

CLERK OF THE COURT

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7 *Attorneys for U. S. Bank, N.A., successor trustee to*
8 *Bank of America, N.A., Successor by Merger to*
9 *LaSalle Bank, N.A., as Trustee to the holders of the*
10 *Zuni Mortgage Loan Trust 2006-OA1, Mortgage*
11 *Loan Pass-Through Certificates Series 2006-OA1*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 5316 CLOVER BLOSSOM CT TRUST,
15
16 Plaintiff,

17 v.

18 U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
19 BANK OF AMERICA, N.A. SUCCEOR BY
20 MERGER TO LASALLE BANK, N.A., AS
21 TRUSTEE TO THE HOLDERS OF THE ZUNI
22 MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THORUGH
CERTIFICATES SERIES 2006-OA1

23 Defendants.

Case No.: A-14-704412-C
Dept. : XXIV

U.S. BANK, N.A.'S NOTICE OF APPEAL

24 Notice is hereby given that U.S. Bank, N.A., solely as Successor Trustee to Bank of America,
25 N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage
26 Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**),
27 appeal to the Supreme Court of Nevada from this Court's order of September 10, 2015 granting
28

Plaintiff Clover Blossom Ct Trust’s Motion for Summary Judgment and Denying U.S. Bank’s
Counter-motion for Summary Judgment.

DATED this 28th day of September, 2015.

AKERMAN LLP

/s/ Matthew I. Knepper

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to LaSalle Bank, N.A., as Trustee to the holders
of the Zuni Mortgage Loan Trust 2006-OA1,
Mortgage Loan Pass-Through Certificates
Series 2006-OA1*

CERTIFICATE OF SERVICE

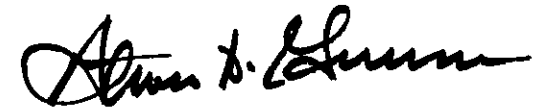
I HEREBY CERTIFY that on the 28th day of September, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **U.S. BANK, N.A.'S NOTICE OF APPEAL** on all parties and counsel as identified on the Court generated notice of electronic filing.

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Bank of America, N.A., Successor by Merger to
LaSalle Bank, N.A., as Trustee to the holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,
Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCESSOR BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C
Dept. No.: XXIV

**U.S. BANK, N.A.'S CASE APPEAL
STATEMENT**

U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), by and through its attorneys of record at Akerman LLP, submits its Case Appeal Statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is U.S. Bank, as described above.

2. The order appealed is the order of September 10, 2015 granting Plaintiff 5316 Clover Blossom Ct Trust's Motion for Summary Judgment and denying U.S. Bank's Countermotion

- 1 for Summary Judgment and all interlocutory orders incorporated therein by the Honorable
2 Judge Jim Crockett.
- 3 3. Counsel for appellant U.S. Bank are Melanie D. Morgan, Esq. and Matthew I. Knepper, Esq.,
4 of Akerman LLP, 1160 N. Town Center Drive, Suite 330, Las Vegas, Nevada 89144.
- 5 4. Trial counsel for Respondent 5316 Clover Blossom Ct Trust is Michael F. Bohn, Esq., 376
6 East Warm Springs Road, Suite 140, Las Vegas, Nevada 89119. U.S. Bank is unaware of
7 whether trial counsel will also act as appellate counsel for Respondent.
- 8 5. Counsel for U.S. Bank are licensed to practice law in Nevada. Trial counsel for Respondent
9 is licensed to practice law in Nevada.
- 10 6. U.S. Bank was represented by retained counsel in the district court.
- 11 7. U.S. Bank is represented by retained counsel on appeal.
- 12 8. U.S. Bank was not granted leave to proceed in forma pauperis by the district court.
- 13 9. The date proceedings commenced in the district court was July 25, 2014.
- 14 10. In this action, Respondent alleges that it owns the property located at 5316 Clover Blossom
15 Ct., North Las Vegas, Nevada (**Property**) free and clear of all liens as a result of an HOA
16 foreclosure sale. Respondent filed a complaint for quiet title to have the court declare that
17 Respondent bought the Property free and clear of U.S. Bank's interests, including the deed of
18 trust held by U.S. Bank (the **Deed of Trust**). U.S. Bank alleges that the Deed of Trust was
19 not extinguished by the HOA foreclosure sale because its predecessor-in-interest's attempted
20 tender satisfied the tender rule, the foreclosure sale was not commercially reasonable,
21 Respondent failed to demonstrate good title, and NRS 116.3116 is unconstitutional. The
22 district court granted Respondent's motion for summary judgment over Appellants'
23 opposition and Rule 56(f) affidavit attesting that it required additional factual discovery to
24 develop its defenses and denied U.S. Bank's counter-motion for summary judgment. U.S.
25 Bank now appeals that order.
- 26 11. This case has not previously been the subject of an appeal to or original writ proceeding in
27 the Supreme Court.
- 28 12. This appeal does not involve child custody or visitation.

13. This appeal does not involve the possibility of settlement.

DATED this 28th day of September, 2015.

AKERMAN LLP

/s/ Matthew I. Knepper

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Mortgage Loan Pass-Through Certificates
Series 2006-OA1*

CERTIFICATE OF SERVICE

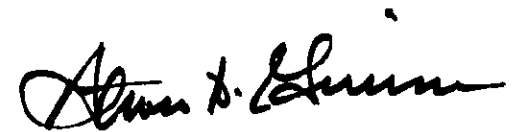
I HEREBY CERTIFY that on the 28th day of September, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **U.S. BANK, N.A.'S CASE APPEAL STATEMENT** on all parties and counsel as identified on the Court generated notice of electronic filing.

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10 Attorney for plaintiff

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 5316 CLOVER BLOSSOM CT TRUST

14 Plaintiff,

15 vs.

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

25 Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

Date of hearing: August 20, 2015
Time of hearing: 9:00 a.m.

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
27 **JUDGMENT GRANTING QUIET TITLE**

28 The motion of plaintiff 5316 Clover Blossom Ct Trust for summary judgment and defendant U.S. Bank's National Association's countermotion for summary judgment having come before the court on August 20, 2015, Michael F. Bohn, Esq. appearing on behalf of the plaintiff and Melanie Morgan, Esq. appearing on behalf of defendant U.S. Bank, and the court, having reviewed the motion and countermotion and the oppositions thereto, and having heard the arguments of counsel, the court makes it's findings of fact, conclusion of law and judgment as follows.

FINDINGS OF FACT

1. The plaintiff acquired the property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada, at foreclosure sale conducted January 16, 2013, as evidenced by the foreclosure deed recorded on January 24, 2013.

2. Defendant U.S. Bank is the current beneficiary of a trust deed which was recorded as an encumbrance to the subject property on June 30, 2004.

3. Defendant U.S. Bank acquired its interest in the deed of trust by assignment which was recorded on June 20, 2011.

4. Prior to the foreclosure sale, the foreclosure agent recorded the notice of delinquent assessment lien on February 22, 2012.

5. On April 20, 2012, the foreclosure agent recorded a notice of default and election to sell under homeowners association lien. The foreclosure agent also mailed the notice to U.S. Bank National Association.

6. On October 31, 2012, the foreclosure agent recorded a notice of trustee's sale. The foreclosure agent also mailed a copy of the notice of sale by certified mail to U.S. Bank National Association.

7. The foreclosure agent also posted the notice on the property and in three locations throughout the county.

8. The foreclosure agent also published the notice of sale in the Nevada Legal News.

9. The HOA foreclosure agent issued a deed upon sale which was recorded on January 24, 2013.

The deed contains the following recitals:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

11. Prior to the HOA foreclosure sale, the defendant tendered what it believed the super priority amount of the lien. The tender was rejected by the foreclosure agent, and the defendant failed to take any

1 additional steps to protect it's interest in the property.

2 12. Any findings of fact which should be considered to be a conclusion of law shall be treated
3 as such.

4 CONCLUSIONS OF LAW

5 1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and
6 other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving
7 party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724,
8 729, 121 P.3d 1026 (2005).

9 2. To defeat a motion for summary judgment the non-moving party bears the burden to "do more
10 than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev. at 732
11 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)). Moreover, the non-
12 moving party must come forward with specific facts showing a genuine issue exists for trial. Matsushita,
13 475 U.S. at 587; Wood P.3d at 1130.

14 3. When ruling on a motion for summary judgment, the court may take judicial notice of the
15 public records attached to the motion. See Harlow v. MTC Financial, Inc., 865 F. Supp 2d 1095 (D. Nev.
16 2012). The recorded documents attached to the plaintiffs motion are referenced in the complaint and/or
17 are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v.
18 Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.") "Documents
19 accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take
20 acknowledgments are presumed to be authentic." NRS 52.165.

21 4. The defendant did not object to the authenticity of any of the exhibits attached to the plaintiff's
22 motion for summary judgment.

23 5. Plaintiff's complaint alleges three claims for relief against defendant U.S. Bank, for
24 declaratory relief, injunctive relief, and quiet title. Summary judgment in favor of the plaintiff on all of
25 plaintiff's claims for relief are appropriate.

26 6. The HOA foreclosure sale complied with all requirements of law, including but not limited
27 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
28

1 recording, posting and publication of the Notice of Sale.

2 7. There is a public policy which favors a final and conclusive foreclosure sale as to the
3 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d
4 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d
5 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

6 8. There is a common law presumption that a foreclosure sale was conducted validly. Fontenot
7 v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25 Cal. App.
8 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014); Timm v.
9 Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen, 804 S.W.
10 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust Co v.
11 Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431 S.E. 2d
12 475 (Ga. App 1993).

13 9. Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16).
14 This creates a disputable presumption that the foreclosure sale was conducted in compliance with the law.

15 10. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
16 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provides that
17 conclusive presumptions include “[a]ny other presumption which, by statute, is expressly made
18 conclusive.” Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals
19 in the foreclosure deed are “conclusive proof” that defendant bank was served with copies of the required
20 notices for the foreclosure sale.

21 11. The court also finds that commercial reasonableness is not an issue in an HOA foreclosure
22 sale. NRS Chapter 116 does not contain a commercial reasonableness requirement, and the court will
23 not read a requirement into a statute which is not expressly stated in the statute. Pro-Max Corp. v.
24 Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001).

25 12. The defendants constitutional challenge to the foreclosure sale is also without merit. NRS
26 116.31168 specifically incorporates the notice requirements of NRS 107.090 into the foreclosure
27 procedure and requires that copies of both the notice of default and the notice of sale be mailed to holders
28

1 of subordinate interests.

2 13. NRS 116.31168(a) provides in part that the “provisions of NRS 107.090 apply to the
3 foreclosure of an association’s lien as if a deed of trust were being foreclosed.” Likewise NRS 107.090
4 provides in part:

5 **Request for notice of default and sale: Recording and contents; mailing of notice;**
6 **request by homeowners’ association; effect of request.**

7

8 3. The trustee or person authorized to record **the notice of default** shall, within 10 days
9 after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be
10 deposited in the United States mail an envelope, registered or certified, return receipt
11 requested and with postage prepaid, containing a copy of the notice, addressed to:

12 (a) Each person who has recorded a request for a copy of the notice; and

13 (b) Each other person with an interest whose interest or claimed interest is subordinate to
14 the deed of trust.

15 4. The trustee or person authorized to make the sale shall, at least 20 days before the date
16 of sale, cause to be deposited in the United States mail an envelope, registered or certified,
17 return receipt requested and with postage prepaid, containing a copy of the notice of time
18 and place of sale, addressed to each person described in subsection 3.

19 14. There is no issue of fact regarding whether the former owner was in default in payment of the
20 assessments as well as whether the lien and foreclosure notices were properly served and posted. The
21 recitals in the foreclosure deed are conclusive as to these issues. Furthermore, the plaintiff presented
22 proof, which was not controverted that the notices were mailed, published, and posted.

23 15. There is no issue regarding whether or not the association foreclosed on the “super-priority”
24 portion of it’s lien. As stated in the Nevada Supreme Court in the case of SFR Investments Pool 1, LLC
25 v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) as to first deeds of trust, NRS
26 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. Unless the
27 superpriority piece has been satisfied prior to the foreclosure sale, the HOA foreclosure sale on it’s
28 assessment lien would necessarily include both the superpriority piece and a subpriority piece of the lien.
The defendant failed to present any evidence that the superpriority portion of the lien was satisfied prior
to the foreclosure sale.

16. There is no requirement in NRS Chapter 116 that a purchaser be a bonafide purchaser.

1 17. The tender of the amount the defendant believed to be the super priority amount does not
2 affect the title received by the plaintiff because once the tender was rejected, the defendant failed to take
3 any further steps to protect it's interest.

4 18. Any conclusion of law which should be a finding of fact shall be considered as such.

5 **ORDER and JUDGMENT**

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover Blossom
7 Ct Trust motion for summary judgment is granted.

8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association counter motion for
9 summary judgment is denied.

10 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
11 Blossom Ct Trust and against defendant U.S. Bank National Association .

12 IT IS FURTHER ORDERED that title to the real property commonly known 5316 Clover
13 Blossom Ct., North Las Vegas, Nevada and legally described as:

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

16 Parcel I:

17 Lot Ninety two (92) of the Plat of Arbor Gate as shown by map thereof on file in Book
18 91 of Plats, page 71, in the office of the County Recorder of Clark County, Nevada

19 Parcel II

20 A non-exclusive easement for ingress and egress and enjoyment in and to the Association
21 property as set forth in the Declaration of Covenants, Conditions and Restrictions for
22 Country Garden (Arbor Gate) a common interest community recorded February 25, 2000
in Book 200000225 as Document No. 00963, of Official Records of Clark County,
Nevada, as the same may from time to time be amended and/or supplemented, which
easement is appurtenant to Parcel One.

23 is hereby quieted in the name of plaintiff 5316 Clover Blossom Ct Trust

24 IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16,
25 2013, and the foreclosure deed recorded on January 24, 2013 as instrument number 201301240002549,
26 the interests of defendant U.S. Bank National Association as well as it's heirs or assigns in the property
27 commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada are extinguished.

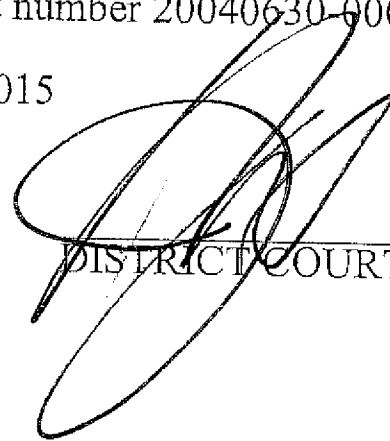
28

1 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
2 and assigns have no further right, title or claim to the real property commonly known as 5316 Clover
3 Blossom Ct., North Las Vegas, Nevada.

4 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
5 and assigns, or anyone acting on their behalf are forever enjoined from asserting any estate, right, title or
6 interest in the real property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada
7 as a result of the deed of trust recorded on June 30, 2004 as instrument number 20040630-0002408.


8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
9 and assigns or anyone acting on it's behalf are forever barred from enforcing any rights against the real
10 property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada as a result of the deed
11 of trust recorded on June 30, 2004 as instrument number 20040630-0002408.

12 DATED this 10 day of September, 2015

13
14 
DISTRICT COURT JUDGE


15 Respectfully submitted by:

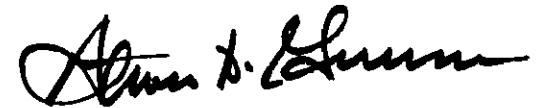
16 LAW OFFICES OF
17 MICHAEL F. BOHN, ESQ., LTD.

18 By: 
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Attorney for plaintiff

22 Reviewed by:

23 AKERMAN LLP

24
25 By: 
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DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,

Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCEsor BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C

Dept. : XXIV

**U.S. BANK, N.A.'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF ITS
COUNTERMOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Defendant U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), hereby submits this supplemental briefing addressing whether Bank of America's super-priority tender extinguished the HOA's super-priority lien and whether the deed recitals contained in the Trustee's Deed Upon Sale are conclusive proof that all requirements of law were satisfied.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 U.S. Bank's Countermotion for Summary Judgment should be granted because Bank of
4 America tendered the super-priority amount of the HOA's lien prior to the foreclosure sale,
5 extinguishing that portion of the HOA's lien. To the extent the super-priority tender did not
6 extinguish the super-priority lien, the HOA's foreclosure sale was still invalid because the HOA's
7 wrongful rejection of the super-priority tender violated the HOA's obligation of good faith, and
8 caused the HOA Lien Statute to operate unconstitutionally as applied to the facts of this case.

9 Even if U.S. Bank's Countermotion is denied, Plaintiff's Motion for Summary Judgment
10 should also be denied because the Trustee's Deed recitals are insufficient to prove that the HOA
11 complied with the HOA Lien Statute. Even if this Court were to hold that every recital contained in a
12 deed served as conclusive, irrefutable proof that the recited act took place, the Trustee's Deed in this
13 case only contains recitals related to the notice provided by the HOA. If this Court is not inclined to
14 grant U.S. Bank's Countermotion for Summary Judgment on the pure legal issue of the
15 constitutionality of the HOA Lien Statute, or based on the unrefuted evidence that Bank of America
16 tendered the super-priority amount prior to the sale, more discovery is necessary to determine
17 whether the HOA complied with the HOA Lien Statute.

18 **II. ARGUMENT**

19 **A. Bank of America's super-priority tender extinguished that portion of the HOA's lien.**

20 This Court should grant U.S. Bank's Countermotion for Summary Judgment because Bank of
21 America's super-priority tender extinguished that portion of the HOA's lien prior to the foreclosure
22 sale. U.S. Bank has produced unrefuted evidence that it tendered \$1,495.00 to the HOA Trustee prior
23 to the foreclosure sale. U.S. Bank's Countermotion, **Ex. H-3**. This amount included not only the nine
24 months of delinquent assessments that constituted the statutorily-defined super-priority amount, but
25 also \$999.50 for "reasonable collection costs." *Id.* Inexplicably, the HOA Trustee rejected this
26 payment and proceeded with the foreclosure sale.

1 A tender which has been made and rejected precludes foreclosure and discharges the subject
2 lien. *See Bisno v. Sax*, 175 Cal. App. 2d 714, 724, 346 P.2d 814 (Cal. Dist. Ct. App. 1959) (“[T]he
3 acceptance of payment of a delinquent installment of principal or interest cures that particular default
4 and precludes a foreclosure sale based upon such a preexisting delinquency. The same is true of a
5 tender which has been made and rejected.”); *Lichty v. Whitney*, 80 Cal. App. 2d 696, 701, 182 P.2d
6 582, 582 (Cal. Dist. Ct. App. 1947) (“A tender of the amount of a debt, though refused, extinguishes
7 the lien of a pledgee, and will entitle the pledger to recover the property pledged.”)

8 According to Plaintiff itself, the Nevada Supreme Court “said not once, but twice, that ... the
9 bank could have paid the super priority amount to preserve its interest in the property” in *SFR*
10 *Investments*. Pltf’s MSJ, at 14; *see SFR Investments*, 334 P.3d at 414 (“[A]s junior lienholder, [the
11 holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]”).
12 Other jurisdictions agree that a tender which has been made, even if rejected, precludes foreclosure
13 and discharges the subject lien. *See Bisno v. Sax*, 346 P.2d 814, 820 (Cal. Dist. Ct. App. 1959)
14 (“[T]he acceptance of payment of a delinquent installment of principal or interest cures that
15 particular default and precludes a foreclosure sale based upon such a preexisting delinquency. The
16 same is true of a tender which has been made and rejected.”); *Lichty v. Whitney*, 182 P.2d 582, 582
17 (Cal. Dist. Ct. App. 1947) (“A tender of the amount of a debt, though refused, extinguishes the lien
18 of a pledgee, and will entitle the pledger to recover the property pledged.”); *Segars v. Classen*
19 *Garage and Service Co.*, 612 P.2d 293, 295 (Okla. Civ. App. 1980) (“A proper and sufficient tender
20 of payment operates to discharge a lien.”).

21 U.S. Bank has produced unrefuted evidence that it tendered the super-priority amount prior
22 to the sale. U.S. Bank’s Countermotion, **Ex. H-3**. By doing so, U.S. Bank “avert[ed] the loss of its
23 security” according to the Nevada Supreme Court. *See SFR Investments*, 334 P.2d at 414. This
24 Court’s analysis should end here, and summary judgment should be entered in favor of U.S. Bank.

25 In retort, Plaintiff contends that “[U.S. Bank] has produced no evidence ... that plaintiff was
26 made aware that defendant claimed that the HOA had wrongfully prevented it from curing the
27 superpriority lien amount prior to the sale.” Pltf’s Opposition, at 15. Plaintiff has failed to explain
28 the relevance of this argument. The *SFR Investments* Court was unequivocal in stating that a pre-

1 foreclosure tender of the super-priority amount preserved the first-priority position of a deed of trust.
2 *See SFR Investments*, 334 P.2d at 414. Whether Plaintiff was aware of the super-priority tender is
3 irrelevant to this action.

4 Even if this Court construes Plaintiff's argument as a good-faith purchaser defense, Plaintiff
5 misconstrues who bears the burden of proof on this point. "In a quiet title action, the burden of proof
6 rests with the plaintiff to prove good title in himself." *Breliant v. Preferred Equities Corp.*, 112 Nev.
7 663, 669, 918 P.2d 314, 318 (1996). As discussed in Section C below, Plaintiff attempts to rely
8 solely on the Trustee's Deed recitals as "conclusive proof" that the HOA sale was properly
9 conducted. However, there are no recitals regarding how the foreclosure sale was conducted, or
10 whether the super-priority amount was properly calculated under NRS 116.3115. Without any deed
11 recitals, there can be no evidentiary presumption favoring Plaintiff on these points. Rather, U.S.
12 Bank and Plaintiff are on an equal evidentiary footing. Therefore, even if Plaintiff's good-faith
13 purchaser defense is valid, it must produce evidence showing that it was unaware of the super-
14 priority tender to prevail on that defense. Plaintiff has produced none. Even if the defense is valid,
15 Plaintiff's summary judgment motion should be denied.

16
17 **B. The HOA Trustee's tender rejection breached the duty of good faith required by the
HOA Lien Statute and violated the Due Process Clause.**

18 Even if Bank of America's super-priority tender did not extinguish the super-priority portion
19 of the HOA's lien, it still invalidated the sale for two additional reasons. First, the HOA's decision to
20 reject payment of an amount exceeding the super-priority portion of the lien and instead sell the
21 property for a miniscule amount was made in bad faith. The HOA Lien Statute imposes an
22 obligation of good faith in the "performance and enforcement" of "every duty governed by" the
23 statute. NRS 116.1113. When Bank of America offered to pay the super-priority amount to the
24 HOA, the HOA had two choices: (1) accept the super-priority payment and forego foreclosure, or (2)
25 reject the super-priority payment and proceed with the foreclosure. Under either scenario, the HOA
26 would receive the same amount—the super-priority portion of its lien. By capriciously choosing to
27 reject the super-priority tender and proceed with foreclosure, the HOA unnecessarily attempted to
28

1 extinguish U.S. Bank's \$147,456.00 lien. This clear violation of the HOA's obligation to act in good
2 faith invalidates the foreclosure sale on which Plaintiff's quiet title claim relies.

3 Second, because (under Plaintiff's theory) U.S. Bank's property interest was extinguished
4 without it or its predecessors having any notice of the super-priority amount of the lien, the HOA
5 Lien Statute operated unconstitutionally under the Due Process Clause. "[W]hen notice is a person's
6 due, process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust*
7 *Co.*, 339 U.S. 306, 315 (1950). The notice U.S. Bank was provided here was, at most, a "mere
8 gesture" of process. Faced with the potential deprivation of its constitutionally-protected property
9 interest, Bank of America¹ tendered the super-priority amount of HOA's lien. U.S. Bank's
10 Countermotion, **Ex. H-3**. Rather than provide Bank of America with the amount necessary to satisfy
11 the HOA's lien, the HOA Trustee rejected this payment without explanation. Without notice of the
12 super-priority amount, U.S. Bank had no opportunity to protect its property interest prior to the
13 HOA's foreclosure. As applied to the circumstances of this case, the HOA Lien Statute operated
14 unconstitutionally, invalidating the HOA foreclosure sale.

15 By wrongfully rejecting Bank of America's super-priority tender, the HOA breached its duty
16 of good faith and caused the HOA Lien Statute to operate unconstitutionally as applied to the facts
17 of this case. For those reasons, the HOA's foreclosure sale was invalid. Accordingly, this Court
18 should enter summary judgment in favor of U.S. Bank.

19 **C. The Trustee's Deed's recitals are insufficient to show full compliance with the HOA**
20 **Lien Statute.**

21 Even if this Court denies U.S. Bank's Countermotion, Plaintiff's Motion for Summary
22 Judgment should also be denied because the recitals contained in the Trustee's Deed Upon sale are
23 not conclusive proof that all requirements of law have been satisfied, and any presumption arising
24 from the recitals is limited to the matters actually recited. Specifically, Plaintiff's Motion for
25 Summary Judgment should be denied because (1) the Trustee's Deed's recitation of compliance with
26 the HOA Lien Statute is not a substitute for actual compliance, (2) the Trustee's Deed's recitals are
27 unsupported legal conclusions not entitled to the NRS 116.31166 presumption, (3) the Trustee's

28 ¹ Bank of America serviced the loan secured by U.S. Bank's Deed of Trust.

1 Deed contains recitals related solely to notice, and (4) discovery is necessary to determine whether
2 the HOA actually complied with the HOA Lien Statute.

3 **1. The Trustee's Deed's recitation of compliance with the HOA Lien Statute is not**
4 **a substitute for actual compliance.**

5 Plaintiff's contention that recitations of compliance with the HOA Lien Statute excuses the
6 HOA from actually complying with the statute's notice provisions overlooks the requirements of
7 NRS 116.31166(3). Plaintiff's reading of NRS 116.31166 ignores an axiomatic proposition: no part
8 of a statute should be construed to render another void. *See Harris Assocs. v. Clark County Sch.*
9 *Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003); *Banegas v. State Indus. Ins. System*, 117 Nev.
10 222, 229, 19 P.3d 245, 250 (2001) ("[W]ords within a statute must not be read in isolation, and
11 statutes must be construed to give meaning to all of their parts and language within the context of the
12 purpose of the legislation."). Further, where statutory provisions may be viewed as conflicting, they
13 must be harmonized. *See, e.g. Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of*
14 *Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 561 (2008); *Acklin v. McCarthy*, 96 Nev. 520, 523, 612
15 P.2d 219, 220 (1980) ("An entire act must be construed in light of its purpose and as a whole.").

16 Ignoring these two maxims, Plaintiff reads NRS 116.31166(1-2) to mean that an HOA's
17 compliance with the HOA Lien Statute rests solely on it reciting compliance with the statute's notice
18 provisions in a foreclosure deed. *See* Pltf's MSJ, at 7. According to Plaintiff, because the Trustee's
19 Deed in the instant case contained these recitations, Plaintiff is entitled to summary judgment on its
20 quiet title claim without producing any evidence of actual compliance with the HOA Lien Statute.
21 *See id.* However, Plaintiff's interpretation is flawed because it would render the following
22 subsection—NRS 116.31166(3)—void. NRS 116.31166 provides:

- 23 1. The recitals in a deed made pursuant to NRS 116.31164 of:
24 (a) Default, the mailing of the notice of delinquent assessment, and
25 the recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are conclusive proof of the matters recited.

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

1 3. The sale of a unit *pursuant to NRS 116.31162, 116.31163 and*
2 *116.31164* vests in the purchaser the title of the unit's owner without
equity or right of redemption.

3 NRS 116.31166 (emphasis added). Plaintiff essentially contends that the recitals in the Trustee's
4 Deed are conclusive proof that the foreclosure extinguished U.S. Bank's Deed of Trust under NRS
5 116.31166(1-2). *See* Pltf's MSJ, at 7. Plaintiff's argument ignores NRS 116.31166(3)'s requirement
6 that the foreclosure sale be conducted *pursuant to NRS 116.31162, 116.31163, and 116.31164* to
7 vest the purchaser at the HOA foreclosure sale with title to the Property. The Nevada Supreme Court
8 has explained that the Legislature's use of "pursuant to" means "in compliance with; in accordance
9 with; under...[a]s authorized by; under...[i]n carrying out." *In re Steven Daniel P.*, 129 Nev. Adv.
10 Op. 73, 309 P.3d 1041, 1044 (2013) (quoting Black's Law Dictionary at 1356 (9th ed. 2009)). The
11 court further explained that "pursuant to" is a "restrictive term" that mandates compliance. *Id.* at
12 1044.

13 Here, by using the phrase "pursuant to" in NRS 116.31166(3) with reference to NRS
14 116.31162, 116.31163 and 116.31164, the Nevada Legislature mandated compliance with those
15 statutes. Consequently, an HOA's foreclosure sale does not vest title without equity or right of
16 redemption unless the HOA actually complied with NRS 116.31162, NRS 116.31163, and NRS
17 116.31164, not just NRS 116.31166(1).

18 In contrast, Plaintiff's interpretation of NRS 116.31166 not only renders the notice
19 requirements of NRS 116.31162, NRS 116.31163, and NRS 116.31164 meaningless, it also would
20 lead to absurd and unjust results. Following Plaintiff's logic, an HOA could fail to record any of the
21 three notices the HOA Lien Statute requires, *falsely* recite that they did in fact send the notices, and
22 the court would be forced to hold that the notices were in fact sent, *even if* the opposing party
23 produced irrefutable evidence that proved the recitals were false. And there is no limiting principle
24 to Plaintiff's position; a dishonest HOA could collude with a dishonest purchaser to sell property
25 without any proper announcement to the current owner or other security holders and still take title to
26 the property free and clear under the aegis of a patently false, yet "irrefutable" recitation. The
27 Nevada Legislature could not have possibly intended such unjust consequences.
28

1 **2. The Trustee's Deed's recitals are unsupported legal conclusions not entitled to**
2 **the NRS 116.31166 presumption.**

3 Additionally, Plaintiff is not entitled to the NRS 116.31166 presumption regarding notice
4 because Plaintiff's Trustee's Deed contains only unsupported legal conclusions. Plaintiff relies on
5 the minimal recitations in the Trustee's Deed that, pursuant to NRS 116.31164 and 116.31166, are
6 allegedly "conclusive proof" that proper notice was provided and proper procedure was followed.
7 See Pltf's MSJ, at 7. However, Plaintiff's Trustee's Deed provides no facts regarding notice. See
8 U.S. Bank's Countermotion, **Ex. G**. Rather, it contains only legal conclusions not subject to the
9 "conclusive proof" standard of NRS 116.31166(1). *See id.*

10 NRS 116.31166(1) is modeled after the Uniform Common Interest Ownership Act. UCIOA
11 makes clear that "a recital of the *facts* of nonpayment of the assessment and of the giving of the
12 notices required by this subsection are *sufficient proof of the facts recited*. . . ." UCIOA § 3-
13 116(1)(4) (emphasis added). Nothing in UCIOA or NRS 116.31166(1) allows a purchaser to rely on
14 unsupported legal conclusions regarding compliance with the statute.

15 Per NRS 116.31166, the deed recitals² that are conclusive proof of the matters recited are
16 limited to: (a) default, (b) the elapsing of the 90 days, and (c) the giving of notice of sale. NRS
17 116.31166(1). Here, the pertinent "facts," such as actual dates, are not cited in the Trustee's Deed—
18 the presumption described in NRS 116.31166(1) and UCIOA § 3-116(1)(4) is therefore inapplicable.

19 Specifically, Plaintiff's Trustee's Deed does not attest to any facts showing compliance with
20 the following requirements of the HOA Lien Statute: (1) that the Notice of Delinquent Assessment
21 was mailed; (2) that the Notice of Default was served by certified mail on the owners of record and
22 all parties of interest that requested notice; (3) that 90 days passed between the mailing of the notice
23 of default and the publishing of the Notice of Sale; (4) proof of mailing of all notices as required by
24 law; (5) posting of the Notice of Sale on the Property; (6) posting of the Notice of Sale in three
25 public places for twenty consecutive days prior to the foreclosure sale; or (7) the publishing of the

26 ² The common meaning of "recital" is a formal statement of relevant facts. *See* Black's Law Dictionary 1435
27 (Rev. 4th. Ed. 1968) ("Recital: The formal statement or setting forth of some matter of fact, in any deed or
28 writing, in order to explain the reasons upon which the transaction is founded . . . The formal preliminary
 statement in a deed or other instrument, of such deeds, agreements, or matters of fact as are necessary to
 explain the reasons upon which the transaction is founded.").

1 Notice of Sale in a newspaper for three consecutive weeks prior to the sale. *See* U.S. Bank's
2 Countermotion, **Ex. G**; NRS 116.311635(1)(a).

3 For Plaintiff to have summary judgment granted in its favor, all seven of those requirements
4 must be met. Plaintiff has produced no evidence showing compliance with any of the seven. Rather,
5 Plaintiff contends that the following passage in the Trustee's Deed is "conclusive proof" of all seven
6 requirements: "All requirements of law regarding the mailing of copies of notices and the posting
7 and publication of the copies of the Notice of Sale have been complied with." *See* U.S. Bank's
8 Countermotion, **Ex G**. This self-serving, conclusory allegation is entitled to no presumption under
9 NRS 116.31166.

10 The Alaska Supreme Court, interpreting the same UCIOA provision at issue here,³ rejected
11 the argument that conclusory allegations in a foreclosure deed are entitled to any presumption in
12 *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986). There, the appellants alleged that under Alaska's
13 applicable statute, the recitals in the foreclosure deed were conclusive evidence of compliance in
14 favor of bona fide purchasers. *Id.* at 783. The deed in that case—strikingly similar to the Trustee's
15 Deed at issue here—stated:

16 All other requirements of law regarding the mailing, publication and personal
17 delivery of copies of the Notice of Default and all other notices have been complied
18 with, and said Notice of Sale was publicly posted as required by law and published in
the Anchorage Times on August 26 and September 2, 9, and 16, 1980.

19 *Id.* The parties disputed whether the deed barred the respondents from overturning the sale based on
20 lack of notice. *Id.* While the appellants alleged that the court should accept the recitals as
21 "conclusive proof," the respondents alleged that only recitals of fact, not conclusions of law, were
22 subject to this standard.⁴ Agreeing with the respondents, the court held:

23
24 ³ The *SFR Investments* Court noted that other states' cases interpreting UCIOA provisions are particularly
25 persuasive because one purpose of adopting a uniform act is "to make uniform the law with respect to its
26 subject matter among states enacting it." *SFR Investments*, 334 P.3d at 410 ("[I]n addition to the usual tools of
27 statutory construction, we have available ... other states' cases to explicate NRS Chapter 116."). Like
28 Nevada, Alaska has adopted and currently uses the 1982 version of UCIOA. *See e.g.*,
[http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Common%20Interest%20Ownership%20Act%20\(1982\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Common%20Interest%20Ownership%20Act%20(1982)).

⁴ ALASKA STAT. 3.20.080(c) provides: The deed shall recite the date and the book and page of the recording
of default, and the mailing or delivery of the copies of the notice of default, the true consideration for the

1 The fact that .080(c) explicitly calls for factual details in the deed recital concerning
2 recording, price, publication, and sale suggests that facts are also called for
3 concerning mailing or delivery. *Further, requiring a factual recital tends to assure*
4 *that the requirements of law concerning mailing or delivery are complied with.* A
5 conclusory statement can be a matter placed in a form, or a programmed deed, and
6 will not require the trustee to review what was actually done. A factual recital does
7 require review in each case. While a factual recital requirement does not protect
8 against fraud in all cases, it does tend to prevent the more common failings of
9 oversight and neglect. A conclusory recital, on the other hand, accomplishes little or
10 nothing.

11 *Id.* at 786 (emphasis added). The court also reasoned that one of UCIOA's primary purposes was to
12 "require that effective notice of default and sale be given to parties in interest, and to provide a self-
13 effecting method of assuring that such notice is given."⁵ *Id.* To further the intended purpose of the
14 statutory presumption, the court held that "what is required is a recital of fact specifying what the
15 trustee has done, not a mere conclusory statement that the trustee has complied with the law." *Id.* at
16 785.

17 Like the foreclosure deed in *Rosenberg*, the Trustee's Deed in this case presents *no facts*
18 entitled to the presumption that the HOA complied with the notice provisions of the HOA Lien
19 Statute. It does not provide, for example, what notice was given, when notices were given, the facts
20 concerning the default which led to the foreclosure, or any detail regarding the conduct of the sale.

21 Because Plaintiff's Trustee's Deed does not provide the proper factual recitations, it is not entitled to
22 any presumption under NRS 116.31166(1). Since Plaintiff is not entitled to the NRS 116.31166(1)

23 conveyance, the time and place of the publication of notice of sale, and the time, place and manner of sale,
24 and refer to the deed of trust by reference to the page, volume and place of record.

25 ⁵ The line of cases that disallow an expert witness to give an opinion as to legal conclusions provide a helpful illustration.
26 See, e.g., *Mukhtar v. Cal. State Univ.*, 299 F.3d 1053, 1066 (9th Cir. 2002); *McHugh v. United Serv. Auto. Ass'n*, 164
27 F.3d 451, 454 (9th Cir. 1999); *United States v. Duncan*, 42 F.3d 97, 101 (2d Cir. 1994). An expert may not state legal
28 conclusions by applying the law to the facts. *Oakland Oil Co. v. Conoco, Inc.*, 144 F.3d 1308, 1328 (10th Cir. 1991).
"In no instance can a witness be permitted to define the law of the case." *Specht v. Jensen*, 853 F.2d 805, 810 (10th Cir.
1988). The law is for a court to determine. *Marx & Co., Inc. v. Diner's Club, Inc.*, 550 F.2d 505, 509-10 (2d Cir. 1977).
Just as an expert witness is not allowed to apply the law to facts or to determine the law of the case, a trustee is similarly
barred from attempting to accomplish the same result through the mechanism of the trustee's deed upon sale. A
legislature may not legislate away a court's power to apply facts to law without also violating the separation of powers
contemplated under the Nevada and United States' Constitutions.

1 presumption on which it solely relied, Plaintiff has failed to show that it complied with the HOA
2 Lien Statute. Accordingly, Plaintiff's Motion for Summary Judgment should be denied.

3 **3. The Trustee's Deed's only recites compliance with the HOA Lien Statute's**
4 **notice provisions.**

5 The Trustee's Deed in the instant case contains the following recitation: "All requirements of
6 law *regarding the mailing of copies of notices and the posting and publication of the copies of the*
7 *Notice of Sale have been complied with.*" U.S. Bank's Countermotion, **Ex. G**. Even if this recital is
8 deemed conclusive proof of the matter recited, the only matter recited concerns the mailing of the
9 required notices. There are no recitals regarding the myriad other requirements of the HOA Lien
10 Statute, including, but not limited to: (1) whether the HOA lien's assessments were "based on a
11 periodic budget adopted by the association pursuant to NRS 116.3115," as required by NRS
12 116.3116; or (2) whether the foreclosure sale was conducted in a commercially reasonable manner,
13 as required by NRS 116.1113.⁶ Without a recital that provides Plaintiff with some presumption
14 regarding the HOA's compliance with these two requirements, Plaintiff must produce some evidence
15 of such compliance to prevail on its instant motion for summary judgment. Plaintiff has produced
16 none. Accordingly, Plaintiff's motion for summary judgment should be denied.

17 **4. Discovery is necessary to determine whether the HOA complied with the HOA**
18 **Lien Statute.**

19 The minimal recitals in Plaintiff's Trustee's Deed are insufficient to provide the HOA's
20 foreclosure sale with any presumption of validity. But even if the deed recitals in this case were
21 sufficient to presume Plaintiff's Deed to be valid, U.S. Bank would still be entitled to discovery
22 regarding whether the HOA actually complied with the HOA Lien Statute. Nevada's Legislature did
23 not intend NRS 116.3116 to render the HOA Lien Statute's notice provisions toothless. This was
24 confirmed by the *SFR Investments* Court, which remanded that case for further fact-finding despite

25 ⁶ By way of example, many of the foreclosure deeds arising from HOA sales contain a recital similar to the following:
26 "Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing
27 of 90 days, mailing of copies of the Notice of Delinquent Assessment and Notice of Default and the posting and
28 publication of the Notice of Sale." In contrast, the Trustee's Deed in the present case does not state that the HOA Trustee
"has complied with all requirements of law. U.S. Bank's Countermotion, **Ex. G**. Even if this Court determines that a
deed's recitals are granted a conclusive presumption, this conclusive presumption surely cannot arise for matters that are
not even recited in the deed.

1 the fact that the foreclosure deed in that case recited compliance with the HOA Lien Statute's notice
2 provisions. 334 P.3d at 419. By its own terms, *SFR Investments* explained that factual development
3 is necessary for several of a first deed of trust holder's defenses,⁷ including whether the HOA
4 provided all required notices prior to the sale, whether the HOA authorized the sale, whether there
5 was any collusion related to the sale, and whether the sale was commercially reasonable.

6 As in *SFR Investments*, discovery is necessary in this case to determine whether the
7 foreclosure sale complied with the HOA Lien Statute, and Plaintiff's Motion for Summary Judgment
8 should be denied on that basis alone. But more importantly, Plaintiff has not met its burden to show
9 that the HOA complied with the HOA Lien Statute, and has thus failed to show that it is entitled to
10 judgment as a matter of law on its quiet title claim. *Breliant v. Preferred Equities Corp.*, 112 Nev.
11 663, 669, 918 P.2d 314, 318 (1996) ("In a quiet title action, the burden of proof rests with the
12 plaintiff to prove good title in himself."). Accordingly, this Court should deny Plaintiff's Motion for
13 Summary Judgment.

14 **III. CONCLUSION**

15 This Court should grant U.S. Bank's Countermotion for Summary Judgment because Bank of
16 America's pre-foreclosure tender extinguished that portion of the HOA's lien. Even if the tender was
17 ineffective to extinguish the lien, the HOA sale was still invalid because the HOA's wrongful
18 rejection of the super-priority tender breached the HOA's obligation of good faith, and caused the
19 HOA Lien Statute to operate unconstitutionally as applied to the facts of this case.

20 Even if U.S. Bank's Countermotion is denied, Plaintiff's Motion for Summary Judgment
21 should also be denied because the Trustee's Deed's recitals are insufficient to prove that the HOA
22 complied with the HOA Lien Statute. Accordingly, should this Court deny U.S. Bank's
23

24
25 ⁷ See *SFR Investments*, 334 P.3d at 418 n. 6 (stating: "we note but do not resolve U.S. Bank's suggestion that
26 we could affirm by deeming SFR's purchase 'void as commercially unreasonable' because "[o]n a motion to
27 dismiss, a court must take all factual allegations in the complaint as true and not delve into matters asserted
28 defensively that are not apparent from the face of the complaint); at 417-18 (stating only that the court would
assume statutorily notices were provided consistent with the standard for deciding a motion to dismiss,
without finding that the notices were provided or sufficient); and at 419 (stating that a "proper" foreclosure
sale is required to extinguish a first deed of trust).

1 Countermotion for Summary Judgment, more discovery is necessary to determine if the HOA's
2 foreclosure complied with the HOA Lien Statute.

3
4 DATED this 13th day of August, 2015.

5 AKERMAN LLP

6
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16 *to LaSalle Bank, N.A., as Trustee to the holders*
17 *of the Zuni Mortgage Loan Trust 2006-OA1,*
18 *Mortgage Loan Pass-Through Certificates*
19 *Series 2006-OA1*
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CERTIFICATE OF SERVICE

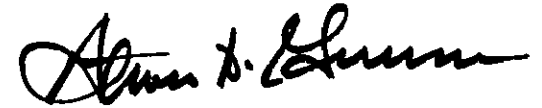
I HEREBY CERTIFY that on the 13th day of August, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system (Wiznet) a true and correct copy of the foregoing **U.S. BANK, N.A.'S SUPPLEMENTAL BRIEFING IN SUPPORT OF ITS COUNTERMOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on all parties and counsel as identified on the Court generated notice of electronic filing.

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Loan Pass-Through Certificates Series 2006-OA1*

DISTRICT COURT
CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,
Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCEsor BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THORUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C
Dept. : XXIV

**U.S. BANK, N.A.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND COUNTERMOTION
FOR SUMMARY JUDGMENT BASED
ON THE DUE PROCESS CLAUSE AND
TENDER, OR ALTERNATIVELY, FOR
RULE 56(F) RELIEF**

Date of Hearing: 08-06-15
Time of Hearing: 9:00 AM

Defendant U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), opposes Plaintiff's Motion for Summary Judgment and moves for summary judgment based on the Due Process Clause and Tender. This Opposition and Countermotion is made and based upon the Memorandum of Points and Authorities attached hereto, all exhibits attached hereto, and such oral argument as may be entertained by the Court at the time and place of the hearing of this matter.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 U.S. Bank is entitled to summary judgment because NRS 116, *et seq.*, the HOA foreclosure
4 statute, is facially unconstitutional because it does not mandate that mortgagees receive actual notice
5 of HOA foreclosure sales. The Due Process Clause requires, under *all* circumstances, that a statute
6 authorizing extinguishment of a lien in a foreclosure sale also *mandate* actual notice to those
7 lienholders. Because no provision of NRS 116 mandates actual notice to mortgagees prior to an
8 HOA's foreclosure sale, the statute is facially unconstitutional. Independently, NRS 116 is
9 unconstitutional as applied to the circumstances of this case, because U.S. Bank was not provided
10 any notice of the amount of the super-priority lien that would extinguish its constitutionally-
11 protected property interest when foreclosed. Because the HOA's foreclosure sale was conducted
12 pursuant to a statute which is unconstitutional—both facially and as applied—it is invalid, and
13 summary judgment should be granted in favor of U.S. Bank.

14 Even if NRS 116 complied with the Due Process Clause, U.S. Bank would still be entitled to
15 summary judgment because the loan servicer tendered payment of the super-priority amount prior to
16 the foreclosure sale, thereby extinguishing the super-priority portion of the HOA's lien.
17 Consequently, to the extent Plaintiff received any interest in the subject property at the HOA's
18 foreclosure sale, that interest is subordinate to U.S. Bank's senior deed of trust.

19 Even if this Court does not grant summary judgment in favor of U.S. Bank, Plaintiff's
20 Motion for Summary Judgment should be denied. Instead of offering evidence showing that the sale
21 of the Property for a 94% discount was commercially reasonable, Plaintiff claims that, under *SFR*
22 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, every HOA foreclosure sale conducted pursuant to NRS
23 116 is commercially reasonable, no matter how diminutive the price. Plaintiff ignores the fact that
24 *SFR Investments* was a case decided at the pleadings stage on a motion to dismiss, and the Court
25 remanded that case for further fact-finding regarding the commercial reasonableness of the sale.
26 Because issues of material fact remain regarding the commercial reasonableness of the foreclosure
27 sale, Plaintiff's Motion for Summary Judgment should be denied.
28

1 In the alternative, U.S. Bank is entitled to a Rule 56(f) continuance, as additional discovery is
2 necessary to develop facts integral to U.S. Bank's defenses. If this Court is not inclined to grant U.S.
3 Bank's Countermotion for Summary Judgment on the pure legal issue of whether NRS 116 is
4 facially invalid under the Due Process Clause, or because the HOA's super-priority lien was
5 extinguished by the pre-foreclosure, super-priority tender, discovery is necessary to develop facts
6 regarding (1) how the HOA Trustee calculated the super-priority amount of the HOA's lien before
7 rejecting Bank of America's tender as insufficient, (2) whether the HOA complied with all
8 requirements of NRS 116, and (3) whether the sale of the Property for a 94% discount was
9 commercially reasonable. To the extent the Court is not inclined to grant U.S. Bank's Countermotion
10 for Summary Judgment or deny Plaintiff's Motion for Summary Judgment for the reasons set forth
11 below, U.S. Bank is entitled to a Rule 56(f) continuance.

12 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

13 **A. The Johnsons borrow \$147,456.00 to purchase a home.**

14 In June 2004, Dennis Johnson and Geraldine Johnson (collectively **Borrowers**) purchased
15 real property located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031 (the
16 **Property**). To finance this purchase, Borrower took out a loan in the amount of \$147,456.00, which
17 was secured by a deed of trust (**Deed of Trust**) in favor of Countrywide Home Loans, Inc. **Exhibit**
18 **A**. This Deed of Trust was assigned to U.S. Bank via an Assignment of Deed of Trust, which was
19 recorded on June 20, 2011. **Exhibit B**.

20 **B. The HOA forecloses on its \$5,021.00 lien.**

21 Alessi & Koenig, LLC (**HOA Trustee**), acting on behalf of Country Gardens Owners'
22 Association (**HOA**), recorded two Notices of Delinquent Assessment Liens on February 22, 2012, at
23 9:17 AM, both ostensibly encumbering the Property. One of the Notices stated the Borrowers owed
24 \$1,095.50 to the HOA. **Exhibit C**. The other Notice stated the Borrowers owed \$1,150.50 to the
25 HOA. **Exhibit D**. On April 20, 2012, the HOA Trustee recorded a Notice of Default and Election to
26 Sell Under Homeowners Association Lien, particularly the Lien attached as Exhibit C, stating the
27 total amount due to the HOA was \$3,396.00. **Exhibit E**. The HOA Trustee then recorded a Notice of
28 Trustee's Sale on October 31, 2012, stating the total amount due to the HOA was \$4,039.00, and

1 setting the sale for November 28, 2012. **Exhibit F**. No sale occurred on that date. Rather, on January
2 26, 2013, the HOA non-judicially foreclosed on the Property. **Exhibit G**. According to the Trustee's
3 Deed Upon Sale, the HOA sold the Property to Plaintiff for \$8,200.00. *Id.*

4 **C. Bank of America's pre-foreclosure, super-priority tender.**

5 Prior to the foreclosure sale, Bank of America, N.A.,¹ through counsel at Miles Bauer
6 Bergstrom & Winters LLP (**Miles Bauer**), contacted the HOA Trustee and requested a payoff ledger
7 detailing the specific super-priority amount of the HOA's lien on the Property. **Exhibit H-1**. Rather
8 than providing a payoff ledger with the exact super-priority amount, the HOA Trustee provided a
9 payoff demand in the amount of \$4,186.00. **Ex. H-2**. However, the ledger showed the HOA's
10 monthly assessments to be \$55.00, meaning the total amount of the last nine months of delinquent
11 assessments was \$495.00. **Exhibit H-2**. On December 6, 2012, Bank of America tendered
12 \$1,494.50—which included \$999.50 in “reasonable collection costs” in addition to the \$495.00 for
13 delinquent assessments—to the HOA Trustee to satisfy the super-priority lien. **Exhibit H-3**. The
14 HOA Trustee refused to accept this tender, and proceeded to foreclose on the Property. **Exhibits H-**
15 **4.**

16 **D. Procedural History**

17 Plaintiff filed its Complaint on July 25, 2014. U.S. Bank answered the Complaint on
18 September 25, 2014. On April 23, 2015, Plaintiff filed its Amended Complaint. Plaintiff filed the
19 instant motion for summary judgment on May 18, 2015.

20 **III. LEGAL STANDARDS**

21 Summary judgment is appropriate only if, after viewing the record in the light most favorable
22 to the nonmoving party, “no genuine issue of material fact exists, and the moving party is entitled to
23 judgment as a matter of law.” NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d
24 1026, 1030 (2005). “[T]he nonmoving party is entitled to have the evidence and all reasonable
25 inferences accepted as true.” *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965, 968, 921 P.2d
26 928, 930 (1996). The moving party “bears the initial burden of production to show the absence of a
27

28 ¹ At the time, Bank of America serviced the loan secured by U.S. Bank's Deed of Trust.

1 genuine issue of material fact.” *Cuzze v. University and Community College System of Nevada*, 123
2 Nev. 598, 602, 172 P.3d 131, 134 (2007).

3 Factual disputes are genuine “if the evidence is such that a rational trier of fact could return a
4 verdict in favor of the nonmoving party.” *Wood*, 121 Nev. at 731. If the moving party bears the
5 burden of persuasion at trial, “that party must present evidence that would entitle it to a judgment as
6 a matter of law in the absence of contrary evidence.” *Francis v. Wynn Las Vegas, LLC*, 262 P.3d
7 705, 714 (2011). Summary judgment is particularly appropriate where issues of law are controlling
8 and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277
9 (1979).

10 IV. ARGUMENT

11 A. U.S. Bank is entitled to summary judgment because the HOA Lien Statute is 12 facially unconstitutional, as it does not guarantee that mortgagees receive notice 13 and an opportunity to be heard.

14 On its face, the HOA Lien Statute is unconstitutional. As an irreducible minimum, courts
15 have universally required that statutes that provide for extinguishment of junior liens in foreclosure
16 also provide for mandatory notice to the junior lienholders. The HOA Lien Statute does not provide
17 for mandatory notice. Rather, the Nevada Legislature has provided only a “request-notice” or “opt-
18 in” provision; which requires notice *only* if the junior lienholder—here the holder of a first deed of
19 trust—requests notice in advance. Such opt-in provisions have met with universal disapprobation in
20 every federal and state court to have considered the question. The reason is clear: where the state
21 will extinguish such a significant interest in real property, it must also mandate that the holder of the
22 lien to be extinguished have notice and some opportunity to remediate. By not mandating such
23 notice, the HOA Lien Statute is unconstitutional on its face. In this case, that means the foreclosure
24 by the HOA and the extinguishment of U.S. Bank’s Deed of Trust are both invalid and U.S. Bank is
entitled to summary judgment.

25 The Due Process Clause of the U.S. Constitution requires that, “at a minimum, [the]
26 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
27 hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339
28

1 U.S. 306, 314 (1950) (emphasis added). An “elementary and fundamental requirement of due
2 process ... is notice reasonably calculated, *under all circumstances*, to apprise interested parties of
3 the pendency of the action and afford them an opportunity to present their objections.” *Tulsa Prof’l*
4 *Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314)
5 (emphasis added). Put more simply, state action may not extinguish an interest in real property
6 unless the holder of that interest is afforded notice of that action.

7 Foreclosures pursuant to the HOA Lien Statute constitute state action, as the Nevada
8 Supreme Court has held that a private party’s deprivation of another private party’s “significant
9 property interest” pursuant to a Nevada statute entitles the property owner to “federal and state due
10 process.” *J.D. Construction v. IBEX Int’l Group*, 240 P. 3d 1033, 1040 (Nev. 2010). In *J.D.*
11 *Construction*, one private party recorded a mechanic’s lien on the property of another private party.
12 *Id.* at 1035. No state actor was involved in placing the lien, yet the Nevada Supreme Court held that
13 “[a] mechanic’s lien is a ‘taking’ in that the property owner is deprived of a significant property
14 interest, which entitles the property owner to federal and state due process.” *Id.* at 1040 (citing
15 *Connolly Dev., Inc. v. Superior Court*, 553 P.2d 637, 645 (Cal. 1976) (holding that private party’s
16 imposition of a “stop notice” lien involved “significant state action” because the imposition is
17 “encouraged, indeed only made possible, by explicit state authorization.”).

18 *J.D. Construction* provides sufficient binding authority that the state-action requirement is
19 met here. If more evidence were needed, however, the logic and reasoning in *Connolly Development,*
20 *Inc. v. Superior Court*, extensively relied upon in *J.D. Construction*, see 240 P.3d at 1040–41 (citing
21 *Connolly* at least five times), applies here. In *Connolly*, the California Supreme Court held that there
22 was “no question” that the state-law “stop notice” lien at issue—which could be enforced by a purely
23 private procedure “without filing or recordation before any state official”—“involve[d] significant
24 state action” and triggered due-process protections. *Id.* at 815. The *Connolly* Court expressly rejected
25 arguments that the lien did not involve state action, noting that the private enforcement procedure
26 ““is not just action against a backdrop of an amorphous state policy, but is instead action encouraged,
27 indeed only made possible, by explicit state authorization.”” *Id.* at 815 & n.14 (quoting *Klim v.*
28 *Jones*, 315 F. Supp. 109, 114 (N.D. Cal. 1970)).

1 Because foreclosures authorized solely by the HOA Lien Statute constitute state action, the
2 HOA Lien Statute must satisfy the Due Process Clause's notice requirements as set forth in *Mullane*.
3 The United States Supreme Court has applied *Mullane*'s principles to the deprivation of a
4 mortgagee's security interests in property that is subject to potential extinguishment in foreclosure,
5 such as the first deed of trust at issue in this case. *Mennonite Bd. of Missions v. Adams*, 462 U.S.
6 791, 800 (1983). In *Mennonite*, an Indiana county sold mortgaged real property as a result of the
7 borrower's delinquent taxes. *Id.* at 793. The county complied with Indiana's governing notice
8 statute, but that statute required only constructive notice to the mortgagee and actual notice to the
9 borrower. *Id.* at 794. The Indiana courts upheld the tax sale statute against a constitutional due
10 process challenge. *Id.* at 795. But the U.S. Supreme Court reversed the decision upholding the
11 statute, holding that because the "sale immediately and drastically diminishes the value of th[e]
12 security interest" and "may result in the complete nullification of the mortgagee's interest" the
13 mortgagee must receive *actual* notice. *Id.* at 798, 800. The Court held that the Due Process Clause
14 required that mortgagees receive either personal service or mailed notice of the foreclosure sale that
15 could extinguish their property interest.

16 Nevada's HOA Lien Statute does not require that mortgagees be provided with actual notice
17 of the HOA foreclosure sales that can extinguish their property interest. Indeed, the statute is not
18 only silent on the subject of mandatory notice, but it effectively disclaims that notice is required in
19 all instances. In two key provisions, the statute explicitly and unambiguously disclaims that notice is
20 required to all mortgagees; rather, mortgagees only receive notice if they have previously requested
21 notice from the HOA. In Section 116.31163, the statute provides that a notice of default and election
22 to sell need only be provided to a mortgagee who "has requested notice" or "has notified the
23 association" more than thirty days before the recordation of the notice of default of the existence of a
24 security interest. NRS 116.31163(1)–(2). Section 116.31165 similarly limited mortgagee notice of
25 sale to those mortgagees who have requested notice under Section 116.31163, or those who have
26 "notified the association." NRS 116.31165(1)(b)(1)–(2). A third provision concerning notice of
27 delinquent assessments does not require notice to lenders at all. NRS 116.31162.

1 As a consequence, the HOA Lien Statute allows for the total extinguishment of the first deed
2 of trust without any notice to the mortgagee holding that deed. If a mortgagee does not request
3 notice—or, put differently, fails to opt in to its right to due process—Nevada law permits the
4 extinguishment of a first deed of trust without notice. Such a result is in direct contravention of
5 *Mennonite*, which held that *actual* notice is required in *all circumstances* where a significant
6 property interest was subject to extinguishment, and rejected the argument that the necessity of
7 actual personal service or mailed notice may vary based on the ability of the mortgagee to protect its
8 own interests. “[A] party’s ability to take steps to safeguard its interests does not relieve the State of
9 its constitutional obligation.” *Mennonite*, 462 U.S. at 799.

10 While *Mennonite* did not address an opt-in or request-notice provision, a broad consensus has
11 emerged in state and federal courts that such provisions are unconstitutional under *Mennonite*. The
12 Fifth Circuit, for instance, considered a Louisiana statute that required notice of a foreclosure sale
13 only to those persons who had filed a request for such notice in the mortgage records. *Small Engine*
14 *Shop, Inc. v. Cascio*, 878 F.2d 883, 885–86 (5th Cir. 1989). The Fifth Circuit applied *Mullane* and
15 *Mennonite*, and held that the statute “as interpreted by the district court, cannot be squared with
16 *Mennonite*’s allocation of notice burdens.” *Id.* at 890.

17 Perhaps more significantly, opt-in provisions have been universally condemned by a
18 consensus of state-court decisions. *See, e.g., Jefferson Tp. v. Block* 447A, 548 A.2d 521, 524 (N.J.
19 1988) (“We conclude that a person’s entitlement to the notice required by due process cannot be
20 conditioned on the requirement that he request it.”); *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986)
21 (holding opt-in scheme unconstitutional because the Constitution requires notice “both to
22 mortgagees of record who have requested such a notice and to mortgagees of record who have not
23 requested such a notice”); *Reeder & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989)
24 (“[A]fter *Mennonite* a mortgagee is required to receive actual notice of a tax sale unless the
25 mortgagee’s address is not reasonably identifiable.”); *City of Boston v. James*, 530 N.E.2d 1254
26 (Mass. App. Ct. 1988) (holding that a “shifting of responsibility” from the foreclosing party to the
27 mortgagee is unconstitutional “even when the persons deprived of notice are sophisticated and
28 knowledgeable”); *Seattle First National Bank v. Umatilla County*, 713 P.2d 33 (Or. App. 1986)

1 (holding that statute permitting notice only to mortgagee who makes request unconstitutional as
2 violating affirmative duty to provide notice); *In re Foreclosure of Tax Liens*, 103 A.D.2d 636, 640
3 (N.Y. App. Div. 1984) (“The Erie County statutes create a real danger that a mortgagee will be
4 forever divested of his property without ever learning of the impending foreclosure.”); *United States*
5 *v. Malinka*, 685 P.2d 405, 409 (Okla. Civ. App. 1984) (“*Mennonite* clearly places the onus on the
6 State to provide notice notwithstanding that a mortgagee might take steps to protect its own
7 interest.”).

8 “Constitutional due process protection does not exist only for those who follow the notice
9 statute but encompasses all interests that may be affected by state action.” *Island Fin., Inc. v.*
10 *Ballman*, 607 A.2d 76, 81 (Md. Ct. Spec. App. 1992). The notice provision here renders the HOA
11 Lien Statute unconstitutional, as Nevada trial courts have previously found. *See, e.g., Octavio Cano-*
12 *Martinez v. HSBC Bank USA, N.A.*, Dist. Ct. Case No. A-692027-C (EJDC) (May 7, 2015),
13 Summary Judgment Order, p. 4 (“Because the Statute does not does not require the foreclosing party
14 to take reasonable steps to ensure that actual notice is provided to interested parties who are
15 reasonably ascertainable (unless the interested party first requests notice) it does not comport with
16 long standing principles of constitutional due process.”); *Paradise Harbor Place Trust v. Deutsche*
17 *Bank National Trust Company*, Dist. Ct. Case No. A-687846-C (EJDC) (Jan. 6, 2014), Dismissal
18 Order, p. 8 (R.A. II, at 302) (holding that HOA Lien Statute’s provisions were facially invalid
19 because the statute “expressly does not require notice of the HOA lien sale to be given to all
20 lienholders before their property interests are completely erased by operation of law”).

21 The Nevada Legislature drafted a notice scheme that does not provide for notice of
22 delinquency to mortgagees and then explicitly disclaims the duty to provide notices of default or sale
23 to mortgagees who do not file a prior request for such notice. The case law cited in the two
24 preceding paragraphs provides that such a scheme is plainly unconstitutional. The fact that the HOA
25 Lien Statute does not require notice to the mortgagee is sufficient, standing on its own, to sustain a
26 facial attack on the statute—requiring invalidation of both the statute and the foreclosure at issue in
27 this case. *See, e.g., Garcia-Rubiera v. Calderon*, 570 F.3d 443, 456 (1st Cir. 2009) (sustaining facial
28 attack on notice provisions and holding that “actual notice cannot defeat [facial] due process claim”).

1 As to mortgagees, the HOA Lien Statute's notice provisions are constitutionally flawed, rendering
2 the statute invalid on its face. Accordingly, summary judgment should be granted in favor of U.S.
3 Bank because the foreclosure sale is unconstitutional.

4 **B. The HOA Lien Statute is unconstitutional as applied to this case because U.S.**
5 **Bank was not provided actual notice of the super-priority lien.**

6 Even if the HOA Lien Statute required that mortgagees receive actual notice of HOA
7 foreclosure sales under all circumstances, the statute is still unconstitutional as applied in this case
8 because U.S. Bank was not provided any notice of the super-priority amount of the HOA's lien.
9 "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339
10 U.S. at 315. To pass muster under the Due Process Clause, the required "notice must be of such
11 nature as reasonabl[e] to convey the required information," with "reference to the subject of which
12 the statute deals." *Id.* at 314.

13 The subject of the HOA Lien Statute is the super-priority lien it provides, the proper
14 foreclosure of which extinguishes a mortgagee's constitutionally-protected security interest in the
15 subject property. While granting super-priority to an HOA lien is a "significant departure from
16 existing practice," the HOA Lien Statute's drafters predicted that the effect on secured lenders would
17 be minimal, as the "secured lenders [would] most likely pay the [nine] months' assessments
18 demanded by the association rather than having the association foreclose on the unit." 1982 UCIOA
19 § 3116 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at 414). UCIOA's drafters
20 presumed that HOAs and their collection agents would willingly provide secured lenders with the
21 amount of the super-priority lien.

22 The Nevada Supreme Court made the same assumption when evaluating the mortgagee's due
23 process challenge in *SFR Investments*. 334 P.3d at 418. In that case, the mortgagee argued that due
24 process required specific notice "indicating the amount of the superpriority piece of the lien[.]" *Id.*
25 Importantly, this case was decided on a motion to dismiss, which did not allow the Nevada Supreme
26 Court to consider any facts "not apparent from the face of the complaint." *Id.* at 418 n.6. In this
27 posture, the Court rejected the mortgagee's due process challenge, stating that "nothing appears to
28 have stopped [the lender] from determining the precise superpriority amount" prior to the sale, and

1 stating that “[i]t is well established that due process is not offended by requiring a person with
2 actual, timely knowledge of an event that may affect a right to exercise due diligence and take
3 necessary steps to preserve that right.” *Id.* at 418 (quoting *In re Medaglia*, 52 F.3d 451, 455 (2d Cir.
4 1995). The Court did not decide whether due process is offended when a mortgagee exercises due
5 diligence by requesting “the precise superpriority amount in advance of the sale,” and the HOA
6 refuses to provide that information. *See SFR Investments*, 334 P.3d at 418.

7 Here, the HOA refused to provide U.S. Bank with the super-priority amount prior to the
8 foreclosure sale. None of the documents recorded by the HOA provide notice of the super-priority
9 portion of the HOA’s lien. *See Ex. C, Ex. D, Ex. E, and Ex. F.* Nonetheless, Bank of America, who
10 serviced the loan secured by U.S. Bank’s Deed of Trust, reached out to the HOA Trustee and
11 requested a payoff ledger detailing the precise amount of the super-priority lien prior to the
12 foreclosure sale. The HOA Trustee refused to provide the super-priority amount, instead demanding
13 that Bank of America pay off the entire HOA lien, even though the majority of the lien was
14 subordinate to U.S. Bank’s Deed of Trust. **Ex. H-2.** Unlike *SFR Investments*, where the Court relied
15 on contentions in the complaint that “nothing appeared to have stopped” the lender from determining
16 the super-priority amount, here the record is clear: the only parties with the information necessary to
17 determine the super-priority amount—the HOA and the HOA Trustee—refused to provide U.S.
18 Bank with the super-priority amount.² It is clear that U.S. Bank was never put on actual notice of the
19 amount of the lien that could extinguish its own senior Deed of Trust.

20 Holding that due process requires HOAs to identify the super-priority amount is not only
21 fundamentally fair—it also implements a policy of the Nevada Legislature. The Nevada Legislature,
22 apparently cognizant of the manipulative and evasive conduct of HOAs like the one here, now
23 requires a foreclosing HOA to identify the “amount of the association’s lien that is prior to the first
24 security interest,” *see* NRS 116.31162(1)(b)(2(I)), as amended by Senate Bill 306. The amended
25

26 ² As discussed fully in Section C below, Bank of America estimated the amount of the super-priority lien
27 based on the payoff ledger provided, and tendered an amount at least equal to the super-priority amount,
28 extinguishing the super-priority portion of the lien. To the extent Bank of America’s tender was inaccurate,
such inaccuracy resulted from the HOA and HOA Trustee’s refusal to provide Bank of America with actual
notice of the super-priority amount.

1 statute also requires the HOA to specifically explain how the holder of a first deed of trust may
2 extinguish a super-priority lien—by tendering the identified super-priority amount no later than five
3 days before the sale. *See* NRS 116.31162(1)(b)(3(II)), as amended by Senate Bill 306. If the holder
4 of the first deed of trust records with the county recorder that it has satisfied the super-priority
5 amount, "the sale may not extinguish the first security interest as to the unit." *Id.*

6 While U.S. Bank does not suggest the procedures the Legislature laid out in the recent
7 amendments are applicable today or to this case, the amendments demonstrate two key points. First,
8 the Nevada Legislature agrees it is fundamentally unfair to permit a foreclosure of a first deed of
9 trust without ever providing notice or recording with the country recorder (1) the *existence* of a
10 super-priority lien; (2) the *amount* of the super-priority lien; or (3) *how to cure* the super-priority lien
11 before the first deed of trust is extinguished. Second, the amendments demonstrate the modesty of
12 U.S. Bank's position. If the Court rules this particular foreclosure did not comport with constitutional
13 due process requirements because of the HOA's failure to identify the existence or amount of a
14 super-priority lien, that holding would apply to only those cases in which HOAs have been so
15 evasive as to avoid identifying the super-priority amount. It will also do no more than implement a
16 requirement already endorsed by the Legislature.

17 The Due Process Clause requires that a party be provided *actual* notice and an *actual*
18 opportunity to be heard prior to the deprivation of that party's property interest. *See, e.g., J.D.*
19 *Constr.*, 240 P.3d at 1040 (Nev. 2010). Providing notice that a lien exists, without specific notice
20 that a super-priority lien exists and the amount of that lien is a "mere gesture" of process. *See*
21 *Mullane*, 339 U.S. at 315 ("[W]hen notice is a person's due, process which is mere gesture is not due
22 process."). The notice provided to a mortgagee whose security interest is at risk of extinguishment
23 must be calculated to afford the mortgagee an opportunity to present its objections or, if necessary,
24 cure the delinquency. *Id.* at 314. But here, U.S. Bank was provided with no notice, much less actual
25 notice, of the amount of the super-priority lien which would extinguish the Bank's constitutionally-
26 protected property interest when foreclosed. Without notice of the super-priority amount, U.S. Bank
27 had no opportunity to protect its property interest prior to the HOA's foreclosure. As applied to the
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1 circumstances of this case, the HOA Lien Statute operated unconstitutionally, invalidating the HOA
2 foreclosure sale. Accordingly, this Court should grant summary judgment in favor of U.S. Bank.

3 C. Bank of America's tender extinguished the super-priority portion of the HOA's
4 lien.

5 Even if the HOA Lien Statute satisfied the actual-notice requirements of the Due Process
6 Clause, U.S. Bank would still be entitled to summary judgment because Bank of America's super-
7 priority tender extinguished that portion of the HOA's lien prior to the foreclosure sale. As Plaintiff
8 freely admits, in *SFR Investments*, the Nevada Supreme Court "said not once, but twice, that ... the
9 bank could simply have paid the super priority amount to preserve its interest in the property." Mot.
10 at 14; *see SFR Investments*, 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of
11 trust] could have paid off the [HOA] lien to avert loss of its security[.]"). Here, the loan servicer paid
12 the super-priority amount prior to the sale, and thus preserved the first-priority position of U.S.
13 Bank's Deed of Trust.

14 Both the drafters of the HOA Lien Statute and the Nevada agency charged with its
15 enforcement agree with Plaintiff's position—tender of the super-priority amount preserves a first
16 deed of trust holder's interest in the foreclosed property. The drafters of the Uniform Common
17 Interest Ownership Act (UCIOA), adopted by Nevada as the HOA Lien Statute, contemplated this
18 result when drafting the super-priority provision, stating that "[a]s a practical matter, secured lenders
19 will most likely pay the [nine] months assessments demanded by the association rather than having
20 the association foreclose on the unit." 1982 UCIOA § 3116 cmt. 1 (cited with approval in *SFR*
21 *Investments*, 334 P.3d at 414.).³ Further, the Nevada Real Estate Division of the Department of
22 Business and Industry (NRED), the agency charged with administering the HOA Lien Statute, has
23 explained that it is "likely that the holder of the first security interest will pay the super priority lien
24 amount to avoid foreclosure by [an HOA]." 13-01 Op. Dep't of Bus. & Indus., Real Estate Div. 18

25
26 ³ The Nevada Supreme Court cited to the official comments to UCIOA extensively when evaluating the HOA
27 Lien Statute in *SFR Investments*, 334 P.3d at 412 ("An official comment written by the drafters of a statute
28 and available to the legislature before the statute is enacted has considerable weight as an aid to statutory
construction.")

(2012) (hereinafter **NRED Letter**); *see also Folio v. Briggs*, 99 Nev. 30, 34, 656 P.2d 842, 844 (1983) (explaining that courts “are obliged to attach substantial weight to [an] agency’s interpretation” of a statute it is charged with administering). This super-priority amount is equal to the amount of assessments that “would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien....” *See* NRS 116.3116(2); *accord* NRED Letter (explaining that “the total amount of the super priority lien attributable to assessments is no more than 9 months of the monthly assessments reflected in the association’s budget.”).

Here, Bank of America, who serviced the loan secured by U.S. Bank’s senior Deed of Trust at the time, tendered the super-priority amount to the HOA Trustee prior to the foreclosure sale. Shortly after the HOA Trustee recorded the Notice of Default and Election to Sell, Bank of America, through counsel at Miles Bauer, contacted the HOA Trustee and requested a payoff ledger detailing the super-priority amount of the HOA’s lien. Rather than providing a breakdown of the nine months of delinquent assessments constituting the super-priority amount, the HOA Trustee provided a payoff demand in the amount of \$4,186.00, which included late fees, interest, and collection costs that fell within the sub-priority portion of the HOA’s lien. **Ex. H-2**. However, the payoff demand showed that, during the nine months preceding the “institution of an action to enforce the lien,” namely the recording of the Notices of Delinquent Assessments Lien, the HOA’s monthly assessments were \$55.00. *Id.*

Accordingly, to satisfy the super-priority portion of the HOA’s lien, Bank of America, tendered \$1,494.50 to the HOA Trustee on December 6, 2012. **Ex. H-3**. This amount included not only the last nine months of delinquent assessments, \$495.00, but also \$999.50 for “reasonable collection costs,” which constituted the sub-priority, rather than super-priority, portion of the HOA’s lien. *Id.* By tendering the full super-priority amount prior to the foreclosure, Bank of America extinguished the super-priority portion of the HOA’s lien, thus redeeming the first-priority position of U.S. Bank’s Deed of Trust prior to the foreclosure sale.

Since the super-priority portion of the HOA’s lien was extinguished prior to the foreclosure sale, Plaintiff’s interest in the Property, if any, is subordinate to U.S. Bank’s senior Deed of Trust

1 pursuant to NRS 116.31164(3)(a). This provision provides that the purchaser at an HOA foreclosure
2 receives “a deed without warranty which conveys to the grantee *all title of the unit’s owner to the*
3 *unit.*” NRS 116.31164(3)(a) (emphasis added). Put differently, under Nevada law, the HOA lost the
4 ability to pass clear title when Bank of America’s tender extinguished the super-priority lien. This
5 point was not lost on Plaintiff, who states “that the bank could have paid the super priority amount to
6 preserve its interest in the property” prior to the foreclosure sale. Mot. at 14.

7 According to the *SFR Investments* Court, the drafters of the UCIOA, the NRED, and even
8 Plaintiff itself, tender of the super-priority amount prior to an HOA foreclosure extinguishes the
9 super-priority portion of an HOA’s lien, thus preserving the first-priority position of the respective
10 deed of trust. Because Bank of America tendered the full super-priority amount prior to the HOA’s
11 foreclosure sale in this case, the super-priority portion of the HOA’s lien was extinguished,
12 preserving the first-priority position of U.S. Bank’s Deed of Trust. Consequently, to the extent
13 Plaintiff received any interest in the Property by way of the HOA foreclosure sale, such interest is
14 junior to U.S. Bank’s senior Deed of Trust, meaning Plaintiff’s quiet title claim fails as a matter of
15 law. Accordingly, U.S. Bank’s Countermotion for Summary Judgment should be granted.

16
17 **D. Plaintiff has produced no evidence showing that the HOA’s foreclosure sale was**
commercially reasonable.

18 This Court should also deny Plaintiff’s Motion for Summary Judgment because (1) every
19 foreclosure sale conducted pursuant to the HOA Lien Statute must be commercially reasonable, and
20 (2) Plaintiff has produced no evidence showing that the HOA’s foreclosure sale of the Property at a
21 94% discount was commercially reasonable as a matter of law.

22 **1. HOA foreclosure sales must be commercially reasonable.**

23 While the HOA Lien Statute provides homeowners associations with strong enforcement
24 mechanisms to assure their dues are paid, the statute also provides a check to insure those with first
25 deeds of trust are treated fairly—specifically, that every foreclosure sale conducted pursuant to the
26 statute must be commercially reasonable. Plaintiff’s assertions that “NRS Chapter 116 does not
27 contain any language that requires that an HOA foreclosure sale be ‘commercially reasonable’” and
28

1 that “UCIOA also does not contain any language that incorporates Article 9 of the Uniform
2 Commercial Code” ignores the plain language of the statute. *See* Mot, at 8.

3 The HOA Lien Statute requires that HOA foreclosure sales be commercially reasonable,
4 stating that “every contract or duty governed by this chapter imposes an obligation of good faith in
5 its performance or enforcement.” NRS 116.1113. The drafters of this section defined good faith as
6 follows: “[g]ood faith ... means observance of two standards: ‘honesty in fact,’ and observance of
7 reasonable standards of fair dealing. While the term is not defined, [it is] derived from and used *in*
8 *the same manner as ...* Sections 2-103(i)(b) and 7-404 of the *Uniform Commercial Code*.” UCIOA §
9 1-113 cmt. (1982) (emphasis added). Nevada’s version of the UCC defines “good faith” as “honesty
10 in fact and the observance of *reasonable commercial standards* of fair dealing.” NRS 104.1201(2)(t)
11 (emphasis added).⁴

12 Nevada courts have confirmed that this commercial reasonableness standard applies to the
13 disposition of collateral. *See, e.g. Jones v. Bank of Nev.*, 91 Nev. 368, 373, 535 P.2d 1279, 1282
14 (1975). And courts in other states interpreting the same UCIOA provision at issue here, UCIOA § 1-
15 113, have held that the disposition of the collateral in these cases, real property, must be
16 commercially reasonable. *Will v. Mill Condominium Owner’s Ass’n*, 848 A.2d 336, 340 (Vt. 2004)
17 (“Although the rules generally applicable to real estate mortgages do not impose a commercial
18 reasonableness standard on foreclosure sales, the UCIOA does provide for this additional layer of
19 protection.”).⁵ Plaintiff’s argument that the HOA’s disposition of the Property here did not have to
20 be commercially reasonable is misplaced. *See* Mot. at 8.

21
22
23 ⁴ Plaintiff’s contention that “UCIOA ... doe [sic] not contain any language that incorporates Article 9 of the
24 Uniform Commercial Code” is directly at odds with intention of UCIOA’s drafters as shown by UCIOA’s
25 official comments. *See* Mot. at 10. As noted by the *SFR Investments* Court, “[a]n official comment written by
26 the drafters of a statute and available to the legislature before the statute is enacted has considerable weights as
27 an aid to statutory construction.” 334 P.3d at 413.

28 ⁵ Plaintiff contends that the “Supreme Court of Vermont’s analysis of Vermont law is not helpful in
interpreting Nevada’s version of the UCIOA, however, because Vermont law does not include the nonjudicial
foreclosure procedure that was ‘handcrafted’ by the Nevada Legislature in NRS 116.31162 through NRS
116.31168.” Mot. at 9. Plaintiff fails to explain how Nevada’s handcrafting of those provisions, which mostly
concern opt-in notice requirements, somehow effects the commercial reasonableness provision of UCIOA,
which has been wholly adopted in both Nevada and Vermont. *Compare* NRS 116.1113, with 27A V.S.A. § 1-
113.

1 Granting super-priority to nominal HOA liens over first deeds of trust “represents a
2 ‘significant departure from existing practice.’” *SFR Investments*, 334 P.3d at 412 (quoting the
3 official comments to UCIOA § 1-116). However, NRS 116.1113’s requirement that the foreclosure
4 of these super-priority liens be commercially reasonable provides first deed of trust holders with
5 assurance that, in the event of an HOA foreclosure, they will receive some of the value they
6 bargained for when they provided a mortgage loan. The commercial reasonableness requirement is
7 provided in the statutory text, was intended by the statute’s drafters, and has been recognized by
8 other courts interpreting the same statutory provision at issue here. Therefore, for Plaintiff to succeed
9 on its instant Motion for Summary Judgment, it must prove that the foreclosure sale of the Property
10 for a 94% discount was commercially reasonable as a matter of law. This is a burden Plaintiff cannot
11 meet.

12 **2. Plaintiff has provided no evidence that the foreclosure sale of the**
13 **Property at a 94% discount was commercially reasonable.**

14 Plaintiff’s Motion for Summary Judgment should be denied because it has failed to provide
15 any evidence showing that the foreclosure sale of the Property for 6% of its ostensible value was
16 commercially reasonable as a matter of law. The Nevada Supreme Court has explained that the
17 conditions of a commercially reasonable sale should reflect a calculated effort to promote a sales
18 price that is equitable to both the debtor and to the secured creditor. *See Dennison v. Allen Group*
19 *Leasing Corp.*, 110 Nev. 181, 186, 871 P.2d 288, 291 (1994). The “quality of the publicity, the price
20 obtained at the auction, [and] the number of bidders in attendance” are also factors to consider when
21 analyzing the commercial reasonableness of a public sale. *Id.* While the price obtained at a
22 foreclosure sale is not the sole determinative factor, it is highly relevant in determining whether a
23 sale is commercially reasonable. *Id.* Importantly, it is well-settled under Nevada law that “a wide
24 discrepancy between the sale price and the value of the collateral compels close scrutiny into the
25 commercial reasonableness of the sale.” *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 98, 560
26 P.2d 917, 920 (1977); *see also Iama Corp. v. Wham*, 99 Nev. 730, 736, 669 P.2d 1076, 1079 (1983);
27 *Jones*, 91 Nev. at 368.
28

1 Such close scrutiny is surely required here, where Plaintiff purchased Property securing a
2 \$147,456.00 loan for \$8,200.⁶ **Ex. A; Ex. G.** Put differently, the discrepancy between the sales price
3 and the value of the collateral here was more than 94%. In light of this wide discrepancy, and the
4 close scrutiny into the circumstances of the sale such discrepancy entails, it is not surprising that
5 Plaintiff contends that the HOA Lien Statute does not require an HOA foreclosure sale to be
6 commercially reasonable.⁷ Mot. at 9.

7 To the contrary, courts analyzing the commercial reasonableness of foreclosure sales have
8 either voided such sales or refused to grant summary judgment in favor of the foreclosing party
9 where the discrepancy between the sales price and the value of the secured property was much less
10 egregious than the present case. For example, in *Iama Corp.*, the Nevada Supreme Court reversed a
11 trial court's finding that a sale of collateral was conducted in a commercially reasonable manner. 99
12 Nev. at 737. Central to the court's decision was the wide discrepancy—25.1% —between the fair
13 market value and the sale price of the collateral. *Id.* at 736. The court then scrutinized whether
14 proper notice was given, whether the bidding was competitive, and whether the sale was conducted
15 pursuant to the sheriff's office's normal procedures. *Id.* The court ultimately set aside the sale
16 because the pre-foreclosure conduct of the seller had detrimentally affected the price the collateral
17 would bring at auction. *Id.* at 736-37.

18 Additionally, courts applying UCIOA have voided commercially unreasonable foreclosure
19 sales. *Will*, 848 A.2d at 340. In *Will*, the property was sold pursuant to a homeowners' association
20 lien of \$3,510.10. *Id.* at 338. The fair market value of the property was \$70,000. *Id.* The court noted
21 that the comment to UCIOA § 1-113, discussed in Section C(1) *supra*, "expresse[d] in unequivocal
22 terms the Legislature's intent to import the [UCC's] commercial reasonableness standard into the
23 UCIOA." *Id.* at 341. The court explained that the homeowners association bears the burden to prove
24

25 ⁶ Plaintiff will likely claim that the value of the loan secured by the Deed of Trust is not an accurate indication
26 of the value of the Property. This is yet another reason why Plaintiff's motion is premature. Discovery is
27 needed to determine the exact value of the Property at the time of the foreclosure sale.

28 ⁷ Plaintiff curiously quotes the *SFR Investments* Court's noting that it declined to reach the commercial
reasonableness argument before relying of the *SFR Investments* decision to say that the price paid at a
foreclosure sale has no bearing on commercial reasonableness "pursuant to SFR." Mot. at 10, 12. Needless to
say, a court's "holding" on an issue that it specifically declined to reach does not constitute binding precedent.

1 the foreclosure was commercially reasonable. *Id.* at 342. The court also stated that the party
2 conducting the sale “must make a good faith effort to maximize the value of collateral,” and “have a
3 reasonable regard for the debtor’s interest.” *Id.* After espousing these standards, the court voided the
4 trustee’s sale because the sale was not made in a commercially reasonable manner. *Id.* at 342.
5 Central to the court’s finding that the sale was commercially unreasonable was the sale of the
6 condominium for an amount 85% lower than the value of the collateral, and the fact that there was
7 only one bid on the property. *See id.* Because the sale was commercially unreasonable, the court
8 vacated the lower court’s grant of summary judgment in favor of the HOA, and voided the sale to
9 the third-party purchaser. *Id.* at 343.

10 Here, Plaintiff has produced no evidence showing that the sale of the Property for a 94%
11 discount was commercially reasonable. Such a wide discrepancy between the sales price and the
12 price of the collateral subjects the commercial reasonableness of this HOA sale to close scrutiny
13 under settled Nevada law. *See Levers*, 93 Nev. at 98; *Iama Corp.*, 99 Nev. at 736; *Jones*, 91 Nev. at
14 368. This close scrutiny entails an inquiry into the bidding process and participants, which U.S.
15 Bank will attempt to uncover through discovery. But currently, “the record is completely devoid of
16 any evidence relating to the bidding process or participants.” *Dennison*, 110 Nev. at 186 (reversing
17 grant of summary judgment in favor of the creditor because the moving party failed to produce
18 evidence showing the sale was commercially reasonable). Further, there is no evidence showing that
19 the HOA “took steps to insure the best price possible would be obtained for the benefit of the
20 debtor.” *Levers*, 93 Nev. at 99 (holding that the secured party failed to meet its burden to show that
21 the sale was commercially reasonable).⁸ Because Plaintiff has failed to produce any evidence
22 showing that the sale of the Property for 6% of its ostensible value is commercially reasonable, its
23

24 ⁸ In an effort to distinguish these UCC cases and prove that the foreclosure sale at issue was commercially
25 reasonable without offering a shred of evidence concerning the foreclosure sale, Plaintiff states that the
26 “method, manner, time, and place of an HOA foreclosure sale, unlike a UCC sale are governed by statute –
27 NRS 116.31162 through 116.31168.” Mot. at 10. However, NRS 116.31162 through NRS 116.31168 concern
28 notice to the unit’s owner, the constitutionally-defective opt-in notice requirements for lienholders, and the
effect of an HOA foreclosure sale on title. Nowhere in those statutes does it specify the method or manner in
which a foreclosure sale must be conducted, the time it must be conducted, or the place where it must be
conducted. NRS 116.31162 through NRS 116.31168 are thus irrelevant to whether “the method, manner,
time, [and] place” of an HOA foreclosure sale is “commercially reasonable.” *See Levers*, 93 Nev. at 98.

1 quiet title claims fail as a matter of law. Accordingly, this Court should deny Plaintiff's Motion for
2 Summary Judgment.

3 **E. In the alternative, U.S. Bank requests a Rule 56(f) Continuance, as additional**
4 **discovery is necessary to develop facts essential to U.S. Bank's defenses.**

5 This Court should deny Plaintiff's Motion for Summary Judgment under Nevada Rule of
6 Civil Procedure 56(f) because it is premature. U.S. Bank has not had the opportunity to develop
7 several issues central to its defense to Plaintiff's quiet title claim. Specifically, additional discovery
8 is necessary to determine: (1) how the HOA Trustee calculated the super-priority amount of the
9 HOA's lien before rejecting Bank of America's super-priority tender as insufficient, (2) whether the
10 HOA complied with all requirements of the HOA Lien Statute, and (3) whether the sale of the
11 Property for a 94% discount was commercially reasonable. To develop the facts around the tender,
12 compliance, and commercial reasonableness issues, U.S. Bank will subpoena the HOA and HOA
13 Trustee, seeking to determine, *inter alia*, who attended the foreclosure sale, whether the HOA's
14 assessments were based on a periodic budget adopted by the HOA pursuant to NRS 116.3115, what
15 announcements were made at the sale regarding Bank of America's super-priority tender, the
16 particulars of the bidding process, and whether all payments made to the HOA were properly
17 applied. Once these subpoenas reveal knowledgeable parties, U.S. Bank intends to depose those
18 parties, seeking to determine more information regarding the HOA's accounting of the payments it
19 received, how the foreclosure auction was conducted, and the general circumstances of the
20 foreclosure sale.

21 In accordance with Rule 56(f), counsel has provided the Court with a detailed affidavit
22 providing the reasons that discovery is necessary to fully develop U.S. Bank's opposition to
23 Plaintiff's quiet title claim. *See* Declaration of Counsel, p. 22. Therefore, to the extent the Court is
24 not inclined to grant U.S. Bank's Countermotion for Summary Judgment, or deny Plaintiff's Motion
25 for Summary Judgment, this Court should grant U.S. Bank a continuance under Rule 56(f).

26 ...

27 ...

28 ...

1 **V. CONCLUSION**

2 This Court should grant U.S. Bank's Countermotion for Summary Judgment because the
3 HOA Lien Statute is unconstitutional under the Due Process Clause, both facially and as-applied to
4 the present case. Even if the statute were constitutional, U.S. Bank would still be entitled to
5 summary judgment because Bank of America's super-priority tender extinguished that portion of the
6 HOA's lien prior to the foreclosure sale.

7 Even if the Court denies U.S. Bank's Countermotion, this Court should also deny Plaintiff's
8 Motion for Summary Judgment. Plaintiff has not shown that the HOA's sale of the Property for a
9 94% discount was commercially reasonable, as required by the HOA Lien Statute. In the alternative,
10 U.S. Bank is entitled to discovery to determine how the HOA Trustee calculated the super-priority
11 amount of the HOA's lien before rejecting Bank of America's tender as insufficient, whether the
12 HOA complied with the HOA Lien Statute, and whether the manner in which the HOA conducted
13 the sale was commercially reasonable.

14 DATED this 22nd day of July, 2015.

AKERMAN LLP

15 /s/ Tenesa S. Scaturro
16 MELANIE D. MORGAN, ESQ.
17 Nevada Bar No. 8215
18 TENESA S. SCATURRO, ESQ.
19 Nevada Bar No. 12488
20 1160 Town Center Drive, Suite 330
21 Las Vegas, Nevada 89144

22 *Attorneys for U. S. Bank, N.A., successor trustee*
23 *to Bank of America, N.A., Successor by Merger*
24 *to LaSalle Bank, N.A.,*
25 *as Trustee to the holders of the Zuni Mortgage*
26 *Loan Trust 2006-OA1, Mortgage Loan Pass-*
27 *Through Certificates Series 2006-OA1*
28

DECLARATION OF TENESA S. SCATURRO, ESQ. IN SUPPORT OF 56(f)
CONTINUANCE

1. I make this declaration based on my personal knowledge.

2. I am an associate with Akerman LLP and legal counsel for U.S. Bank in this action.

3. This Court should deny Plaintiff's Motion for Summary Judgment based on NRC 56(f). U.S. Bank should be permitted to conduct discovery as to how the HOA Trustee calculated the super-priority amount owed before rejecting Bank of America's tender as insufficient, whether the HOA and HOA Trustee complied with all requirements of NRS 116, *et seq.*, and whether the foreclosure sale was commercially unreasonable in violation of NRS 116.1113.

4. U.S. Bank requires additional discovery to fully develop several key defenses. U.S. Bank plans to depose the 30(b)(6) witnesses of the HOA and HOA Trustee, the person who actually conducted the auction on the HOA Trustee's behalf, and the 30(b)(6) witness of Plaintiff to determine whether the sale was conducted in accordance with Nevada law. For example, U.S. Bank intends to conduct discovery on whether the HOA impermissibly attempted to foreclose on violation liens, whether the HOA's monthly assessments were based on a periodic budget adopted by the HOA pursuant to NRS 116.3116, whether the homeowner made HOA payments that were not applied, whether there was a payment plan between the HOA and the homeowner that was ignored, whether the HOA approved the sale, and whether the HOA Trustee changed the sale date from the date listed in the Notice of Sale in accordance with NRS 116.31164.

5. Additionally, discovery is necessary to determine—among a host of facts relevant to the commercial reasonableness of the sale—how the HOA Trustee conducted the sale, the market value of the Property at the time of the sale, whether accurate information concerning Bank of America's super-priority tender was communicated to those in attendance at the auction, and the relationship, if any, between Plaintiff, the HOA, HOA Trustee, and other prospective purchasers. Plaintiff has not in any way disclosed the circumstances of the sale, which must be evaluated to determine whether the sale was commercially reasonable, especially in light of the diminutive price Plaintiff paid for the Property.

7. This discovery is necessary to determine whether the HOA complied with NRS 116, *et seq.*, a prerequisite to Plaintiff taking any title to the Property by way of the foreclosure sale, and whether the sale was commercially unreasonable in violation of NRS 116.1113.

8. This Court should deny Plaintiff's Motion for Summary Judgment pursuant to NRCPS 56(f).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 22nd day of July, 2015.

/s/ Tenesa S. Scaturro
TENESA S. SCATURRO, ESQ.

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I HEREBY CERTIFY that on July 22, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system (Wiznet) a true and correct copy of the foregoing **U.S. BANK, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON THE DUE PROCESS CLAUSE AND TENDER, OR ALTERNATIVELY, FOR RULE 56(F) RELIEF** on all parties and counsel as identified on the Court generated notice of electronic filing.

Michael F. Bohn, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
mbohn@bohnlawfirm.com

Attorneys for Plaintiff

/s/ Rebecca L. Thole
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

20040630-0002408

Assessor's Parcel Number:
12431220392
After Recording Return To: *MAIL TAX STATEMENTS TO:*
COUNTRYWIDE HOME LOANS, INC.

Fee: \$45.00
06/30/2004 11:16:47 T23040047543
Reg. LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs 32

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
KARLA R. WILSON
~~Recording Requested By:~~
J. BOLICH

32

COUNTRYWIDE HOME LOANS, INC.

7350 W. CHEYENNE AVENUE
LAS VEGAS
NV 89129

04050200-CV

[Space Above This Line For Recording Data]

04050200 0006348226006004
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0003681336-4

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 JUNE 24, 2004 together with all Riders to this document.

NEVADA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 16

SA(NV) (0307) CHL (07/03)(d)

VMP Mortgage Solutions - (800)521-7281

Initials:

[Handwritten initials]

FORM 3029 1/01

23991

003482260000001008A

(B) "Borrower" is
DENNIS L JOHNSON, AND GERALDINE J JOHNSON, HUSBAND AND WIFE
AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada
Calabasas, CA 91302-1613

Lender's address is

(D) "Trustee" is
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY MSN SV-88
SIMI VALLEY, NV 93065

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

(F) "Note" means the promissory note signed by Borrower and dated JUNE 24, 2004

The Note states that Borrower owes Lender
ONE HUNDRED FORTY SEVEN THOUSAND FOUR HUNDRED FIFTY SIX and
00/100

Dollars (U.S. \$ 147,456.00) 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, 2034

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

ELL

AGG

DOC ID #: 0006348226006004

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS

[Street/City]

Nevada 89031-0480 ("Property Address"):

[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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums

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any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

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defends against enforcement of the lien in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

11. Assignments 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.

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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 claims for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees.

Initials: 

Form 3029 1/01



property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined in 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).

Initials: 

Form 3029 1/01



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

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

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

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

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

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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00

DOC ID #: 0036348226006004

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:

Dennis L. Johnson (Seal)
DENNIS L. JOHNSON -Borrower

Geraldine J. Johnson (Seal)
GERALDINE J. JOHNSON -Borrower

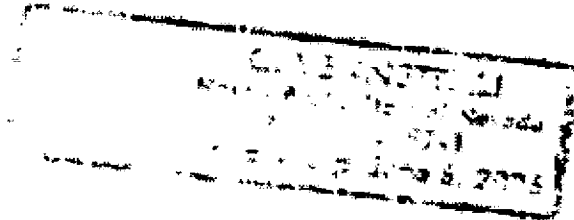
_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on 6-28-04 by

Dennis L. Johnson + Geraldine J. Johnson



A handwritten signature in cursive script, appearing to read "C. Vermettili".

C. Vermettili

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

EXHIBIT "A"

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

Parcel I

Lot Ninety two (92) of the Plat of Arbor Gate as shown by map thereof on file in Book 91 of plats, page 71, in the Office of the County Recorder of Clark County, Nevada.

Parcel II

A non-exclusive easement for ingress and egress and enjoyment in and to the Association property as set forth in the Declaration of Covenants, Conditions and Restrictions for Country Garden (Arbor Gate) a common interest community recorded February 25, 2000 in Book 20000225 as Document No. 00963, of Official Records of Clark County, Nevada, as the same may from time to time be amended and/or supplemented, which easement is appurtenant to Parcel One.

Assessor's Parcel Number: 124-31-220-092

ADJUSTABLE RATE RIDER
(MTA Index - Payment Caps)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
12431220092
Prepared By:
KARLA R. WILSON

04050200
{Escrow/Closing #}

0006348226006004
{Doc ID #}

CONV
• ARM PayOption Rider
10729-US (07/02) 01(d)

Page 1 of 7

Initials: 



* 2 3 9 8 1 *



* 0 6 3 4 8 2 2 6 0 0 0 0 0 0 1 0 7 2 9 *

DOC ID #: 0006348226066004

THIS ADJUSTABLE RATE RIDER is made this TWENTY-FOURTH day of JUNE, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrowers Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.

("Lender") of the same date and covering the property described in the Security Instrument and located at:
5316 CLOVER BLOSSOM COURT
NORTH LAS VEGAS, NV 89031-0480
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.625 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

DOC ID #: 0006348226006004

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of AUGUST, 2004, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

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

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 25/1000 percentage point(s) (3.025 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest rate will never be greater than 10.325 %.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the **FIRST** day of each month beginning on **August, 2004**. I will make these payments every month until I have paid all the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on **JULY 01, 2034**, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ **517.79**. This amount may change.

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the **first** day of **AUGUST, 2005**, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment". The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new

required monthly payment will be lesser of the Limited Payment and the Full Payment. I also have the option each month to pay more than the Limited Payment up to and including the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to Principal will be the rate required by Section 2 above.

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid principal can never exceed a maximum amount equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount that would be sufficient to repay my then unpaid principal in full on the Maturity Date in substantially equal installments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I also will begin paying the Full Payment as my monthly payment on the final Payment Change Date.

4. NOTICE OF CHANGES

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

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

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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


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

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

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

DOC ID #: 0006348226006004

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


DENNIS L. JOHNSON (Seal)
Borrower


GERALDINE J. JOHNSON (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

[Space Above This Line For Recording Data]

1-4 FAMILY RIDER
(Assignment of Rents)

PARCEL ID #:
12431220092
Prepared By:
KARLA R. NILSON

04050200
[ESD/OW/CLIPPING #]

0006348226006004
[Doc ID #]

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac Uniform Instrument

Page 1 of 4

100-575 (0000) 01 CHL (00/01)(0)
CONV/VA

VMP MORTGAGE FORMS - (800) 521-7291

Initials: *DLH*
Form 170 1/01
5/98



* 23881 *



* 063482260000001057R *

DOC ID #: 0006348226006004

THIS 1-4 FAMILY RIDER is made this TWENTY-FOURTH day of JUNE, 2004, 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

COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS, NV 89031-0480

[Property Address]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOC ID #: 0006348226006004

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

 (Seal)
DENNIS L. JOHNSON - Borrower

 (Seal)
GERALDINE J. JOHNSON - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS 2V-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

[Space Above This Line For Recording Data]

PLANNED UNIT DEVELOPMENT RIDER

PARCEL ID #:
12431220092
Prepared By:
KARLA R. WILSON

04050200

(Pencrow/Closure #)

0006348226006004

(Doc ID #)

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Page 1 of 4

Initials:

79 (0000) 01 CHL (00/01)(#) VMP MORTGAGE FORMS - (800)521-7200
CONV/VA

Form 3100



* 23981 *



* 063482260000001007R *

DOC ID #: 0006348226006004

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TWENTY-FOURTH day of JUNE, 2004, 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 COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS, NV 89031-0480
[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 THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as
ARBOR GATE
[Name of Planned Unit Development]

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

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

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

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

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

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

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

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

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

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

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

DOC ID #: 1006348226006004

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

Dennis L. Johnson (Seal)
DENNIS L. JOHNSON - Borrower

Geraldine J. Johnson (Seal)
GERALDINE J. JOHNSON - Borrower

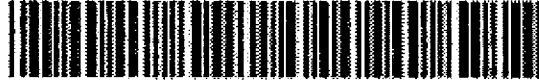
____ (Seal)
- Borrower

____ (Seal)
- Borrower

EXHIBIT B

EXHIBIT B

Recording Requested By:
Bank of America
Prepared By: Diana DeAvila
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036



DocID# 6686348226090044
Tax ID: 12431220092
Property Address:
5316 Clover Blossom Ct
North Las Vegas, NV 89031-0480
NV0-ADT 14157743 6/14/2011

Inst #: 201106200002747
Fees: \$15.00
N/C Fee: \$25.00
06/20/2011 03:24:45 PM
Receipt #: 817961
Requestor:
CORELOGIC
Recorded By: CYV Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1000157-0003681336-4

MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-OA1 whose address is 9062 OLD ANNAPOLIS RD, COLUMBIA, MD 21045 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.
Made By: DENNIS L JOHNSON, AND GERALDINE J JOHNSON, HUSBAND AND WIFE
AS JOINT TENANTS
Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 6/24/2004 Original Loan Amount: \$147,456.00

Recorded in Clark County, NV on: 6/30/2004, book N/A, page N/A and instrument number 20040630-0002408

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

6-15-2011

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

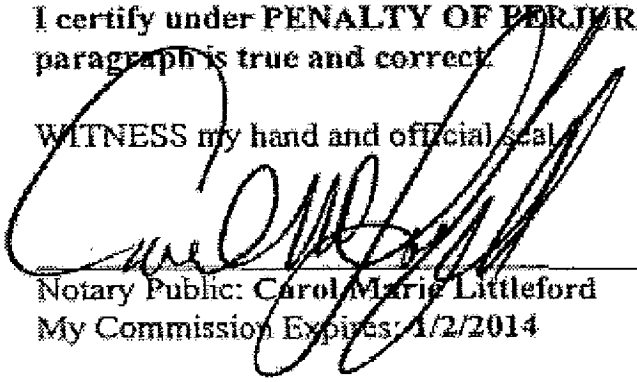
By: Martha Munoz
Martha Munoz, Assistant Secretary

State of California
County of Ventura

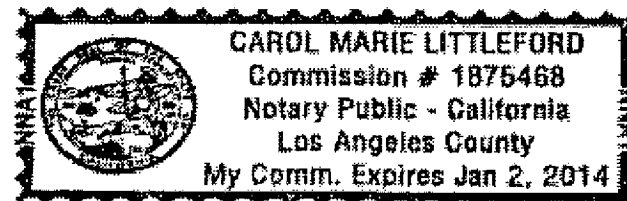
On June 15, 2011 before me, Carol Marie Littleford, Notary Public, personally appeared Martha Munoz, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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: Carol Marie Littleford
My Commission Expires: 1/2/2014

(Seal)



Attached to: Assignment of Deed of Trust

Borrowers: Dennis L Johnson
Geraldine J Johnson

EXHIBIT C

EXHIBIT C

Inst #: 201202220001651
Fees: \$17.00
N/C Fee: \$0.00
02/22/2012 09:17:26 AM
Receipt #: 1073371
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 29628-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Country Gardens Owners' Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **LOT 92 Book 91 Page 71** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

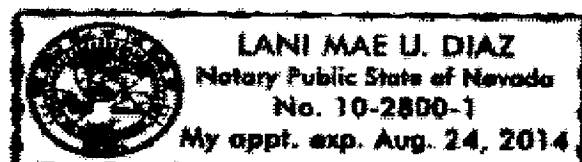
The total amount due through today's date is: **\$1,095.50**. Of this total amount **\$1,020.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **January 11, 2012**

By: 
Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me **Feb. 17, 2012**
~~January 11, 2012~~

(Seal)



(Signature)

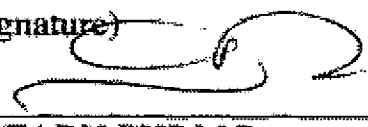

NOTARY PUBLIC

EXHIBIT D

EXHIBIT D

Inst #: 201202220001527
Fees: \$17.00
N/C Fee: \$0.00
02/22/2012 09:17:26 AM
Receipt #: 1073345
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 30488-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Country Gardens Owners' Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **PLAT BOOK 91 PAGE 71 LOT 92 Book 91 Page 71** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

The total amount due through today's date is: **\$1,150.50**. Of this total amount **\$1,075.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **February 6, 2012**

By: _____

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me February ¹⁷~~6~~, 2012

(Seal)



(Signature)

NOTARY PUBLIC

EXHIBIT E

EXHIBIT E

Inst #: 201204200000428
Fees: \$17.00
N/C Fee: \$0.00
04/20/2012 08:27:12 AM
Receipt #: 1136956
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 124-31-220-092

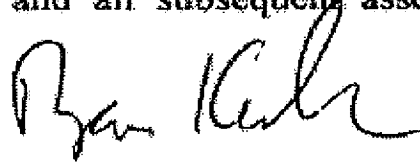
Trustee Sale No. 30488-5316

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,396.00** as of **March 27, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Country Gardens Owners' Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **February 22, 2012** as document number **0001651**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **DENNIS L & GERALDINE J JOHNSON**, of **PLAT BOOK 91 PAGE 71 LOT 92**, as per map recorded in Book 91, Pages 71, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031.** If you have any questions, you should contact an attorney. 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 Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **February 22, 2012**, on behalf of **Country Gardens Owners' Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **January 10, 2011** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **March 27, 2012**



Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

EXHIBIT F

EXHIBIT F

Inst #: 201210310000738

Fees: \$17.00

N/C Fee: \$0.00

10/31/2012 08:04:08 AM

Receipt #: 1354103

Requestor:

ALESSI & KOENIG LLC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 124-31-220-092

TSN 30488-5316

NOTICE OF TRUSTEE'S 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 Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

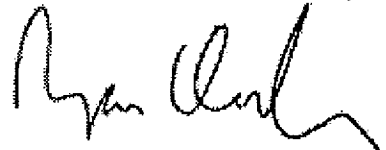
NOTICE IS HEREBY GIVEN THAT:

On November 28, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on February 22, 2012, as instrument number 0001651, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031.** The owner of the real property is purported to be: **DENNIS L & GERALDINE J JOHNSON**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. 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 \$4,039.00. Payment must be in made in the form of certified funds.

Date: October 15, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Country Gardens Owners' Association

EXHIBIT G

EXHIBIT G

②-1

Inst #: 201301240002549

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$43.35 Ex: #

01/24/2013 02:33:00 PM

Receipt #: 1470974

Requestor:

ALESSI & KOENIG LLC

Recorded By: ANI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
5316 Clover Blossom Ct Trust
PO Box 36208
LAS VEGAS, NV 89133

A.P.N. No. 124-31-220-092

TS No. 30488-5316

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **5316 Clover Blossom Ct Trust**
The Foreclosing Beneficiary herein was: **Country Gardens Owners' Association**
The amount of unpaid debt together with costs: **\$5,021.00**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$8,200.00**
The Documentary Transfer Tax: **\$43.35**
Property address: **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031**
Said property is in [] unincorporated area: **City of North Las Vegas**
Trustor (Former Owner that was foreclosed on): **DENNIS L & GERALDINE J JOHNSON**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded February 22, 2012 as instrument number 0001651, in Clark County, does hereby grant, without warranty expressed or implied to: **5316 Clover Blossom Ct Trust (Grantee)**, all its right, title and interest in the property legally described as: **LOT 92**, as per map recorded in Book 91, Pages 71 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

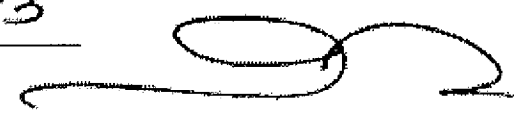
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

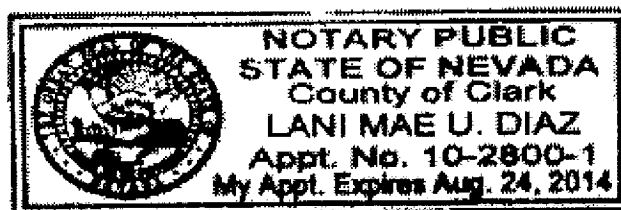
Ryan Kerbow, Esq. 
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 1/24/13

WITNESS my hand and official seal.
(Seal)


(Signature)



STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 124-31-220-092
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 \$ 8,200.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 8,200.00
d. Real Property Transfer Tax Due \$ 43.35

4. If Exemption Claimed:

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 5316 Clover Blossom Ct Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT H

EXHIBIT H

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 } ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP, formerly known as Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED] 2260

Borrower(s): Dennis L. and Geraldine J. Johnson

Property Address: 5316 Clover Blossom Court, North Las Vegas, Nevada 89031

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a November 21, 2012 letter from Paterno C. Jurani, Esq., an attorney with Miles Bauer, to Country Gardens Owners' Association, care of The Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a Statement of Account from Alessi & Koenig, LLC dated November 27, 2012 and received by Miles Bauer in response to the November 21, 2012 letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a December 6, 2012 letter from Rock K. Jung, an attorney with Miles Bauer, to Alessi & Koenig, LLC enclosing a check for \$1,494.50.

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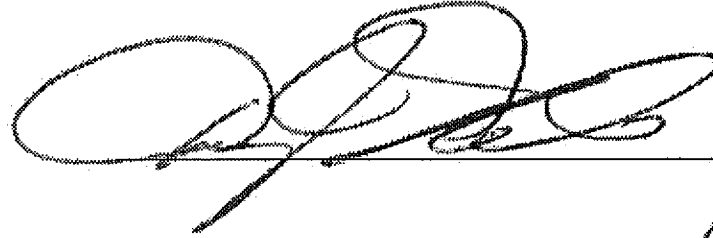
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9. Based on Miles Bauer's business records, Alessi & Koenig, LLC returned the \$1,494.50 check to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as **Exhibit 4**.

FURTHER DECLARANT SAYETH NOT.

Date: 7/14/15



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 14th day of July, 2015,

by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Arlene D. Martin (Seal)
(Signature of Notary Public)

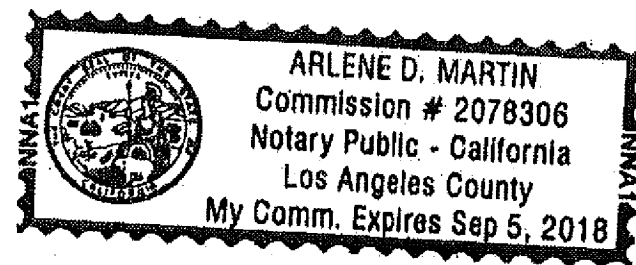


EXHIBIT 1

DOUGLAS E. MILES
Also Admitted in California &
Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
California
PATERNO C. JURANI



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Pkwy., Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 942-0411

CALIFORNIA OFFICE
1231 E. Dyer Road, Suite 100
Santa Ana, CA 92705
Phone (714) 481-9100
Fax (714) 481-9141

RICHARD J. BAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENAHAN
MARK T. DOMEYER
Also Admitted in the District of
Columbia & Virginia
TAMI S. CROSBY
L. BRYANT JAQUEZ
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
CORI D. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANI T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
LAWRENCE R. BOIVIN
RICK J. NEHORAOPF
BRIAN M. LUNA

November 21, 2012

Country Gardens Owners' Association
c/o The Alessi & Koenig, LLC
9500 West Flamingo Rd., Ste. 205
Las Vegas, NV 89147

Re: *Property Address: 5316 Clover Blossom Court, North Las Vegas, NV 89031*
MBBW File No.: 12-H2280

Dear Sir or Madam:

This letter is written in response to your Notice of Sale with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first and second deed of trust loans secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

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

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

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

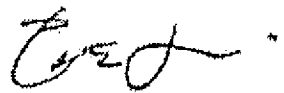
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of the Foreclosure sale that is scheduled for November 28, 2012. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0413. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Paterno C. Jurani, Esq.

EXHIBIT 2

DAVID ALESSI*

THOMAS HAYARD*

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA.
PHONE: 909-861-8300

\$1,494.⁵⁰

FACSIMILE COVER LETTER

To:	A Bhome	Re:	5316 CLOVER BLOSSOM CT/HO #30488
From:		Date:	Tuesday, November 27, 2012
Fax No.:		Pages:	2, Including cover
		HQ #:	30488

Dear A Bhome:

This cover will serve as an amended demand on behalf of Country Gardens Owners' Association for the above referenced escrow; property located at 5316 CLOVER BLOSSOM CT, North Las Vegas, NV. The total amount due through December 15, 2012 is \$4,186.00. The breakdown of fees, interest and costs is as follows:

Pre NOD	\$90.00
Release of Lien	\$30.00
Demand Fee	\$150.00
Attorney Fees (1.5)	\$360.00
Pre-Notice of Trustee Sale	\$90.00
Notice of Delinquent Assessment Lien - Nevada	\$275.00
Notice of Default	\$345.00
Notice of Trustee Sale	\$275.00
Foreclosure Fee	\$150.00
Total	\$1,765.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



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ACOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	C \$1,765.00
2. Notary, Recording, Copies, Mailings, and PACER	C \$350.00
3. Assessments Through December 15, 2012	\$1,189.00
4. Late Fees Through December 15, 2012	\$22.00
5. Fines Through November 27, 2012	\$0.00
6. Interest Through December 15, 2012	\$0.00
7. RPIR-GI Report	C \$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	C \$275.00
9. Management Company Advanced Audit Fee	C \$200.00
10. Management Account Setup Fee	\$0.00
11. Publishing and Posting of Trustee Sale	C \$175.00
13. Conduct Foreclosure Sale	-\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$4,186.00
Less Payments Received:	\$0.00
Total Amount Due:	\$4,186.00

Please have a check in the amount of \$4,186.00 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

RUN DATE: 08/06/2012

COUNTRY GARDEN
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2012 TO 08/31/2012
SINGLE OWNER

PAGE: 1

000029-01 PERFECT STORM, C/O DENNIS&JOANNE JOHNSON
STOP PAYMENT

5316 CLOVER BLOSSOM CT

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
12/31/2011	BEGINNING BALANCE			490.50
01/01/2012	MONTHLY ASSESSMENTS	55.00		545.50
01/31/2012	LATE FEE	5.50		551.00
02/01/2012	MONTHLY ASSESSMENTS	55.00		606.00
03/01/2012	MONTHLY ASSESSMENTS	55.00		661.00
03/02/2012	LATE FEE	5.50		666.50
03/31/2012	LATE FEE	5.50		672.00
04/01/2012	MONTHLY ASSESSMENTS	55.00		727.00
05/01/2012	MONTHLY ASSESSMENTS	55.00		782.00
05/01/2012	LATE FEE	5.50		787.50
05/31/2012	LATE FEE	5.50		793.00
06/01/2012	MONTHLY ASSESSMENTS	55.00		848.00
07/01/2012	MONTHLY ASSESSMENTS	55.00		903.00
07/01/2012	LATE FEE	5.50		908.50
07/31/2012	LATE FEE	5.50		914.00
08/01/2012	MONTHLY ASSESSMENTS	55.00		969.00

1 OWNERS -

REPORT BALANCE AS OF: 08/31/2012

969.00

Assessment $9 \times 55 = 495$
Late fee $= 9 \times 5.50 = 49.50$
Collection $2,850 \div 3 = 950$

EXHIBIT 3

DOUGLAS E. MILES
Also Admitted in California &
Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
California
PATERNO C. JURANI



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Pkwy., Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 369-4955

CALIFORNIA OFFICE
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Santa Ana, CA 92705
Phone: (714) 481-9100
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RICHARD J. BAUER, JR.
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S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOURI
LAWRENCE R. BOIVIN
RICK J. NEHORAOPF
BRIAN M. LUNA

December 6, 2012

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 5316 Clover Blossom Court
Account ID: 30488
LOAN #: [REDACTED] 2260
MBBW File No. 12-H2280

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,186.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

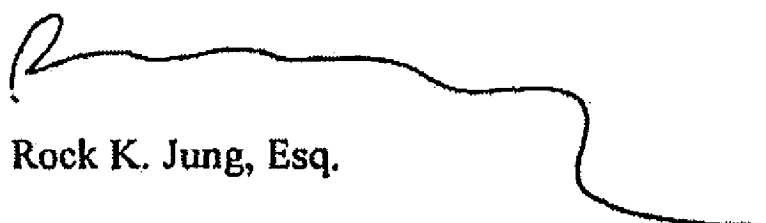
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.310313(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$999.50.

Thus, our client has authorized us to make payment to you in the amount of \$1,494.50, which takes into account both the maximum 9 months worth of common assessments as well as reasonable collection costs to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$1,494.50. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 5316 Clover Blossom Court have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

12-H2280

Initials: NEG

Payee: Alessi & Koenig, LLC

Check #: 17657

Date: 12/4/2012 Amount: 1,494.50

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/4/2012	30488	To Cure HOA Deficiency	1,494.50			

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1231 E. Dyer Road, #100
Santa Ana, CA 92705
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020
12-H2280
Loan # 2260

17657

Date: 12/4/2012

Amount \$**** 1,494.50

Pay \$*****One Thousand, Four Hundred Ninety-Four & 50/100 Dollars
to the order of

Alessi & Koenig, LLC

Check Void After 90 Days

Security Features Included. Details on back.

EXHIBIT 4

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Back](#) Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-14-704412-C

5316 Clover Blossom CT Trust, Plaintiff(s) vs. U S Bank National Association, Defendant(s)

§
§
§
§
§
§

Case Type: Other Title to Property
Date Filed: 07/25/2014
Location: Department 24
Cross-Reference Case Number: A704412

PARTY INFORMATION

		Lead Attorneys
Defendant	Clear Recon Corps	
Defendant	U S Bank National Association	Dana Jonathon Nitz Retained 7023844012(W)
Plaintiff	5316 Clover Blossom CT Trust	Michael F Bohn Retained 702-642-3113(W)

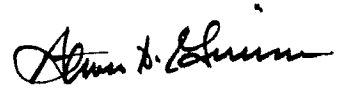
EVENTS & ORDERS OF THE COURT**OTHER EVENTS AND HEARINGS**

07/25/2014 **Case Opened**
07/25/2014 **Complaint**
Complaint
08/13/2014 **Receipt of Copy**
Receipt of Copy
08/13/2014 **Affidavit of Service**
Affidavit of Service
08/26/2014 **Affidavit of Service**
Affidavit of Service for Clear Recon Corps
09/25/2014 **Answer**
Defendant U.S. Bank, National Association, Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1
09/25/2014 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure
09/30/2014 **Stipulation and Order**
Stipulation and Order for Non-Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust
10/02/2014 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order for Non Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust
12/17/2014 **Joint Case Conference Report**
Joint Case Conference Report
12/19/2014 **Scheduling Order**
Scheduling Order
01/05/2015 **Case Reassigned to Department 24**
District Court Case Reassignment 2015
01/14/2015 **Order Setting Civil Bench Trial**
Order Setting Civil Bench Trial
01/14/2015 **Substitution of Attorney**
Substitution of Attorney
02/09/2015 **Motion to Amend Complaint**
Motion to Amend Complaint
03/12/2015 **Motion to Amend Complaint (9:00 AM) (Judicial Officer Crockett, Jim)**
PLAINTIFF'S MOTION TO AMEND COMPLAINT
[Parties Present](#)
[Minutes](#)
Result: Granted
04/23/2015 **Amended Complaint**
Amended Complaint
04/30/2015 **Certificate of Service**
Certificate of Service
05/06/2015 **Order Granting**
Order Granting Motion to amend Complaint
05/07/2015 **Notice of Entry**
Notice of Entry of Order
05/18/2015 **Motion for Summary Judgment**
Motion for Summary Judgment
06/18/2015 **Motion for Summary Judgment (9:00 AM) (Judicial Officer Crockett, Jim)**
09/10/2015 **Status Check (9:00 AM) (Judicial Officer Crockett, Jim)**
Status Check - Trial Readiness
10/20/2015 **Pre Trial Conference (9:30 AM) (Judicial Officer Crockett, Jim)**
11/12/2015 **Calendar Call (9:30 AM) (Judicial Officer Crockett, Jim)**

11/16/2015 | **Bench Trial** (10:00 AM) (Judicial Officer Crockett, Jim)
Civil Bench Trial

FINANCIAL INFORMATION

Defendant U S Bank National Association			
	Total Financial Assessment		223.00
	Total Payments and Credits		223.00
	Balance Due as of 05/19/2015		0.00
09/25/2014	Transaction Assessment		223.00
09/25/2014	Wiznet	Receipt # 2014-110591-CCCLK	U S Bank National Association (223.00)
Plaintiff 5316 Clover Blossom CT Trust			
	Total Financial Assessment		470.00
	Total Payments and Credits		470.00
	Balance Due as of 05/19/2015		0.00
07/25/2014	Transaction Assessment		270.00
07/25/2014	Wiznet	Receipt # 2014-85818-CCCLK	5316 Clover Blossom CT Trust (270.00)
05/18/2015	Transaction Assessment		200.00
05/18/2015	Wiznet	Receipt # 2015-52005-CCCLK	5316 Clover Blossom CT Trust (200.00)



CLERK OF THE COURT

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

6 Attorney for plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 5316 CLOVER BLOSSOM CT TRUST

10 Plaintiff,

11 vs.

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

17 Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

EXEMPTION FROM ARBITRATION:
Title to real property

18 **AMENDED COMPLAINT**

19
20 Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohn, Esq.
21 alleges as follows:

22 1. Plaintiff is the owner of the real property commonly known as 5316 Clover Blossom Ct, North
23 Las Vegas, Nevada.

24 2. Plaintiff obtained title by foreclosure sale conducted on January 16, 2013.

25 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
26 due from the former owner to the Country Gardens Owners' Association, pursuant to NRS Chapter 116.

27 4. U.S. Bank, National Association, Successor Trustee To Bank of America, N.A., Successor by
28

1 Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni Mortgage Loan Trust 2006-OA1,
2 Mortgage Loan Pass-Through Certificates, Series 2006-OA1 is the beneficiary of a deed of trust which
3 was recorded as an encumbrance to the subject property on June 30, 2004.

4 5. Clear Recon Corps is the substituted trustee on the deed of trust.

5 6. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
6 which was properly conducted with adequate notice given to all persons and entities claiming an interest
7 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
8 Country Gardens Owners' Association, pursuant to NRS Chapter 116.

9 7. The HOA foreclosure sale complied with all requirements of law, including but not limited
10 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
11 recording, posting and publication of the Notice of Sale.

12 8. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the
13 HOA Lien representing 9 months of assessments for common expenses.

14 9. Nonetheless, defendant U.S. Bank, National Association, Successor Trustee To Bank of
15 America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni
16 Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates, Series 2006-OA1 has
17 recorded a notice of default and election to sell under its deed of trust pursuant to NRS 107.080.

18 10. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

19 11. The plaintiff is entitled to an award of attorneys fees and costs.

20 **SECOND CLAIM FOR RELIEF**

21 12. Plaintiff repeats the allegations contained in paragraphs 1 through 11.

22 13. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
23 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
24 to the subject property.

25 14. The plaintiff is entitled to an award of attorneys fees and costs.

26 **THIRD CLAIM FOR RELIEF**

27 15. Plaintiff repeats the allegations contained in paragraphs 1 through 14.

16. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

17. The plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 23rd day of April 2015.

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

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

DISTRICT COURT CIVIL COVER SHEET

A- 14- 704412- C

XVI 11

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): 5316 CLOVER BLOSSOM CT TRUST	Defendant(s) (name/address/phone): U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2008-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2008-OA1; and CLEAR RECON CORPS
Attorney (name/address/phone): MICHAEL F. BOHN, ESQ. 376 East warm Springs Road, Suite 140 Las Vegas, NV 89119 (702) 642-3113	Attorney (name/address/phone): []

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

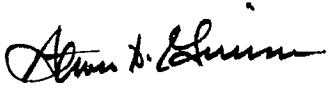
July 25, 2014

Date

/s/ Michael F. Bohn, Esq. /

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 JEFF ARLITZ, ESQ.

6 Nevada Bar No.: 6558

7 jarlitz@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 East Warm Springs Road, Ste. 140

11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 5316 CLOVER BLOSSOM CT TRUST

17 Plaintiff,

18 vs.

19 U.S. BANK, NATIONAL ASSOCIATION,
20 SUCCESSOR TRUSTEE TO BANK OF
21 AMERICA, N.A., SUCCESSOR BY MERGER
22 TO LASALLE BANK, N.A., AS TRUSTEE TO
23 THE HOLDERS OF THE ZUNI MORTGAGE
24 LOAN TRUST 2006-OA1, MORTGAGE
25 LOAN PASS-THROUGH CERTIFICATES
26 SERIES 2006-OA1; and CLEAR RECON
27 CORPS

28 Defendants.

CASE NO.: A- 14 - 704412 - C

DEPT NO.:

XVI I I

EXEMPTION FROM ARBITRATION:
Title to real property

COMPLAINT

Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Jeff Arlitz, Esq. alleges as follows:

1. Plaintiff is the owner of the real property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada.

2. Plaintiff obtained title by foreclosure sale conducted on January 16, 2013.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments

1 due from the former owner to the Country Gardens Owners' Association, pursuant to NRS Chapter 116.

2 4. U.S. Bank, National Association, Successor Trustee To Bank of America, N.A., Successor by
3 Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni Mortgage Loan Trust 2006-OA1,
4 Mortgage Loan Pass-Through Certificates, Series 2006-OA1 is the beneficiary of a deed of trust which
5 was recorded as an encumbrance to the subject property on June 30, 2004.

6 5. Clear Recon Corps is the substituted trustee on the deed of trust.

7 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
8 which was properly conducted with adequate notice given to all persons and entities claiming an interest
9 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
10 Country Gardens Owners' Association, pursuant to NRS Chapter 116.

11 8. Nonetheless, defendant U.S. Bank, National Association, Successor Trustee To Bank of
12 America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni
13 Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates, Series 2006-OA1 has
14 recorded a notice of default and election to sell under its deed of trust pursuant to NRS 107.080.

15 9. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

16 10. The plaintiff is entitled to an award of attorneys fees and costs.

17 **SECOND CLAIM FOR RELIEF**

18 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

19 12. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
20 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
21 to the subject property.

22 13. The plaintiff is entitled to an award of attorneys fees and costs.

23 **THIRD CLAIM FOR RELIEF**

24 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

25 15. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
26 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
27 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any

1 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

2 16. The plaintiff is entitled to an award of attorneys fees and costs.

3 WHEREFORE, plaintiff prays for Judgment as follows:

4 1. For injunctive relief;

5 2. For a determination and declaration that plaintiff is the rightful holder of title to the property,
6 free and clear of all liens, encumbrances, and claims of the defendants.

7 3. For a determination and declaration that the defendants have no estate, right, title, interest or
8 claim in the property.

9 4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
10 or claim in the property; and

11 5. For such other and further relief as the Court may deem just and proper.

12 DATED this 25th day of July 2014.

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

15 By: / s / Jeff Arlitz, Esq. /
16 Michael F. Bohn, Esq.
17 Jeff Arlitz, Esq.
18 376 East Warm Springs Road, Ste. 140
19 Las Vegas, Nevada 89119
20 Attorney for plaintiff
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22
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VERIFICATION

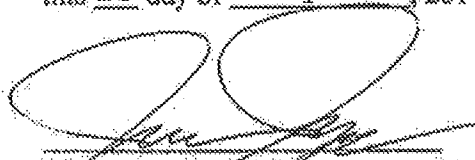
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

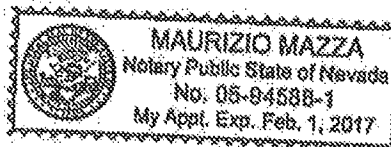
Iyad Haddad, being first duly sworn, deposes and says;

That he is the manager of the trustee of the plaintiff trust and that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.


IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 25 day of July, 2014


NOTARY PUBLIC in and for said
County and State



1 **IAFD**
MICHAEL F. BOHN, ESQ.
2 State Bar No. 1641
mbohn@bohnlawfirm.com
3 JEFF ARLITZ, ESQ.
State Bar No. 6558
4 jarlitz@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

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

18 Defendants.

CASE NO.:
DEPT NO.:

19 **INITIAL APPEARANCE FEE DISCLOSURE**

20 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-
21 entitled action as indicated below:

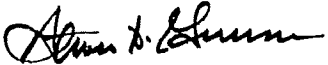
22 5316 CLOVER BLOSSOM CT TRUST, Plaintiff \$270.00

23 TOTAL REMITTED: \$270.00

24 DATED this 25th day of July 2014.

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

26 By: /s/ Michael F. Bohn, Esq. /
27 MICHAEL F. BOHN, ESQ.
376 East Warm Springs Road, Ste. 140
28 Las Vegas, Nevada 89119
Attorney for plaintiff


CLERK OF THE COURT

1 **ANSW**
2 LAUREL I. HANDLEY (NV Bar #9576)
3 KRISTA J. NIELSON (NV Bar #10698)
4 **PITE DUNCAN, LLP**
5 520 South 4th St., Suite 360
6 Las Vegas, Nevada 89101
7 Telephone: (702) 991-4630
8 Facsimile: (702) 685-6342
9 E-mail: knielson@piteduncan.com

10 Attorneys for Defendant U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE
11 TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A.,
12 AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
13 MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-OA1

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 5316 CLOVER BLOSSOM CT TRUST,

17 Plaintiff,

18 vs.

19 U.S. BANK, NATIONAL ASSOCIATION,
20 SUCCESSOR TRUSTEE TO BANK OF
21 AMERICA, N.A., SUCCESSOR BY
22 MERGER TO LASALLE BANK, N.A., AS
23 TRUSTEE TO THE HOLDERS OF THE
24 ZUNI MORTGAGE LOAN TRUST 2006-
25 OA1, MORTGAGE LOAN PASS-
26 THROUGH CERTIFICATES SERIES 2006-
27 OA1; and CLEAR RECON CORPS,

28 Defendants.

Case No.: A-14-704412-C

Dept. No.: XVIII

**DEFENDANT U.S. BANK, NATIONAL
ASSOCIATION, SUCCESSOR TRUSTEE
TO BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO LASALLE
BANK, N.A., AS TRUSTEE TO THE
HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1'S ANSWER TO
COMPLAINT**

21 COMES NOW Defendant, U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR
22 TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE
23 BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN
24 TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-
25 OA1 ("Defendant"), by and through its counsel of record, LAUREL I. HANDLEY, ESQ.,
26 KRISTA J. NIELSON, ESQ., of PITE DUNCAN, LLP, and hereby files its Answer to Plaintiff's
27 Complaint.

28 /./

1 1. Answering Paragraph 1 of the Complaint, Defendant lacks sufficient information to
2 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
3 contained therein.

4 2. Answering Paragraph 2 of the Complaint, Defendant lacks sufficient information to
5 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
6 contained therein.

7 3. Answering Paragraph 3 of the Complaint, Defendant lacks sufficient information to
8 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
9 contained therein.

10 4. Answering Paragraph 4 of the Complaint, Defendant admits the allegations contained
11 therein.

12 5. Answering Paragraph 5 of the Complaint, Defendant admits the allegations contained
13 therein.

14 6. Answering Paragraph 7 of the Complaint, Defendant denies the allegations contained
15 therein.¹

16 7. Answering Paragraph 8 of the Complaint, Defendant admits that a Notice of Default was
17 recorded against the real property known as 5316 Clover Blossom Court, North Las Vegas,
18 Nevada 89031, pursuant to the Deed of Trust recorded on June 30, 2004. Defendant lacks
19 sufficient information to form a belief as to the truth of the remaining allegations, and on that
20 basis denies the remaining allegation contained therein.

21 8. Answering Paragraph 9 of the Complaint, Defendant denies the allegations
22 contained therein.

23 9. Answering Paragraph 10 of the Complaint, Defendant denies the allegations contained
24 therein.

25
26
27
28 ¹ There is no Paragraph 6 of the Complaint.

1
2 **SECOND CLAIM FOR RELIEF**

3 10. Defendant repeats each of the responses provided in Paragraphs 1-10 as if
4 fully set forth herein.

5 11. Answering Paragraph 11 of the Complaint, Defendant denies the allegations
6 contained therein.

7 12. Answering Paragraph 12 of the Complaint, Defendant denies the allegations
8 contained therein.

9 13. Answering Paragraph 13 of the Complaint, Defendant denies the allegations
10 contained therein.

11
12 **THIRD CLAIM FOR RELIEF**

13 14. Defendant repeats each of the responses provided in Paragraphs 1-13 as if
14 fully set forth herein.

15 15. Answering Paragraph 14 of the Complaint, Defendant denies the allegations contained
16 therein.

17 14. Answering Paragraph 15 of the Complaint, Defendant denies the allegations contained
18 therein.

19 15. Answering Paragraph 16 of the Complaint, Defendant denies the allegations contained
20 therein.

21
22 **AFFIRMATIVE DEFENSES**

23 Defendant sets forth the following distinct and affirmative defenses to each and every
24 purported cause of action alleged in Plaintiff's Complaint, and the whole thereof:

25 **FIRST AFFIRMATIVE DEFENSE**

26 The Complaint, and each and every alleged cause of action contained therein, fails to
27 state a suitable and cognizable claim upon which relief may be granted.
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1 PRAYER FOR RELIEF

2 WHEREFORE, Defendant prays for the following:

3 1. That Plaintiff's Complaint be dismissed in its entirety with prejudice and that Plaintiff
4 take nothing by way of its Complaint.

5 2. For attorney's fees and costs of defending this action; and

6 3. For such other and further relief as the Court deems fit.

7 DATED this 25th day of September, 2014.

8 PITE DUNCAN, LLP

9
10 
11 LAUREL I. HANDLEY

12 KRISTA J. NIELSON

13 *Attorneys for Defendant*

14 U.S. BANK, NATIONAL ASSOCIATION,
15 SUCCESSOR TRUSTEE TO BANK OF
16 AMERICA, N.A., SUCCESSOR BY
17 MERGER TO LASALLE BANK, N.A., AS
18 TRUSTEE TO THE HOLDERS OF THE
19 ZUNI MORTGAGE LOAN TRUST 2006-
20 OAI, MORTGAGE LOAN PASS-
21 THROUGH CERTIFICATES SERIES
22 2006-OAI
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CERTIFICATE OF SERVICE

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 520 South Fourth Street, Suite 360, Las Vegas, Nevada 89101.

I hereby certify that on September 25, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Michael F. Bohn, mbohn@bohnlawfirm.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of September, 2014, at Las Vegas, Nevada.



NICOLE L. LANE

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

U.S. Bank, N.A., as Successor Trustee to Bank
of America, N.A.,

Appellant

v.

5316 Clover Blossom Ct Trust,
Respondent.

No. 68915

Electronically Filed
Oct 23 2015 09:05 a.m.
Tara K. Linder
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 24
County Clark Judge Hon. Jim Crockett
District Ct. Case No. A-14-704412-C

2. Attorney filing this docketing statement:

Attorney Matthew I. Knepper Telephone 702-634-5000
Firm Akerman LLP
Address 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

Client(s) U.S. Bank, N.A., as Successor Trustee

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael F. Bohn Telephone 702-642-3113
Firm Law Offices of Michael F. Bohn, Esq., Ltd.
Address 376 E. Warm Springs Road #125
Las Vegas, NV 89119

Client(s) 5316 Clover Blossom Ct Trust

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Although this case involves familiar issues regarding the interpretation and application of NRS 116.3116, there are no other cases or proceedings presently or previously pending before this court directly related to this appeal.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Other than the underlying trial court action, there are no other cases or proceedings presently or previously pending directly related to this appeal.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Respondent alleges that it owns the property located at 5316 Clover Blossom Ct., North Las Vegas, Nevada (Property) free and clear of all liens as a result of an HOA foreclosure sale. Respondent filed a complaint for quiet title to have the court declare that Respondent bought the Property free and clear of U.S. Bank's interests, including the deed of trust held by U.S. Bank (the Deed of Trust). U.S. Bank alleges that the Deed of Trust was not extinguished by the HOA foreclosure sale because its predecessor-in-interest's attempted tender satisfied the tender rule, the foreclosure sale was not commercially reasonable, Respondent failed to demonstrate good title, and NRS 116.3116 is unconstitutional. The district court granted Respondent's motion for summary judgment over Appellants' opposition and Rule 56(f) affidavit attesting that it required additional factual discovery to develop its defenses and denied U.S. Bank's counter-motion for summary judgment. U.S. Bank now appeals that order.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

(1) Whether a tender offer of nine months of assessments and collection costs extinguished the HOA's superpriority lien? (2) Whether the HOA lien statute is facially unconstitutional? (3) Whether the HOA lien statute is unconstitutional as applied because it does not require that notice be provided to lenders of the amount of the superpriority lien? (4) Whether the HOA sale is void as commercially unreasonable based on inadequacy of price and the rejection of the tender offer? and (5) Whether recitals of compliance with the notice requirements of NRS 116 in a trustee's deed are sufficient to establish compliance as a matter of law?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

This case is similar to many others currently pending before the Nevada Supreme Court in that it raises several issues regarding the application and enforceability of NRS 116.3116 (as it existed before amended by the Nevada Legislature in 2015). To counsel's knowledge, these other cases also present some of the issues above:

Case Number 68345, 2713 Rue Toulouse Trust v. Bank of America, N.A. (Issues # 1, 2, 3, and 4)

Case Number 68345, Bank of New York Mellon v. Star Golden Enterprises Series 6 (Issues # 1, 2, 4)

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☒ Yes

☐ No

If not, explain: U.S. Bank will act concurrently with this statement to provide the proper notice under the rules.

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal involves several significant issues related to NRS 116.3116. The appellants do not seek reversal of any part of this Court's recent decision construing NRS 116.3116 in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014); however, a decision regarding the issues in this appeal could be binding on many other pending cases.

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from September 10, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Sep 10, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed September 28, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order: The Court's September 10, 2015 order granted summary judgment for Respondent and against appellant, the only two remaining parties to the case. Accordingly, it is a final judgment that is appealable under NRAP 3A(b)(1).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

- U.S. Bank, National Association, Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1
- 5316 Clover Blossom Ct Trust

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff 5316 Clover Blossom Ct Trust was granted summary judgment on its claims for quiet title and declaratory relief on September 10, 2015

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

U.S. Bank, N.A.
Name of appellant

Matthew I. Knepper, Esq.
Name of counsel of record

10/22/2015
Date

/s/ Matthew I. Knepper
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 22nd day of October, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
376 E Warm Springs Rd., Suite 140
Las Vegas, NV 89119

Dated this 22nd day of October, 2015

/s/ Lucille Chiusano
Signature