**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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| CARRINGTON HOLDINGS, LLC,<br>Appellant,<br>vs.<br>R VENTURES VIII, LLC, a Nevada series limited liability company of the container R VENTURES, LLC under NRS § 86.296;<br>Respondent. | Case No.: 70545<br>District Court:<br>**A-13-684151-C** |



**APPEAL**

**From the Eighth Judicial District Court**

**The Honorable Valerie Adair**

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# RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF

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## NRAP 26.1 Disclosure Statement

The undersigned counsel of record certifies the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the Justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case:

- R Ventures VIII, LLC, a series of R Ventures, LLC;
- R Ventures, LLC, a Nevada limited liability company;
- Villamartin De Don Sancho Trust Dated January 1, 2013; and,
- CJLD, LLC, a Nevada limited liability company.

There are no other known interested parties.

Cooper Coons, Ltd. has represented R Ventures VIII, LLC in this matter since its inception.

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## Introduction

This appeal arises out of a counter motion for summary judgment where R Ventures VIII, LLC was ultimately granted summary judgment in a quiet title action. R Ventures VIII, LLC purchased the property at issue at an HOA foreclosure sale pursuant to NRS 116. This appeal followed alleging the lower court erred because NRS 116 is unconstitutional and the sale was commercially unreasonable as a matter of law or otherwise legally deficient.

## Summary of the Argument

Carrington Mortgage claims six errors made by the lower court. First, Carrington Mortgage claims the lower court erred because the statute does not mandate notice to a recorded lienholder and is therefore unconstitutional. Second, Carrington Mortgage claims an offer of payment extinguished the super-priority portion of the HOA lien prior to the foreclosure sale. Third, Carrington Mortgage claims a private agreement impermissibly split the HOA lien. Fourth, Carrington Mortgage claims federal law preempts NRS 116. Fifth, Carrington Mortgage claims reliance on conclusive presumptions established by statute is impermissible. Finally, Carrington Mortgage claims the sale was commercially unreasonable. Each of these arguments will be discussed in turn.

This Court must reject Carrington Mortgage's claim the statute is facially unconstitutional. First, this Court has already upheld an as-applied challenge to NRS 116 in *SFR*. Next, the language of the statute incorporates mandatory notice provisions in NRS 107.090 as well as requires notice to all lienholders of record through NRS 116.31163(2).

This Court must reject Carrington Mortgage claim that an offer of payment extinguished the super-priority portion of the HOA lien prior to the foreclosure sale. The attempted payment included an impermissible condition that would extinguish the remainder of the HOA lien. When the attempted payment was rejected, Carrington Mortgage did nothing to protect its interest. Additionally, as a bona fide purchaser for value, any defect in the title cannot be imputed to R Ventures VIII.

This Court must reject Carrington Mortgage's claim that a private agreement impermissibly split the HOA lien. First, the text and purpose of the agreement clearly state the HOA retained the right to foreclose and did not split the lien. Second, this agreement is explicitly permitted in the HOA's CC&Rs. Finally, a lien splitting prohibition is applicable only in the context of the Foreclosure Mediation Program.

This Court must reject Carrington Mortgage's claim that federal law preempts NRS 116. The applicable federal agency has only an insurance interest

insufficient to impute federal preemption. Alternatively, the applicable federal regulations and guidance explicitly require a mortgagee to pay HOA assessments.

This Court must reject Carrington Mortgage's claim that reliance on conclusive presumptions established by statute is impermissible. Even if these conclusive presumptions are rejected, Carrington Mortgage never disputed the evidence establishing compliance with NRS 116 rendering this argument moot.

Finally, this Court must reject Carrington Mortgage's claim the HOA foreclosure sale was commercially unreasonable. Carrington Mortgage relies exclusively on the purchase price at the HOA foreclosure sale; however, black letter law clearly indicates Carrington Mortgage must have produced some evidence of impropriety in the sale that contributed to this low purchase price. Because Carrington Mortgage failed to present any evidence, the lower court's ruling must stand.

## Argument

### I. As Applied Analysis Proscribes Facial Challenge.

The Nevada Supreme Court recently upheld an as-applied challenge to the constitutionality of NRS 116. *SFR Investments Pool 1, LLC v U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014). A facial challenge requires a finding all applications of a statute will be unconstitutional based upon the text of the statute.

The Nevada Supreme Court has held at least one application of the statute is

constitutional. *Id*. First, the Court credited the allegations in the Plaintiff's Complaint as true, most pertinently that the plaintiff had complied with all notice requirements. *Id*. Second, the Court concluded "U.S. Bank's due process challenge to the lack of adequate notice fails, at least at this early stage in the proceeding." *Id* at 22. Consequently, the Court left open the factual challenge of notice; however, clearly indicated that if the notice requirements were followed, the due process challenge will fail. Thus, one application of the statute is valid. Logically, if one application of the statute is constitutional, all applications of the statute cannot be unconstitutional.

## II. NRS 116 Requires Notice to Be Given to A Record Interest Holder.

Even ignoring NRS 116.31168(1)'s incorporation of the mandatory notice provisions in NRS 107.090 that require copies of the notice of default and notice of sale to be mailed to "[e]ach other person with an interest who interest or claimed interest is subordinate…" to the association's lien, NRS 116 provides an additional requirement to notify recorded interest holders.

NRS 116.31163(2) explicitly provides for notice to "any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the

existence of the security interest." When read in conjunction with NRS 111.320 which states:

> **Filing of conveyances or other instruments is notice to all persons: Effect on subsequent purchasers and mortgagees.**
> Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this chapter or in NRS 105.010 to 105.080, inclusive, must from the time of filing the same with the Secretary of State or recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

A foreclosing party must impart the notice to the security interest provided for in NRS 116.31163(2). The statute plainly states all persons receive notice when a document is recorded. Here, Carrington Mortgage's predecessors in interest provided notice to Southern Terrace HOA of its interest by recording the assignment of deed of trust on October 6, 2011. Thus, Southern Terrace HOA was required to give notice to Carrington Mortgage.

NRS 116.31165(1)(b)(2) also incorporates this language by requiring mailing a copy of the notice of sale to be sent to "the holder of a recorded security interest of the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of the sale, of the existence of the security interest, lease, or contract of sale." Here, Southern Terrace HOA is necessarily put on notice via the recordation of the prior deed of trust pursuant to NRS 111.320.

Consequently, Southern Terrace HOA must have provided the notice of sale to Carrington Mortgage. Notably, Carrington Mortgage did not meaningfully dispute receipt of notice but merely its sufficiency as notice of the super priority amount. JA at 257-59.

## III. Offer of Payment Was Insufficient to Set Aside the Sale.

### a. Offer to Pay Was Conditional.

A tender must be an unconditional offer. *Black's Law Dictionary* pg. 1479 (7th ed. 1999). However, in the letter dated January 10, 2013, the alleged tender was considered to be:

> …a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on you part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 6175 Novelty Street have now been "**paid in full**." (emphasis added). JA at 435.

Merely calling it a tender does not make it so. The condition attached to this payment was a full satisfaction of the debt, both the super-priority and the sub-priority portions of the HOA lien. Under no circumstances could this be considered an unconditional offer. While the junior portion of the HOA lien may lose its secured interest in the Property after a foreclosure sale by a superior interest, it exists as a debt and cannot be demanded to be abandoned. If the Property was foreclosed by the lender, the excess proceeds, if any, would need to be distributed

down the priority of existing liens. Thus, Bank of America had no right to demand the HOA extinguish this interest.

Carrington Mortgage cites to two contract cases to support its contention a tender is completed upon a mere offer. However, a closer examination of both cases shows this interpretation is wholly incorrect.

First, *Cladianos v. Friedhoff*, deals with the law of contract and whether a tender of services was sufficient to sustain the contract. Tender, in the context used, is wholly different from the legal tender in the context of mortgages. Specifically, the case stated:

> The nature of this 'tender' is set forth in 12 Am.Jur. 891, Contracts, § 334, as follows: 'The word 'tender' as used in such a connection does not mean the same kind of offer as when it is used in reference to the payment or offer to pay an ordinary debt due in money, where the money is offered to a creditor who is entitled to receive it, nothing further remains to be done, and the transaction is completed and ended; but it means only a readiness and willingness accompanied with an ability on the part of one of the parties to do the acts which the agreement requires him to perform, provided the other will concurrently do the things which he is required by it to do, and a notice by the former to the latter of such readiness. Such readiness, ability, and notice are sufficient evidence of, and indeed imply, an offer or tender in the sense in which those terms are used in reference to mutual and concurrent agreements. It is not an absolute, unconditional offer to do or transfer anything at all events, but it is, in its nature, conditional only, and dependent on, and to be performed only in case of, the readiness of the other party to perform his part of the agreement.' *Id*., 69 Nev. 41, 210 (1952).

As stated, this entire section specifically excludes tender with respect to the payment of offer to pay an ordinary debt due in money. Similarly, *Ebert v. Western States Refining Co.*, deals with contract reformation and makes no mention of tender, much less of tender applicable to the present controversy. The only potential reference is to an unconditional option to purchase; however, this application to the present controversy is a mystery.

Ultimately, this offer of payment is insufficient to discharge the HOA lien.

**b. Carrington Mortgage Failed To Act.**

In *Shadow Wood*, the Nevada Supreme Court held the district court should have conducted a full hearing on the equities, noting the lender's inaction, "NYCB knew the sale had been scheduled and that it disputed the lien amount, yet it did not attend the sale, request arbitration to determine the amount owed, or seek to enjoin the sale pending judicial determination of the amount owed," weighed heavily against the lender. *Id*. at 19. "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." *Id.* at 24.

*SFR* requires a lender to exercise due diligence and take necessary steps to preserve its rights including "paying the entire amount and requesting a refund of the balance." *Id*. at 418. According to the payment scheme under NRS

116.31164(3)(c), the lender would be able to recover a substantial majority of the bid price in excess of the super-priority amount as their junior lien would be next in line. After deducting the super-priority lien, they would receive a substantial majority of their bid amount and may dispute the rest in a small claims action. Additionally, Carrington Mortgage must deposit the alleged tender upon rejection amount into court to forestall a foreclosure. *Bisno v. Sax*, 346 P.2d 814, 820 (Cal. Ct. App. 1959); See also 59 C.J.S. *Mortgages* § 506, p. 826, stating: 'A tender of payment or performance sufficient to discharge the mortgage may preclude foreclosure and a proceeding already commenced may be stopped by paying what is due into court.'

Here, Carrington Mortgage and its predecessors in interest did nothing to alert bidders at the auction of a dispute. It did not attend the sale. It did not request arbitration to determine the amount owed. It did not enjoin the sale pending judicial determination of the amount owed. It did not record a lis pendens. It failed to request a partial release of the HOA lien reflecting their attempted payment. It failed to tender the full amount state by the HOA under dispute. It did not deposit the amount into court. Carrington Mortgage failed to exercise any diligence to preserve their property rights.

**c. R Ventures VIII Purchased Without Any Notice of Tender.**

Here, R Ventures VIII purchased the property at an auction without notice of

any purported defense of Carrington Mortgage. While R Ventures VIII had record notice of the deed of trust, a properly conducted HOA sale would extinguish this interest, permitting R Ventures VIII to take the Property without notice of any claim of superior title. It is undisputed R Ventures VIII had no knowledge of any purported defect in the sale of the Property. Thus, no actual defect in the foreclosure sale would defeat R Ventures VIII's claim because it did not have any notice and is protected as a bona fide purchaser for value. This protection extends even to when a sale did not comply with constitutionally required notice under *Mullane*. *See Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977).

The lender can provide no evidence that the purchaser knew or should have known about the disputed lien amount or attempts to pay the lien; and, consequently, the potential harm to the purchaser must be taken into account. *Shadow Wood*. at 24. R Ventures VIII's affidavit definitively affirms R Ventures VIII had no knowledge of any tender. JA at 238. Further, the audio recording of the auction has Mr. Atkinson list the properties where a partial payment has been at issue. JA at 220-36. Notably, the Property was not among that list. *Id*. Consequently, R Ventures VIII would never had been required to inquire about the status of a purported tender, especially with the disclosure at the auction.

## IV. Tri-Party Agreement Had No Effect on the HOA Sale

Carrington Mortgage make three claims regarding the PSA, each will be discussed in detail below. First, Carrington Mortgage claim the PSA satisfied the HOA Lien and eliminated their ability to foreclose; however, the express terms of the PSA and testimony of a party to the PSA clearly show otherwise. Second, Carrington Mortgage argue NRS 116.3102(p) prohibits the PSA despite the express authorization contained in the HOA's CC&Rs. Finally, Carrington Mortgage dubiously claim the PSA split the HOA Lien, impermissible under case law applicable to the Foreclosure Mediation Program. However, such a program does not apply to foreclosures under NRS 116.

### a. HOA Retained Right to Foreclose

According to the text of the purchase and sale agreement ("PSA"), First 100 acquired rights to the proceeds of a monetization event triggered by notice of foreclosure sale. JA at 359-75. To read this PSA to eliminate the ability of the HOA's ability to pursue foreclosures would negate the intent of the PSA and the understanding of the contracting parties. The carefully crafted PSA ensured the HOA retained the HOA lien and the ability to foreclose through its newly designated collection agent, United Legal Services, Inc. After the foreclosure sale was completed, the disbursements of funds was made to United Legal Services, Inc. as the authorized agent of the HOA. Once the HOA had satisfied its HOA lien,

those satisfied funds were contractually obligated to be transferred to First 100.

**b. CC&Rs Authorized the HOA to Enter Into the Agreement.**

As specifically enumerated in the CC&Rs Section 5.1, the HOA had the ability to enter into any contract not specifically prohibited by the governing documents. JA at 465. Carrington Mortgage has not provided any citation to these governing documents that would prohibit the type of arrangement agreed upon in the PSA. NRS 116.3102(p) specifically permits express powers to assign future income, even general expressions of powers like those contained in Section 5.1. Consequently, the HOA had the power to enter into the PSA.

Alternatively, the PPI, the interest at issue, does not relate to future income, but specifically characterizes the interest as proceeds on past amounts due. NRS 116.3102(p) merely prohibits assignment of future income, not past due assessments. Thus, NRS 116.3102(p) has no bearing on the present controversy.

**c. Edelstein is Only Applicable to the Foreclosure Mediation Program.**

Carrington Mortgage' assertion that splitting a lien prevents foreclosure of an HOA lien is wholly inapplicable. *Edelstein v. Bank of New York Mellon*, deals with specific requirements under the Foreclosure Mediation Program instated for foreclosures of deeds of trust, wholly inapplicable to the present case. *Id*. at 286 P.3d 249, 258 (Nev. 2012). Before a lender can proceed with foreclosure under

NRS 107, it is mandated to mediate with the obligor, including a requirement that the lender have the authority to modify the loan. The only reason the foreclosure was found inappropriate when the promissory note and the deed of trust have been separated is because the party foreclosing does not have authority to modify the promissory note as required under the Foreclosure Mediation Program.

Here, the HOA lien has no analogous split between a deed of trust and a promissory note. Even if such a thing existed, Nevada law does not require HOA foreclosures to participate in the foreclosure mediation program, the subject of *Edelstein*.

## V. The HOA Sale Was Not Preempted by Federal Law.

Carrington Mortgage alleges federal law proscribes the application of NRS 116. However, federal law does not preempt Nevada law regarding Nevada property. According to *United States v. Kimbell Foods, Inc*. 440 U.S. 715 (1979), loan priority is determined by state law in the absence of federal law delineating the priority. Carrington Mortgage has provided no statutory reference where federal law delineates priority. Alternatively, even if Federal law applies, HUD regulations clearly mandate the mortgagee is responsible for HOA assessments and fees and the consequences should a lender choose not to pay.

Carrington Mortgage has not provided statutory information regarding FHA priority. Thus, no federal law delineates the lien priority. Pursuant to *United States*

*v. Kimbell Foods, Inc.*, loan priority should be determined by state law.

Even if federal law applies, they fail to recognize HUD specifically required the lender to continue to pay HOA assessments as they became due and are expressly subordinate to state law as set forth below.

HUD's internal procedure via multiple mortgagee letters indicates lien priority is determined by state law. A mortgagee letter dated June 20, 2012 clearly requires a mortgagee to "adhere to state and local laws while they hold title to a property that was financed with an FHA-insured mortgage." Mortgagee Letter 2012-11 available at <portal.hud.gov/hudportal/documents/huddoc?id=12-11ml.pdf> (last visited December 5, 2016). A super priority lien for assessments is analogous to a tax lien. Because either may implicate serious title defects, similar to escrow accounts set aside for taxes, "mortgagees must take any action necessary to protect HUD's interest when foreclosure actions are brought by a condo/HOA on a property securing an FHA-insured mortgage." *Id*. A lender is required to pay off both before conveying title to HUD. Mortgagee Letter 2013-18, page 3 available at <portal.hud.gov/hudportal/documents/huddoc?id=13-18ml.pdf> (last visited December 5, 2016).

Further, rule citations to 24 CFR 203.355, cited by *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, No. 2:13-cv-01845-GMN-GWF, 2012 WL 4798565 (D. Nev. Sept. 25, 2014) a Nevada District Court Case the lender

relies on, specifically mentions state law limitations on foreclosures. 24 CFR 203.355(c) states:

> "[if] **the laws of the State** in which the mortgaged property is located… **[d]o not permit** the commencement of foreclosure within the time limits… the mortgage must commence foreclosure within 90 days after the expiration of the time during which foreclosure is prohibited"(emphasis added).

This information renders any federal preemption argument inapplicable. Notably, neither the moving paper nor decision did not consider the aforementioned Mortgagee Letters. The letter dated June 20, 2012 specifically requires mortgagees to follow state law. Mortgagee Letter 2012-12 available at < portal.hud.gov/hudportal/documents/huddoc?id=12-12ml.pdf > (last visited December 5, 2016).

Additionally and most importantly, HUD will not suffer a financial loss in this case. 24 CFR 203.359(a) requires the bank to acquire "good and marketable title" and possession of the property before transferring to FHA. Upon the successful transfer of marketable title to FHA, a lender will receive the value of the insurance policy in exchange for the property. Here, FHA will not be required to pay because the lender failed to deliver "good and marketable title."

Even if Carrington Mortgage conveyed title to HUD, 24 CFR 203.366(b) enumerates the procedure if a lender transfers title without good and marketable title and the lender refuses or cannot remedy the title defect. Title will be

reconveyed to the lender, and the lender must reimburse the funds to the FHA program. *Id*. Thus, a federal property interest, if any, is not affected by NRS 116.

Application of HUD guidelines will not undermine the FHA insurance's goals. First, the courts are ill equipped to oversee the minutia of HUD activity. "HUD has very broad discretion in order to achieve national housing objectives," *United States v. Antioch Found.*, 822 F.2d 693, 695 (7th Cir. 1987), because "courts are ill equipped to superintend" especially about "economic and managerial decisions" involving a balancing of factors and consideration of complex financial data with respect to the administration of FHA insurance. *Hahn v. Gottlieb*, 430 F.2d 1243, 1249-51 (1st Cir. 1970). Day to day decision concerning, for instance, whether and when to foreclose or forbear from foreclosing "involve[ ] a balancing of factors and consideration of complex financial data." *Falzarano v. United States*, 607 F.2d 506, 512 (1st Cir. 1979).

Second, HUD has internal procedures designed to further its interests by requiring a mortgagee to pay HOA assessments. According to HUD procedures, to prevent foreclosure by an HOA, a mortgagee must pay the delinquent assessments. These payments are reimbursable. 24 CFR 203.402. Bank of America, Carrington Mortgage predecessor in interest, sat on its rights and refused to comply with FHA policy waiving any insurance.

## VI. Conclusive Presumptions Establish Statutory Compliance.

NRS 47.240(6) permits conclusive presumptions to be expressly made by statute. Pursuant to NRS 116.31166: "[t]he recitals in a deed made pursuant to NRS 116.31164 of: (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The giving of notice of sale, are conclusive proof of the matters recited." A conclusive presumption *requires* the trier of fact to find the existence of a presumed fact from the finding of a basic fact. The opposing party may not offer any evidence to rebut the existence of the presumed fact. *See Melendrez v. D & I Investment, Inc.* 127 Cal.App.4th 1238, 1255, 1250, fn. 17. (2005). While this Court limited the scope of the presumption in *Shadow Wood*, the statutory compliance is confirmed when these recitals are contained in the resulting foreclosure deed. 336 P.3d 1112.

Notably, the HOA Foreclosure Deed states all requirements of law were complied with including the default occurred, the required notices were sent, the required 90 days had elapsed, and the sale was posted and published in compliance with applicable law. JA at 128. Thus, because the mailing of the copies of notices is given conclusive effect and the recitals were contained in the foreclosure deed, the Court must accept this statement as conclusively true.

However, Carrington Mortgage does not appear to challenge these assertions

as untrue, thus rendering any opinion regarding these conclusively presumed facts moot.

## VII. Carrington Mortgage Provided No Evidence of a Commercially Unreasonably Sale.

*Shadow Wood* cemented R Ventures VIII's interpretation that price alone will not justify setting aside a foreclosure Sale. *Id*. at 9-10 (Citing *Long v. Towne* and *Golden v. Tomiyasu*). The Nevada Supreme Court has held that mere "inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). *See also Golden v. Tomiyasu*, 79 Nev. 503, 504, 387 P.2d 989 (1963) (remanded the setting aside of a foreclosure sale holding that "inadequacy of price, without proof of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of price is not sufficient" to set aside the sale). *See also Shadow Wood Homeowners Ass'n vs New York Community Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance Opinion 5. The foreclosure sale at which R Ventures VIII purchased the Property was properly conducted in all respects.

Even in cases where a discrepancy in price and value necessitated scrutiny into the commercial reasonableness of the disposition of collateral, courts focus on the manner of the sale that might have caused such a discrepancy. In *Levers v. Rio*

*King Land & Inv. Co.*, the Nevada Supreme Court found that the secured party failed to provide reasonable notice to the debtor and took no steps to publicize the sale in any manner, and therefore the debtor was entitled to a credit equal to the fair market value rather than the sale price. *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 920 (Nev. 1977).

Carrington Mortgage mischaracterizes the facts underlying the *Will v. Mill Condominium Owners; Ass'n* decision. *Id*. 848 A.2d 336, 340 (Vt. 2004). While the Court took into consideration the sale's price, the other potentially serious defects in the sales procedure, namely exclusive reliance on one bid and pre-bid communication of the minimum acceptable bid to the sole bidder, combined with the sales price to violate Vermont's Uniform Commercial Code. *Id*. at 342-343. This close examination support's R Ventures VIII's position the sale of the Property at issue was commercially reasonable.

Carrington Mortgage produced no evidence beyond the purchase price. Carrington Mortgage failed to provide one scintilla of evidence of an improper sale sufficient to find a commercially unreasonably sale. On the other hand, R Ventures VIII provided ample uncontested proof of multiple bidders, a publicly advertised auction, and no pre-sale communications. JA at 190-238.

The factual record below confirms the foreclosure sale was properly conducted. It was a publicly advertised auction with multiple bidders. *Id*. Because

Carrington Mortgage failed to produce any evidence, they did not meet their opposition burden.

Even if the sale was commercially unreasonable, the proper remedy would be to pursue the HOA and its foreclosure agent for the acts or omissions, especially when R Ventures VIII was without notice of these purported defects.

## Conclusion

For the foregoing reasons, this Court should affirm the district court's order granting summary judgment in favor of R Ventures VIII, LLC.

Dated December 5, 2016.

COOPER COONS, LTD.

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## CERTIFICATE OF COMPLAINCE

I hereby certify the **RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word processing program in type 14-point Times New Roman type style. I further certify this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because it contains approximately 5,577 words.

Finally, I hereby certify I have read the **RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify this brief complies 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 to be found. I understand that I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated December 5, 2016.

COOPER COONS, LTD.

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interest in, this action. On December 5, 2016, I caused to be served a true and correct copy of the foregoing **RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF** upon the following by the method indicated.

____ **BY E-MAIL**: by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

__X__ **BY ELECTRONIC SUBMISSION**: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

____ **BY U.S. MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ *Kim Hexamer*

_____

An Employee of COOPER COONS, LTD.