IN THE SUPREME COURT OF THE STATE OF NEVADA

K&P HOMES, A SERIS LLC OF DEK HOLDINGS, LLC, a Nevada Limited Liability Company,

Appellant,

vs.

CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB NOT IN ITS INDIVIDUAL CAPACITY BUT AS TRUSTEE OF ARLP TRUST 3,

Respondent.

SUP. CT. CASE NO. 69966

(Certified Question from the United States District Court for the District of Nevada, Case No. 2:15-cv-01534-RCJ-VCF)

APPELLANT'S REPLY BRIEF

JOHN HENRY WRIGHT
Nevada Bar No. 6182
THE WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com
Attorney for Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

I. ARGUMENT:

A. SFR Applies to the Instant Case:

As noted in K & P HOMES, LLC's Opening Brief, the Court was presented with a Certified Question under NRAP 5. That Question is:

> Does the rule of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014) that foreclosures under NRS 116.3116 extinguish first security interests apply retroactively to foreclosures occurring prior to the date of that decision.

There is no question that the Court in SFR was interpreting the provisions of NRS 116.3116, et seq., and existing law, as to whether or not the statute provided for the extinguishment of a first deed of trust. In addition, the Court was interpreting the statute as to whether or not the HOA could foreclose on its lien via non-judicial foreclosure proceedings. The entire decision is an examination of the provisions of an existing statute.

In its Answering Brief Christiana Trust contends that this Court should declare that SFR does not apply retroactively. Christiana Trust ignores two simple facts: SFR interprets an existing statute, and the fact that private actors erroneously interpreted NRS 116:31126 does not mean that the statute was not in effect. Non-retroactivity has been applied only in situations where it was totally unforeseeable that ling standing precedent would be overturned or an issue had not previously been addressed. In SFR, the this Court found the issue had been addressed, explicitly and

unambiguously, within the statute itself. In support of its argument, Christiana Trust relies almost exclusively on Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). Chevron applied the non-retroactivity doctrine to a federal law that shortened the statute of limitations (where the statute in question was subject to "a long line of decisions by the Fifth Circuit" holding differently) and where the application of the new holding would have resulted in Plaintiff's claim being time-barred. Id.

Christiana Trust also overlooks the fact that Chevron's equitable exception has been discredited by the United States Supreme Court in Harper v. Virginia Dept. Of Taxation, 509 U.S. 86 (1993). In Harper, the United States Supreme Court held:

> When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the announcement of the rule.

Ignoring that Chevron was meant to be applied exclusively to Federal questions, not questions of state law as is here, it is clear that Harper has overruled the reasoning relied on by Christiana Trust. This is justification on its own for rejecting Christiana Trust's arguments.

In its opening brief K & P informed the Court of two cases of Morales-Izquerdo v. Department of Homeland Security, 600 F.3d 1076, 1087-1088 (9th Cir. 2010) and Rivers v. Roadway Express, 511 U.S. 298 (1994). The Morales-Izquerdo

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

opinion is on point here. The United States Court of Appeals for the Ninth Circuit stated:

> Ordinarily, "[a] judicial construction of a statue is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Rivers v. Roadway Express, Inc., 511 U.S. 298, 312-13, 114 S. Ct. 1510, 128 L. Ed. 2d 274 (1994).* This results from the time-honored principle that when a court construes a statute, "it is explaining its understanding of what the statute has meant continuously since the date when it became law.' *Id. At 313 n.12; see also United States v. City of Tacoma, 332 F.3d 574, 580 (9th Cir. 2003)* ("The theory of a judicial interpretation of a statute is that the interpretation give the meaning of the statute from its inception, and does not merely give an interpretation to be used from the date of the decision.") Thus, when a court applies a statute to the parties before it, "that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate [the] announcement of the rule." *Harper v. Va. Dept' of Taxation, 509 U.S. 86, 97 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993).*
>
> 600 F.3d at 1087-1089

The Ninth Circuit Court of Appeals' holding in Morales-Izquierdo is based on two United States Supreme Court decisions. Rivers v. Roadway Express, Inc., 511 U.S. 298 (1994), and Harper v. Virginia Dept' of Taxation, 509 U.S. 86 (1993), referenced above. In Rivers, at footnote 12, the Supreme Court stated:

> [W]hen this Court construes a statue, it is explaining its understanding of what the statute has meant continuously since the date when it became law. In statutory cases the Court has no authority to depart from the congressional command setting the effective date of a law that it has enacted.

Based on the substantial number of opinions from the United States Supreme Court subsequent to Chevron in 1971 it is abundantly clear that Chevron has been deemed

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

inapplicable to a Court's interpretation of a statute that has been on the books for twenty-five years. Chevron, to the extend it has any controlling effect in any case, only applies to the creation of new law. That is not what occurred in SFR.

In this case, the statute in question, NRS 116.3116 was enacted by the legislature and signed into law in 1991. Christiana Trust asks this Court to do what the United States Supreme Court said it did not have the authority to do – Change the effective date of the statute. This court cannot do that. The Court's construction of NRS 116.3116 in SFR was an explanation of what the statute has meant since 1991, the date it was enacted, and it is therefore applied to all cases whether or not the events predate the announcement of SFR. The fact that Christiana Trust and other lenders chose to interpret the statute in a manner inconsistent with the express language of the statute is not a basis for a departure from the time-honored principles of judicial construction established by the United States Supreme Court.

In Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 366 P.3d 1105 (Nev. 2016) this Court stated:

> Where the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby.

Likewise, as pointed out in K & P HOMES, LLC's opening brief, a person's misinterpretation of the law does not make the consequences unfair, especially with

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

a sophisticated party such as Christiana Trust. Yet, that is what Christiana Trust argues for in this instance. All of Christiana Trust's arguments are based on the misinterpretation of the law prior to SFR on the part of "sophisticated" market participants. However, the fact that these participants now claim they misinterpreted NRS 116.3116 is not a basis for upsetting every validly conducted HOA foreclosure that occurred prior to SFR. Nor is it a valid reason to depart from the long-standing principles of judicial construction.

B. RESPONSE TO FHFA'S AMICUS BRIEF:

On July 15, 2016, the Federal Housing Finance Agency (FHFA) filed an Amicus Brief in Support of Respondent, Christiana Trust. FHFA's Amicus Brief is based on arguments and relies on exhibits that were not presented to the lower court and were not part of the lower court record. To the extent that the Nevada Supreme Court entertains FHFA's Amicus Brief in reaching its decision on the Certified Question at hand, K & P HOMES, LLC feels compelled to respond to the averments made by FHFA and submits this responsive brief for the purpose of setting the record straight and providing the Court with additional information for consideration.

1. FHFA is Attempting to Mislead the Court:

FHFA has filed an Amicus Brief that has one purpose, to mislead the Court. FHFA puts forth the argument that the lending industry, particularly Fannie Mae and

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

Freddie Mac or "enterprises'" never believed that NRS 116.3116 provided that the HOA super-priority lien was anything more than a payment priority statute under which the HOA would receive 9 months of assessments upon the lender's foreclosure of its deed of trust, or that the Court's interpretation of the statute was unforeseen. These claims are simply untrue and are not supported by the historical record or any credible evidence.

FHFA makes the following claims in its Amicus Brief:

> The *SFR* decision established a new and unexpected principle of law, placing countless deeds of trust at risk of extinguishment or drastic and immediate devaluation. To prevent that unforseen and inequitable result, and to preserve the settled expectations of the housing-finance market, the Court should hold that *SFR* applies only prospectively, not retroactively.
> (Amicus Brief at pp. 2-3)

> Just as *SFR* was not foreseen by the many state and federal courts that issued contrary holdings, neither did many market participants anticipate this outcome.
> (Amicus Brief at p.6)

> Had market participants lacking other protection from deed-of-trust extinguishment understood that then existing law allowed and HOA sale to terminate their lien, they likely would have protected themselves contractually when writing their mortgages.
> Here, retroactivity would disrupt lenders' justifiable reliance on a common understanding of the law.
> (Amicus Brief at p.12)

> The *SFR* decision and a similar holding an another jurisdiction, however, altered this common understanding, "shifting HOA super liens from a payment priority to a true priority, by disrupting mortgage market participants' settled expectations in contract rights, this shift created profound, unintended consequence for mortgage lenders, the servicers of their loans, and the housing industry at large."
> (Amicus Brief at pp.13-14)

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

And, two of the biggest misrepresentations by FHFA are:

> Reasonable participants such as the Enterprises (Fannie Mae and Freddie Mac) did not anticipate that their first-position mortgages could be erased via a homeowners' association foreclosure sale. (Amicus Brief at p.13).

and,

> While it might in theory be possible to incorporate that risk into the terms of a mortgage loan at issuance, once the loan is written the terms are what they are and the mortgagee cannot re-price the loan to account for the sudden increase in risk.

The housing crisis that began in 2006 substantially eroded the value of Fannie Mae and Freddie Mac held mortgages. Worried that either or both Fannie Mae and Freddie Mac might become insolvent, Congress passed the Housing and Economic Recovery Act of 2008 (HERA), Pub.L. No. 110-289, 122 Stat. 2654, which created the FHFA and authorized this new agency to place Fannie Mae and Freddie into conservatorship under specific circumstances. *See*, 12 U.S.C. § 4511 (creating the FHFA). Under the Act, FHFA has power to exercise all rights, titles powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity. 12 U.S.C § 4617(b)(2)(A)(i). On September 6, 2008, the Director of the FHFA placed Fannie Mae and Freddie Mac under the FHFA's temporary conservatorship with the objective of stabilizing the institutions so they could return to their normal business operations. Under the Act, Fannie Mae and Freddie Mac

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

are referred to as the "regulated entities" or"enterprises." [1] FHFA comes to this Court as an independent agency of the United States Government, claiming that this appeal directly affects the interests of Fannie Mae and Freddie Mac. However, as will be shown below, FHFA's claims are based on complete misrepresentations of Fannie Mae and Freddie Mac's long held understanding of the statute involved.

2. Fannie Mae and Freddie Mac Helped Write the UCIOA:

As this Court is well aware, NRS Chapter 116 was enacted in 1991 and is the result of the Nevada Legislature adopting the Uniform Common Interest Ownership Act ("UCIOA"). The UCIOA was drafted by the Uniform Law Commission. The Uniform Law Commission was established in 1892 and provides states with non-partisan and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. Carl H. Lisman has served as a Uniform Law Commissioner since 1976, and has been involved, almost continuously, with the drafting of substantially all of the uniform and model laws relating to condominiums, planned communities and cooperatives, time-shares, partition of real estate, land security and foreclosure. Mr. Lisman was one of the original drafters of the UCIOA in 1982 and chaired the committee that amended the UCIOA in 1994. He was also a member of

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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[1]Throughout its Amicus Brief FHFA refers to Fannie Mae and Freddie Mac as the "Enterprises."

and chaired the drafting committee that produced both the 2008 amendment to the UCIOA and the UCIOA Bill of Rights Act.

In June, 2013, Carl H. Lisman executed an affidavit in the matter of Bayview Loan Servicing, LLC v. Alessi & Koenig, Case No. 2:13-cv-00164-RCJ-NJK in the Federal District Court of Nevada.[2] Mr. Lisman also drafted an opinion letter dated May 29, 2013. Both the affidavit and the letter explain in detail the purpose of the UCIOA and the goals of the commission in providing for the super priority status of a portion of and HOA lien. Mr. Lisman's Affidavit states in pertinent part as follows:

> 15. UCA recognized that the ability of the association to fund itself from assessments required that the association have the ability to protect itself form non-paying owners. It - and the subsequent UPC and 1982 UCIOA - determined that the protection should be in the form of a statutory lien on each unit to secure payment of assessment against the unit or fines against the unit owner.
>
> 16. Having decided that the association ought to have a lien to secure payment, the drafters then proceeded to consider the priority to

---

[2]Like the Certified Question now before the Court, the Bayview decision was issued by Federal Judge Robert C. Jones. In that case, Judge Jones concluded that NRS 116.3116 merely provided for a payment priority upon a bank foreclosure. K & P does not know whether or not Judge Jones gave Mr. Lisman's affidavit due consideration. However, it is clear that Mr. Lisman's opinion was known to the banking industry prior to this Court's decision in SFR. Ultimately, this Court rejected the Bayview interpretation of the statute in favor of the Limbwood, Cape Jasmine, and First 100 view that the statute establishes a true priority lien. *See*, SFR at 412.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

be accorded to the association's lien... If the association's only realistic remedy is foreclosure, the association's lien - for assessments arising after the unit owner's mortgage of deed of trust was recorded in the office of the recorder - would ordinarily be junior to government charges and assessments and the first security interest (and might be subject to prior judgment liens, prior mechanic's and materialmen's liens and homestead, dowrey and curtesy rights).. As a result, a foreclosing association would take subject to the first security interest -- not a practical result -- or, worse, be foreclosed by the holder of the first security interest.,

17. UCA created – and each of UPCA and 1982 UCIOA repeated – a priority rule, not a payment rule. " A lien under this section is prior to all other liens and encumbrances on a unit." Had we intended that the priority be only for payment we would have said so. A payment priority would not serve the goal we were seeking.

19. The association's lien is divided into two parts: One part, sometimes referred to as the "super lien," is ahead of all other interest except real estate taxes and other governmental assessments and charges. It is also superior to "a first security interest on the unit," even if the security interest was recorded before the date on which the assessment sought to be enforced became delinquent. The priority portion of the lien is superior in all respects to the first security interest just as any other superior lien would be. If it were otherwise, the fundamental purpose of the six-month priority would be easily defeated by the presence of a pre-existing security interests, which is precisely what the priority was supposed to correct.

(Attachment 1)

So, how does Mr. Lisman's affidavit show that lenders and Fannie Mae and Freddie Mac were aware of the commissions objectives in drafting the UCIOA? This is explained in Mr. Lisman's expert opinion letter. On May 19, 2013, Carl Lisman provided an opinion letter to the Common Interest Committee of the Nevada State Bar Real Property Section. The letter was sent to attorney Michael E. Buckley, Esq., with the law firm of Fennemore Craig Jones Vargas in Las Vegas (Fennemore

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

Craig is counsel for FHFA here and submitted the Amicus Brief on behalf of FHFA). Mr. Buckley was the Co-Chair of the committee and requested Mr. Lisman's opinion. For the most part Mr. Lisman's opinion contained the same information as does his affidavit, with the exception of one very important and very telling addition. In Mr. Lisman's letter he informs Mr. Buckley that ***it was in fact Fannie Mae and Freddie Mac that proposed the super priority lien in favor of the associations.***

Page 5 of Mr. Lisman's letter states:

> However, if the association's only realistic remedy is foreclosure, the association's lien – for assessments arising after the unit owner's mortgage was recorded in the office of the recorder – would ordinarily be junior to the first security interest. As a result, a foreclosing association would take subject to the first security interest – not a practical result – or, worse, be foreclosed by the holder of the first security interest.
>
> ***It was Fannie Mae and Freddie Mac that proposed a solution that would protect the association and the interests of the holder of the first security interest; Give the association a limited priority ahead of the first security interest*** – UCIOA chose an amount equal to six months of assessment under the annual budget; the Nevada version is nine months. As explained in the Official comments,
>
> > as to prior first security interests the association's lien does have priority for six months' assessment based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes and equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders.
>
> First embodied in the 1976 Uniform Condominium Act, this priority principle has become the law not only in States that enacted one or mor of the Uniform laws and in a half dozen other States by specific legislation.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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

(Attachment 2)

A copy of Mr. Lisman's opinion letter is posted on the Nevada State Bar website at: https://www.nvbar.org/wp-content/uploads/RP_Lisman%20on%20Super%20Priority%20May%202013.pdf.

Beyond this, the fact that the "Enterprises" were aware of the implications of the Statutes prior to this Court's decision in SFR is made abundantly clear in the Servicing Guide and Announcements provided by Fannie Mae to its loan servicers. Fannie Mae provides servicing guides to banks and other financial institutions that service loans. On March 14, 2012, two and a half years *before* SFR, Fannie Mae's servicing guide provided as follows:

> **Section 202, Special Assessments (01/31/03)**
>
> Special assessments may be imposed by special tax, municipal utility, or community facilities districts in some states, **by the HOA of a PUD** or condo project; or by the co-op corporation of a co-op project. The servicer must maintain accurate records on the status of any special assessments that could become a lien against the property. Generally, the borrower will pay special assessments directly, but if he or she fails to do so, the servicer must advance its own funds to pay them if that is necessary to protect the priority of Fannie Mae's lien. In a few instances, deposits to pay special assessments will be collected as part of the mortgage loan payment.
>
> When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days' delinquent in the payment of assessments or

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

charges levied by the association, the servicer should advance the funds to pay the charges if necessary to **protect the priority of Fannie Mae's mortgage lien**. **If the project is located in a state that has adopted** the Uniform Condominium Act (UCA), **the Uniform Common Interest Ownership Act (UCIOA), or a similar statute that provides for up to six months of delinquent regular condo assessments to have lien priority over the mortgage lien**, Fannie Mae will reimburse the servicer for up to six months of such advances.

(Attachment 3, emphasis)

One month later, on April 11, 2012, Fannie Mae issued Servicing Guide Announcement (SVC-2012-05) which reminded servicers of their duty to clear HOA assessment liens. The Announcement stated:

> Currently, Fannie Mae requires servicers to advance funds when the service is notified by an HOA for a PUD or condo project that the borrower is 60 days delinquent in the payment of assessments or charges levied by the association if necessary to protect the priority of Fannie Mae's mortgage lien.
> ...
> For properties located in states providing priority for assessment liens over a previously-recorded mortgage document, servicers must take steps to protect the priority of the mortgage lien.

(Attachment 4)

If the affidavit and opinion letter from Carl Lisman and the above-referenced Servicing Guide Announcements are not convincing enough, K & P HOMES, LLC, asks the Court to examine Fannie Mae's Selling Guide Announcement issued just nine (9) months prior to this Court's decision in SFR, and after a substantial number of the subject properties had been sold at HOA foreclosures. On January 14, 2014, Fannie Mae issued *Selling Guide* Announcement SEL-2014-02, which plainly states

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

that Fannie Mae supports the six month super-priority lien in favor of an HOA. The announcement states:

> Fannie Mae supports maintaining the maximum six-month limited priority lien for common expense assessments (typically knows as homeowner association or HOA fees) that currently applies in most jurisdictions. The six-month period is clear and provides discrete and measurable risk exposure for mortgage lending on units located in condo and PUD projects. The six-month period sufficiently balances the rights and needs of lenders (including mortgage servicers and secondary market investors), HOAs and borrowers.
>
> This policy change will be included in a future version of the Selling Guide, Until that time, the updated version of the applicable Selling Guide topic is as follows:
> **B4-2.1-06, Priority of Common Expenses**
> Fannie Mae allows a limited amount of regular common expense assessments (typically known as homeowner or HOA fees) to have priority over Fannie Mae's mortgage lien for mortgage loans secured by units in a condo project or planned unit development (PUD). This applies if the condo or Pud Project is located in a jurisdiction that has enacted
> - the Uniform Condominium Act
> - the Uniform Common Interest Ownership Act, or
> - a similar statue that provides for unpaid assessment to have priority over first mortgage loans.

(Attachment 5)

Thus, it is painfully obvious that Fannie Mae and Freddie Mac, the "enterprises" for which FHFA speaks, were instrumental in drafting the law that provides for the super-priority lien to have seniority over the deed of trust. It is also equally obvious that Fannie Mae has always supported the existence of the super-priority lien and has, in fact, instructed servicers to take necessary steps to protect its security interests and to 'preserve the priority' of its lien by paying the HOA its

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

super priority assessment. For FHFA to inject itself into this matter by claiming that the "enterprises" did not anticipate or appreciate that their security interest could be at risk or be extinguished by an HOA foreclosure, is done without true candor toward this Court and is simply revisionist history not based on even a scintilla of truth.

3. Market Participants Have Provided for Protection In Their Deeds of Trust and PUD Riders:

FHFA also claims, "had market participants lacking other protection for deed-of-trust extinguishment understood that then existing law allowed an HOA sale to terminate their lien, they likely would have protected themselves contractually when writing their mortgages." This too is as bald faced as it gets. The "market participants" have indeed written protection into their deed of trust. Nearly every deed of trust, including the deed of trust in this case, contains the following or similar language:

> **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 security by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in goof faith by, or defense against

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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 fo 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 fo 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.
(emphasis added)

In addition, nearly every deed of trust securing a loan against a property located in a community governed by an HOA contains a Planned Unit Development Rider or PUD, in this case the PUD provides as follows:

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 fo 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:

PUD Obligations. Borrower shall perform all of Borrowers obligations under the Homeowner Association's Constituent Documents. The "Constituent Documents are the (i) Declaration or any other documents which creates the Association; (ii) by-laws; (iii) code of regulation; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

Remedies. If Borrower does not pay the condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of the 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.

(Attachment 6)

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

Thus, it is disingenuous for FHFA to suggest that "market participants" have not protected themselves contractually. They have. In fact, the Deed of Trust and PUD Rider in this case and just cited is a Fannie Mae form and states so at the bottom of each page! This exhibit was actually produced by the respondent in the lower court https://www.nvbar.org/wp-content/uploads/RP_Lisman%20on%20Super%20Priority%20May%202013.pdfin support of its motion to dismiss.

Finally, a bank's failure to protect its own interests and the purported interests of the "enterprises" should not be transformed into the deprivation of a purchaser's rights under the guise of federal preemption. Federal preemption is not the issue being litigated in the underlying case nor the very narrow question certified to this court. Those important issues deserve to be presented in the appropriate fashion and not ham handedly interjected into this limited discussion.

When all the foregoing is taken into consideration, the conclusion that "the practice in the real estate industry prior to the announcement of Nevada Supreme Court's controversial decision was to treat such sales as not extinguishing first mortgages" lacks any credible evidentiary support and cannot be justified.

II. CONCLUSION:

Based on all the foregoing, it is clear that this Court's decision in SFR was intended to apply both prospectively and retrospectively. The SFR decision merely

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

interpreted a statute that was enacted in 1991. The fact that lenders now claim that they interpreted the statute in a manner that was ultimately proven wrong does not constitute a basis for only a prospective application.

DATED this 11th day of August, 2016.

/s/ John Henry Wright
JOHN HENRY WRIGHT
Nevada Bar No. 6182

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32 (a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirement of NRAP 32(a)(6) because this brief has been prepared in proportionately spaced typeface using WordPerfect X6 in 14 point and Times New Roman.

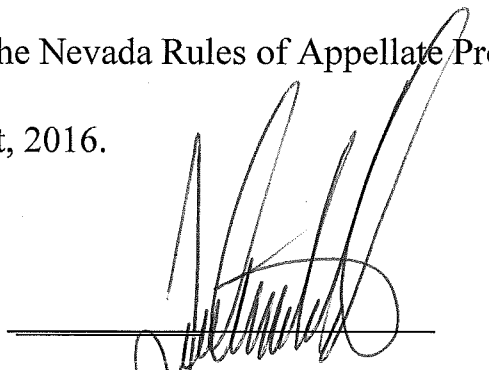
2. I further certify that this brief complies with the page- or typed-volume limitations of NRAP 32(a)(7) because excluding the parts of the brief that are exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,849 words.

3. Finally, I hereby certify that I have read this appellate reply brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 11th day of August, 2016.



JOHN HENRY WRIGHT
Nevada Bar No. 6182
THE WRIGHT LAW GROUP
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8485
Attorney for the Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BAYVIEW LOAN SERVICING, LLC	)	
Plaintiff	)	
	)	
v.	)	**2:13-cv-00164-RCJ-NJK**
	)	
ALESSI & KOENIG, LLC et al.	)	

AFFIDAVIT

I, Carl H. Lisman, being first duly sworn, do hereby swear under penalty of perjury as follows:

My Experience and Background

1. I am a lawyer admitted to practice in the State of New York in 1970 and in the State of Vermont in 1971; my New York status is inactive and my Vermont status is active.

2. ***Uniform Law Commissioner.*** I have served as a Uniform Law Commissioner without interruption since 1976. I have been involved, almost continuously, in the drafting of substantially all of the uniform and model laws relating to condominiums, planned communities and cooperatives, time-shares, partition of real estate, land security interests and foreclosure. The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws or the "ULC") was established in 1892. It provides States with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

3. My initial involvement in common interest ownership law was as a member of the ULC's 1976 review committee on the Uniform Condominium Act ("UCA"). Thereafter, I was a

member of the drafting committees that produced the 1980 Uniform Planned Community Act ("UPCA") and the 1982 Uniform Common Interest Ownership Act ("1982 UCIOA"). I was a member of and chaired the committee that amended the Uniform Common Interest Ownership Act in 1994 ("1994 UCIOA").

4. I was a member of and chaired the drafting committee that produced both the 2008 amended Uniform Common Interest Ownership Act ("2008 UCIOA") and the Uniform Common Interest Owners Bill of Rights Act.

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

6. I have been on the faculty of numerous courses and classes for lawyers and others involved in real estate, including chairing the American Law Institute-American Bar Association's annual course on condominium, planned community and mixed use projects (since 1990) as well as serving on the faculty of the ALI-ABA annual course on resort real estate (since 1990). In those courses, I emphasize the benefits and burdens of the Uniform Laws for developers and their lenders; lenders to unit owners and associations; merchant builders; unit purchasers and sellers; associations; and managers.

7. ***Speaker.*** I've addressed legislative committees in a number of States (including California, Maryland and North Carolina) on the subject of the real property Uniform Laws as well as been an invited speaker at symposia and similar events.

8. ***Peer Organizations.*** I have been a member of and chaired the Common Interest Committee of the American College of Real Estate Lawyers and the Condominium and Planned Community Committee of the ABA Real Property Section.

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

UCIOA and NUCIOA

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

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

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

11. UCIOA was, as promulgated in 1982 and, as amended and revised thereafter is,

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[1] The ULC has subsequently amended 1982 UCIOA: First, in 1994, to address minor changes and, second, in 2008, to significantly revise Part 3 to expand governance rights for owners and increase transparency of board actions, as well as other changes throughout the rest of the Act. Those changes do not affect my opinions.

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

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

divided into five parts:

- Article 1 contains definitions and general provisions.
- Article 2 provides for the creation, alteration and termination of common interest communities.
- Article 3 concerns the administration of the community association.
- Article 4 deals with consumer protection for purchasers.
- Article 5 is an optional Article which establishes an administrative agency to supervise developers' activities.

12. Nevada enacted NUCIOA in 1991. At that time, Nevada adopted, with variations not relevant in this Affidavit, 1982 UCIOA's Section 3-116. The Nevada version is NRS 116.3116.

13. Roughly half the States have enacted one or more of the Uniform Condominium Act, the Uniform Planned Community Act or one of the iterations of UCIOA.[3]

Priorities

14. The first of the uniform laws addressing common interest communities was the Uniform Condominium Act. It was initially designed to deal with a wide range of issues including flexibility for developers, abuses by developers, the need to protect developer lenders

---

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

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

Uniform Planned Community Act: Pennsylvania.

Uniform Common Interest Owners Bill of Rights: Kansas.

after developer failure, separating title documentation from purchaser disclosure, appropriate disclosure for purchasers, and the powers and responsibilities of the association.[4]

15. UCA recognized that the ability of the association to fund itself from assessments required that the association have the ability to protect itself from non-paying owners.[5] It – and the subsequent UPC and 1982 UCIOA – determined that the protection should be in the form of a statutory lien[6] on each unit to secure payment of assessments against the unit or fines against

---

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

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

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

[5] The role of the association is critical to the success or failure of the great majority of common interest communities. In that regard, one of the most important conclusions that was reached addressed the need of the association to be properly funded.

Most common interest associations raise funds for their operations by assessing their members; some associations have amenities or other assets that generate income from third parties, but they are few in comparison. Similarly, most associations begin their budgeting process by identifying their expenses and then match up total expenses with assessment revenue. The consequence of this process is that if a single unit owner fails to pay her assessment obligations, the association is forced to cut back its expenses in the same amount – to the end that not all budgeted services can be provided.

In this respect, the association is similar to a involuntary creditor; it is required by statute and its governing documents to provide services even to owners who do not pay their assessments.

[6] UCA § 3-116(a), 1982 UCIOA § 3-116(a) and NUCIOA § 116.3116(a) each provide that the association "has a lien...." 1994 UCIOA amended this subsection to add "statutory" (The association has a statutory lien....") in order to ensure that the association's rights in bankruptcy are protected.

the unit owner.[7] The mere existence of the lien was believed to be sufficient leverage to ensure the association's ability to collect and, if not so, then the association was given the statutory authority to foreclose its lien in the same manner as a security interest.

16. Having decided that the association ought to have a lien to secure payment, the drafters then proceeded to consider the priority to be accorded to the association's lien. There are, generally speaking, five categories of potentially competing liens: Governmental charges and assessments; mortgages and deeds of trust; judgment liens; mechanic's and materialmen's liens; and homestead rights, dower and curtesy rights. These interests are inherently different:

- Governmental charges and assessments include municipal real estate taxes and special assessments; federal tax liens; and state and municipal income tax liens.
- Statutes and judicial decisions differentiate among purchase money mortgages and mortgages that are not purchase money mortgages.
- Judgment liens can arise against individual units or the association.
- Mechanics and materialmen can have claims against the declarant, the association or a unit owner.
- The laws of the States vary significantly relating to homestead rights, dower and curtesy.

If the association's only realistic remedy is foreclosure,[8] the association's lien – for

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[7] Fees, charges, late charges, fines and interest are included in "assessment" for purposes of the lien. 2008 UCIOA added reasonable attorney's fees and other sums due the association under the declaration or as a result of an administrative, arbitration, mediation or judicial decision.

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

assessments arising after the unit owner's mortgage or deed of trust was recorded in the office of the recorder – would ordinarily be junior to governmental charges and assessments and the first security interest (and might be subject to prior judgment liens, prior mechanic's and materialmen's liens and homestead, dower and curtesy rights). As a result, a foreclosing association would take subject to the first security interest – not a practical result – or, worse, be foreclosed by the holder of the first security interest.

17. UCA created – and each of UPCA and 1982 UCIOA repeated – a priority rule, not a payment rule: "A lien under this section is prior to all other liens and encumbrances on a unit." UCA §3-116(b), UPCA § 3-116(b), UCIOA § 3-116(b), NUCIOA § 116.3116(2). Had we intended that the priority be only for payment, we would have said so.[9] A payment priority would not serve the goal we were seeking.[10]

18. This priority principle has become the law not only in States that enacted one or more of the Uniform Laws but in a half dozen other States by specific legislation.

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[9] As explained in the Official Comments,

> "To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens. ... [A]s to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders."

Indeed, until recently I had never heard of a "payment priority" as different from a priority rule

[10] Similarly, 1982 UCIOA § 1-104 (and NUCIOA 116.1104) prohibit a declaration provision that varies the term of the priority rule. Although there are some sections in both laws that allow the drafter of a declaration or bylaws to change a default rule, neither 1982 UCIOA Section 3-116 nor NUCIOA 116.3116 permits a declaration to "undo" the priority rule by, for example, eliminating it or subordinating it. The sections for which variation is permitted are listed in Official Comment 4 to UCIOA. (Both do allow the declaration to provide that fines, late charges and other fees are not treated as assessments.)

19. The association's lien is divided into two parts: One part, sometimes referred to as the "super lien," is ahead of all other interests except real estate taxes and other governmental assessments and charges. It is also superior to "a first security interest on the unit," even if the security interest was recorded before the date on which the assessment sought to be enforced became delinquent. 1982 UCIOA § 3-116(b), NUCIOA § 116.3116(2)(b). The priority portion of the lien is superior in all respects to the first security interest, just as any other superior lien would be. If it were otherwise, the fundamental purpose of the six-month priority would be easily defeated by the presence of a pre-existing security interest, which is precisely what the priority was supposed to correct. In most instances, the association's lien – being so much smaller in amount than the mortgage indebtedness – would never be, as a practical matter, collectible.

Under the Uniform Laws, the calculus of the priority is equal to not more than six months of regular assessments but, upon computation of that amount, the priority amount can be a combination of regular and special assessments, fees, charges, late charges, fines and interest. UCIOA § 3-116(a). In Nevada, the priority calculus is for nine months of regular assessments. NUCIOA § 116.3116(1).[11]

The other part is junior to the first security interest but ahead of other mortgages, deeds of

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[11] A lender faced with the association's limited priority could be expected to protect its collateral by requiring its borrowers to escrow for association assessments in the same manner as lenders have long required escrow for property taxes and casualty insurance. I am not aware that there are any studies on this subject, but anecdotal evidences strongly suggests that lender rarely – if ever – require a borrower to escrow for association assessments.

trust and encumbrances not recorded before the recording of the declaration.[12]

20. The amount to which the association is entitled under its priority position is the assessment "amount which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien," UCIOA § 3-116(b),[13] or, in Nevada, nine months (NUCIOA § 116.3116(2)). The decision to use "institution of an action" (rather than "commencement of an action") was deliberate in order to ensure that the triggering event not is not limited to the initiation of a judicial action. "Action" means just that: something done. In jurisdictions that employ nonjudicial foreclosure, the action is typically recording a notice of default and giving appropriate notice to interested persons of the date, time and place of the sale.

Foreclosure

21. The association lien is foreclosed, on a unit in a condominium or planned community, in the same manner that a mortgage or deed of trust is foreclosed.[14] Nevada enacted NUCIOA § 116.31162 instead of 1982 UCIOA Section 3-116(j); it left in place

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[12] The association prior position does not affect the priority of mechanic's or materialmen's liens. UCIOA § 3-116(b); NUCIOA § 116.3116(2). UCIOA contains an optional provision confirming that the association's lien is not subject to homestead, dower and curtesy laws; Nevada did not adopt that provision.

[13] The first sentence of 1982 UCIOA is as follows: "The association has a lien on a unit for any assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due." That sentence was amended in 1994 to delete "from the time the assessment or fine becomes due" because it appeared to cause confusion with respect to priority issues. The statutory intention was, 1982 and now, that the association's lien is the functional equivalent of real estate taxes (except for the special priority rules set out in subsection (b)). The lien arises by virtue of the statute.

[14] The association's lien is foreclosed "in like manner as a mortgage on real estate." UCA § 3-116(a), UPCA § 3-116(a). 1982 UCIOA re-ordered Section 3-116 but did not change the substance; subsection (j) provides: "The association's lien may be foreclosed as provided in this subsection: (1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate [or power of sale under [insert appropriate state statute] [or by power of sale under subsection (k)]. Subsequent revisions to UCIOA did not change this.

the provisions relating to non-real estate cooperatives and moved the process rules for foreclosure of units in a condominium, planned community or real estate cooperative to Section 31162. This change nonetheless preserves the association's right to foreclose by sale – the same manner by which a mortgage or deed of trust is foreclosed.[15]

22. The statutory priority of the association's lien is not limited to a first claim against the proceeds from the foreclosure sale (up to the priority calculus). It also puts the association ahead of the first security interest – and that means that foreclosure by the association extinguishes the first security interest and all junior interests.[16]

23. That result naturally follows from the customary rule regarding priority of interests in real estate.[17] A foreclosure sale of the association's lien is governed by the same principles generally applicable to lien foreclosure sales, so that foreclosure of a lien entitled to

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[15] I am not admitted to practice in the State of Nevada. In my review of NCUIOA §§ 116.31162 - 31164, I concluded that these provisions have been tailored to deal with units in common interest communities, but the rules embodied in these sections are very similar to process rules in foreclosure of mortgages and deeds of trust.

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

[17] The Restatement of Property (Mortgages) (1996) states the general rule, in the context of mortgage foreclosure, this way in the Introductory Note to Chapter 7: "[A] valid foreclosure of a senior lien terminates not only the owner's equity of redemption, but all junior interests whose holders are joined as well." Section 7.1 repeats this principle: A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified under applicable law." By substituting "association lien" for "mortgage," the rule in NUCIOA 116.3116 is clearly understood.

Comment a. to Section 7.1 reaffirms this conclusion: "It is a fundamental principle of mortgage law that a valid judicial foreclosure of a senior mortgage terminates not only the owner's title and equitable redemption rights, but also all other junior interests whose holders were made parties defendant. A power of sale (nonjudicial) foreclosure that complies with applicable statutory notice and related requirements accomplishes the same results. Thus, a purchaser at a foreclosure sale not only acquires the previous owner's interests in the real estate, but a title free and clear of all other properly joined interests that were junior to the foreclosed lien. ... It is equally axiomatic that the title deriving from a foreclosure sale, whether judicial or by power of sale, will be subject to all mortgages and other interests that are senior to the mortgage being foreclosed."

priority extinguishes that lien and all subordinate liens. The liens attach to the proceeds of the sale and are paid out accordingly.

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

Conclusion

24. NUCIOA follows the principles in UCIOA:

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

- Because of this statutory priority, foreclosure by the association extinguishes a first security interest and all other junior interests whether foreclosure is judicial or nonjudicial.

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

Dated: June 17, 2013.

Carl H. Lisman

Subscribed and sworn to in my presence this 17 day of June, 2013.

Deborah L. Abrams
Notary Public

26961\002

EXHIBIT 2

LISMAN LECKERLING, P.C.
Attorneys at Law

Carl H.Lisman
Direct dial: 802 865-2500 ext. 225
E-mail: clisman@lisman.com

May 29, 2013

Michael E. Buckley, Esq., Co-Chair
Common-Interest Committee
Nevada State Bar Real Property Section
Fennemore Craig Jones Vargas
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101

Karen D. Dennison, Esq., Co-Chair
Common-Interest Committee
Nevada State Bar Real Property Section
Holland & Hart LLP
5441 Kietzke Lane, 2nd Floor
Reno, Nevada 89511

Ladies and Gentlemen:

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

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

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

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

My Experience and Background

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

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

Priorities

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

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

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

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

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

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

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

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

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

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

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

Foreclosure

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

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

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

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

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

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

Conclusion

The NUCIOA follows the principles in UCIOA:

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

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

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

Sincerely,

Carl H. Lisman

26961\001

EXHIBIT 3

FannieMae

Fannie Mae Single Family 2012 Servicing Guide

March 14, 2012

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

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

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

The servicer must maintain accurate records on the status of real estate taxes and ground rents. The servicer of a ***first-lien mortgage loan*** usually accomplishes this by paying the bills itself using funds in the borrower's escrow deposit account. When the servicer has waived the escrow deposit account for a specific borrower, it still remains responsible for the timely payment of taxes and ground rents. Therefore, if the borrower fails to pay the taxes or ground rents, the servicer must advance its own funds to pay them, revoke the waiver, and begin escrow deposit collections to pay future bills. (Also see *Section 103.01, Waiver of Escrow Deposits (10/29/10).*)

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

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

The servicer should use the funds in the borrower's escrow deposit account to pay taxes and other related charges before any penalty date. Whenever funds are available, the servicer must pay these expenses early enough to take advantage of the maximum discounts allowed. If the deposit account balance is not sufficient to pay those obligations, the servicer should notify the borrower and then advance its own funds. The borrower may be billed for the amount the servicer advanced if (and in the manner) permitted by the mortgage loan documents, applicable law, and government regulations. If a penalty is incurred for late payments of taxes—and the borrower was a factor in delaying the payment—the servicer may bill the borrower for the penalty. Otherwise, the servicer must pay the penalty from its own funds. In such cases, Fannie Mae will reimburse the servicer for any funds it has to advance (including those for late charges and tax penalties). (Also see *Part VIII, Section 110.01, Delinquent Tax Late Charges or Penalties (01/31/03).*)

Section 202 Special Assessments (01/31/03)

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

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

EXHIBIT 4

Servicing Guide Announcement SVC-2012-05

April 11, 2012

Payment of Homeowners' Association Dues and Condo Assessments

Fannie Mae requires servicers to protect the priority of the mortgage lien and to clear all liens for delinquent homeowners' association (HOA) dues and condo assessments on properties acquired through foreclosure or deed-in-lieu of foreclosure.

Servicers must follow the policies outlined herein for all conventional mortgage loans held in Fannie Mae's portfolio, those purchased for Fannie Mae's portfolio but subsequently securitized into MBS pools (known as Pooled from Portfolio or PFP mortgage loans), those originally delivered as part of an MBS pool that have either a special or regular servicing option or a shared-risk MBS pool for which Fannie Mae or the servicer markets the acquired property, or other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement.

Effective Date

Unless otherwise indicated, all policy changes specified in this Announcement are effective July 1, 2012; however, Fannie Mae encourages servicers to implement them as soon as possible. All other requirements provided in the associated sections of the *Servicing Guide* remain unchanged.

Property Assessments

Servicing Guide, Part III, Section 202: Special Assessments

Currently, Fannie Mae requires servicers to advance funds when the servicer is notified by an HOA for a PUD or condo project that the borrower is 60 days delinquent in the payment of assessments or charges levied by the association if necessary to protect the priority of Fannie Mae's mortgage lien. Fannie Mae provides for reimbursement to the servicer for up to six months of such advances in certain states.

In addition, Fannie Mae currently requires servicers to ensure any priority liens for delinquent HOA dues and assessments on acquired properties are cleared immediately, but no later than 30 days, after the foreclosure sale or acceptance of a deed-in-lieu of foreclosure.

For properties located in states providing priority for assessment liens over a previously-recorded mortgage document, servicers must take steps to protect the priority of the mortgage lien. When pursuing foreclosure, the servicer must determine the amount to be paid in order to clear the association's claim of lien and preserve the priority of the mortgage lien. The amount is generally the lowest of:

- the actual delinquent assessment balance and allowed costs,
- the maximum amount due from the foreclosing first mortgage entity based on the provisions in the project's declaration, or
- the maximum amount due from a foreclosing first mortgage entity under the relevant state statute.

The servicer must pay that amount immediately following, but no later than 30 days after, the foreclosure sale date or acceptance of a deed-in-lieu of foreclosure. Clearing the priority lien within this time frame will ensure that Fannie Mae's lien position is preserved and costly delays are avoided when selling the property.

If an association refuses to release its claim of lien against a property for the amount determined to be the obligated amount after reasonable efforts to reach agreement, the servicer or its foreclosure attorney must contact the Fannie Mae legal department at nonroutine_litigation@fanniemae.com to seek further guidance.

Revision of Reimbursable Limits

Servicing Guide, Part III, Section 202: Special Assessments and Part VIII, Section 110: Expenses During Foreclosure Process

Fannie Mae is revising the reimbursement policy to servicers to align with the amount the servicer must pay to protect Fannie Mae's mortgage lien position and ensure acquired properties are clear of any liens for HOA dues and assessments. After completion of the foreclosure sale or acceptance of the deed in lieu of foreclosure, Fannie Mae will reimburse the servicer for the advances made up to the lowest of:

- the actual advances paid,
- the maximum limit provided in the project declaration, or
- the state statutory maximums.

Servicer Responsibility on Acquired Properties

Servicing Guide, Part VIII, Section 302.01: Servicer's Responsibilities

Servicers are reminded of their responsibility to continue advancing funds to pay for HOA dues and property taxes as they come due following a foreclosure sale as required under applicable state law. A servicer must also perform the following property management duties until notified by Fannie Mae that the property has been sold and that the final settlement has occurred:

- Request that the tax rolls be changed to reflect Fannie Mae's ownership of the property (specifying that the tax bills should continue to be directed to the servicer), and pay the appropriate taxes and assessments as they come due; and
- Contact the management company if the acquired property was part of a condominium, PUD, or cooperative project to ensure that all future bills for homeowners' association (or cooperative corporation) assessments or fees are sent to the servicer, and pay the bills as they come due.

Noncompliance

Servicing Guide, Part I, Section 201.10.02: Alternatives to Contract Termination

Fannie Mae reminds servicers that it may pursue any of its available remedies, which may include, but are not limited to, repurchase, "make whole," or indemnification for failure to comply with Fannie Mae's policies regarding delinquent homeowners' association dues and assessments.

*****

Servicers should contact their Servicing Consultant, Portfolio Manager or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans
Vice President
Chief Risk Officer for Credit Portfolio Management

EXHIBIT 5

Selling Guide Announcement SEL-2014-02

January 14, 2014

Priority of Common Expense Assessments

Fannie Mae is revising its policy concerning priority of common expense assessments for mortgages secured by units in condo and planned unit development (PUD) projects to permit no more than six months of regular common expense assessments to have priority over Fannie Mae's mortgage lien. This policy change does not apply to projects located in a jurisdiction that enacted a law on or before January 14, 2014 that provides for such lien priority for a period greater than six months (for example, Connecticut and Florida). If applicable state law allows for greater than six months of lien priority for assessments, but provides an exception for Fannie Mae's requirements, then the six-month maximum applies (such as Nevada).

Fannie Mae supports maintaining the maximum six-month limited priority lien for common expense assessments (typically known as homeowner association or HOA fees) that currently applies in most jurisdictions. The six-month period is clear and provides discrete and measureable risk exposure for mortgage lending on units located in condo and PUD projects. The six-month period sufficiently balances the rights and needs of lenders (including mortgage servicers and secondary market investors), HOAs, and borrowers.

This policy change will be included in a future version of the *Selling Guide.* Until that time, the updated version of the applicable *Selling Guide* topic is as follows:

B4-2.1-06, Priority of Common Expenses

Fannie Mae allows a limited amount of regular common expense assessments (typically known as homeowner association or HOA fees) to have priority over Fannie Mae's mortgage lien for mortgage loans secured by units in a condo project or planned unit development (PUD). This applies if the condo or PUD project is located in a jurisdiction that has enacted

- the Uniform Condominium Act,
- the Uniform Common Interest Ownership Act, or
- a similar statute that provides for unpaid assessments to have priority over first mortgage liens.

The table below describes the permitted priority of common expense assessments for purposes of determining eligibility of a mortgage loan secured by a unit in a condo or PUD project for purchase by Fannie Mae.

If ...	Then ...
The condo or PUD project is located in a jurisdiction that enacted a law on or before January 14, 2014, that provides that regular common expense assessments will have priority over Fannie Mae's mortgage lien for a maximum amount greater than six months,	The maximum number of months of regular common expense assessments permitted under the applicable jurisdiction's law as of January 14, 2014, may have priority over Fannie Mae's mortgage lien, provided that if the applicable jurisdiction's law as of that date referenced an exception for Fannie Mae's requirements, then no more than six months of regular common expense assessments may have priority over Fannie Mae's mortgage lien.

If ...	Then ...
The condo or PUD project is located in any other jurisdiction,	No more than six months of regular common expense assessments may have priority over Fannie Mae's mortgage lien, even if applicable law provides for a longer priority period.

Notwithstanding any provisions to the contrary in the Guide, which do not require the lender to represent or warrant compliance with Fannie Mae project legal document requirements, the condo or PUD project legal documents must evidence compliance with the above requirements.

Effective Date

This change is effective for all mortgage applications dated after January 14, 2014.

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Lenders who have questions about this Announcement should contact their Account Team.

Carlos T. Perez
Vice President
Chief Credit Officer for Single-Family

EXHIBIT 6

19

20070725-0005226

Fee: $32.00
N/C Fee: $0.00

07/25/2007 15:30:56
T20070134056
Requestor:
NORTH AMERICAN TITLE COMPANY

Debbie Conway CDO
Clark County Recorder Pgs: 19

Assessor's Parcel Number:
~~TBD~~ 176 27 312 159
Return To:
Universal American Mortgage Company, LLC
Secondary Marketing Ops
311 Park Place Blvd, Suite 500
Clearwater, FL 33759-3999

Prepared By: Laqucia Woods
Universal American Mortgage Company, LLC
1725 West Green Tree Drive
TEMPE, ARIZONA 85284

~~Recording Requested By:~~
Laqucia Woods
Universal American Mortgage Company, LLC
1725 West Green Tree Drive
TEMPE, ARIZONA 85284

77

4560207 10250 [Space Above This Line For Recording Data]

A2699

DEED OF TRUST

MIN 100059600055838515

Loan # 0005583851

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated July 03, 2007, together with all Riders to this document.

(B) "Borrower" is RITA WIEGAND, AN UNMARRIED WOMAN

Borrower is the trustor under this Security Instrument.

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

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

20070725-0005226

Fee: $32.00
N/C Fee: $0.00
07/25/2007 15:30:56
T20070134056
Requestor:
NORTH AMERICAN TITLE COMPANY
Debbie Conway CDO
Clark County Recorder Pgs: 19

19

Assessor's Parcel Number:
~~TBD~~ 176 27 312 159
Return To:
Universal American Mortgage Company, LLC
Secondary Marketing Ops
311 Park Place Blvd, Suite 500
Clearwater, FL 33759-3999

Prepared By: Laqucia Woods
Universal American Mortgage Company, LLC
1725 West Green Tree Drive
TEMPE, ARIZONA 85284

~~Recording Requested By:~~
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Universal American Mortgage Company, LLC
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TEMPE, ARIZONA 85284

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4560207 10250 [Space Above This Line For Recording Data]

A2699

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Borrower is the trustor under this Security Instrument.

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

Loan # 0005583851 A2699

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

(D) "Trustee" is Stewart Title Company

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

(F) "Note" means the promissory note signed by Borrower and dated July 03, 2007

The Note states that Borrower owes Lender Two Hundred Eighty Four Thousand Two Hundred and 00/100 Dollars (U.S. $ 284,200.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 01, 2037

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

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

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

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

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

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

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

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

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

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

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

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

Initials: RCW

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

PLEASE SEE ATTACHED LEGAL DESCRIPTION

RW
INITIAL

Parcel ID Number: ~~TBD~~ 176 27-312-159 which currently has the address of
7461 GLIMMERING SUN AVENUE [Street]
LAS VEGAS [City], Nevada **89178** [Zip Code]
("Property Address"):

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

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

Initials: RW

Loan # 0005583851 A2699

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

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

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

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

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

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

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

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

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

Initials: RW

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

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

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

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

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

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

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

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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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials: RW

Loan # 0005583851 A2699

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:

_____

Rita Wiegand (Seal)
RITA WIEGAND -Borrower

_____

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Loan # 0005583851 A2699

STATE OF NEVADA Minnesota
COUNTY OF Ramsey

This instrument was acknowledged before me on July 17, 2007 by RITA WIEGAND

DELLA Y. CHATHAM
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2008

1-31-08

Della Y Chatham

Mail Tax Statements To:

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

Initials: R.W.

Loan # 0005583851 3150/FNMA

PLANNED UNIT DEVELOPMENT RIDER

MIN # 100059600055838515

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 3rd day of July, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Universal American Mortgage Company, LLC , a Florida limited liability company

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 7461 GLIMMERING SUN AVENUE, LAS VEGAS, NEVADA 89178

[Property Address]

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

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

[Name of Planned Unit Development]

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

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

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

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

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

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

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

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

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

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

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

Initials: R.W

Loan # 0005583851 3150/FNMA

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

Rita Wiegand (Seal) -Borrower
RITA WIEGAND

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

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EXHIBIT "A"

PARCEL ONE (1):

LOT TWO HUNDRED TWENTY-SIX (226) OF FINAL MAP OF MOUNTAINS EDGE POD 211 (A COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 131 OF PLATS, PAGE 17, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE COMMON ELEMENTS AS DELINEATED ON SAID MAP REFERRED TO ABOVE AND FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCALANTE, RECORDED NOVEMBER 22, 2006 IN BOOK 20061122 AS DOCUMENT NO. 748 OF OFFICIAL RECORDS.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE COMMON ELEMENTS AS DELINEATED ON SAID MAP REFERRED TO ABOVE AND FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCALANTE, RECORDED NOVEMBER 22, 2006 IN BOOK 20061122 AS DOCUMENT NO. 748 OF OFFICIAL RECORDS.