners' association's lien without any  
14 compensation to the lienholder, is an unconstitutional taking as a matter of law. First, the deed of  
15 trust is a property right—a fact that Plaintiff does not dispute. Second, the Legislature's  
16 enactment of the Statute to support a public policy in favor of HOAs constitutes government  
17 action. Third, Wells Fargo received no compensation for the taking, let alone just compensation,  
18 as required by both the Nevada and U.S. Constitutions.

19 None of Plaintiff's contentions offered in opposition succeed in demonstrating how the  
20 sale at issue in this case was not an unconstitutional taking as a matter of law.

21 1. The Nevada Legislature's enactment of the Statute constitutes government action.

22 Plaintiff asserts that because the HOA is a "non-profit corporation," not a public or  
23 governmental entity, there can be no state action, and thus no unconstitutional taking. This  
24 contention fails for the following reasons. First, the Takings Clause does not require that the  
25 government itself take the property. Second, the Legislature's enactment of the Statute is  
26 sufficient state action.

27 The seizure of a property interest can be a taking even where the government does not  
28 itself acquire the property. A "takings analysis is not necessarily limited to outright acquisitions

1 by the government for itself.” *United States v. Sec. Indus. Bank*, 459 U.S. 70, 77-78 (1982)  
2 (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)). Moreover, the  
3 Supreme Court has clarified that the government’s physical acquisition of a lien property was  
4 not material in determining whether a taking has occurred. *Id.* The government’s “simply  
5 impos[ing] a general economic regulation,” which “in effect transfers the property interest from a  
6 private creditor to a private debtor” is also a taking. *Id.*

7 Here, the Legislature’s enactment of the Statute is a government-sanctioned taking. The  
8 Statute (as recently interpreted by the Nevada Supreme Court) allows for extinguishment of a  
9 lender’s first-recorded deed of trust in favor of a *de minimis* HOA lien, for the sole purpose of  
10 promoting a public policy supporting the HOAs, without any compensation to Wells Fargo, as the  
11 secured lien holder. The Statute not only allows for, but is the sole mechanism by which, Wells  
12 Fargo’s property is seized, for a stated public purpose, and without not only just, but without any,  
13 compensation.

14 2. The lender could not have taken its property right subject to the HOA’s inchoate  
15 lien which did not yet exist.

16 Plaintiff asserts that a taking cannot occur here because Wells Fargo recorded its deed of  
17 trust and obtained its secured interest in the Property after the Statute was enacted and the  
18 CC&Rs were recorded. This contention fails as a matter of law for the following reasons.

19 a) *The Statute did not put Wells Fargo on notice of an actual lien or potential*  
20 *extinguishment, accordingly Wells Fargo did not take its interest in the*  
21 *Property with knowledge of the HOA’s purported rights.*

22 Plaintiff’s contention that Wells Fargo took its secured interest with knowledge of a non-  
23 existent lien and potential extinguishment fails as the Statute provides no such information. The  
24 Statute only provides for the possibility of an inchoate lien—one that may or may not materialize  
25 at some point in the future. The Statute expressly states that the lien does not exist until the  
26 homeowner defaults. NRS 116.3116 states: “The association has a lien on a unit for any  
27 construction penalty that is imposed against the unit’s owner pursuant to NRS 116.310305, any  
28 assessment levied against that unit or any fines imposed against the unit’s owner *from the time the*



1 *construction penalty, assessment or fine becomes due.*” (emphasis added).

2 As a result, when Wells Fargo recorded its deed of trust, the HOA lien did not exist and  
3 had not been recorded. The only thing that Wells Fargo may have been aware of was the  
4 possibility of a future HOA lien for unpaid neighborhood dues.

5 Importantly, Plaintiff fails to cite any legal authority for its proposition that, in order to  
6 assert a takings violation, Wells Fargo’s deed of trust must have been recorded prior to enactment  
7 of the Statute. Plaintiff’s attempt to factually distinguish *Indus* and *Louisville* fails. See  
8 Plaintiff’s Opp., pp. 9-10. Although both *Indus* and *Louisville* involved situations where the  
9 property right at issue existed prior to the enactment of the challenged statute or regulation,  
10 neither case held that lien perfection prior to enactment of the challenged statute is a prerequisite  
11 to finding a taking.

12 Indeed, the facts here are akin to *Armstrong*, cited in Wells Fargo’s Motion to Dismiss.  
13 *Armstrong v. United States*, 364 U.S. 40, 48 (1960). In *Armstrong*, the contract which created the  
14 possibility that the government may recover the lien property was enacted prior to recording  
15 the secured interest. In *Armstrong*, the party entitled to a secured interest had knowledge of a  
16 preexisting contract or right, as Plaintiff purports Wells Fargo had here (and Wells Fargo  
17 disputes), which provided for the potential for a future government taking. *Id.* However, in spite  
18 of the pre-existing contract, there was no injury or taking, until the government physically took  
19 possession of the property, making it impossible for the lienholder to enforce its lien. *Id.* The  
20 Court recognized that the *potential* for possession of the lien property was insufficient to  
21 constitute actual knowledge, which may negate a takings claim. *Id.* Accordingly, the court found  
22 that the government’s conduct constituted an unconstitutional taking, even though the statute was  
23 in place when the liens were recorded. *Id.*

24 *Armstrong* is instructive because the government’s prospective authorization of the taking  
25 occurred before any lien existed, and the government action that ultimately authorized the taking  
26 —the contract—did not, by itself, effect the taking. *Id.* Although the contract was in place, prior  
27 to the lien, the taking did not occur until the shipbuilding company’s default triggered the  
28 government’s retention of the materials without compensation to the materialmen for its lien. *Id.*

1 Likewise here, that the enactment of the Statute predates Wells Fargo's recorded deed of trust,  
2 just as the contract predated the secured interest in *Armstrong*, is immaterial. It is the default of  
3 the borrower's assessment obligations (like the default of the underlying contract in *Armstrong*)  
4 which triggers the taking, and thus the harm to the lienholder. *See Armstrong*, 364 U.S., at 48  
5 ("The total destruction by the government of all compensable value of these liens, which  
6 constitute compensable property, has every possible element of a Fifth Amendment 'taking' and  
7 is not a mere 'consequential incidence' of a valid regulatory measure.")

8 *b) It is the foreclosure of an HOA lien, not the enactment of the Statute which*  
9 *causes damage; thus there is no taking until foreclosure.*

10 Plaintiff suggests that because Wells Fargo recorded its interest with knowledge of the  
11 existence of the Statute, Wells Fargo cannot claim any taking of its secured interest. This  
12 assertion is without merit. It is not the enactment of the Statute that constitutes the taking. The  
13 Statute only provides for a right to record and foreclose a lien at some point in the future. The  
14 Statute does not cause any injury due to enactment alone. A taking only occurs when the HOA  
15 foreclosure sale occurs. Just as *Armstrong* required the contract and the subsequent default in  
16 order to constitute a taking, here, in addition to the Statute, there must be an actual default, a  
17 recorded lien, and foreclosure sale, in order to cause the harm and thus the taking.

18 Takings occur at property loss, not earlier. Nor could Wells Fargo have challenged the  
19 Statute when it was enacted. Any theoretical, pre-enforcement challenge to the Statute in 1991  
20 would have been non-justiciable by any measure. Such a challenge would have been an  
21 impermissible, unripe, pre-enforcement challenge by a party without standing. First, a party may  
22 not seek pre-enforcement review of a statute absent an actual and well-founded fear that the law  
23 will be enforced against it. *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2343 (2014)  
24 (citing *Va. v. Am. Booksellers Assn. Inc.*, 484 U.S. 383 (1988)). Wells Fargo did not have an  
25 actual and well-founded fear that this ambiguous statute would be used to deprive it of property  
26 interests at the time of its passage. Relatedly, an earlier challenge would have been unripe.  
27 Importantly, it was not until September 18, 2014, when the Supreme Court interpreted the Statute,  
28 in *SFR v. U.S. Bank*, to render extinguishment of a deed of trust upon an HOA foreclosure that

1 Wells Fargo had an actual and well-founded fear that the statute would be used to deprive it of its  
2 property right.

3 A “controversy must be definite and concrete, touching the legal relations of parties  
4 having adverse legal interests. It must be a real and substantial controversy admitting of specific  
5 relief through a decree of a conclusive character, as distinguished from an opinion advising what  
6 the law would be upon a hypothetical state of facts.” *Hillblom v. United States*, 896 F.2d 426,  
7 430 (9th Cir. 1990) (citing *Aetna Life Ins. v. Haworth*, 300 U.S. 227, 240–41 (1937) (citations  
8 omitted)). The ripeness doctrine demands that litigants state a claim on which relief can be  
9 granted and that litigants’ asserted harm is “direct and immediate” rather than speculative or  
10 hypothetical. *Id.* (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 152 (1967)).

11 At the time the Statute was enacted and before this deluge of HOA litigation, no concrete  
12 controversy existed. Underscoring this is the fact that the Statute had been “on the books” for  
13 over twenty years before anyone attempted to apply it as they are now.

14 3. If there was no public purpose, the Taking is Unauthorized and the Foreclosure Sale  
15 Must be Voided.

16 Plaintiff also briefly argues, without further analysis, that “[t]he present case, however,  
17 does not involve any property being taken for public use as required by the Fifth Amendment to  
18 the U.S. Constitution or Article I, Section 8 of the Nevada Constitution.” (Opp’n. p. 9.) The fact  
19 the property was not taken for a public purpose, as Plaintiff argues, would actually be yet another  
20 reason the HOA’s foreclosure sale should be voided. It is impermissible to take property to only  
21 bestow it upon another private party. *Kelo v. City of New London, Conn.*, 545 U.S. 469, 477  
22 (2005) (“[I]t has long been accepted that the sovereign may not take the property of A for the sole  
23 purpose of transferring it to another private party B, even though A is paid just compensation.”).  
24 In other words, if Plaintiff is correct that there has been no taking for public use, then the  
25 foreclosure sale should be voided because there has been a taking without the required public use  
26 (and, in this case, compensation).

27 ///

28 ///

1       **D. Plaintiff's Reliance on Legal Conclusions Set Forth in the Foreclosure Deed's**  
2       **Recitals Fails to Establish the Validity of the Sale.**

3       Plaintiff's reliance upon legal conclusions set forth in the foreclosure deed's recitals fails  
4       to establish either Wells Fargo's receipt of notice or compliance with the Statute, and does not  
5       render the sale valid.

6             1. Boilerplate recital language does not establish notice for compliance.

7       Boilerplate recitals in the HOA foreclosure deed establish neither Wells Fargo's receipt of  
8       notice nor compliance with NRS 116.3116 *et seq.* In considering this identical issue, courts have  
9       held that legal conclusions in a recital do not conclusively establish the purported conclusion.  
10      "We are persuaded that what is required is a recital of fact specifying what the trustee has done,  
11      not a mere conclusory statement that the trustee has complied with the law." *Rosenberg v. Smidt*,  
12      727 P.2d 778, 785 (Alaska 1986). The Washington Court of Appeals has likewise declined to  
13      apply a conclusive presumption prescribed by statute because "the deed contains legal  
14      conclusions but not factual recitals that establish compliance" with the law. *Albice v. Premier*  
15      *Mortg. Servs. of Wash., Inc.*, 239 P.3d 1148, 1155 (Wash. Ct. App. 2010), *aff'd*, 276 P.3d 1277  
16      (Wash. 2012).

17      A factual recital necessitates review in each case—*e.g.* the date notice was sent, the total  
18      deficiency amount, and the superpriority amount. *Rosenberg*, 727 P.2d at 786. Factual  
19      recitations provide assurance that statutory requirements are complied with, whereas "a  
20      conclusory statement can be a matter placed in a form, or a programmed deed, and will not  
21      require the trustee to review what was actually done." *Id.* "A conclusory recital, on the other  
22      hand, accomplishes little or nothing." *Id.* at 786. Thus, "requiring the trustee to recite the  
23      statutorily mandated facts of the loan-default procedure strikes the appropriate balance between  
24      the competing interests of all the parties." *See Albice*, 239 P.3d at 1155.

25      Moreover, the ordinary meaning of "recital" is a preliminary statement "showing the  
26      existence of particular facts". *Black's Law Dictionary* 1385 (9th ed. 2009). *Black's Law*  
27      *Dictionary* defines "recital" as a "preliminary statement in a contract or deed explaining the  
28      reasons for entering into it or the background of the transaction, or showing the existence of

1 particular facts”. *Id.* Accordingly, NRS 116.31166’s use of the word “recital” calls for facts  
2 rather than conclusions. *Id.* at 924.

3 Here, the HOA’s foreclosure deed offers only generic legal conclusions that the HOA  
4 complied with all the requirements of law. The foreclosure deed states only that  
5 “Nevada Association Services, Inc. has complied with all requirements of law including, but not  
6 limited to, the elapsing of 90 days, mailing of copies of [notices] and the posting and publication  
7 of the Notice of Sale.” (RJN Exhibit H). The HOA’s foreclosure deed fails to identify any facts  
8 regarding this particular foreclosure. The foreclosure deed offers no dates of service for the  
9 purported notices, no facts identifying who received the purported notice, and no specific facts  
10 evidencing that the notices included all required information. The foreclosure deed’s conclusory  
11 and vague assertions make it impossible to determine, as a matter of fact, whether the law was  
12 complied with. Accordingly, the generic recitals in the HOA’s foreclosure deed evidence nothing  
13 in this setting. *See Albice*, 239 P.3d at 1155.

- 14 2. Even if the recitals established compliance with the Statute (and they do not), the  
15 Statute is unconstitutional on its face and purported compliance with an  
16 unconstitutional statute does not make the sale valid.

17 As detailed above, the opt-in notice provisions in the Statute do not comport with the  
18 requirements of due process, making the Statute unconstitutional on its face. Plaintiff’s argument  
19 simply asserts that the sale should be valid, based upon generic, conclusory legal recitals that  
20 allege compliance with an unconstitutional statute. Unfortunately for Plaintiff, compliance with a  
21 deficient statute does not correct the deficiencies within the statute itself or render the sale valid.

22 Plaintiff’s reliance on *Pro-Max Corp. v. Feenstra* is misplaced because that case involved  
23 a question of statutory interpretation not at issue here. 117 Nev. 90, 16 P.3d 1074 (2001)  
24 (rejecting the district court’s limitation of NRS 106.240 to bona fide purchasers and concluding  
25 instead that “the statute is clear and unambiguous. . . . [and] no further interpretation is required  
26 or permissible.”). Contrary to Plaintiff’s assertion, the specific issue here is not interpretation of  
27 the Statute. Instead, Wells Fargo argues that the Statute is unconstitutional, on its face, because it  
28 fails to comport with due process. Even if the conclusive presumptions in the recitals were

evidence of anything (and they are not), a conclusive presumption asserting compliance with an unconstitutional statute is meaningless and does not make the foreclosure sale valid.

For these reasons, Plaintiff's reliance upon the broad and generic legal conclusions set forth in the recitals does not establish the validity of the sale.

**E. The HOA Foreclosure Price Was Commercially Unreasonable as a Matter of Law.**

Plaintiff's failure to buy the property in a commercially reasonable manner voids the HOA foreclosure sale and requires dismissal as a matter of law. Yet, Plaintiff attempts to overlook the fact that the property was purchased at the HOA foreclosure sale for \$6,900.00 when it is valued at approximately ten (10) times that amount.

The Supreme Court's decision in *SFR v. U.S. Bank* expressly left the issue of "commercial reasonableness" and the related issue of "*bona fide* purchaser status" open. *SFR Investments Pool I v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, n.6 (2014), *reh'g denied* (Oct. 16, 2014). Although the Nevada Supreme Court declined to consider issues of commercial reasonableness on a motion to dismiss, it did not foreclose the possibility that in other cases, the issue could be ruled upon as a matter of law because the Court has discretion to take judicial notice of the Property's estimated value.<sup>2</sup>

**1. Contrary to Plaintiff's contention, proof of fraud is not a requirement to establishing a commercially unreasonable sale.**

Plaintiff's contention that there must be evidence of fraud or conspiracy in order to set aside a sale as commercially unreasonable misinterprets the Supreme Court's holding in *Golden*. In *Golden*, the Supreme Court held only that "proof of some element of fraud, unfairness or

---

<sup>2</sup> A fact is subject to judicial notice if it is "(a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS § 47.130(2). Courts can take judicial notice of matters of public record. *United States v. 14.02 Acres of Land*, 547 F.3d 943, 955 (9th Cir. 2008) (finding that the court "may take judicial notice of matters of public record") (citations and internal quotation marks omitted); *Valasquez v. Mortg. Elec. Registration Sys., Inc.*, No. C 08-3818 PJH, 2008 WL 4938162, at \*2-\*3 (N.D. Cal. Nov. 17, 2008) (taking judicial notice of: (1) deed of trust, (2) assignment of deed of trust, (3) notice of default and election to sell under deed of trust, (4) substitution of trustee, and (5) rescission of notice of default because they were publicly recorded). Here, the documents evidencing a commercially unreasonable sale (attached to Wells Fargo's RJN) were recorded with the Clark County Recorder's office or come directly from the Clark County Assessor's records and, therefore, are matters of public record. The authenticity of such records may be readily and accurately determined, and are therefore appropriate for judicial notice at the motion to dismiss stage.

1 oppression as accounts for and brings about the inadequacy of price” will support setting aside a  
2 commercially unreasonable sale. *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963)  
3 (emphasis added). The Supreme Court did not mandate that proof of fraud alone was required,  
4 but held that some element of fraud, or unfairness, or oppression would support setting aside a  
5 sale. The requirement to present “some element of fraud, unfairness or oppression” suggests a  
6 sliding scale for a court to weigh and balance on a continuum, considering all of the surrounding  
7 facts and circumstances.

8 Plaintiff suggests that the primary issue is that the price was too low. Wells Fargo asserts  
9 that there is much more at stake here than just price. Indeed, it is inherently unfair and oppressive  
10 that millions of dollars of secured interests can be wiped out to satisfy *de minimis* HOA liens,  
11 which results in Nevada citizens unable to buy, sell, or refinance properties and/or substantial  
12 increases in the costs of obtaining a home loan, among other dangerous effects. These  
13 consequences are unfair and oppressive to Nevada’s citizens, its real estate market, and the  
14 industries which rely upon and service the real estate market.

15 Moreover, in weighing the totality of circumstances, the Nevada Supreme Court has found  
16 that:

17 To say that a mortgagee with power to sell, who has an  
18 encumbrance on the estate of less than one-third of its value – an  
19 encumbrance which five or six months’ rent will discharge – has  
20 the right to sell the estate absolutely to the first man he meets who  
will pay the amount of encumbrance, without any attempt to get a  
larger price for it, *would in our opinion be equivalent to saying*  
*fraud and oppression shall be protected and encouraged.*

21 *Golden*, 79 Nev. at 513, 387 P.2d 989 (emphasis added) (quoting *Runkle v. Gaylord*, 1 Nev. 123,  
22 129 (1865)). The Supreme Court has already determined that attempting to sell a property for  
23 less than one-third of its value without any attempt to get a higher price is equivalent to fraud.  
24 Yet that is exactly the practice at issue here—selling an entire condominium for the price of a  
25 very used car, typically well below even one-third of the value deemed fraudulent in *Runkle*.  
26 Accordingly, this conduct, regardless of any further evidence, is tantamount to fraud, unfairness  
27 and oppression, and sufficient to set aside the sale.

28 The United States District Court for the District of Nevada has found that even if the

1 foreclosure sale had extinguished the lender's deed of trust (which contention it rejected), the  
2 lender still would have standing to challenge the foreclosure sale as commercially unreasonable,  
3 stating that the sale of a property for \$10,000 "raises serious doubts as to commercial  
4 reasonableness."<sup>3</sup> *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222,  
5 1229 (D. Nev. 2013), *reconsideration denied*, No. 2:13-CV-00164-RCJ-NJK, 2013 WL 3943915  
6 (D. Nev. July 30, 2013).

7 Additionally, the Eighth Judicial District has repeatedly dismissed quiet title cases  
8 involving HOA foreclosure sales on the independent basis that such sales were not commercially  
9 reasonable. In *SFR Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, the Court found that a  
10 \$7,000 purchase price was one factor the court considered in determining that the plaintiff buyer  
11 was not a bona fide purchaser, because the plaintiff did not provide valuable consideration for the  
12 property. *SFR Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, Order Denying  
13 Application for Temporary Restraining Order n. 9, Case No. A-13-684596-C, Dept. XXXI,  
14 entered on August 5, 2013; *see also Design 3.2 LLC v. Bank of New York Mellon*, Case No. A-10-  
15 621628, Dept. XV, "*Design 3.2 Order*", entered on June 15, 2011) (finding that the purchaser at  
16 the HOA foreclosure sale was not a bona fide purchaser, in part because plaintiff purchased for  
17 only \$3,743.84 and the deed of trust was \$576,000.) Courts from other jurisdictions have reached  
18 this same conclusion. *See Will v. Mill Condo. Owners' Ass'n*, 848 A.2d 336 (Vt. 2004) (voiding  
19 an HOA super-priority foreclosure sale, holding that sale of the property for \$3,510.10 was not  
20 commercially reasonable when the property had a fair market value of \$70,000.)

21 Plaintiff relies on *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994) to argue the  
22 foreclosure sale price is the only legitimate evidence of the property's value at the time of the  
23 foreclosure sale. (Opp'n. p. 14.) *BFP* involved an entirely different issue than what is in dispute  
24 here. In *BFP*, the U.S. Supreme Court was asked to determine if a house, supposedly worth

---

25  
26 <sup>3</sup>Courts from other jurisdictions have reached a similar conclusion. The Vermont Supreme Court recently addressed  
27 this issue in the context of its own HOA super-priority statute (based on the Uniform Act). In its ruling, the Vermont  
28 court voided an HOA super-priority foreclosure sale holding that sale of the property for \$3,510.10 was not  
commercially reasonable when the property had a fair market value of \$70,000. *See Will v. Mill Condominium  
Owners' Ass'n*, 848 A.2d 336 (Vt. 2004). Specifically, the Vermont Supreme Court held that "the enforcement  
mechanisms provided for in [the Uniform Act] must be conducted in good faith as defined in § 1-113, that is, *in a  
commercially reasonable manner*." *Id.* at 342.



1 \$725,000, that was sold for \$433,000 at a properly noticed foreclosure sale was “reasonably  
2 equivalent value” under the bankruptcy code’s fraudulent transfer provisions. *Id.* at 534 (citing  
3 11 U.S.C. § 548). The Court noted that the bankruptcy code did not use the term fair market  
4 value; rather, it deliberately used the phrase “reasonably equivalent value” and went on to  
5 determine what was meant by that term. *Id.* at 537. Nevada has specifically endorsed an analysis  
6 the U.S. Supreme Court has apparently rejected in interpreting the bankruptcy code. *Golden*, 79  
7 Nev. at 513–14 (discussing inadequacy of price, which can only be determined by comparing the  
8 foreclosure sale price with the fair market value). Even if Plaintiff’s argument were correct, *BFP*  
9 involved the sale of the house for more than half its value, while the instant case involves the sale  
10 of the property for less than 10 percent of its value. Factually and legally *BFP* is inapplicable.

11 2. Plaintiff’s Opposition fails to demonstrate that the sale was commercially  
12 reasonable.

13 In its Opposition, Plaintiff makes no attempt to explain how a property can sell for less  
14 than 10 percent of its fair market value and still be commercially reasonable. Presumably,  
15 Plaintiff’s purchase price is a direct reflection of what Plaintiff believed it purchased. Plaintiff’s  
16 purchase price, 10 percent of the fair market value, only demonstrates that Plaintiff and the HOA  
17 believed the property *was* subject to Wells Fargo’s first-in-time deed of trust, not that it wasn’t.  
18 Plaintiff’s other refrain—that “lenders can protect themselves” —is simply not true where, as  
19 established above, the Statute does not require proper notice. There is no rational basis for  
20 allowing these commercially unreasonable sales to continue when there are alternative means of  
21 achieving the intended statutory purpose, without causing any harm to Nevada lenders or  
22 homeowners. As ruled on by other Courts in this jurisdiction, and as expressly left open by the  
23 Nevada Supreme Court, the sale here was not commercially reasonable and is void as a matter of  
24 law.

25 The commercially unreasonable purchase price cannot be justified or excused on the sole  
26 ground that the lender can protect itself. First, the lender cannot protect itself against a  
27 foreclosure for which it has received no notice. As detailed herein, the Statute does not require  
28 notice to the lender, and violates due process. Second, even assuming Plaintiff’s contention is

1 true, this presumption ignores the HOA's practices of holding the property hostage until all  
2 amounts demanded are paid (well in excess of the super priority amount), refusing to  
3 communicate with the lender, or proceeding with foreclosure in the middle of payment  
4 discussions with the lender. Third, even assuming Plaintiff's contention is true, the purported fact  
5 that a lender may be able to protect itself, does not justify a sale for pennies on the dollar—it is a  
6 non sequitur. Someone, sometime, under some set of hypothetical facts, could always stop a  
7 fraudulent transaction. That possibility does nothing to render the underlying transaction  
8 legitimate. The lender is not a party to these commercially unreasonable sales. The plaintiff and  
9 HOA are, and their terms are unreasonable on their face, and their sales void.

10 Finally, in numerous cases it has been held that purchase prices for less than 20% of the  
11 value of the property are for inadequate consideration. *Allied Steel Corp v. Cooper*, 607 So.2d  
12 113, 120 (Miss. 2006) (determining that a sale for less than 40 percent of FMV “shocks the  
13 conscience”); *Armstrong v. Csurilla*, 817 P.2d 1221, 1234 (N.M. 1991) (holding that foreclosure  
14 sales that fall into the 10-40 % range should not be confirmed absent good reasons to do so);  
15 *United Okla. Bank v. Moss*, 793 P.2d 1359 (Okla. 1990) (finding that approximately 20% of FMV  
16 was insufficient); *Crown Life Ins. Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M. 1991) (finding  
17 15% of FMV insufficient); *Rife v. Woolfolk*, 289 S.E.2d 220 (W. Va. 1982) (14% of FMV was  
18 insufficient); *Ballentyne v. Smith*, 205 U.S. 285 (1907) (14% of FMV was insufficient); *First*  
19 *Nat'l Bank of York v. Critel*, 555 N.W.2d 773 (Neb. 1996) (reversing trial court's confirmation of  
20 a foreclosure sale that yielded 14% of the appraised value); *Polish Nat. Alliance v. White Eagle*  
21 *Hall Co., Inc.*, 470 N.Y.S.2d 642 (N.Y. App. Div. 1983) (“foreclosure sales at prices below 10%  
22 of value have been consistently held unconscionably low”). This is also consistent with the  
23 Restatement (Third) of Property (Mortgages), which the Nevada Supreme Court relied upon in  
24 *SFR v. U.S. Bank* and other cases.<sup>4</sup> Section 8.3 with provides:

25 (a) A foreclosure sale obtained pursuant to a foreclosure proceeding that  
26 is otherwise regularly conducted in compliance with applicable law does not  
render the foreclosure sale defective unless the price is grossly inadequate.

27 (b) Subsection (a) applies to both power of sale and judicial foreclosure

28 <sup>4</sup> See, e.g., *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 435 P.3d 535, 537 (Nev. 2010); *Huston v. Bank of Am. Fed. Sav. Bank*, 119 Nev. 485, 490, 491, 78 P.3d 71, 74 (2003).

proceedings.

The sale in this case was grossly inadequate, making the HOA foreclosure sale defective. Thus, this Court should determine that this sale, which was less than 10% of the value of the property, was commercially unreasonable and vacate the sale.

**F. Plaintiff Has No Answer to the Serious Public Policy Problems Presented by the Statute.**

Rather than addressing (much less rebutting) the serious public policy issues, Plaintiff claims the Supreme Court considered and rejected the public policy arguments because they were raised in amicus briefing in support of a petition for rehearing, which was denied. A denial of a petition for rehearing is not precedent and cannot be considered a ruling on the merits of arguments filed in support of that petition. *See Marshak v. Reed*, 229 F. Supp. 2d 179, 184 (E.D.N.Y. 2002), *aff'd*, 87 F. App'x 208 (2d Cir. 2004); *Riley v. Camp*, 130 F.3d 958, 984 (11th Cir. 1997); *Luckey v. Miller*, 929 F.2d 618, 622 (11th Cir. 1991); *Exxon Chemical Patents, Inc. v. Lubrizon Corp.*, 137 F.3d 1475, 1479 (Fed. Cir. 1998); *Landreth v. Comm'r*, 859 F.2d 643, 648 (9th Cir. 1988); *Fernandez v. Chardon*, 681 F.2d 42, 51 n. 7 (1st Cir. 1982);; *see also Md. v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) ("Inasmuch, therefore, as all that a denial of a petition for a writ of certiorari means is that fewer than four members of the Court thought it should be granted, this Court rigorously has insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review."). Accordingly, reliance upon the amicus briefs addressing public policy issues is not grounds for rejecting Wells Fargo's public policy argument here.

Plaintiff's Opposition does not assert or demonstrate that Wells Fargo's public policy concerns are unjustified or unrealistic. The public policy concerns identified in Wells Fargo's Motion to Dismiss address systemic overarching ramifications that will likely be experienced by Nevada's homeowners, potential buyers, its real estate market as a whole, and industries dependent upon the real estate market, such as residential construction and realtors. Wells Fargo has already detailed the anticipated harm which will likely result as the effects of the *SFR v. U.S. Bank* opinion begin to trickle down through the economy.

1 Additionally, and again instead of explaining why the public policy concerns are not  
2 viable, Plaintiff attempts to simply place the blame on lenders, asking why Wells Fargo did not  
3 pay the HOA lien. This effort fails for the following reasons. First, Wells Fargo cannot attempt  
4 to satisfy an HOA lien for which it has received no notice. As detailed herein, the Statute does  
5 not require notice to the lender. Second, the purported fact that a lender may be able to protect  
6 itself by paying the HOA lien, does not remedy the unconstitutional sale, conducted in violation  
7 of the due process clause, the Supremacy Clause, and the Takings Clause of the Constitution.  
8 Nor does Wells Fargo's purported opportunity to satisfy the HOA lien justify a commercially  
9 unreasonable sale for pennies on the dollar. Accordingly, these public policy issues must be  
10 considered and require dismissal.

### 11 **III. CONCLUSION**

12 For the reasons set forth herein and the moving brief, Wells Fargo's Renewed Motion to  
13 Dismiss should be granted.

14 DATED this 4<sup>th</sup> day of June 2015.

15 SNELL & WILMER L.L.P.

16 By: /s/ Paul W. Shakespear

17 Richard C. Gordon, Nevada Bar No. 9036  
18 Paul W. Shakespear, Nevada Bar No. 10752  
19 3883 Howard Hughes Parkway, Suite 1100  
20 Las Vegas, NV 89169

21 Attorneys for Defendant  
22 WELLS FARGO HOME MORTGAGE A  
23 DIVISION OF WELLS FARGO BANK, N.A.  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **WELLS FARGO HOME MORTGAGE, A DIVISION OF WELLS FARGO BANK, N.A.'S REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT** by the method indicated below:

_____	U.S. Mail	_____	Federal Express
_____	U.S. Certified Mail	<u>XXXXX</u>	Electronic Service
_____	Facsimile Transmission	_____	Hand Delivery
_____	Overnight Mail		

and addressed to the following:

Michael F. Bohn, Esq.  
BOHN LAW FIRM  
376 E. Warm Springs, Suite 140  
Las Vegas, NV 89119  
Telephone: (702) 642-3113  
Facsimile: (702) 642-9766  
E-mail: mbohn@bohnlawfirm.com

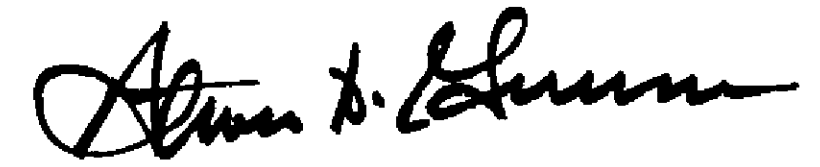
Attorneys for Plaintiff  
*Saticoy Bay LLC Series 6915 Silver State*

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

/s/ Mindi Mordue  
An Employee of Snell & Wilmer L.L.P.

21800213.1

# **EXHIBIT 1**



CLERK OF THE COURT

Richard C. Gordon, Esq.  
Nevada Bar No. 9036  
Bradley T. Austin  
Nevada Bar No. 13064  
SNELL & WILMER LLP.  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169  
Telephone (702) 784-5200  
Fax: (702) 784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
[baustin@swlaw.com](mailto:baustin@swlaw.com)

*Attorneys for HSBC Bank USA, National Association as Trustee  
for Wells Fargo Asset Securities Corporation*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OCTAVIO CANO-MARTINEZ, an  
individual,

Plaintiff,

vs.

HSBC BANK USA, NATIONAL  
ASSOCIATION AS TRUSTEE FOR  
WELLS FARGO ASSET SECURITIES  
CORPORATION; GREENWOOD  
HOMEOWNERS ASSOCIATION; DOE  
Individuals I through X; ROE  
Corporations and Organizations I through  
X,

Defendants.

CASE NO. A-13-692027-C

DEPT. NO. XXV

**ORDER GRANTING DEFENDANT  
HSBC BANK USA'S MOTION FOR  
SUMMARY JUDGMENT**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

This matter concerning Defendant HSBC Bank USA's ("HSBC") Motion for Summary Judgment, filed on August 11, 2014 and supplemented on December 1, 2014, came on for hearing on the 14th day of April, 2015 at the hour of 9:00 a.m. before Department XXV of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE KATHLEEN DELANEY presiding; Plaintiff OCTAVIO CANO-MARTINEZ appeared by and through his attorney BRYAN NADDAFI, ESQ. of the LAW OFFICES OF P. STERLING KERR; Defendant GREENWOOD HOMEOWNERS ASSOCIATION appeared by and through its attorney,

JOSEPH P. HARDY, ESQ. of the law firm GORDON AND REES, LLP; and HSBC BANK USA appeared by and through its attorney, BRADLEY T. AUSTIN, ESQ. of the law firm SNELL & WILMER, LLP. Having reviewed the papers and pleadings on file herein and heard oral arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. This lawsuit involves real property located at 670 Rolling Green Drive, Las Vegas, NV 89169, and bearing Assessor's Parcel Number 162-15-214-014 (the "Property"). The Property is located within a common-interest community governed by the Greenwood Homeowners Association ("Association").

2. On or about January 18, 2007, Lamon Holloway purchased the Property and executed a First Deed of Trust in the amount of \$171,000.00 with Wells Fargo Bank, N.A.

3. On or about July 24, 2012, the Association recorded a Notice of Delinquent Assessment Lien against the Property.

4. On or about December 7, 2012, the Association recorded a Notice of Trustee Sale against the Property

5. On or about December 20, 2012, Wells Fargo Bank, N.A. assigned the First Deed of Trust to HSBC.

6. On or about March 5, 2013, the Association held a non-judicial foreclosure sale and the Property was sold to Mario Zamora-Prado for the total amount of \$6,493.01.

7. On or about October 3, 2013, Zamora-Prado quitclaimed the Property to Plaintiff for \$0.00.

8. Plaintiff subsequently filed a Complaint with this Court, seeking declaratory relief and quiet title to the Property.

9. On April 14, 2015, at the hearing on Defendant's Motion for Summary Judgment, Defendant's counsel argued that ~~that~~ the statute upon which Plaintiff's claims for quiet title and declaratory relief necessarily rely, NRS 116.3116 *et seq.* (the "Statute"), does not satisfy



1 constitutional due process principles. Defendants contend that the Statute is facially  
2 unconstitutional because the burden shifting “opt-in” provisions first require lenders to give  
3 notice in order to receive notice of the operative steps in the HOA foreclosure process. As such,  
4 the Statute does not require the foreclosing party to take reasonable steps to ensure that actual  
5 notice is provided to interested parties who are reasonably ascertainable. Plaintiff’s counsel  
6 argued that in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014),  
7 *reh’g denied* (Oct. 16, 2014), the Nevada Supreme Court resolved this issue in favor of Plaintiff  
8 because the Supreme Court considered, and ruled on, an as-applied constitutional challenge. The  
9 crux of this matter hinges upon whether the Statute at issue is facially unconstitutional.

### 10 CONCLUSIONS OF LAW

#### 11 **THE COURT HEREBY FINDS AS FOLLOWS AS A MATTER OF LAW:**

12 1. The Nevada Supreme Court, in its *SFR v. U.S. Bank* decision, did not address any  
13 facial challenge, including the facial challenge to the constitutionality of the Statute raised in the  
14 instant Motion for Summary Judgment.

15 2. The Statute violates the Due Process Clauses of the Fifth and Fourteenth  
16 Amendments of the United States Constitution because its “opt-in” notice provisions do not  
17 mandate that reasonable and affirmative steps be taken to give actual notice to lenders and other  
18 holders of recorded security interests prior to a deprivation of their property rights. Because the  
19 Statute does not require the foreclosing party to take reasonable steps to ensure that actual notice  
20 is provided to interested parties who are reasonably ascertainable (unless the interested party first  
21 requests notice) it does not comport with long standing principles of constitutional due process.  
22 *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800, 103 S. Ct. 2706, 2711-12, 77 L.  
23 Ed. 2d 180 (1983); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950);  
24 *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 893 (5<sup>th</sup> Cir. 1989).

25 3. The Statute violates the Due Process Clause of the Nevada Constitution for the  
26 same reasons as articulated in Paragraph 2. Nevada Const., art. I, sec. 8(5).  
27  
28

1           4. Moreover, reference to NRS 107.090 does not salvage the federal or state  
2 constitutionality of the Statute because Plaintiff's construction of NRS 107.090 as mandating  
3 notice to lenders before foreclosure would render superfluous the express "opt-in" notice  
4 provisions contained in NRS 116.3116, in violation of rules of statutory construction. *See S.*  
5 *Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)  
6 ("When interpreting a statute, this Court must give its terms their plain meaning, considering its  
7 provisions as a whole so as to read them in a way that would not render words or phrases  
8 superfluous or make a provision nugatory.") (internal quotations omitted).

9           5. For these reasons, this Court finds that the Statute is facially unconstitutional in  
10 violation of the Due Process Clauses of both the United States and Nevada Constitutions.

11 Based upon the foregoing Findings of Fact and Conclusions of Law,

12           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant's Motion  
13 for Summary Judgment, filed August 11, 2014, and supplemented on December 1, 2014, is  
14 **GRANTED.**

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///


27 ///

28 ///

1 IT IS FURTHER ORDERED that because multiple parties are involved, this Court  
2 expressly directs the entry of a final judgment with respect to HSBC, but not all defendants,<sup>1</sup>  
3 pursuant to NRCP 54(b) due to the express determination that there is no just reason for delay.

4 IT IS SO ORDERED.

5  
6 DATED: May 7, 2015.

  
DISTRICT COURT JUDGE

9  
10 Submitted by:

11   
Richard C. Gordon, Esq.

12 Bradley T. Austin, Esq.

SNELL & WILMER L.L.P.

13 3883 Howard Hughes Parkway

Suite 1100

14 Las Vegas, NV 89169

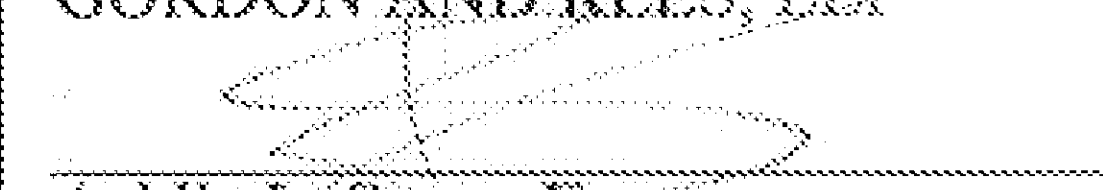
15 *Attorneys for HSBC Bank USA, National Association*  
16 *as Trustee for Wells Fargo Asset Securities Corporation*

17 DATED May 4, 2015

18 Approved as to form and content:

19 DATED May 4, 2015.

20 GORDON AND REES, LLP

21   
22 Ashlie L. Surur, Esq.

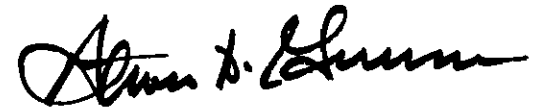
Nevada Bar No. 11290

23 3770 Howard Hughes Parkway, Suite 100

24 Las Vegas, NV 89169

25 *Attorney for Greenwood Homeowners*  
26 *Association*

27 <sup>1</sup> This Order does not resolve all claims against, or defenses raised by, at least one remaining Defendant because the  
28 Court made no specific findings as to the Association nor did the Association join or oppose HSBC's Motion for  
Summary Judgment. Accordingly, 54(b) certification as to HSBC is appropriate.



CLERK OF THE COURT

Richard C. Gordon  
Nevada Bar No. 9036  
Paul W. Shakespear  
Nevada Bar No. 10752  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
Email: [pshakespear@swlaw.com](mailto:pshakespear@swlaw.com)

Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 350  
DURANGO 104

Plaintiff,

vs.

WELLS FARGO HOME MORTGAGE A  
DIVISION OF WELLS FARGO BANK, N.A.;  
MTC FINANCIAL dba TRUSTEE CORPS;  
RON N. SENHOLTZ and SHIRLEY P.  
SENHOLTZ as trustees for the Senholtz  
Family Trust

Defendants.

CASE NO.: A-13-688410-C  
DEPT. NO.: XXVIII

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT WELLS  
FARGO HOME MORTGAGE, A  
DIVISION OF WELLS FARGO BANK,  
N.A.'S RENEWED MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

///

///

///

///

///

///

///

///

///

1 PLEASE TAKE NOTICE that the ORDER GRANTING DEFENDANT WELLS  
2 FARGO HOME MORTGAGE, A DIVISION OF WELLS FARGO BANK, N.A.'S RENEWED  
3 MOTION TO DISMISS PLAINTIFF'S COMPLAINT was entered this this Court on July 10,  
4 2015, a copy of which is attached hereto.

5 DATED this 13<sup>th</sup> day of July, 2015.

6 SNELL & WILMER L.L.P.

7 By: /s/ Paul W. Shakespear  
8 Richard C. Gordon, Nevada Bar No. 9036  
9 Paul W. Shakespear, Nevada Bar No. 10752  
10 3883 Howard Hughes Parkway, Suite 1100  
11 Las Vegas, NV 89169  
12 Attorneys for Defendant  
13 WELLS FARGO BANK, N.A.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT WELLS FARGO HOME MORTGAGE, A DIVISION OF WELLS FARGO BANK, N.A.'S RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT by the method indicated below:

_____	U.S. Mail	_____	Federal Express
_____	U.S. Certified Mail	<u>XXXXXX</u>	Electronic Service
_____	Facsimile Transmission	_____	Hand Delivery
_____	Overnight Mail		

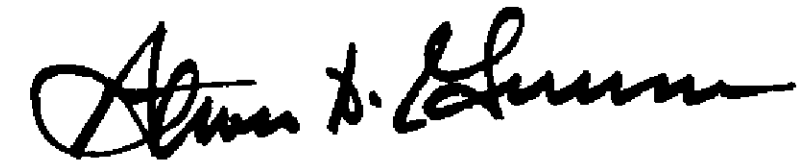
and addressed to the following:

Michael F. Bohn, Esq.  
BOHN LAW FIRM  
376 E. Warm Springs, Suite 140  
Las Vegas, NV 89119  
Telephone: (702) 642-3113  
Facsimile: (702) 642-9766  
E-mail: mbohn@bohnlawfirm.com

Attorneys for Plaintiff  
*Saticoy Bay LLC Series 6915 Silver State*

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

/s/ Mindi Mordue  
An Employee of Snell & Wilmer L.L.P.



CLERK OF THE COURT

1 Richard C. Gordon  
Nevada Bar No. 9036  
2 Paul W. Shakespear  
Nevada Bar No. 10752  
3 SNELL & WILMER LLP.  
3883 Howard Hughes Parkway, Suite 1100  
4 Las Vegas, NV 89169  
Telephone: (702) 784-5200  
5 Facsimile: (702) 784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
6 Email: [pshakespear@swlaw.com](mailto:pshakespear@swlaw.com)

7 Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE, A DIVISION OF  
8 WELLS FARGO BANK, N.A.

9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 SATICOY BAY LLC SERIES 350 DURANGO  
104

CASE NO.: A-13-688410-C  
DEPT. NO.: XXVIII

13 Plaintiff,

14 vs.

**ORDER GRANTING DEFENDANT  
WELLS FARGO HOME  
MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A.'S  
RENEWED MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

15 WELLS FARGO HOME MORTGAGE A  
DIVISION OF WELLS FARGO BANK, N.A.;  
16 MTC FINANCIAL dba TRUSTEE CORPS;  
RON N. SENHOLTZ and SHIRLEY P.  
17 SENHOLTZ as trustees for the Senholtz Family  
Trust

18 Defendants.

19  
20 And all related actions.  
21

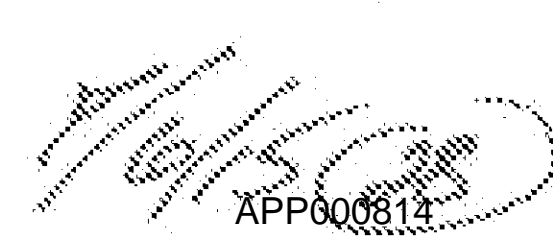
22 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

23 This matter concerning Defendant Wells Fargo Home Mortgage, a Division of Wells  
24 Fargo Bank, N.A.'s ("Wells Fargo"), Renewed Motion to Dismiss Plaintiff's Complaint, filed  
25 April 13, 2015, came on for hearing on the 9<sup>th</sup> day of June, 2015 at the hour of 9:00 a.m. before  
26 Department XXVIII of the Eighth Judicial District Court, in and for Clark County, Nevada, with  
27 JUDGE RONALD J. ISRAEL presiding; Plaintiff SATICOY BAY LLC SERIES 350  
28 DURANGO 104 appeared by and through its attorney, ARTHUR P. TAN, ESQ. of the BOHN

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

Snell & Wilmer

CLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
(702) 784-5200



APP000814



1 LAW FIRM; Defendant WELLS FARGO HOME MORTGAGE, A DIVISION OF WELLS  
2 FARGO BANK, N.A. appeared by and through its attorney, CHARLES E. GIANELLONI, ESQ.  
3 of the law firm SNELL & WILMER LLP. Having reviewed the papers and pleadings on file  
4 herein and heard oral arguments of counsel, this Court makes the following Findings of Fact and  
5 Conclusions of Law:

6 FINDINGS OF FACT

7 1. This lawsuit involves real property located at 350 S. Durango Drive, #104, Las  
8 Vegas, Nevada 89128 (the "Property"). The Property is located within a common-interest  
9 community governed by Angel Point Condominiums (the "HOA").

10 2. On July 1, 2003, the Senholtzes obtained a loan in the amount of \$81,370.00  
11 from Wells Fargo Home Mortgage, Inc. to refinance their original loan for the purchase of the  
12 Property.

13 3. The HOA recorded a Notice of Delinquent Assessment Lien on November 15,  
14 2012.

15 4. On January 18, 2013, the HOA recorded a Notice of Default and Election to Sell  
16 Under Homeowners Association Lien.

17 5. On April 4, 2013, a Notice of Breach and Default and Election to Cause Sale of  
18 Real Property under Deed of Trust was recorded.

19 6. The HOA then recorded a Notice of Trustee's Sale on May 20, 2013.

20 7. On or about June 14, 2013, the HOA held a non-judicial foreclosure sale and the  
21 Property was sold to Saticoy Bay LLC Series for the total amount of \$6,900.00.

22 8. On August 29, 2013, a Certificate from the Nevada Foreclosure Mediation  
23 Program was recorded.

24 9. Plaintiff filed a Complaint for Quiet Title and Declaratory Relief against the  
25 Senholtzes and Wells Fargo on September 12, 2013.

26 10. On June 9, 2015, at the hearing on Defendant's Motion to Dismiss Plaintiff's  
27 Complaint, Defendant's counsel argued that the statute upon which Plaintiff's claims for quiet  
28 title and declaratory relief necessary rely, NRS 116.3116 *et seq.* (the "Statute"), does not satisfy



1 constitutional due process principles. Defendants contend that the Statute is facially  
2 unconstitutional because the burden shifting "opt-in" provisions first require lenders to give  
3 notice in order to receive notice of the operative steps in the HOA foreclosure process. As such,  
4 the Statute does not require the foreclosing party to take reasonable steps to ensure that actual  
5 notice is provided to interested parties who are reasonably ascertainable. Plaintiff's counsel  
6 argued that in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (2014), *reh'g denied* (Oct. 16,  
7 2014) ("*SFR*"), the Nevada Supreme Court resolved this issue in favor of Plaintiff because the  
8 Supreme Court considered, and ruled on, an as-applied constitutional challenge. The crux of this  
9 matter hinges upon whether the Statute at issue is facially unconstitutional.

#### 10 CONCLUSIONS OF LAW

#### 11 **THE COURT HEREBY FINDS AS FOLLOWS AS A MATTER OF LAW:**

- 12 1. The Nevada Supreme Court, in *SFR*, did not address any facial challenge,  
13 including the facial challenge to the constitutionality of the Statute's notice provisions raised in  
14 the instant Motion to Dismiss.
- 15 2. The Statute violates the Due Process Clauses of the Fifth and Fourteenth  
16 Amendments of the United States Constitution because its "opt-in" notice provisions do not  
17 mandate that reasonable and affirmative steps be taken to provide actual notice to lenders and  
18 other holders of recorded security interests prior to the deprivation of their property rights.  
19 Because the Statute does not require the foreclosing party to take reasonable steps to ensure that  
20 actual notice is provided to interested parties who are reasonably ascertainable (unless the  
21 interested party first requests notice) it does not comport with long standing principles of  
22 constitutional due process. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799--800  
23 (1983); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Small Engine*  
24 *Shop, Inc. v. Cascio*, 878 F.2d 883, 893 (5th Cir. 1989).
- 25 3. The Statute violates the Due Process Clause of the Nevada Constitution, Nevada  
26 Const., art. I, sec. 8(5), for the same reasons as articulated in Paragraph 2.
- 27 4. Moreover, reference to NRS 107.090 does not salvage the federal or state  
28 constitutionality of the Statute because Plaintiff's construction of NRS 107.090 as mandating

1 notice to lenders before foreclosure would render superfluous the express "opt-in" notice  
2 provisions contained in NRS 116.3116, in violation of rules of statutory construction. See  
3 *S. Nev. Homebuilders Ass'n v. Clark Cnty.*, 117 P.3d 171, 173 (Nev. 2005) ("When interpreting a  
4 statute, this Court must give its terms their plain meaning, considering its provisions as a whole  
5 so as to read them in a way that would not render words or phrases superfluous or make a  
6 provision nugatory.") (internal quotations omitted).

7 5. For these reasons, this Court finds that the Statute is facially unconstitutional in  
8 violation of the Due Process Clauses of both the United States and the Nevada Constitutions.

9 Based upon the foregoing Findings of Fact and Conclusions of Law,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant's Motion  
11 to Dismiss, filed April 13, 2015, is **GRANTED**.

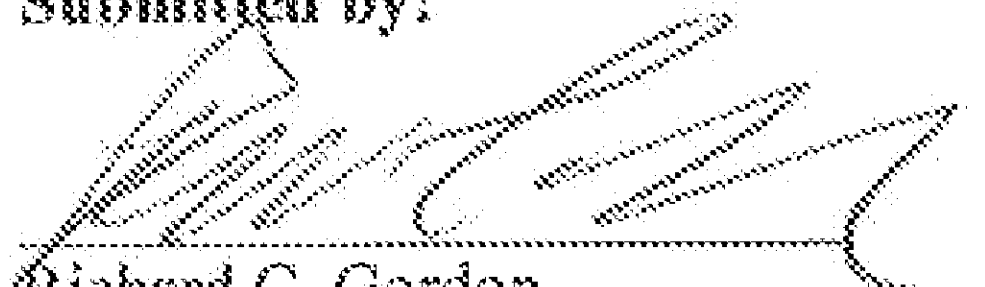
12 **IT IS FURTHER ORDERED** that because multiple parties are involved, this Court  
13 expressly directs the entry of a final judgment with respect to Wells Fargo, but not all defendants,  
14 pursuant to NRCP 54(b) due to the express determination that there is no just reason for delay.

15 **IT IS SO ORDERED.**

16 DATED: June 7, 2015

  
DISTRICT COURT JUDGE

17  
18  
19  
20 Submitted by:

21   
22 Richard C. Gordon  
23 Nevada Bar No. 9036  
24 Paul W. Shakespear  
25 Nevada Bar No. 10752  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

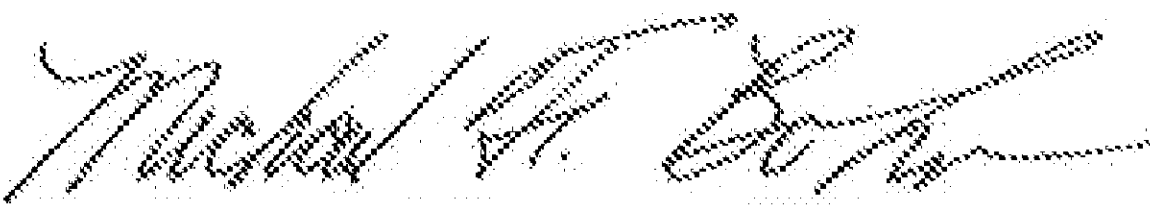
26 *Attorneys for Wells Fargo Home Mortgage,*  
27 *a Division of Wells Fargo Bank, N.A.*

28 DATED June \_\_, 2015

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

Approved as to form and content:

BOHN LAW FIRM

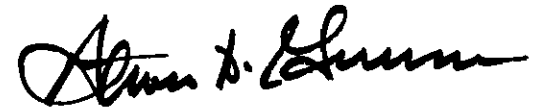


Michael F. Bohn, Esq.  
Nevada Bar No. 1641  
376 E. Warm Springs, Suite 140  
Las Vegas, NV 89119

Attorneys for Plaintiff  
*Saticoy Bay LLC Series 350 Durango 104*

DATED June \_\_, 2015

21864058



CLERK OF THE COURT

1 **NOAS**  
2 MICHAEL F. BOHN, ESQ.  
3 Nevada Bar No.: 1641  
4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
5 LAW OFFICES OF  
6 MICHAEL F. BOHN, ESQ., LTD.  
7 376 East Warm Springs Road, Ste. 140  
8 Las Vegas, Nevada 89119  
9 (702) 642-3113/ (702) 642-9766 FAX  
10 Attorney for plaintiff

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 SATICOY BAY LLC SERIES 350 DURANGO  
14 104

15 Plaintiff,

16 vs.

17 WELLS FARGO HOME MORTGAGE A  
18 DIVISION OF WELLS FARGO BANK, N.A.;  
19 MTC FINANCIAL dba TRUSTEE CORPS;  
20 RON N. SENHOLTZ and SHIRLEY P.  
21 SENHOLTZ as trustees for the Senholtz Family  
22 Trust

23 Defendants.

CASE NO.: A-13-688410-C  
DEPT NO.: XXVIII

24 **NOTICE OF APPEAL**

25 NOTICE IS HEREBY GIVEN that plaintiff, Saticoy Bay LLC Series 350 Durango 104, hereby  
26 appeals to the Supreme Court of Nevada from the Order granting defendant Wells Fargo Home  
27 Mortgage's renewed motion to dismiss plaintiff's complaint entered in this action on July 10, 2015.

28 DATED this 14th day of July 2015.

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

By: /s/ Michael F. Bohn, Esq./  
MICHAEL F. BOHN, ESQ.  
376 E. Warm Springs Road, Suite 140  
Las Vegas, Nevada 89119  
Attorney for plaintiff

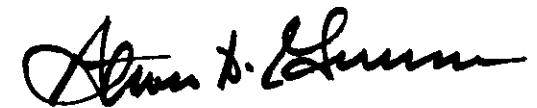
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 14th day of July 2015,, an electronic copy of **NOTICE OF APPEAL**, copy of which is attached hereto, was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

Richard C. Gordon, Esq.  
Paul W. Shakespear, Esq.  
SNELL & WILMER, LLP  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169  
Attorney for Wells Fargo Bank, N.A.

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



CLERK OF THE COURT

1 DFLT

2 MICHAEL F. BOHN

3 Nevada Bar No.: 1641

4 LAW OFFICES OF MICHAEL F. BOHN, ESQ.

5 376 E. Warm Springs Road, Ste. 140

6 Las Vegas, NV 89119

7 (702) 642-3113/(702) 642-9766

DISTRICT COURT

CLARK COUNTY, NEVADA

8 SATICOY BAY LLC SERIES 350

9 DURANGO 104

-vs-

Plaintiff(s),

CASE NO. A-13-688410-C

10 WELLS FARGO HOME MORTGAGE A

11 DIVISION OF WELLS FARGO BANK, N.

12 A.; MTC FINANCIAL dba TRUSTEE

13 CORPS; RON N. SENHOLTZ and

14 SHIRLEY P. SENHOLTZ as trustees for

the Senholtz Family Trust

DEPT NO. XXVIII

Defendant(s).

15  
16 **DEFAULT**

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

SHIRLEY P. SENHOLTZ as trustee for the Senholtz Family Trust

18 Defendant(s) herein, being duly served with a copy of the Summons and Complaint on  
by publication on;

19 October 28, November 4, 12, 18, 25, 2013

that more than 20 days, exclusive of the day

20 of service, having expired since service upon the Defendant(s); that no answer or other

21 appearance having been filed and no further time having been granted, the default of

22 the above-named Defendant(s) for failing to answer or otherwise plead to Plaintiff's

23 Complaint is hereby entered.

24 STEVEN D. GRIERSON, CLERK OF COURT

25 By:

Deputy Clerk

Date

IVONNE HERNANDEZ

26 Submitted By:

27 MICHAEL F. BOHN, ESQ.

Nevada bar No.: 1641

LAW OFFICES OF MICHAEL F. BOHN, ESQ.

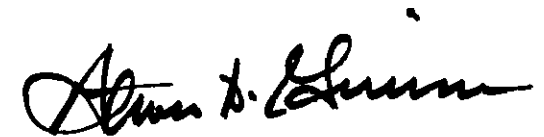
376 East Warm Springs Road, Ste 140

Las Vegas, NV 89119

(702) 642-3113

RECEIVED  
JUL 22 2015  
CLERK OF THE COURT

RECEIVED  
JUL 22 2015  
CLERK OF THE COURT



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

SATICOY BAY LLC, SERIES 350  
DURANGO 104,

Plaintiff,

vs.

WELLS FARGO HOME MORTGAGE,

Defendant.

CASE NO. A688410

DEPT. XXVIII

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE  
TUESDAY, JUNE 9, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**WELLS FARGO HOME MORTGAGE, A DIVISION OF WELLS FARGO**  
**BANK, N.A.'S RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

APPEARANCES:

For the Plaintiff:

GERALD L. TAN, ESQ.

For the Defendant:

CHARLES E. GIANELLONI, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 TUESDAY, JUNE 9, 2015 AT 9:05 A.M.

2  
3 THE CLERK: Case Number A688410 Saticoy Bay versus Wells Fargo Home  
4 Mortgage.

5 THE COURT: Good morning. Counsel, state your appearance for the record.

6 MR. TAN: Gerald Tan on behalf of the plaintiff, Your Honor.

7 MR. GIANELLONI: Charles Gianelloni on behalf of Wells Fargo, Your Honor.

8 THE COURT: Good morning. Okay, I had two of these this morning.  
9 Although they are different, they're still *SFR* revisited. So Defendant's Motion to  
10 Dismiss. Do you have anything to add?

11 MR. GIANELLONI: I just have one point I want to make, Your Honor. This  
12 has obviously been extensively briefed. You probably know much more about it  
13 than maybe you and I do at this point. So, one thing I wanted to say was as to the  
14 facial due process argument. Legislature amended NRS 116 last week and the first  
15 thing they did was they added actual notice to the statute. So, just wanted to point  
16 that out. I think that's evidence that the –

17 THE COURT: Ex post facto or something?

18 MR. GIANELLONI: The point is just simply that the first chance that they had  
19 to amend the statute, they made actual notice a requirement. And that's the  
20 argument that we're making is that it's facially unconstitutional. It's the only thing I  
21 have to add.

22 THE COURT: Plaintiffs.

23 MR. TAN: I have nothing to add on the due process stuff, Your Honor, but as  
24 to the takings argument, we didn't really address this in our brief, but I think that the  
25 state action component is a little questionable here. A private actor imposed the



1 assessments, a private actor was delinquent on those assessments, a private actor  
2 foreclosed on this property.

3 Now if the contention is this is a regulatory taking, that must fail. The  
4 116 was enacted in 1991 so the lender in this case took the deed of trust subject to  
5 that law already so I don't think there can be a regulatory taking.

6 Other than that, nothing to add, Your Honor.

7 THE COURT: Thank you. I guess I should start by saying I don't know who  
8 attached it or – was that you? The Judge Delaney's decision.

9 THE LAW CLERK: You asked me to.

10 THE COURT: Well, oh, okay. I – no, I know but I wasn't sure if they had  
11 attached it or –

12 THE LAW CLERK: That's why I crossed it out.

13 THE COURT: In any event, I'm familiar with several of the decisions in this  
14 regard and one of the reasons I think we put this off for thirty days is I thought  
15 there – well, actually it is, or at least one of the parties, and it may not be you two,  
16 but one of the banks or – has brought this to the Supreme Court.

17 But in any event, I agree with Judge Delaney. I don't think that it's a  
18 taking under the, you know, a government taking. But I do believe it violates due  
19 process. The, if you will, incorporating 107 or, you know, and 116 doesn't, to me, go  
20 far enough, if you will, regarding due process. The fact that, oh and I think it was  
21 brought up regarding, and I'll just mention real quick, the reasonableness of the  
22 sale. Was that in this one or the other one?

23 MR. GIANELLONI: This, Your Honor.

24 MR. TAN: I believe that's a contention in this case, yeah.

25 THE COURT: Commercially reasonable. I – commercially I agree with and I

1 think it was Federal District Court Judge, doesn't matter, who said that commercially  
2 reasonable doesn't necessarily mean the fact that it was a \$5,000 purchase on a  
3 million dollar loan. They're taking a, if you will, to use a vernacular, flyer. And so  
4 commercially reasonable means open to the public and there's a case that defines  
5 that. It doesn't mean that just because it was bought for very little violates  
6 commercially reasonable. And I think that's what's been brought up by many of the  
7 banks and I disagree. However, that's mere dicta because I'm ruling on the grounds  
8 that it is facially unconstitutional because of the due process clause and the fact that  
9 I do not feel that 107 saves it, if you will.

10 So I agree and I've seen a draft, not a draft, maybe it is a filed version  
11 of Judge Delaney's decision and I agree with that. So. And it happens to be  
12 because so many of these are the same firm or two or three firms, I should say.  
13 This was in *Octavia versus HSBC*. And it happens to be your firm.

14 So I'm granting the Motion to Dismiss. Hopefully I explained it well  
15 enough, but I'm incorporating her decision. And, as I said, if it's dicta or not, I  
16 disagree with the argument that it assailed just because it's, let's say, and I can't  
17 remember if this one was 5,000, that means that it's not commercially reasonable.

18 Okay?

19 MR. GIANELLONI: Yes, Your Honor.

20 THE COURT: Have a good day.

21 MR. TAN: Thank you, Your Honor.

22 THE CLERK: Does that dismiss --

23 MR. GIANELLONI: Thank you. Prepare the order?

24 THE CLERK: -- the case?

25 THE COURT: Yes. And pass it by the plaintiff. And good luck on -- hopefully

1 they'll come up with a decision. Do you guys involved in one of the appeals now or?

2 MR. TAN: We're in the *Gogo Way* appeal, but I think that's a tender issue,  
3 something like that.

4 THE COURT: I will put – I will say that one of the Supreme Court Justices,  
5 and this is just for your information, was at the Judge's Conference, what about a  
6 month ago, and did say that it was a narrow decision. And that – and of course he  
7 didn't, you know, speak for everybody, but he said there was issues that were  
8 unresolved out there that had to be addressed, i.e., these things. So.

9 THE CLERK: Does this close the case?

10 THE COURT: It does.

11 THE CLERK: Close it.

12 MR. TAN: Thank you, Your Honor.


13 THE COURT: All right.

14 MR. GIANELLONI: Thank you, Your Honor.

15 THE COURT: Have a good day.

16  
17 [Proceeding concluded at 9:13 a.m.]  
18  
19  
20

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case.

23   
24 Judy Chappell  
25 Court Recorder

MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX

Attorney for appellant

Electronically Filed  
Dec 18 2015 10:59 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

SUPREME COURT COURT  
STATE OF NEVADA

SATICOY BAY LLC SERIES 350  
DURANGO 104,

Appellant,

vs.

WELLS FARGO HOME MORTGAGE,

Respondent.

No. 68630

**JOINT APPENDIX 4**

Michael F. Bohn, Esq.  
LAW OFFICE OF MICHAEL F. BOHN,  
ESQ., LTD.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX

Attorney for Appellant

Richard C. Gordon, Esq.  
Paul W. Shakespear, Esq.  
SNELL & WILMER, LLP  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169  
(702)784-5200/(702)784-5252FAX

Attorney for Respondents

**INDEX TO JOINT APPENDIX 4**

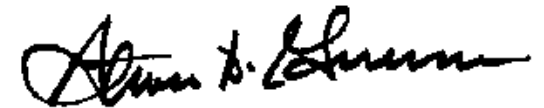
Wells Fargo's Request for Judicial Notice. . . . .	APP000716
Opposition to Wells Fargo's Motion to Dismiss. . . . .	APP000764
Wells Fargo's Reply in Support of Renewed Motion to Dismiss. . . . .	APP000784
Notice of Entry of Order Granting Wells Fargo's Renewed Motion to Dismiss. . . . .	APP000811
Notice of Appeal. . . . .	APP000819
Default of Shirley P. Senholtz. . . . .	APP000820
Transcript of Proceedings - June 9, 2015. . . . .	APP000822

**ALPHABETICAL INDEX TO JOINT APPENDIX**

<b>Title</b>	<b>Appendix</b>	<b>Bates</b>
Affidavit of Publication - Shirley P. Senholtz. . . . .	3	APP000524
Affidavit of Service - Wells Fargo Home Mortgage. . . . .	3	APP000523
Complaint . . . . .	1	APP000001
Default of Shirley P. Senholtz. . . . .	4	APP000820
Ex Parte motion for Temporary Restraining Order. . . . .	1	APP000008
Notice of Appeal. . . . .	4	APP000819
Notice of Dismissal - Ron N Senholtz. . . . .	1	APP000007
Notice of Entry of Order. . . . .	3	APP000673
Notice of Entry of Order. . . . .	3	APP000679
Notice of Entry of Order Granting Wells Fargo's Renewed Motion to Dismiss..	4	APP000811
Opposition to Countermotion to Dismiss and countermotion to Stay Case Pt 1..	3	APP000528
Opposition to Countermotion to Dismiss and countermotion to Stay Case Pt 2..	3	APP000583
Opposition to Wells Fargo's Motion to Dismiss. . . . .	4	APP000764
Order Granting Countermotion to Stay Proceedings. . . . .	3	APP000671
Order Lifting Stay on Litigation . . . . .	3	APP000677

1	Stipulation fr Non-Monetary Relief . . . . .	3	APP000525
2	Substitution of Attorney.. . . .	3	APP000683
3	Temporary Restraining Order. . . . .	1	APP000041
4	Transcript of Proceedings - June 9, 2015.. . . .	4	APP000822
5	Wells Fargo’s Errata to Opposition to the Motion for Preliminary Injunction . . .	3	APP000493
6	Wells Fargo’s Opposition to the Motion for Preliminary Injunction Pt 1. . . . .	1	APP000044
7	Wells Fargo’s Opposition to the Motion for Preliminary Injunction Pt 2. . . . .	1	APP000143
8	Wells Fargo’s Opposition to the Motion for Preliminary Injunction Pt 3. . . . .	2	APP000241
9	Wells Fargo’s Opposition to the Motion for Preliminary Injunction Pt 4. . . . .	3	APP000484
10	Wells Fargo’s Renewed Motion to Dismiss Complaint. . . . .	3	APP000686
11	Wells Fargo’s Reply in Support of Renewed Motion to Dismiss. . . . .	4	APP000784
12	Wells Fargo’s Request for Judicial Notice. . . . .	4	APP000716

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

Richard C. Gordon  
Nevada Bar No. 9036  
Paul W. Shakespear  
Nevada Bar No. 10752  
SNELL & WILMER LLP.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
Email: [pshakespear@swlaw.com](mailto:pshakespear@swlaw.com)

Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 350  
DURANGO 104

Plaintiff,

vs.

WELLS FARGO HOME MORTGAGE A  
DIVISION OF WELLS FARGO BANK, N.A.;  
MTC FINANCIAL dba TRUSTEE CORPS;  
RON N. SENHOLTZ and SHIRLEY P.  
SENHOLTZ as trustees for the Senholtz  
Family Trust

Defendants.

CASE NO.: A-13-688410-C  
DEPT. NO.: XXVIII

**WELLS FARGO HOME MORTGAGE, A  
DIVISION OF WELLS FARGO BANK,  
N.A.'S REQUEST FOR JUDICIAL  
NOTICE**

COMES NOW Defendant WELLS FARGO HOME MORTGAGE, A DIVISION OF  
WELLS FARGO BANK, N.A., ("Wells Fargo"), by and through its counsel, the law firm of Snell  
& Wilmer LLP., and requests that the Court take judicial notice of the documents listed below in  
this Request for Judicial Notice ("RJN"). Judicial notice of the following documents is proper in  
the context of the motion to dismiss as each document is publicly recorded, referenced, and/or  
central to the allegations of the Plaintiff's complaint even if not attached to the same.

1. Copy of a Grant, Bargain, Sale Deed recorded on February 19, 1997 (attached as  
Exhibit A).

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
(702) 784-5200

2. Copy of a Deed of Trust, recorded on August 11, 2003 (attached hereto as **Exhibit B**).
3. Copy of a Substitution of Trustee and Deed of Reconveyance, recorded on October 15, 2003 (attached hereto as **Exhibit C**).
4. Copy of a Notice of Delinquent Assessment Lien, recorded on November 15, 2012 (attached as **Exhibit D**).
5. Copy of a Notice of Default and Election to Sell Under Homeowners Association Lien, recorded on January 18, 2013 (attached as **Exhibit E**).
6. Copy of a Notice of Breach and Default and Election to Cause Sale of Real Property under Deed of Trust, recorded on April 4, 2013 (attached hereto as **Exhibit F**).
7. Copy of a Notice of Trustee's Sale, recorded on May 20, 2013 (attached hereto as **Exhibit G**).
8. Copy of a Foreclosure Deed, recorded on June 17, 2013 (attached hereto as **Exhibit H**).
9. Copy of a Certificate of Foreclosure Mediation Program, recorded on August 29, 2013 (attached hereto as **Exhibit I**).
10. Copy of Clark County Assessor Records for 350 S. Durango Dr., Unit #104, Las Vegas, Nevada (attached as **Exhibit J**).

A fact is subject to judicial notice if it is "(a) generally known within the territorial jurisdiction of the trial court; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS 47.130(2). "A judge or court shall take judicial notice if requested by a party and supplied with the necessary information." NRS 47.150(2).

The Court may take judicial notice of matters of public record. *See, e.g., United States v. 14.02 Acres of Land*, 547 F.3d 943, 955 (9th Cir. 2008) (the court "may take judicial notice of matters of public record") (citations and internal quotation marks omitted); *Valasquez v. Mortgage Elec. Registration Sys., Inc.*, No. C 08-3818 PJH, 2008 WL 4938162, at \*2-\*3 (N.D. Cal. Nov. 17, 2008) (taking judicial notice of: (1) Deed of Trust, (2) Assignment of Deed of Trust, (3) Notice of Default and Election to Sell Under Deed of Trust, (4) Substitution of Trustee,



1 and (5) Rescission of Notice of Default because they were publicly recorded). In addition, the  
2 federal courts regularly take judicial notice of public documents attached to motions to dismiss  
3 submitted by defendants. *See, e.g., Roe v. Johnson*, 334 F. Supp. 2d 415, 419-20, n.6 (S.D.N.Y.  
4 2004); *In re Bayside Prison Litigation*, 190 F. Supp. 2d 755, 761 (D. N.J. 2002). *See also Leber*  
5 *v. Berkley Vacation Resorts*, Case No. 2:08-CV-01752-PMP-PAL, 2009 U.S. Dist. LEXIS 66928  
6 (D. Nev. Jul. 27, 2009).

7 The Deed of Trust and foreclosure records are documents recorded with the Clark County  
8 Recorder's Office and, therefore, are matters of public record, the authenticity of which may be  
9 readily and accurately determined.

10 The Court may also take judicial notice of documents that are incorporated by reference  
11 into a complaint, even if not attached to the same, if: (1) the complaint refers to the document,  
12 (2) the document is central to the plaintiff's claims, and (3) the authenticity of the document is  
13 undisputed. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Branch v. Tunnell*, 14 F.3d  
14 449, 454 (9th Cir. 1994) ("documents whose contents are alleged in a complaint and whose  
15 authenticity no party questions, but which are not physically attached to the pleading, may be  
16 considered in ruling on a Rule 12(b)(6) motion to dismiss"), *overruled on other grounds by*  
17 *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1127 (9th Cir. 2002). *See also Gowen v.*  
18 *Tiltware, LLC*, Case No. 2:08-cv-01581-RCJ-RJJ, 2009 U.S. Dist. LEXIS 43970 (D. Nev.  
19 May 19, 2009).

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 As such, and for all the foregoing reasons, the Court may take judicial notice of each of  
2 the Documents attached hereto.

3 DATED this 13<sup>th</sup> day of April, 2015.

4 SNELL & WILMER LLP.

5  
6 By: /s/ Paul W. Shakespear

7 Richard C. Gordon, Nevada Bar No. 9036  
8 Paul W. Shakespear, Nevada Bar No. 10752  
9 3883 Howard Hughes Parkway, Suite 1100  
10 Las Vegas, NV 89169

11 Attorneys for Defendant  
12 WELLS FARGO HOME MORTGAGE, A  
13 DIVISION OF WELLS FARGO BANK, N.A.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.734.5200

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **WELLS FARGO HOME MORTGAGE, A DIVISION OF WELLS FARGO BANK, N.A.'S REQUEST FOR JUDICIAL NOTICE** by the method indicated below:

_____	U.S. Mail	_____	Federal Express
_____	U.S. Certified Mail	<u>XXXXX</u>	Electronic Service
_____	Facsimile Transmission	_____	Hand Delivery
_____	Overnight Mail		

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

/s/ Gaylene Kim  
An Employee of Snell & Wilmer L.L.P.

21281667

Affix R.P.T.T. \$ 112.45

**GRANT, BARGAIN, SALE DEED**

THIS INSTRUMENT WITNESSETH: That

ANGEL POINT II, LLC, a Nevada Limited Liability Company

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to:

ROY N. SENHOLTZ AND SHIRLEY P. SENHOLTZ, HUSBAND AND WIFE AS JOINT TENANTS

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

See Exhibit A attached hereto and made a part hereof.

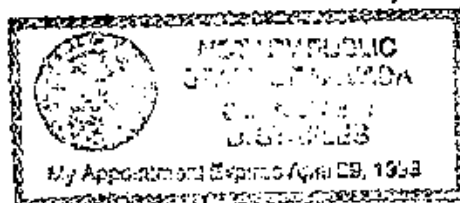
APN: 138-33-225-042

Subject to: 1. Taxes for the current fiscal year, paid current.  
 2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

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

Witness my/our hand(s) this 14th day of February, 1998.

Angel Point II, LLC, a Nevada Limited Liability Company

By: [Signature]  
Richard D. Wenman, ManagerSTATE OF NEVADA  
COUNTY OF CLARK96101355 018 SC  
WHEN RECORDED MAIL TO:This instrument was acknowledged before me on February 7, 1997 by Richard D. Wenman, as manager of Angel Point II, LLC.Mr. and Mrs. Roy N. Senholtz  
350 S. Durango Drive #104  
Las Vegas, NV 89128[Signature]  
Notary PublicMy commission expires: 4/29/98

APR 19 1997

## Exhibit A

## Parcel I (Living Unit):

Unit One Hundred Fifty-eight (158) in Building Fifteen (15) of ANGEL POINT CONDOMINIUMS II as shown by map thereof on file in Book 75 of Plats, Page 3, and amended by map thereof on File in Book 77 of Plats, Page 16, in the Office of the County Recorder, Clark County, Nevada.

## Parcel II (Common Area):

An undivided (1/16) interest as tenants-in -common in Phase II of Angel Point Condominiums II, as shown upon the Plat Map referred to above and as defined in that certain Declaration of Restrictions recorded December 29, 1994 in Book 941229 as Instrument No. 00538.

Excepting therefrom, all Living Units in Phase II of Angel Point Condominiums II, as shown by map thereof on file in Book 75 of Plats, Page 3, and amended by map thereof on File in Book 77 of Plats, Page 16, in the Office of the County Recorder, Clark County, Nevada.

And reserving therefrom, for the benefit of the owners in Phases I, III, and IV, a non-exclusive Easement for ingress and egress and use and enjoyment in, to and over all common areas, as shown on the Condominium Plat referred to above and subject to the terms set forth in that certain Declaration of Restrictions recorded December 29, 1994 in Book 941229 as Instrument No. 00538 of Official Records, Clark County, Nevada.

Further reserving therefrom, an Easement in favor of the Association for access through the common areas and each Unit for providing utilities, for maintaining the common areas and Association property.

## Parcel III (Exclusive Use Easement):

An exclusive Easement to use and occupy those portions of the project designated as "Exclusive Use Areas" (parking spaces, balconies, patios and stairways), said right is appurtenant to Parcels I and II and more fully described in the Declaration of Restrictions, recorded December 29, 1994 in Book 941229 as Instrument No. 00538.

## Parcel IV (Phased Areas):

A non-exclusive Reciprocal Easement appurtenant to all Units for ingress and egress of vehicular and pedestrian traffic over the streets and over the walkways within the common areas and Association property.

CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:  
UNITED TITLE OF NEVADA  
02-19-97 15:08 ISJ 2  
OFFICIAL RECORDS  
BOOK: 970219 INST: 01267  
FEE: 8.00 RPT: 112.45

00043

RECORDED AT THE REQUEST OF:

Assessor's Parcel Number:

13833226042

Recording requested by: LSI

When recorded return to:

Custom Recording Solutions

2550 N. Redhill Ave.

Santa Ana, CA. 92705 303352

800-756-3524 ext. 5011

Prepared By:

Wells Fargo Home Mortgage, Inc.

1595 SPRUCE ST., RIVERSIDE, CA 925070000

Recording Requested By: Karen S. Jackson

WELLS FARGO HOME MORTGAGE, INC.

LSI

08-11-2003

08:00

CDO

OFFICIAL RECORDS

BOOK/INSTR: 20030811-00043

PAGE COUNT: 22

FEE: 35.00  
RPTT: .00

1595 SPRUCE ST., RIVERSIDE, CA 925070000

[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 JULY 01, 2003 together with all Riders to this document.

(B) "Borrower" is ROY N SENHOLTZ AND SHIRLEY P SENHOLTZ, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION

organized and existing under the laws of THE STATE OF CALIFORNIA

0027264001

NEVADA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

 -6(NV) (0005)

Page 1 of 15

Initials: R.S.

VMP MORTGAGE FORMS - (800)521-7291



20030811  
.00043

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

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is UNITED TITLE OF NEVADA

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

(E) "Note" means the promissory note signed by Borrower and dated JULY 01, 2003

The Note states that Borrower owes Lender EIGHTY ONE THOUSAND THREE HUNDRED SEVENTY AND 00/100

Dollars

(U.S. \$\*\*\*\*\*81,370.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2033

(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 type="checkbox"/> Adjustable Rate Rider	<input checked="" type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input 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

20030811  
00043

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 Exhibit A attached hereto TAX PARCEL NUMBER: 13833226042

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

Parcel ID Number: 13833226042

350 S DURANGO DR

LAS VEGAS

("Property Address"):

which currently has the address of

[Street]

(City), Nevada 89128

[Zip Code]

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



20030811  
.00043

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

20030811  
.00043

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

20030811  
.00043

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



20030811  
.00043

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.

20030811  
.00043

(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.

20030811  
.00043

**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.

20030811  
.00043

**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



20030811  
.00043

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.

20030811  
.00043

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

20030811  
00043

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:

\_\_\_\_\_

Roy N. Senholtz (Seal)  
ROY N SENHOLTZ -Borrower

\_\_\_\_\_

Shirley P. Senholtz (Seal)  
SHIRLEY P SENHOLTZ -Borrower

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

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

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

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

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

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

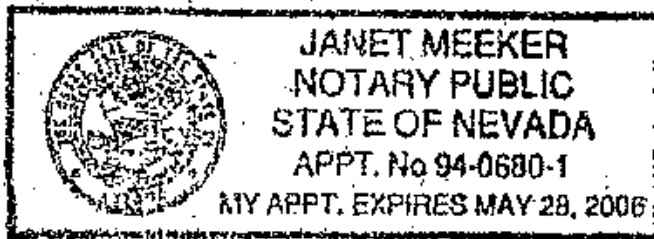
20030811  
00043

STATE OF NEVADA  
COUNTY OF *Clark*

This instrument was acknowledged before me on  
ROY N SENHOLTZ SHIRLEY P SENHOLTZ

*May 29, 2003*

by



*Janet Meeker*  
Janet Meeker  
My Commission Expires: *May 28, 2006*

## **Exhibit "A"**

Loan Number :

Borrower : ROY N SENHOLTZ And SHIRLEY P  
SENHOLTZ

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

**PARCEL 1:**

**UNIT ONE HUNDRED FIFTY-EIGHT(168), IN BUILDING FIFTEEN(15) OF ANGEL POINT  
CONDOMINIUMS II AS SHOWN BY MAP THEREOF ON FILE IN BOOK 75 OF PLATS, PAGE 3,  
AND AMENDED BY MAP THEREOF ON FILE IN BOOK 77 OF PLATS, PAGE 16, IN THE  
OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.**

**PARCEL II:**

**AN UNDIVIDED (1/16)INTEREST AS TENANTS-IN-COMMON IN PHASE II OF ANGEL POINT  
CONDOMINIUMS II, AS SHOWN UPON THE PLAT MAP REFERRED TO ABOVE AND AS  
DEFINED IN THAT CERTAIN DECLARATION OF RESTRICTIONS RECORDED DECEMBER 29,  
1994 IN BOOK 941229 AS INSTRUMENT NO. 00538.**

**PARCEL III:**

**AN EXCLUSIVE EASEMENT TO USE AND OCCUPY THOSE PORTIONS OF THE PROJECT  
DESIGNATED AS "EXCLUSIVE USE AREAS"(PARKING SPACES, BALCONIES, PATIOS AND  
STAIRWAYS) SAID RIGHT IF APPURTENANT TO PARCEL I AND II AND MORE FULLY  
DESCRIBED IN THE DECLARATION OF RESTRICTIONS RECORDED DECEMBER 29, 1994 IN  
BOOK 941229, AS INSTRUMENT NO. 00538.**

**PARCEL IV:**

**A NONEXCLUSIVE RECIPROCAL EASEMENT APPURTENANT TO ALL UNIT FOR INGRESS  
AND EGRESS OF VEHICULAR AND PEDESTRIAN TRAFFIC OVER THE STREETS AND OVER  
THE WALKWAYS WITHIN THE COMMON AREAS AND ASSOCIATION PROPERTY.**

138-33-225-042

6

20030811  
.00043

## CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this **1ST** day of **JULY, 2003**, 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 HOME MORTGAGE, INC.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **350 S. DURANGO DR., LAS VEGAS, NV 89128**

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

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

**A. Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project 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, from which Lender requires insurance,

0027264001

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

VMP-SR (0008) Form 3140 1/01

Page 1 of 3 Initials: \_\_\_\_\_  
VMP MORTGAGE FORMS  
(800)521-7291





20030811  
00043

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, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application 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, whether of the unit or of the common elements, 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 Condominium Project, 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 condominium 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.

20030811  
.00043

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

Roy N. Senholtz (Seal)  
ROY N SENHOLTZ -Borrower

Shirley P. Senholtz (Seal)  
SHIRLEY P SENHOLTZ -Borrower

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

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

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

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

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

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



20030811  
00043

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **1ST** day of **JULY, 2003**, 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 HOME MORTGAGE, INC.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **350 S DURANGO DR, LAS VEGAS, NV 89128**

[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

[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.

0027264001

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

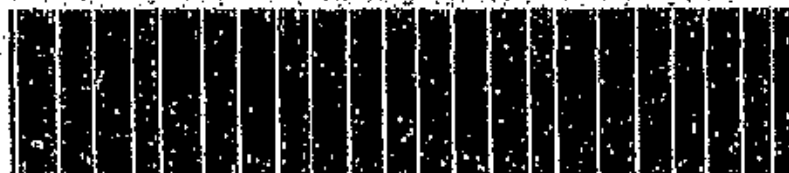
Form 3150 1/01

Page 1 of 3

Initials: \_\_\_\_\_

VMP-7R (0008)

VMP MORTGAGE FORMS - (800)521-7291



20030811  
.00043

**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.

20030811  
00043

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

Roy N. Senholtz (Seal)  
ROY N SENHOLTZ -Borrower

Shirley P. Senholtz (Seal)  
SHIRLEY P SENHOLTZ -Borrower

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

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

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

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

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

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

20031015  
01752

RECORDED AT THE REQUEST OF:

PN Tax ID #: 13833226042

This instrument prepared by:

WPNVSTD-3 06/29/03

RONALD E. MEHARG

When recorded, return to:

DOCX, LLC

1111 ALDERMAN DR., SUITE 350

ALPHARETTA, GA 30005

770-753-4373

Mail Tax Statements To:

ROY N SENHOLTZ

350 SOUTH DURANGO DRIVE

LAS VEGAS, NV 89145

Project #: R043WF

Loan #: 685-6304363



\* 6 8 5 - 6 3 0 4 3 6 3 \*

Investor Loan #: 20030721 (R048)

Property Address:

350S DURANGO DR

LAS VEGAS, NV 89145

DOCX LLC

10-15-2003

10:43

DEZ

OFFICIAL RECORDS

BOOK/INSTR: 20031015-01752

PAGE COUNT: 2

FEE: 18.00  
RPTT: .00



### SUBSTITUTION OF TRUSTEE AND DEED OF RECONVEYANCE

WHEREAS, that certain Deed of Trust described below provides that the holder of the Note secured by said Deed of Trust may appoint a successor Trustee to any Trustee thereunder appointed; and

WHEREAS, the indebtedness secured by said Deed of Trust having been fully paid and satisfied:

NOW THEREFORE, WELLS FARGO HOME MORTGAGE, INC., whose address is 3476 STATEVIEW ROAD, MAC X7801-033, FORT MILL, SC 29715, being the present legal owner and holder of the indebtedness secured by said Deed of Trust, does hereby substitute and appoint, WELLS FARGO HOME MORTGAGE, INC. as successor Trustee, and as Trustee does hereby reconvey, without warranty, to the person or persons entitled thereto, all the estate, title, and interest held by it, as Trustee, under said Deed of Trust, to the property described therein.

Trustor(s): ROY N. SENHOLTZ AND SHIRLEY P. SENHOLTZ HUSBAND AND WIFE AS JOINT TENANTS

Original Trustee: UNITED TITLE OF NEVADA

Original Beneficiary: BUILDERS MORTGAGE COMPANY

Date of Deed of Trust: 2/5/1997

Loan Amount: \$86190

Date Recorded: 02-19-1997

Instrument #: 970219.01267

Comments:

and recorded in the official records of CLARK County, State of Nevada, and more particularly described on said Deed of Trust referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 7/30/2003.

WELLS FARGO HOME MORTGAGE, INC.



  
HITESH PANDIT  
VICE PRES. LOAN DOCUMENTATION

20031015  
01752

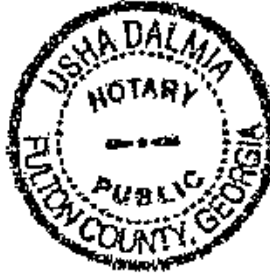
State of GA

County of FULTON

On this date of 7/30/2003, before me, the undersigned authority, a Notary Public duly commissioned, qualified and acting within and for the aforementioned State and County, personally appeared the within named **HITESH PANDIT**, known to me (or identified to me on the basis of satisfactory evidence) that he/she is the **VICE PRES. LOAN DOCUMENTATION** of **WELLS FARGO HOME MORTGAGE, INC.**, and was duly authorized in his/her respective capacity to execute the foregoing instrument for and in the name and in behalf of said corporation and that said corporation executed the same, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on the date hereinabove set forth.

U. Dalmia  
Notary Public: **USHA DALMIA**  
My Commission Expires: 09-16-2006



Inst #: 201211150001932  
Fees: \$17.00  
N/C Fee: \$0.00  
11/15/2012 09:36:24 AM  
Receipt #: 1383523  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: KGP Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN # 138-33-226-042  
# N71578

### **Accommodation**

### **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 December 29, 1994, as instrument number 00538 Book 941229, of the official records of Clark County, Nevada, the Angel Point Condominiums has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 350 S. Durango Drive #104 Las Vegas, NV 89145 particularly legally described as: ANGEL POINT CONDO II AMD, PLAT BOOK 77, PAGE 16, UNIT 158, BLDG 15 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Roy N Senholtz, Shirley P Senholtz as Trustees for The Senholtz Family Trust dated 06/06/2004

Mailing address(es):  
P.O. Box 371879 Las Vegas, NV 89137  
P.O. Box 371879 Las Vegas, NV 89137  
P.O. Box 371879 Las Vegas, NV 89137

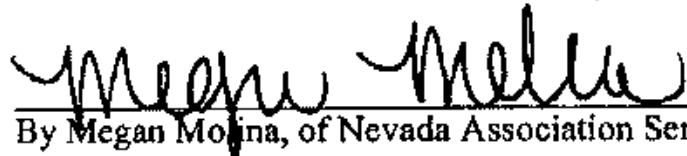
\*Total amount due as of today's date is \$2,228.00.

This amount includes late fees, collection fees and interest in the amount of \$1,133.00

\* 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: November 12, 2012



By Megan Molina, of Nevada Association Services, Inc., as agent for Angel Point Condominiums

When Recorded Mail To:  
Nevada Association Services  
TS # N71578  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

APN # 138-33-226-042  
NAS # N71578  
North American Title # 38961  
Property Address: 350 S. Durango Drive #104

②

Inst #: 201301180002571  
Fees: \$18.00  
N/C Fee: \$0.00  
01/18/2013 09:32:18 AM  
Receipt #: 1465060  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: RYUD 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 \$3,213.00 as of January 14, 2013 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, Angel Point Condominiums (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 Angel Point Condominiums, 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 # N71578

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 Roy N Senholtz, Shirley P Senholtz as Trustees for The Senholtz Family Trust dated 06/06/2004, dated November 12, 2012, and recorded on November 15, 2012 as instrument number 0001932 Book 20121115 in the official records of Clark County, Nevada, executed by Angel Point Condominiums, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on December 29, 1994, as instrument number 00538 Book 941229, 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.

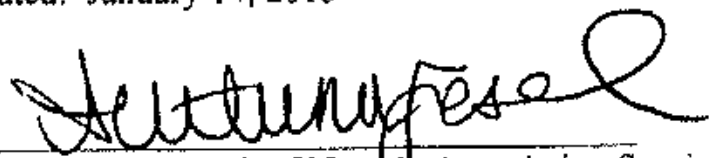
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the 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: ANGEL POINT CONDO II AMD, PLAT BOOK 77, PAGE 16, UNIT 158, BLDG 15 in the County of Clark

Dated: January 14, 2013



By: Autumn Fesel, of Nevada Association Services, Inc.  
on behalf of Angel Point Condominiums

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



APN 138-33-226-042

RECORDING REQUESTED BY:

**PACIFIC COAST TITLE**

WHEN RECORDED MAIL TO:

TRUSTEE CORPS

17100 Gillette Ave

Irvine, CA

92614

Inst #: 201304040000193

Fees: \$222.00

N/C Fee: \$25.00

04/04/2013 08:02:58 AM

Receipt #: 1561479

Requestor:

PACIFIC COAST TITLE

Recorded By: DXI Pgs: 6

DEBBIE CONWAY

CLARK COUNTY RECORDER

TS No. NV09002485-12-1

TO No. 95302420

Commonly known as: 350 S DURANGO DR, LAS VEGAS, NV 89128

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO CAUSE SALE  
OF REAL PROPERTY UNDER DEED OF TRUST**

NOTICE IS HEREBY GIVEN THAT: **MTC FINANCIAL INC. dba TRUSTEE CORPS** 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 as of July 1, 2003, executed by **ROY N SENHOLTZ AND SHIRLEY P SENHOLTZ, HUSBAND AND WIFE**, as Trustor, to secure obligations in favor of **WELLS FARGO HOME MORTGAGE, INC.**, as Beneficiary, recorded August 11, 2003 as Instrument No. 20030811-00043 of official records in the Office of the County Recorder of Clark County, Nevada; and that

The Deed of Trust secures the payment of and the performance of certain obligations, including, but not limited to, the obligations set forth in that certain Promissory Note with a face amount of \$81,370.00 (together with any modifications thereto the "Note"); and that

A breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the Trustor has failed to perform obligations pursuant to or under the Note and/or Deed of Trust, specifically: failed to pay payments which became due **THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON May 1, 2012 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST, ALONG WITH LATE CHARGES, PLUS FORECLOSURE COSTS AND LEGAL FEES. PLUS ALL OF THE TERMS AND CONDITIONS AS PER THE DEED OF TRUST, PROMISSORY NOTE AND RELATED LOAN DOCUMENTS.**

That by reason thereof the present Beneficiary under such Deed of Trust has executed and delivered to said 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.

APN 138-33-226-042

TS No. NV09002485-12-1

TO No. 95302420

### NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in Section NRS 107.080, the right of reinstatement will terminate and the property may thereafter be sold. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

Wells Fargo Home Mortgage a Division of Wells Fargo Bank, N.A.  
c/o TRUSTEE CORPS  
17100 Gillette Ave  
Irvine, CA 92614  
Phone No: 949-252-8300

Dated: April 3, 2013

TRUSTEE CORPS  
as Duly Appointed Successor Trustee




By: Amy Lemus, Authorized Signatory

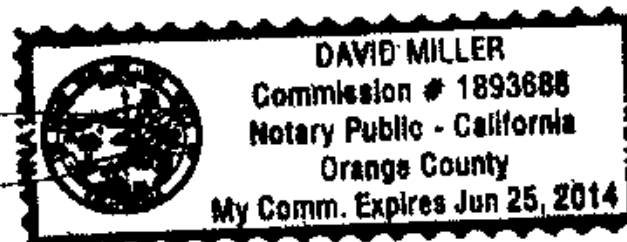
State of CALIFORNIA  
County of ORANGE

On April 3, 2013 before me, David Miller Notary Public  
in and for said county, personally appeared AMY LEMUS 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 CALIFORNIA that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal

  
Notary Public



To the extent your original obligation was discharged, or is subject to an automatic stay of  
bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or  
informational purposes only and does not constitute an attempt to collect a debt or to impose  
personal liability for such obligation. However, a secured party retains rights under its security  
instrument, including the right to foreclose its lien.

TS No: NV09002485-12-1  
APN: 138-33-226-042

**AFFIDAVIT OF AUTHORITY IN SUPPORT OF  
NOTICE OF DEFAULT AND ELECTION TO SELL  
[NRS § 107.080]**

I, Valencia D. Bush, am the Vice President Loan Documentation of Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc. (hereinafter "Wells Fargo"), the current beneficiary of the subject Deed of Trust ("Current Beneficiary") or the authorized representative of the Current Beneficiary. The borrower(s) identified in subject Deed of Trust is/are, Roy N Senholtz and Shirley P Senholtz. The subject Deed of Trust encumbers the real property located at 350 S Durango Dr Las Vegas, Nevada 89128. This Affidavit is provided in support of the Notice of Default and Election to Sell.

The following facts are, except where otherwise indicated, true of my own personal knowledge based upon my personal review of business records of Wells Fargo which have been represented to me to be true by persons employed by Wells Fargo who have a business duty to Wells Fargo to accurately and completely make, take and maintain those records in the regular and ordinary course of their business duties. Where the following facts are not based on my personal knowledge, they are based on my personal review of documents which are of public record in the State of Nevada and/or documents created by third parties the accuracy of which Wells Fargo relies on in conducting its business of servicing mortgage loans.

1(a). The full name and business address of the current trustee of record for the deed of trust at issue is MTC FINANCIAL INC. dba TRUSTEE CORPS, which is located at 17100 Gillette Ave, Irvine, CA 92614.

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust at issue is Wells Fargo Bank, NA, which is located at 3476 Stateview Blvd Ft. Mill, SC 29715.

1(c). The full name and business address of the Current Beneficiary for the obligation or debt secured by the Deed of Trust at issue is Wells Fargo Bank, NA which is located at 3476 Stateview Blvd Ft. Mill, SC 29715.

1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust at issue is Wells Fargo Bank, NA which is located at 3476 Stateview Blvd Ft. Mill, SC 29715.

2. I further affirm that to the best of my knowledge, and from my review of the documents of public record, the full name and business address of each prior beneficiary of the Deed of Trust of which I am aware at issue is:

NV-057-V3  
TS No: NV09002485-12-1      APN: 138-33-226-042

Name: WELLS FARGO HOME MORTGAGE, INC.

Last known address: P.O. BOX 10304, Des Moines, IA 503060304

Instrument: Deed of Trust recorded 08/11/2003 as Instrument Number 20030811-00043.

The other known prior beneficiaries (whether of record or not), if any, along with the date and manner of their acquisition of a beneficial interest in the Deed of Trust and their last known address, if any, are, to the best of my knowledge, set forth in Exhibit "A" hereto, if applicable, which is incorporated herein by this reference.

3. The Current Beneficiary, the successor in interest of the beneficiary or the trustee of the Deed of Trust is in either actual or constructive possession of the Note secured by the Deed of Trust.

4. The current trustee under the Deed of Trust has the authority to exercise the power of sale with respect to the subject Deed of Trust pursuant to the instruction of the Current Beneficiary of record and the current holder of the Note secured by the Deed of Trust.

5. The following is information regarding the amount in default, the principal amount secured by the Deed of Trust, a good faith estimate of fees imposed and to be imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale:

5(a). The total amount in default, as of 03/25/2013, is \$6,339.78.

5(b). As of 03/25/2013, the amount of fees and costs already charged to debtor because of the default is \$130.20. This amount is included in 5(a).

5(c). As of 03/25/2013, the unpaid principal amount of the obligation or debt secured by the Deed of Trust is currently \$70,374.02.

5(d). As of 03/25/2013, as a good faith estimate, the amount of fees and costs to be imposed or charged to the debtor because of the default, excluding the foreclosure fees and costs set forth in Paragraph 5(e), below, will be \$400.00.

5(e) As a good faith estimate of the foreclosure fees and costs to be charged to the debtor in connection with the exercise of the power of sale under the Deed of Trust will be \$2,490.00.

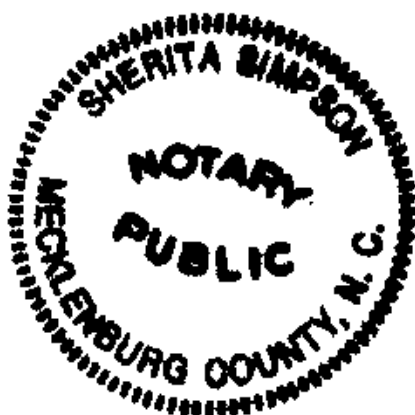
6. To the best of my knowledge, and if an Exhibit "A" is attached, it contains the date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on March 25<sup>th</sup>, 2013.

Valencia D. Bush  
Valencia D. Bush - Vice President Loan Documentation  
Wells Fargo Bank, NA  
03/25/13

State of North Carolina  
County of Mecklenburg

The foregoing instrument was sworn to and subscribed before me this 25<sup>th</sup> day of March, 2013, by Valencia D. Bush, who is personally known to me.



Sherita Simpson  
Sherita Simpson  
NOTARY PUBLIC, State of North Carolina  
My commission expires: 3/29/2014

TS No: NV09002485-12-1  
APN: 138-33-226-042

**Exhibit "A"**

<b>Full Name</b>	<b>Street, City, State, Zip</b>	<b>Date (if applicable)</b>	<b>Instrument No. (if applicable)</b>
Federal Home Loan Mortgage Corporation	8200 Jones Branch Drive McLean, VA	Not Applicable	Not Applicable

Inst #: 201305200000711

Fees: \$18.00

N/C Fee: \$0.00

05/20/2013 08:05:51 AM

Receipt #: 1621003

Requestor:

NORTH AMERICAN TITLE SUNSET

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN#

138-33-226-042

11 digit number may be obtained at:

<http://sandgate.co.clark.nv.us/cicsAssessor/owner.htm>

NOTICE OF FORECLOSURE SALE

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET, STE. 111

City/State/Zip LAS VEGAS, NV 89113

This page added to provide additional information required by NRS 111.312 Sections 1-2  
(An additional recording fee of \$1.00 will apply.)

This cover page must be typed or printed clearly in black ink only.

CS12/03

APN # 138-33-226-042  
Angel Point Condominiums

NAS # N71578

**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, November 12, 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 6/14/2013 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 December 29, 1994 as instrument number 00538 Book 941229 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on November 15, 2012 as document number 0001932 Book 20121115 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: 350 S. Durango Drive #104, Las Vegas, NV 89145. Said property is legally described as: ANGEL POINT CONDO II AMD, PLAT BOOK 77, PAGE 16, UNIT 158, BLDG 15, 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: Roy N Senholtz, Shirley P Senholtz as Trustees for The Senholtz Family Trust dated 06/06/2004

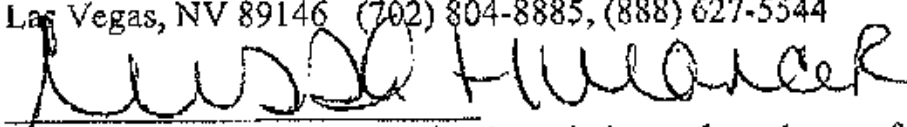
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy 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 \$5,120.18. 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 1/18/2013 as instrument number 0002571 Book 20130118 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.

May 15, 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.



Inst #: 201306170002016

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

RPTT: \$285.60 Ex: #

06/17/2013 12:01:35 PM

Receipt #: 1657621

Requestor:

RESOURCES GROUP

Recorded By: SUO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Please mail tax statement and  
when recorded mail to:  
Saticoy Bay LLC Series 350 Durango 104  
P.O. Box 36204  
Las Vegas, NV 89133

### FORECLOSURE DEED

APN # 138-33-226-042

North American Title #38961

NAS # N71578

The undersigned declares: \$285.60

Nevada Association Services, Inc., herein called agent (for the Angel Point Condominiums), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded November 15, 2012 as instrument number 0001932 Book 20121115, in Clark County. The previous owner as reflected on said lien is Roy N Senholtz, Shirley P Senholtz as Trustees for The Senholtz Family Trust dated 06/06/2004. Nevada Association Services, Inc. as agent for Angel Point Condominiums does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 350 Durango 104 (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: ANGEL POINT CONDO II AMD, PLAT BOOK 77, PAGE 16, UNIT 158, BLDG 15 Clark County

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Angel Point Condominiums 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 1/18/2013 as instrument # 0002571 Book 20130118 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 Angel Point Condominiums at public auction on 6/14/2013, 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 \$6,900.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: June 14, 2013



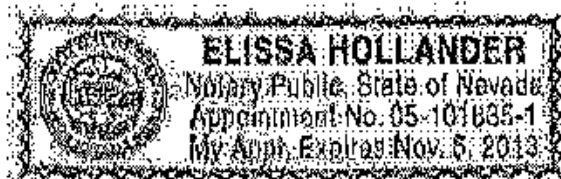
By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA )  
COUNTY OF CLARK )

On June 14, 2013, before me, Elissa Hollander, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)

(Signature)



*Elissa Hollander*

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 138-33-226-042

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

\$ 55,689.00

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

\$ 56,000.00

c. Transfer Tax Value:

\$ 285.60

d. Real Property Transfer Tax Due

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

Misty Blanchard

Capacity: Agent for HOA/NAS Employee

Signature

Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**

(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: Nevada

Zip: 89146

**BUYER (GRANTEE) INFORMATION**

(REQUIRED)

Print Name: Satcom Bay LLC Series

Address: P.O. Box 36208

City: Las Vegas

State: Nevada

Zip: 89133

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

Print Name: SATCOM BAY LLC SERIES 350

Escrow # \_\_\_\_\_

Address: P.O. Box 36208

DURANGO DR #104

City: NV

State: NV

Zip: 89133

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

APN: 138-33-226-042

Alt. APN:

Recording requested by:

PACIFIC COAST TITLE

When recorded, mail to:

Trustee Corps  
17100 Gillette Avenue  
Irvine, CA. 92614

NV09002485-12-1

Inst #: 201308290004265

Fees: \$17.00

N/C Fee: \$0.00

08/29/2013 02:42:37 PM

Receipt #: 1752939

Requestor:

PACIFIC COAST TITLE

Recorded By: MSH Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

## CERTIFICATE

### STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

Property Owner(s):

Senholtz, Roy  
Senholtz, Shirley

Property Address:

350 S Durango Dr  
Las Vegas, NV 89128  
Clark Co.

Trustee:

Trustee Corps  
Attn: Doug Nunez  
3571 Red Rock St Suite C  
Las Vegas, NV 89103

Instrument Number:

Deed of Trust Doc Number:  
20030811-00043

Book: Page:

- ☐ **Mediation Waived:** The Beneficiary may proceed with the foreclosure process.
- ☒ **Non-Applicable Property:** The Beneficiary may proceed with the foreclosure process.
- ☐ **No Agreement:** A Foreclosure Mediation Conference was held on N/A. The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with the foreclosure process.
- ☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on N/A. The parties agreed homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.
- ☐ **Grantor Non-Compliance:** 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. The Beneficiary may proceed with the foreclosure process.
- ☐ **Certificate Reissuance:** The Beneficiary may proceed with the foreclosure process.
- ☐ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 04-04-2013 Proof of Service Date: 04-11-2013

Certificate Issued Date: 08-01-2013

**FMP CERT: 2013-08-01-0083**



GENERAL INFORMATION	
PARCEL NO.	138-33-226-042
OWNER AND MAILING ADDRESS	SATICOY BAY LLC SERS 350 DURANGO %SER 350 S DURANGO 104 P O BOX 36204 LAS VEGAS NV 89133
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	350 S DURANGO DR UT 104 LAS VEGAS
ASSESSOR DESCRIPTION	ANGEL POINT CONDO II AMD PLAT BOOK 77 PAGE 16 UNIT 158 BLDG 15
RECORDED DOCUMENT NO.	* 20130617:02016
RECORDED DATE	Jun 17 2013
VESTING	NS
COMMENTS	

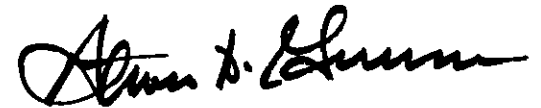
\*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	200
APPRAISAL YEAR	2014
FISCAL YEAR	2015-16
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2014-15	2015-16
LAND	4200	5250
IMPROVEMENTS	20378	24306
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	24578	29556
TAXABLE LAND+IMP (SUBTOTAL)	70223	84446
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	24578	29556
TOTAL TAXABLE VALUE	70223	84446

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	0.00 Acres
ORIGINAL CONST. YEAR	1997
LAST SALE PRICE MONTH/YEAR	55689 6/2013
LAND USE	170 - Condominium
DWELLING UNITS	1

<b>PRIMARY RESIDENTIAL STRUCTURE</b>					
<b>1ST FLOOR SQ. FT.</b>	1188	<b>CASITA SQ. FT.</b>	0	<b>ADDN/CONV</b>	
<b>2ND FLOOR SQ. FT.</b>	0	<b>CARPORT SQ. FT.</b>	0	<b>POOL</b>	NO
<b>3RD FLOOR SQ. FT.</b>	0	<b>STORIES</b>	Condo/1 Story Multi-Family	<b>SPA</b>	NO
<b>UNFINISHED BASEMENT SQ. FT.</b>	0	<b>BEDROOMS</b>	2	<b>TYPE OF CONSTRUCTION</b>	Frame-Stucco
<b>FINISHED BASEMENT SQ. FT.</b>	0	<b>BATHROOMS</b>	2 FULL	<b>ROOF TYPE</b>	Concrete Tile
<b>BASEMENT GARAGE SQ. FT.</b>	0	<b>FIREPLACE</b>	1		
<b>TOTAL GARAGE SQ. FT.</b>	0				



CLERK OF THE COURT

1 **OPPS**  
2 MICHAEL F. BOHN, ESQ.  
3 Nevada Bar No.: 1641  
4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
5 LAW OFFICES OF  
6 MICHAEL F. BOHN, ESQ., LTD.  
7 376 East Warm Springs Road, Ste. 140  
8 Las Vegas, Nevada 89119  
9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for plaintiff

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 SATICOY BAY LLC SERIES 350 DURANGO  
14 104

15 Plaintiff,

16 vs.

17 WELLS FARGO HOME MORTGAGE A  
18 DIVISION OF WELLS FARGO BANK, N.A.;  
19 MTC FINANCIAL dba TRUSTEE CORPS;  
20 RON N. SENHOLTZ and SHIRLEY P.  
21 SENHOLTZ as trustees for the Senholtz Family  
22 Trust

23 Defendants.

CASE NO.: A-13-688410-C  
DEPT NO.: XXVIII

24 **PLAINTIFF'S OPPOSITION TO DEFENDANT WELLS**  
25 **FARGO HOME MORTGAGE'S MOTION TO DISMISS**

26 Plaintiff, Saticoy Bay LLC Series 350 Durango 104 ("Plaintiff"), by and through its attorney,  
27 Michael F. Bohn, Esq., opposes the motion to dismiss filed by Defendant, Wells Fargo Home Mortgage,  
28 a Division of Wells Fargo Bank, N.A. (hereinafter "Defendant" or "Wells Fargo"), for the reasons set  
forth herein.

**FACTS**

Plaintiff is the owner of the real property commonly known as 350 South Durango Road, Unit  
104, Las Vegas, Nevada (hereinafter "Property"). Plaintiff obtained title to the Property by way of

1 foreclosure deed recorded on June 17, 2013 (Exhibit 1 to this opposition and Exhibit H to request for  
2 judicial notice ("RJN") filed by Wells Fargo on April 13, 2015).

3 Defendant Wells Fargo is named as the lender in a deed of trust recorded against the Property on  
4 August 11, 2003. (RJN, Exhibit B)

5 On November 15, 2012, the agent for the Angel Point Condominiums (hereinafter "HOA")  
6 recorded a notice of delinquent assessment lien as instrument # 201211150001932. (RJN Exhibit D) On  
7 January 18, 2013, the agent for the HOA recorded a notice of default and election to sell under  
8 homeowners association lien. (RJN, Exhibit E) On May 20, 2013, the agent for the HOA recorded a  
9 notice of foreclosure sale. (RJN, Exhibit G)

10 As reflected by the foreclosure deed recorded on June 17, 2013, at the public auction held on June  
11 14, 2013, plaintiff was the highest bidder and paid the bid amount of \$6,900.00 in cash. Pursuant to the  
12 provisions of NRS Chapter 116, the HOA foreclosure sale held on June 14, 2013 extinguished any  
13 interest that Defendant held in the Property. Because Defendant holds no interest in the Property,  
14 Defendant's motion to dismiss should be denied.

#### 15 POINTS AND AUTHORITIES

##### 16 **1. Defendant has not met the requirements for the granting of a motion to dismiss.**

17 In the case of Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481, 484, 874 P.2d 744,  
18 746 (1994), the Nevada Supreme Court adopted the following standards in deciding a motion to dismiss:

19 All factual allegations of the complaint must be accepted as true. Capital Mortgage  
20 Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126 (1985). A complaint will not be  
21 dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff  
22 could prove no set of facts which, if accepted by the trier of fact, would entitle him [or  
her] to relief." Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing  
Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

23 In the present case, plaintiff alleged in paragraph 2 of its complaint that it acquired title to the  
24 Property by a foreclosure deed recorded on June 17, 2013, and plaintiff alleged in paragraph 7 of its  
25 complaint the interest of each of the defendants had been extinguished by the foreclosure sale conducted  
26 by the HOA due to the delinquency in assessments due from the former owners.

27 Defendant has presented no evidence disputing that the HOA complied with all requirements for  
28



1 the nonjudicial foreclosure of its assessment lien pursuant to NRS Chapter 116. Defendant has also not  
2 denied that in compliance with NRS Chapter 116, the authorized agent for the HOA timely mailed to  
3 Defendant a copy of the notice of default and election to sell under homeowners association lien, recorded  
4 on January 18, 2013 (RJN Exhibit E) and a copy of the notice of foreclosure sale, recorded on May 20,  
5 2013 (RJN Exhibit G). Defendant also does not dispute that it did not pay the amount of the HOA's  
6 super priority lien prior to the public auction held on June 14, 2013.

7 Instead, the undisputed allegations in plaintiff's complaint prove that the foreclosure of the HOA's  
8 super priority lien at the HOA sale held on June 14, 2013 extinguished any estate, right, title, interest or  
9 claim in the property held by Defendant and vested title to the real property in the plaintiff free of  
10 Defendant's deed of trust. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334  
11 P.3d 408 (2014).

## 12 **2. Defendant's trust deed was extinguished by the foreclosure sale**

13 NRS 116.3116 provides in part:

### 14 **Liens against units for assessments.**

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

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

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

28 (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**

1 **budget adopted by the association pursuant to NRS 116.3115 which would have**  
2 **become due in the absence of acceleration during the 9 months immediately**  
3 **preceding institution of an action to enforce the lien,** unless federal regulations adopted  
4 by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage  
5 Association require a shorter period of priority for the lien. If federal regulations adopted  
6 by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage  
7 Association require a shorter period of priority for the lien, the period during which the  
8 lien is prior to all security interests described in paragraph (b) must be determined in  
9 accordance with those federal regulations, except that notwithstanding the provisions of  
10 the federal regulations, the period of priority for the lien must not be less than the 6  
11 months immediately preceding institution of an action to enforce the lien. This subsection  
12 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens  
13 for other assessments made by the association. (emphasis added)

14  
15 By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for 9 months of charges  
16 is "prior to all security interests described in paragraph (b)." The first deed of trust, recorded on August  
17 11, 2003, falls squarely within the language of paragraph (b). The statutory language does not limit the  
18 nature of this "priority" in any way.

19  
20 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.  
21 Op. 75, 334 P.3d 408 (2014), the Supreme Court stated:

22  
23 NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an  
24 individual homeowner's property for up to nine months of unpaid HOA dues. With  
25 limited exceptions, this lien is "prior to all other liens and encumbrances" on the  
26 homeowner's property, even a first deed of trust recorded before the dues became  
27 delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien such  
28 that its foreclosure extinguishes a first deed of trust on the property and, if so, whether it  
can be foreclosed nonjudicially. We answer both questions in the affirmative and  
therefore reverse.

334 P.3d at 409.

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

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

Id. at 419.

Because the facts in the present case are substantially the same as the facts in SFR Investments  
Pool 1, LLC v. U.S. Bank, N.A., the court should reach the same conclusion that the nonjudicial

1 foreclosure of the HOA's super priority lien at the public auction held on June 14, 2013 extinguished the  
2 "first security interest" held by Defendant.

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

4 The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a  
5 public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc.  
6 v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family  
7 Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller  
8 & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank,  
9 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the court described the non-judicial foreclosure  
10 provisions of NRS Chapter 116 as "elaborate," and therefore supported the public policy favoring the  
11 finality of a foreclosure sale.

12 Additionally, there is a common law presumption that a foreclosure sale was conducted validly.  
13 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25  
14 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014);  
15 Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen,  
16 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust  
17 Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431  
18 S.E. 2d 475 (Ga. App 1993).

19 Under Nevada law, the recitals in the deed are sufficient and conclusive proof that a default  
20 occurred and that the required notices were mailed by the HOA. The foreclosure deed recorded on June  
21 17, 2013 includes the following recitals:

22 Default occurred as set forth in a Notice of Default and Election to Sell, recorded on  
23 1/18/2013 as instrument # 0002571 Book 20130118 which was recorded in the office of  
24 the recorder of said county. Nevada Association Services, Inc. has complied with all  
25 requirements of law including, but not limited to, the elapsing of 90 days, mailing of  
26 copies of Notice of Delinquent Assessment and Notice of Default and the posting and  
27 publication of the Notice of Sale.

28 The controlling statute, NRS 116.31166, provides:

**Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for  
proper application of purchase money; title vested in purchaser without equity or**

1       **right of redemption.**

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

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

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

15          NRS 47.240(6) also provides that conclusive presumptions include "[a]ny other presumption  
16          which, by statute, is expressly made conclusive." Because NRS 116.31166 contains such an expressly  
17          conclusive presumption, the recitals in the foreclosure deed are "conclusive proof" that Defendant was  
18          served with copies of the required notices for the foreclosure sale. Defendant has not denied that the  
19          HOA's agent mailed copies of both of these required notices to Defendant.

20          In the case of Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001), the district court  
21          refused to apply the conclusive presumption contained in NRS 106.240 because "[t]he district court  
22          determined that the legislature intended for the statute to protect bona fide purchasers." The Supreme  
23          Court reversed the district court's judgment that the statute only protected bona fide purchasers and  
24          stated:

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

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

        In the present case, the title in the name of the plaintiff is made conclusive and not subject to  
attack from any party including the Defendant. The Defendant's claims, if any, for any alleged failures  
in the foreclosure process are against the foreclosure agent. See Moeller v. Lien 25 Cal. App. 4th 822,

1 832, 30 Cal. Rptr. 2d 777 (1994).

2 Plaintiff respectfully submits that this court should find that the foreclosure deed recorded on June  
3 17, 2013 is conclusive and sufficient proof that the title now vested in the plaintiff is not subject to attack  
4 from the Defendant.

5 **4. The foreclosure process in NRS Chapter 116 does not violate due process**  
6 **because NRS 116.31168(1) incorporates the notice requirements in NRS 107.090**  
7 **and required that copies of both the notice of default and the notice of sale be**  
8 **mailed to holders of subordinate interests.**

9 At page 6 of its motion, Defendant asserts that NRS Chapter 116 has a “fatal flaw” because “none  
10 of its express notice provisions provide for mandatory notice to lenders; despite the fact that their property  
11 rights are directly threatened by an HOA’s non-judicial foreclosure.”

12 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408  
13 (2014), the Nevada Supreme Court specifically addressed and rejected the argument that the notice  
14 requirements in NRS Chapter 116 are unconstitutional. The Court painstakingly went through each of  
15 the foreclosure requirements in NRS Chapter 116 and called the statutory scheme “elaborate.” In  
16 rejecting U.S. Bank’s claim that there was a due process violation, the Court stated:

17 U.S. Bank makes two additional arguments that merit brief discussion. First, the lender  
18 contends that the nonjudicial foreclosure in this case violated its due process rights.  
19 Second, it invokes the mortgage savings clause in the Southern Highlands CC & Rs,  
20 arguing that this clause subordinates SHHOA's lien to the first deed of trust. Neither  
21 argument holds up to analysis.

22 1.

23 SFR is appealing the dismissal of its complaint for failure to state a claim upon which  
24 relief can be granted. NRCP 12(b)(5). The complaint alleges that “the HOA foreclosure  
25 sale complied with all requirements of law, including but not limited to, recording and  
26 mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the  
27 recording, posting and publication of the Notice of Sale.” It further alleges that, “prior to  
28 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.” **In view of the  
fact that the “requirements of law” include compliance with NRS 116.31162 through  
NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1), we  
conclude that U.S. Bank's due process challenge to the lack of adequate notice fails, at  
least at this early stage in the proceeding. (emphasis added)**

334 P.3d at 417-418.

26 At pages 12 to 14 of its motion, Defendant asserts that the caption of NRS 116.31168 supersedes  
27 the express language in the body of NRS 116.31168(1) and that the statute does not incorporate the

1 provisions of NRS 107.090 requiring that copies of both the notice of default and the notice of sale be  
2 mailed to holders of “subordinate” interests even if they do not make an affirmative request for notice.  
3 As noted in the SFR decision, on the other hand, the Nevada Supreme Court has adopted plaintiff’s  
4 reading of the statute that the notices require under NRS 107.090 are also required for an HOA  
5 foreclosure “by incorporation.” Id. at 418.

6 Wells Fargo’s interpretation of NRS 116.31168(1) and NRS 107.090 is inconsistent with  
7 numerous rules of statutory construction. For example, the Nevada Supreme Court has recognized that  
8 when the language of a statute is plain and unambiguous, a court should give that language its ordinary  
9 meaning and not go beyond it. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d  
10 974, 977 (1989). Additionally, courts must construe statutes to give meaning to all of their parts and  
11 language, and courts are to read each sentence, phrase, and word to render it meaningful within the  
12 context of the purpose of the legislation. Board of County Comm’rs v. CMC of Nevada, 99 Nev. 739,  
13 744, 670 P.2d 102, 105 (1983). A statute should be interpreted to give the terms their plain meaning,  
14 considering the provisions as a whole, so as to read them in a way that would not render words or phrases  
15 superfluous or make a provision nugatory. Southern Nevada Homebuilders v. Clark County 121 Nev.  
16 446, 117 P.3d 171 (2005). A statute should be construed so that no part is rendered meaningless. Public  
17 Employees’ Benefits Program v. Las Vegas Metropolitan Police Department 124 Nev. 138, 179 P.3d 542  
18 (2008). All of these standards are violated by Wells Fargo’s interpretation that gives the caption assigned  
19 to the statute the power to negate the express language contained in the body of the statute.

20 The Nevada Supreme Court has also recognized a general presumption that statutes will be  
21 interpreted in compliance with the Constitution. Sereika v. State, 114 Nev. 142, 955 P.2d 175, 180  
22 (1998). The Nevada Supreme Court has stated that “statutes must be construed consistent with the  
23 constitution and, where necessary, in a manner supportive of their constitutionality.” Foley v. Kennedy,  
24 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1994). Where a statute is susceptible to both a constitutional  
25 and an unconstitutional interpretation, the court is obliged to construe the statute so that it does not violate  
26 the constitution. Whitehead v. Nevada Commission on Judicial Discipline, 110 Nev. 380, 878 P.2d 913,  
27 919 (1994), citing Sheriff v. Wu, 101 Nev. 687, 708 P.2d 305 (1985).

1 The notice requirements of NRS 116.31162 through 116.31168, and by incorporation, NRS  
2 107.090, provide holders of “subordinate” deeds of trust with adequate notice prior to an HOA  
3 foreclosure sale. The statutory foreclosure process does not violate due process.

4 **5. The statute does not violate the takings clauses of the United States and Nevada**  
5 **Constitutions.**

6 At page 15 of its motion, Wells Fargo asserts that “[p]ermitting the extinguishment of a first-  
7 recorded deed of trust in favor of a *de minimis* homeowners’ association’s lien to recover several months  
8 of assessments is a taking that violates both Constitutions.” The present case, however, does not involve  
9 any property being “taken for public use” as required by the Fifth Amendment to the U.S. Constitution  
10 or Article I, Section 8 of the Nevada Constitution.

11 The case of McCarran Int’l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006), is unlike the  
12 present case because that case involved a height restriction ordinance adopted by Clark County that  
13 reduced the height of any structures that could be erected on plaintiff’s property from 150 feet to only 80  
14 to 90 feet. In addition, the plaintiff argued that approximately 100 planes per day used his airspace at  
15 altitudes below 500 feet. In the present case, on the other hand, NRS Chapter 116 was adopted by the  
16 Nevada legislature in 1991, and the super priority lien rights granted to the HOA by NRS 116.3116(2)  
17 and the HOA’s declaration of Covenants Conditions and Restrictions (CC&Rs) recorded on December  
18 29, 1994 pre-dated the recording of Defendant’s deed of trust on August 11, 2003. (RJN, Exhibit B) The  
19 recorded CC&Rs provided Defendant with “notice that by operation of the statute, the [earlier recorded]  
20 CC&Rs might entitle the HOA to a super priority lien at some future date which would take priority over  
21 a [later recorded] deed of trust.” SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op.  
22 75, \*22, 334 P.3d 408, 418 (2014), quoting 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979  
23 F. Supp. 2d 1142, 1152 (D. Nev. 2013).

24 In the case of United States v. Security Industrial Bank, 459 U.S. 10 (1982), cited at page 16 of  
25 Wells Fargo’s motion, the United States Supreme Court affirmed a decision by the Court of Appeals that  
26 the exemptions created by 11 U.S.C. § 522(f)(2) could not have “retrospective application” and invalidate  
27 liens acquired before the enactment date of the Bankruptcy Reform Act of 1978. In the present case, the

1 enactment of NRS Chapter 116 in 1991 and the recording of the CC&Rs for the HOA could not be a  
2 taking of Wells Fargo's interest in the Property because the deed of trust was not recorded until August  
3 11, 2003.

4 In Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935), cited at page 16 of Wells  
5 Fargo's motion, the United States Supreme Court held that a sub-section added to §75 of the Bankruptcy  
6 Act by the Frazier-Lemke Act adopted on June 28, 1934 could not be applied to change the mortgagee's  
7 rights in mortgages recorded in 1922 and 1924. No "retrospective" application of NRS 116.3116(2)  
8 exists in the present case. Wells Fargo obtained its interest in the real property with constructive notice  
9 that NRS Chapter 116 and the CC&Rs for the HOA provided the HOA with super priority lien rights that  
10 could extinguish its "subordinate" interest in the property.

11 The case of Armstrong v. United States, 364 U.S. 40 (1960), cited at pages 16 and 17 of Wells  
12 Fargo's motion, is unlike the present case because the United States took ownership of 11 boats that were  
13 subject to the petitioners' materialmen's liens under state law and thereby made those liens unenforceable.  
14 In this case, the private foreclosure sale by the HOA did not involve a government purchaser, and Wells  
15 Fargo's deed of trust was always subordinate to the HOA's super priority lien rights.

16 At pages 17 of its motion, Wells Fargo states that "government seizure" of property is not  
17 necessary to finding "an unconstitutional taking," but that "[t]he government's 'simply impos[ing] a  
18 general economic regulation," which "in effect transfers the property interest from a private creditor to  
19 a private debtor" is a taking. United States v. Security Industrial Bank, 459 U.S. at 78. In the present  
20 case, however, no such economic regulation was imposed by the government after Wells Fargo acquired  
21 its deed of trust against the Property. Wells Fargo instead acquired its interest in the Property subject to  
22 the super priority lien rights granted to the HOA by NRS Chapter 116 and the CC&Rs for the HOA.

23 **6. The Nevada Supreme Court has rejected the public policy arguments**  
24 **advanced by Wells Fargo and has instead chosen to support the public**  
**policy benefits achieved by the UCIOA and NRS Chapter 116.**

25 At page 18 of its motion, Wells Fargo asserts that allowing the HOA to enforce its super priority  
26 lien according to the Nevada Supreme Court's opinion in SFR Investments Pool 1, LLC v. U.S. Bank,  
27 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), would violate Nevada's public policy reflected in the



1 Nevada Foreclosure Mediation Program and the Homeowners' Bills of Rights statutes. To the contrary,  
2 the Nevada Supreme Court recognized in its decision several countervailing policy arguments.

3 First, the Court observed:

4 This makes an HOA's ability to foreclose on the unpaid dues portion of its lien essential  
5 for common-interest communities. *Id.* at 12. Otherwise, when a homeowner walks away  
6 from the property and the first deed of trust holder delays foreclosure, the HOA has to  
7 "either increase the assessment burden on the remaining unit/parcel owners or reduce the  
8 services the association provides (e.g., by deferring maintenance on common amenities)." *Id.*  
at 5-6. To avoid having the community subsidized first security holders who delay  
foreclosure, whether strategically or for some other reason, UCIOA § 3-116 creates a true  
superpriority lien:

9 130 Nev., Adv. Op. 75 at \*12; 334 P.3d at 414.

10 The Court also recognized:

11 But as a junior lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss  
12 of its security; it also could have established an escrow for SHHOA assessments to avoid  
13 having to use its own funds to pay delinquent dues. 1982 UCIOA § 3-116 cmt. 1; 1994  
& 2008 UCIOA § 3-116 cmt. 2. The inequity U.S. Bank decries is thus of its own making  
and not a reason to give NRS 116.3116(2) a singular reading at odds with its text and the  
interpretation given it by the authors and editors of the UCIOA.

14 130 Nev., Adv. Op. 75 at \*13; 334 P.3d at 414.

15 At page 19 of its motion, Wells Fargo argues that the court must impose a "commercial  
16 reasonableness requirement" upon the HOA's foreclosure sale in order to prevent homeowners from  
17 being exposed to large deficiency judgments when lenders sue them. The Nevada Supreme Court instead  
18 recognized that "the choice of foreclosure method for HOA liens is the Legislature's, and the Nevada  
19 Legislature has written NRS Chapter 116 to allow nonjudicial foreclosure of HOA liens, subject to the  
20 special notice requirements and protections handcrafted by the Legislature in NRS 116.31162 through  
21 NRS 116.31168." 130 Nev., Adv. Op. 75 at \*20, 334 P.3d at 417.

22 At page 19 of its motion, Wells Fargo asserts that the Supreme Court's interpretation of the statute  
23 "will prevent lenders from considering foreclosure alternatives and compel lenders to foreclose more  
24 quickly." Wells Fargo offers no evidence for this argument, and Wells Fargo fails to explain why lenders  
25 will not simply pay the *de minimis* amount necessary to prevent the HOA from foreclosing its super  
26 priority lien as intended by the drafters of the UCIOA.

27 At page 20 of its motion, Wells Fargo contends that "banks will not lend money for residential  
28

1 real property purchases when their deed of trust could be extinguished by an HOA sale, without notice  
2 and for a commercially unreasonable price.” Wells Fargo provides no evidence to support this argument,  
3 and it ignores that notice is provided by an HOA when it forecloses and that a lender can prevent the  
4 property from being sold at a low price by curing the unit owner’s arrearage or by bidding at the HOA  
5 sale.

6 At page 20 of its motion, Wells Fargo states that “HOAs take the smallest amount of risk among  
7 creditors and provide the least amount of services to a homeowner.” Wells Fargo provides no evidence  
8 to support this argument, and as noted by the Nevada Supreme Court, a lender need take no risk regarding  
9 unpaid HOA assessments if it simply establishes an escrow to collect and pay the assessments. SFR  
10 Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, \*13, 334 P.3d 408, 414 (2014),

11 **6. The amount paid by plaintiff at the HOA foreclosure sale does not support**  
12 **the dismissal of plaintiff’s complaint.**

13 At page 21 of its motion, Wells Fargo quotes from the Nevada Supreme Court’s decision in  
14 Golden v. Tomiyasu, 79 Nev. 503, 510, 387 P.2d 989 (1963), that “proof of some element of fraud,  
15 unfairness or oppression as accounts for and brings about the inadequacy of price” will support setting  
16 aside a foreclosure sale. Wells Fargo, however, has produced no evidence of any defect in the HOA  
17 foreclosure sale held on June 14, 2013. The respondents in Golden v. Tomiyasu were likewise unable  
18 to produce any evidence to support their claim to set aside a trustee’s sale, and the Nevada Supreme Court  
19 reversed the decision by the trial court setting aside the sale even though 80 acres of property valued at  
20 \$200,000 were sold for \$18,025.73.

21 Similarly, Wells Fargo has produced no evidence that the HOA sold the property “to the first man  
22 he meets who will pay the amount of encumbrance [sic], without any attempt to get a larger price for it”  
23 as took place in the case of Runkle v. Gaylord, 1 Nev. 123, 129 (1865).

24 At page 21 of its motion, Wells Fargo quotes from Levers v. Rio King Land and Investment Co.,  
25 93 Nev. 95, 98-99, 560 P.2d 917, 919-20 (1977), which involved a secured party’s collection actions  
26 under NRS Chapter 104. In Levers, the secured creditor had purchased the collateral at a non-judicial  
27 sale for \$100 after giving the respondent notice by mail only 8 days before the sale. The court also noted

1 that only the secured creditor and a former employee attended the sale and that “[t]here is no evidence  
2 that respondents publicized the sale in any manner.” Id. After paying \$100 for the collateral, the secured  
3 creditor resold the collateral to a third party for \$10,000. Under these egregious circumstances, the  
4 Nevada Supreme Court reversed the trial court’s decision setting aside the sale. Instead, the Court held  
5 that it was sufficient that the district court deducted the fair market value of the collateral in calculating  
6 the deficiency judgment owed to the secured creditor. In the present case, Wells Fargo has failed to  
7 identify a single defect in the method, manner, time, or place of the public auction held on June 14, 2013.  
8 Wells Fargo has only objected to the sales price.

9 At pages 21 and 22 of its motion, Defendant also cites non-binding decisions by other courts that  
10 focused only on the price obtained at the foreclosure sale.

11 In footnote 13 at page 22 of its motion, Defendant cites the case of Will v. Mill Condominium  
12 Owners’ Association, 848 A.2d 336, 342 (2004), as holding that “sale of the property for \$3,510.10 was  
13 not commercially reasonable when the property had a fair market value of \$70,000.00.” On the other  
14 hand, the Supreme Court of Vermont did not void the sale solely on the basis of the price paid, but also  
15 noted that providing the only bidder with the minimum acceptable bid “was an assurance that the  
16 condominium would be sold for exactly that low amount.” Id. at 343. In addition, Vermont law is not  
17 helpful in interpreting Nevada’s version of the UCOIA because Vermont law does not include the  
18 nonjudicial foreclosure procedure that was handcrafted by the Nevada Legislature in NRS 116.31162  
19 through NRS 116.31168.

20 In particular, Vermont’s version of the UCIOA does not contain any statutory language similar  
21 to the provision in NRS 116.31166(1) that the recitals in an HOA foreclosure deed “are conclusive proof  
22 of the matters recited.” Vermont’s version of the UCIOA also does not contain any provisions similar  
23 to the statement in NRS 116.31166(2) that “[s]uch a deed containing those recitals is conclusive against  
24 the unit’s former owner, his or her heirs and assigns, **and all other persons.**” (emphasis added) While  
25 it might make sense to make a secured party prove that its “disposition of collateral was commercially  
26 reasonable” when it seeks to recover a deficiency judgment, it makes no sense to impose this obligation  
27 on the purchaser at an HOA foreclosure sale. To do so would read NRS 116.31166 out of the statute.

1 At page 22 of its motion, Defendant asserts that “[t]he HOAs are ‘selling’ properties well below  
2 their fair market value” and “selling the property to the first speculator who will pay the lien amount,  
3 without making any effort to obtain a fair market price.” Defendant provides no evidence that the HOA  
4 in this case engaged in any such conduct.

5 At page 23 of its motion, Defendant refers to a Clark County Assessor Parcel Search Information  
6 Sheet (Exhibit B to Defendant’s motion) that shows a “total taxable value” assigned to the Property for  
7 2015-2016 to argue that the \$6,900 paid by plaintiff on June 14, 2013 is grossly disproportionate to the  
8 fair market value of the Property today.

9 In the case of BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the U.S.  
10 Supreme Court explained why the fair market value of a property cannot be used to prove the forced sale  
11 value of the property:

12 ...the fact that a piece of property is legally subject to forced sale, like any other fact  
13 bearing upon the property’s use or alienability, necessarily affects its worth. Unlike most  
14 other legal restrictions, however, foreclosure has the effect of completely redefining the  
15 market in which the property is offered for sale; normal free-market rules of exchange are  
16 replaced by the far more restrictive rules governing forced sales. Given this altered  
17 reality, and the concomitant inutility of the normal tool for determining what property is  
18 worth (fair market value), **the only legitimate evidence of the property’s value at the  
19 time it is sold is the foreclosure-sale price itself.** (emphasis added)

20 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014),  
21 the amount due on the notice of delinquency was less than \$5,000.00, and the amount due on the  
22 mortgage was hundreds of thousands of dollars. The Nevada Supreme Court upheld the HOA  
23 foreclosure sale and noted twice in its opinion that the bank had a simple remedy – to pay the small lien,  
24 and if necessary, sue for a refund of any balance which may be due.

25 NRS Chapter 116 contains no language that permits an HOA foreclosure sale to be set aside as  
26 “commercially unreasonable,” and NRS 104.9109(4)(k) expressly provides that Article 9 of the Uniform  
27 Commercial Code does not apply to “[t]he creation or transfer of an interest in or lien on real property  
28 . . .” Consequently, the language in NRS 104.9610(2) requiring that “[e]very aspect of a disposition of  
collateral, including the method, manner, time, place and other terms, must be commercially reasonable”  
does not apply to the HOA foreclosure sale that was held in the present case pursuant to NRS 116.31162

1 through NRS 116.31168 and, by incorporation, NRS 107.090.

2 **CONCLUSION**

3 The language in NRS 116.3116(2) created a super priority lien that extinguished defendant Wells  
4 Fargo's subordinate deed of trust when the plaintiff purchased the real property at the HOA foreclosure  
5 sale held on June 14, 2013. The express language of the relevant statutes and the Nevada Supreme  
6 Court's decision in SFR Investments Pool 1, LLC v. U.S. Bank, N.A. support plaintiff's position that the  
7 HOA took all actions necessary to foreclose its super priority lien and extinguish all security interests that  
8 fall within the scope of NRS 116.3116(2)(b). This includes Defendant's deed of trust.

9 By reason of the foregoing, plaintiff respectfully submits that Defendant Wells Fargo's motion  
10 to dismiss should be denied.

11 DATED this 27th day of April, 2015.

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

14 By: / s / Michael F. Bohn, Esq. /  
15 Michael F. Bohn, Esq.  
16 376 East Warm Springs Road, Ste. 140  
17 Las Vegas, Nevada 89119  
18 Attorney for plaintiff  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law  
Offices of Michael F. Bohn, Esq., Ltd. and on the 27th day of April, 2015, an electronic copy of the  
**OPPOSITION MOTION TO DISMISS** was served on opposing counsel via the Court’s electronic  
service system to the following counsel of record:

Richard C. Gordon, Esq.  
Paul W. Shakespear, Esq.  
SNELL & WILMER, LLP  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169

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

# EXHIBIT 1

Inst #: 201306170002016

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

RPTT: \$285.60 Ex: #

06/17/2013 12:01:35 PM

Receipt #: 1657621

Requestor:

RESOURCES GROUP

Recorded By: SUO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Please mail tax statement and  
when recorded mail to:  
Saticoy Bay LLC Series 350 Durango 104  
P.O.Box 36204  
Las Vegas, NV 89133

### FORECLOSURE DEED

APN # 138-33-226-042  
North American Title #38961

NAS # N71578

The undersigned declares: *#28560*

Nevada Association Services, Inc., herein called agent (for the Angel Point Condominiums), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded November 15, 2012 as instrument number 0001932 Book 20121115, in Clark County. The previous owner as reflected on said lien is Roy N Senholtz, Shirley P Senholtz as Trustees for The Senholtz Family Trust dated 06/06/2004. Nevada Association Services, Inc. as agent for Angel Point Condominiums does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 350 Durango 104 (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: ANGEL POINT CONDO II AMD, PLAT BOOK 77, PAGE 16, UNIT 158, BLDG 15 Clark County

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Angel Point Condominiums 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 1/18/2013 as instrument # 0002571 Book 20130118 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 Angel Point Condominiums at public auction on 6/14/2013, 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 \$6,900.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: June 14, 2013

*Misty Blanchard*

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

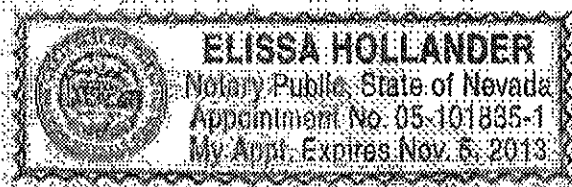


STATE OF NEVADA )  
COUNTY OF CLARK )

On June 14, 2013, before me, Elissa Hollander, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)

(Signature)



*Elissa Hollander*

DUPLICATE COPY

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 138-33-226-042

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

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

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

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

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

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

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

3.a. Total Value/Sales Price of Property

\$ 55,689.00

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

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

c. Transfer Tax Value:

\$ 56,000.00

d. Real Property Transfer Tax Due

\$ 285.60

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

Misty Blanchard

Capacity: Agent for HOA/NAS Employee

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**

(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: Nevada

Zip: 89146

**BUYER (GRANTEE) INFORMATION**

(REQUIRED)

Print Name: Saticoy Bay LLC Series

Address: P.O. Box 36208

City: Las Vegas

State: Nevada

Zip: 89133

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

Print Name: SATICOY BAY LLC SERIES 350

Escrow # \_\_\_\_\_

Address: P.O. Box 36208

DURANGO DR #104

City: LV

State: NV

Zip: 89133

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED