Case No. 71325

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Appellant, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association, Respondent.	Electronically Filed Jan 25 2017 02:21 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Judge
District Court Case No. District Court Case No. A-13-679329-C

JOINT APPENDIX VOLUME 3

Respectfully submitted by:

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1	5	7/16/13	Application or Entry of Default Against Ana Torres	JA_0027
4	16	9/16/16	Case Appeal Statement	JA_0801
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1	6	4/30/14	Default Against Ana Torres	JA_0032
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1&2	7	3/2/16	First Horizon Home Loans Motion for Summary Judgment	JA_0037
3	11	3/21/16	First Horizon Home Loans Opposition to SFR's Motion for Summary Judgment	JA_0569
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4	13	8/17/16	Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0779
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4	18	9/13/16	Transcript of Proceedings Status Check	JA_0873

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4	17	6/21/16	Transcript of Proceedings Motion for Summary Judgment	JA_0807
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Exhibit "A"

TS #: 12-00029-NS-NV
Title Order # 61200062

Subject Deed of Trust Information:

Deed of Trust Dated: July 15, 2008

Deed of Trust Recorded: 07-25-2008 as 20080725-0003028, Official Records

Original Loan Amount: $136,923.00

Original Trustor:

Ana Torres, an Unmarried Woman

Original Beneficiary:

Mortgage Electronic Registration Systems, Inc. MERS, solely as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns

Original Trustee:

United Title of Nevada

Assignments:

The beneficial interest in the Deed of Trust was purportedly assigned by an assignment recorded 08-17-2012 as 201208170001261, of Official Records.

Assignor: Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns
Assignee: First Horizon Home Loans, a Division of First Tennessee Bank, National Association

Ex. 1-N

Exhibit 1-N

Ex. 1-N

APN 161-26-111-017

WHEN RECORDED MAIL TO:

NATIONSTAR MORTGAGE, LLC C/O

NDSC 7720 N . 16th Street, Suite 300

Phoenix, AZ 85020

Inst #: 201301110003297
Fees: $32.00
N/C Fee: $25.00
01/11/2013 01:56:03 PM
Receipt #: 1455887
Requestor:
PREMIER AMERICAN TITLE
Recorded By: CDE Pgs: 16
DEBBIE CONWAY
CLARK COUNTY RECORDER

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT

DOCUMENT TO BE RECORDED: **DEED OF TRUST**

THIS DEED OF TRUST IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF CORRECTING THE LEGAL DESCRIPTION.

I hereby affirm that this document submitted for recording does not contain a social security number.

Signature DEBORAH KISS
Printed name & title AUDITOR

APN# 161-26-111-017 (2) 10 C13

20080725-0003028

Fee: $26.00
N/C Fee: $25.00

07/25/2008 12:47:16
T20080155742
Requestor:
RECORD SEARCHING SERVICES

Debbie Conway BRT
Clark County Recorder Pgs: 13

Recording Requested By: CHICAGO TITLE

Name: CHICAGO TITLE/SERVICELINK DIVISION

Address: 400 CORPORATION DRIVE

City/State/Zip: ALIQUIPPA, PA 15001

Document Title: DEED OF TRUST

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from (type of document), Book Page Document # recorded (date) in the County Recorder office.

If Surveyor, please provide name and address.

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

NV Affirmation cover Sheet – 2/06

VMP ® -368C(NV) (0602)

Assessor's Parcel Number:
County: 161-26-111-017 City: N/A
Return To: ~~FHHL - POST CLOSING MAIL ROOM~~
Chicago Title/Service Link Division
~~1555 W WALNUT HILL LN #200 MC 6712~~
~~IRVING, TX 75038~~ 1548917
400 Corporation Drive
Aliquippa PA 15001
Prepared By: FIRST HORIZON HOME LOANS,
A DIVISION OF FIRST TENNESSEE BANK N.A.
7375 PRAIRIE FALCON DR STE 120
LAS VEGAS, NV 89128

Recording Requested By:
FIRST HORIZON HOME LOANS
4000 HORIZON WAY
IRVING, TX 75063

[Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No.
332-4647084-703

MIN 100085200641519139

THIS DEED OF TRUST ("Security Instrument") is made on July 15, 2008
The Grantor is ANA TORRES, An Unmarried Woman

("Borrower"). The trustee is ~~SERVICE LINK~~ United Title of Nevada
3980 Howard Hughes Pkwy Las Vegas NV 89109
("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). 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.
FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A., ("Lender")
0064151913
FHA Nevada Deed of Trust with MERS - 4/96
VMP-4N(NV) (0510) Amended 2/98

is organized and existing under the laws of THE UNITED STATES OF AMERICA ,
and whose address is 4000 HORIZON WAY,
IRVING, TEXAS 75063 . Borrower owes Lender the principal sum of
ONE HUNDRED THIRTY SIX THOUSAND NINE HUNDRED TWENTY THREE & 00/100
Dollars (U.S. $ 136,923.00).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on AUGUST 1, 2038 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in Clark
County, Nevada:
All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

which has the address of 5069 MIDNIGHT OIL DRIVE [Street]
LAS VEGAS [City], Nevada 89122 [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 or canceling this Security Instrument.

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

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

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In

any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later

sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C.

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1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

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

Initials: AGT

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, 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

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. 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 and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. 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.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ dollars not to exceed the maximum allowable per HUD.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider	☐ Growing Equity Rider	☐ Other [specify]
☒ Planned Unit Development Rider	☐ Graduated Payment Rider	

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

_____ Ana Gloria Torres (Seal)
ANA TORRES -Borrower

_____ _____ (Seal)
-Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on 07-16-08 by ANA TORRES

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
NICOLE D. PINERO
Appt. No. 04-86860-1
My Appt. Expires Feb. 4, 2012

Nicole D Pinero

Mail Tax Statements To:

TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

PLANNED UNIT DEVELOPMENT RIDER

0064151913

FHA Case No.
332-4647084-703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of July 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A.

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

5069 MIDNIGHT OIL DRIVE, LAS VEGAS, NV 89122

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

SILVER SPRINGS- UNIT A

[Name of Planned Unit Development]

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

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard 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 for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

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

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

Ana Gloria Torres (Seal)
ANA TORRES -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Exhibit "A"
Legal Description

All that certain parcel of land situated in the County of Clark, State of Nevada, being known and designated as follows:

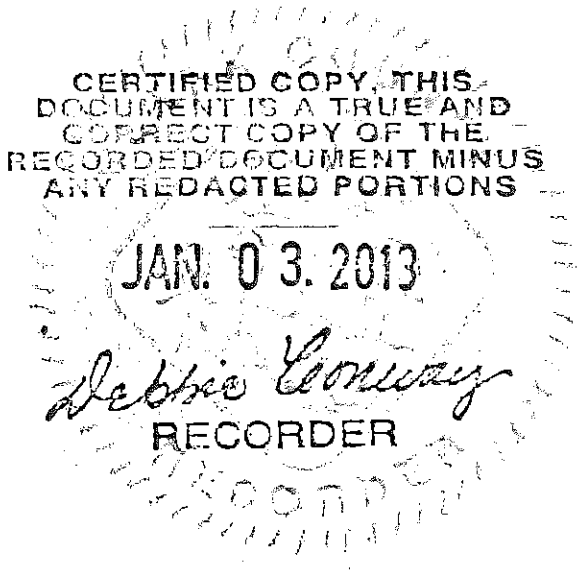
Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendments recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restriction recorded September 17, 2001 in Book 2001 as Document No. 01331 of Official Records and as same may be amended from time to time.

Tax ID: 161-26-111-017


CERTIFIED COPY. THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS
JAN. 03. 2013
Debbie Conway
RECORDER

LEGAL DESCRIPTION

File no.: 612000062

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

Lot Forty-Six (46) of Silver Springs – Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

APN: 161-26-111-017

Ex. 1-O

Exhibit 1-O

Ex. 1-O

Inst #: 201302050002551
Fees: $17.00
N/C Fee: $0.00
02/05/2013 04:01:46 PM
Receipt #: 1486476
Requestor:
ALESSI & KOENIG LLC
Recorded By: CYV Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

APN: **161-26-111-017** TSN **30478-5069**

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **March 6, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **February 22, 2012**, as instrument number **0001525**, of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122.** The owner of the real property is purported to be: **ANA TORRES**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$4,109.00.** Payment must be in made in the form of certified funds.

Date: **January 16, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Squire Village at Silver Springs Community Association

Ex. 1-P

Exhibit 1-P

Ex. 1-P

AFFIDAVIT OF THOMAS J. BAYARD, ESQ. AS CUSTODIAN OF RECORDS FOR ALESSI & KOENIG, LLC

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

COMES NOW, THOMAS J. BAYARD, ESQ., who after being duly sworn, deposes and says:

1. That Affiant is the Custodian of Records and Person Most Knowledgeable for Alessi & Koenig, LLC regarding Trustee foreclosure sales.

2. That Alessi & Koenig, LLC was served with a Subpoena Duces Tecum calling for the production of records as indicated below:

1. Any and all affidavits or certificates of posting, mailing, and publication of foreclosure notices in your possession, custody or control pertaining to **5069 Midnight Oil Drive, Las Vegas, Nevada 89122, Parcel No. 161-26-111-017** (the "Property");

2. Any and all records, notes, and/or documents in your possession, custody or control evidencing non-privileged communications between you and any person or entity relating to the Property;

3. Any and all documents in your possession, custody or control evidencing charges to and the payment history of any accounts relating to the Property.

4. Any and all documents in your possession, custody or control evidencing compliance with NRS 116.31161-116.31168 as it pertains to the foreclosure of the Property.

3. That Affiant has made a true and correct copy of those records in his possession and that the reproduction of them attached hereto is true and complete, except for those documents which are subject to attorney-client privilege and/or other valid privilege or objection.

///

///

///

ANA TORRES
5069 MIDNIGHT OIL DR

LAS VEGAS, NV 89122-8124

Chicago Title/ Servicelink Division
400 Corporate Drive

ALIQUIPPA, PA 15001

SERVICELINK
4000 INDUSTRIAL BLVD

ALIQUIPPA, PA 15001

Federal Home Loan Mortgage Corporation
5000 PLANO PARKWAY

CARROLLTON, TX 75010

First Horizon Home Loans, A Div of
First Tennessee Bank NA
7375 Prairie Falcon Dr, Suite 120

LAS VEGAS, NV 89128

First Horizon Home Loans, A Div of
First Tennessee Bank NA
4000 Horizon Way

IRVING, TX 75063

UNITED TITLE OF NEVADA
3980 Howard Hughes Pkwy

LAS VEGAS, NV 89109

MERS
PO BOX 2026

FLINT, MI 48501-2026

TOTAL MORTGAGE SOLUTIONS, LP
1555 W Walnutt Hill Lane, Suite 200A

IRVING, TX 75038

CORPORATION SERVICE COMPANY
801 ADLAI STEVENSON DRIVE

SPRINGFIELD, IL 62703

AQUA FINANCE, INC.
ONE CORPORATE DRIVE, SUITE 300

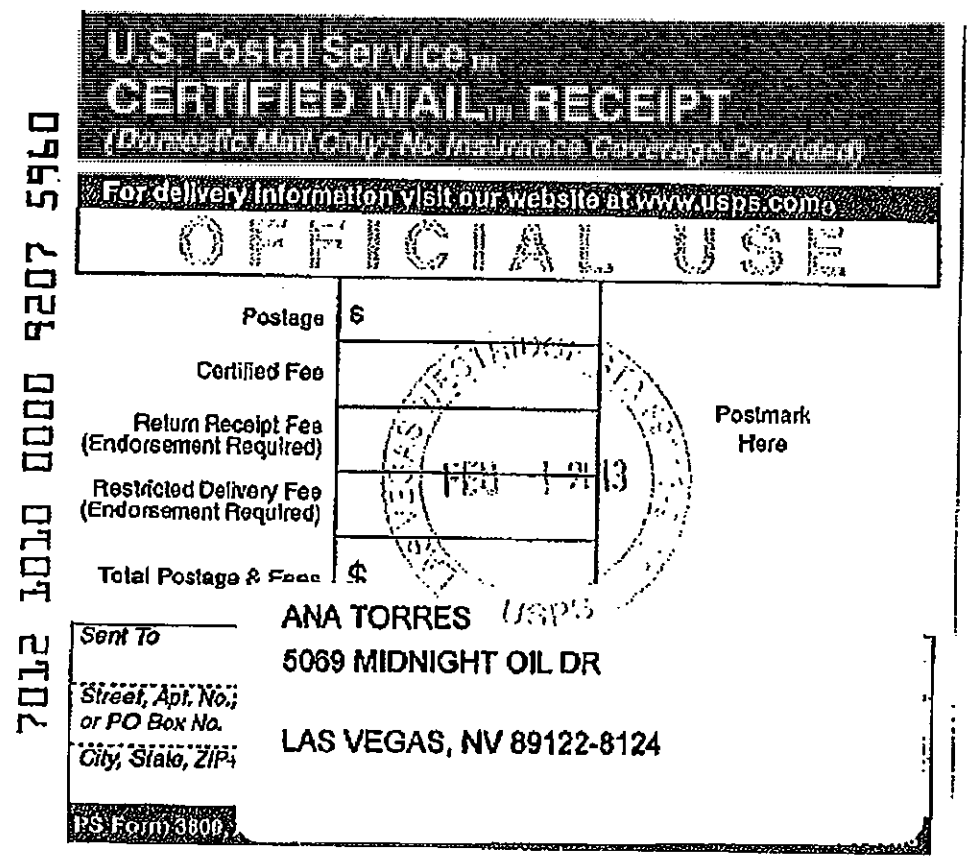
WAUSAU, WI 54401

National Default Servicing Corporation
7720 N 16th St., Suite 300

Phoenix, AZ 85020

OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 205

LAS VEGAS, NV 89104



NOTS MAILINGS

7012 1010 0000 9207 5953

U.S. Postal Service™
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For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
Postmark Here

Sent To
Chicago Title/ Servicelink Division
Street, Apt. No. or PO Box No.
400 Corporate Drive
City, State, ZIP+4
ALIQUIPPA, PA 15001

PS Form 3800

7012 1010 0000 9207 5946

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Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
Postmark Here

Sent To
SERVICELINK
Street, Apt. No. or PO Box No.
4000 INDUSTRIAL BLVD
City, State, ZIP+4
ALIQUIPPA, PA 15001

PS Form 3800

7012 1010 0000 9207 5939

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Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
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Federal Home Loan Mortgage Corporation
Street, Apt. No.; or PO Box No.
5000 PLANO PARKWAY
City, State, ZIP+4
CARROLLTON, TX 75010

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Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
Postmark Here

Sent To
First Horizon Home Loans, A Div of
First Tennessee Bank NA
Street, Apt. No.; or PO Box No.
7375 Prairie Falcon Dr, Suite 120
City, State, ZIP+4
LAS VEGAS, NV 89128

PS Form 3800

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Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
Postmark Here

Sent To
First Horizon Home Loans, A Div of
First Tennessee Bank NA
Street, Apt. No. or PO Box No.
4000 Horizon Way
City, State, ZIP+4
IRVING, TX 75063

PS Form 3800

7012 1010 0000 9207 5908

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Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

FEB 2013
Postmark Here

Sent To
UNITED TITLE OF NEVADA
Street, Apt. No or PO Box No.
3980 Howard Hughes Pkwy
City, State, ZIP+4
LAS VEGAS, NV 89109

PS Form 3800

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7012 1010 0000 9207 5892

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Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
MERS
Street, Apt. No.; or PO Box No.
PO BOX 2026
City, State, ZIP+4
FLINT, MI 48501-2026

PS Form 3800, A

7012 1010 0000 9207 5885

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Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
TOTAL MORTGAGE SOLUTIONS, LP
Street, Apt. No.; or PO Box No.
1555 W Walnutt Hill Lane, Suite 200A
City, State, ZIP+4
IRVING, TX 75038

PS Form 3800, A

7012 1010 0000 9207 5878

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Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
CORPORATION SERVICE COMPANY
Street, Apt. No.; or PO Box No.
801 ADLAI STEVENSON DRIVE
City, State, ZIP+4
SPRINGFIELD, IL 62703

PS Form 3800, A

7012 1010 0000 9207 5861

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Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
AQUA FINANCE, INC.
Street, Apt. No.; or PO Box No.
ONE CORPORATE DRIVE, SUITE 300
City, State, ZIP+4
WAUSAU, WI 54401

PS Form 3800, A

7012 1010 0000 9207 5854

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Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
National Default Servicing Corporation
Street, Apt. No.; or PO Box No.
7720 N 16th St., Suite 300
City, State, ZIP+4
Phoenix, AZ 85020

PS Form 3800, A

7012 1010 0000 9207 5847

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
OFFICIAL USE
Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
FEB 1 2013

Sent To
OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
Street, Apt. No.; or PO Box No.
2501 E SAHARA AVE SUITE 205
City, State, ZIP+4
LAS VEGAS, NV 89104

PS Form 3800, A

NOTS MAILINGS

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

APN: 161-26-111-017 TSN 30478-5069

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On March 6, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on February 22, 2012, as instrument number 0001525, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122. The owner of the real property is purported to be: ANA TORRES

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $4,109.00. Payment must be in made in the form of certified funds.

Date: January 16, 2013

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Squire Village at Silver Springs Community Association

Inst #: 201302050002551
Fees: $17.00
N/C Fee: $0.00
02/05/2013 04:01:46 PM
Receipt #: 1486476
Requestor:
ALESSI & KOENIG LLC
Recorded By: CYV Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

APN: 161-26-111-017 TSN 30478-5069

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **March 6, 2013,** Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **February 22, 2012,** as instrument number **0001525,** of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122.** The owner of the real property is purported to be: **ANA TORRES**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$4,109.00.** Payment must be in made in the form of certified funds.

Date: **January 16, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Squire Village at Silver Springs Community Association

Ex. 1-Q

Exhibit 1-Q

Ex. 1-Q

Inst #: 201302070001593
Fees: $19.00
N/C Fee: $0.00
02/07/2013 12:23:48 PM
Receipt #: 1489406
Requestor:
PREMIER AMERICAN TITLE
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

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

NDSC File No. : 12-00029-NS-NV
Title Order No. : 61200062
APN No. : 161-26-111-017

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 07/15/2008 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY; IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **ANA TORRES, AN UNMARRIED WOMAN,** dated **07/15/2008** and recorded **07/25/2008** as Instrument No. **20080725-0003028** (or Book, Page) and Re-Recorded on **01/11/2013** as Instrument No. **201301110003297** (or Book, Page) for the reason of **'Correct legal'** of the Official Records of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **10/30/2012** as Instrument No. **201210300002798** (or Book , Page) of said Official Records.

Date and Time of Sale: 02/26/2013 at **10:00 A.M.**
Place of Sale: At the front entrance to the Nevada Legal News 930 S. 4th St., Las Vegas, NV 89101

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

5069 MIDNIGHT OIL DRIVE
LAS VEGAS, NV 89122

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **$148,344.78**. The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and /or the fair market of the property.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 02/05/2013

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

By: _____
Nichole Alford, Trustee Sales Representative

State of: Arizona
County of: Maricopa

On 25, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Nichole Alford personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature _____

Exhibit A

NDSC Notice of Sale Addendum

NDSC No.	:	12-00029-NS-NV
PROP. ADDRESS	:	5069 MIDNIGHT OIL DRIVE LAS VEGAS, NV 89122
COUNTY	:	CLARK

LEGAL DESCRIPTION :

Parcel 1:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

Ex. 1-R

Exhibit 1-R

Ex. 1-R

Inst #: 201303070003168
Fees: $18.00 N/C Fee: $0.00
RPTT: $772.65 Ex: #
03/07/2013 01:32:46 PM
Receipt #: 1525066
Requestor:
PREMIER AMERICAN TITLE
Recorded By: DHG Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067
FORWARD TAX STATEMENTS TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067

APN: **161-26-111-017**

NDSC File No.: 12-00029-NS-NV
Loan No.: 0596965595
Title Order No.: 61200062

TRUSTEE'S DEED UPON SALE

Transfer Tax : **$ 772.65**
The Grantee herein **WAS** the Beneficiary
The amount of the unpaid debt was **$151,283.09**
The amount paid by the Grantee was **$151,283.09**
The property is in the city of **LAS VEGAS**, County of **CLARK**, State of **NV**.

National Default Servicing Corporation, an Arizona Corporation, as the duly appointed Trustee (or successor Trustee or Substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without any covenant or warranty to :

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, NATIONAL ASSOCIATION

herein called Grantee, the following described real property situated in **CLARK** County :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

This conveyance is made pursuant to the powers conferred upon Trustee by said Deed of Trust executed by **ANA TORRES, AN UNMARRIED WOMAN** , as Trustor, recorded on **07/25/2008** as Instrument No. **20080725-0003028** (or Book, Page) and Re-Recorded on **01/11/2013** as Instrument No. **201301110003297** (or Book, Page) for the reason of **'Correct legal'** of the Official Records of **CLARK** County, **NV**.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **02/26/13** Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, which amount was **$151,283.09.**

Dated : 2/27/13

National Default Servicing Corporation, an Arizona Corporation

By: _____
Carmen Navejas, Trustee Sales Officer

State of: Arizona
County of: Maricopa

On 2-27, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Carmen Navejas personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

Signature _____

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

STATE OF NEVADA
DECLARATION OF VALUE FORM

1 Assessor Parcel Number(s)
a) 161-26-111-017
b) _____
c) _____
d) _____

2 Type of Property:

a)		Vacant Land	b)	x	Single Fam. Res.
c)		Condo/Twnhse	d)		2-4 Plex
e)		Apt. Bldg	f)		Comm'l/Ind'l
g)		Agricultural	h)		Mobile Home
		Other _____			

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a Total Value/Sales Price of Property $151,283.09
b Deed in Lieu of Foreclosure Only (value of property) (_____)
c Transfer Tax Value: $151,283.09
d Real Property Transfer Tax Due $ 772.65

4. **If Exemption Claimed**:
a Transfer Tax Exemption per NRS 375.090, _____.
b Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____%

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

Signature _____ Capacity Grantor
Carmen Navejas, 12-00029-NS-NV

Signature _____ Capacity Grantee

SELLER (GRANTOR) INFORMATION	**BUYER (GRANTEE) INFORMATION**
National Default Servicing Corp.	**First Horizon Home Loans**
7720 N. 16th Street, Suite 300	**350 Highland Drive**
Phoenix, AZ 85020	**Lewisville TX 75067**

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

Print Name: _____ **Escrow #:** 612000662

Address: Premier American Title Agency
400 N. Stephanie St Suite 140

City: Henderson, NV 89014 _____ **Zip:** _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 1-S

Ex. 1-S

Inst #: 201303180003508
Fees: $17.00 N/C Fee: $0.00
RPTT: $35.70 Ex: #
03/18/2013 03:14:46 PM
Receipt #: 1538706
Requestor:
ALESSI & KOENIG LLC
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
LAS VEGAS, NV 89119

A.P.N. No.**161-26-111-017** TS No. **30478-5069**

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **Squire Village at Silver Springs Community Association**
The amount of unpaid debt together with costs: $5,342.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$7,000.00**
The Documentary Transfer Tax: $35.70
Property address: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122-8124**
Said property is in [ ] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ANA TORRES**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001525**, in **Clark** County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SILVER SPRINGS-UNIT A LOT 46**, as per map recorded in Book **91**, Pages **36** as shown in the Office of the County Recorder of **Clark** County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 6, 2013** at the place indicated on the Notice of Trustee's Sale.

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

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 3/11/13

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 161-26-111-017
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 7,000.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 7,000.00
d. Real Property Transfer Tax Due $ 35.70

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi & Koenig LLC	Print Name: SFR Investments Pool 1, LLC
Address: 9500 W Flamingo Rd., Ste. 205	Address: 5030 Paradise Road, St. B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89119

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

Print Name: Alessi & Koenig LLC	Escrow # N/A Foreclosure
Address: 9500 W Flamingo Rd., Ste. 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 2

DECLARATION OF CHRISTOPHER HARDIN IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Christopher Hardin, declare as follows:

1. I am over the age of eighteen years old and competent to testify.

2. I am a resident of Clark County, Nevada.

3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.

4. I am the manager at SFR Investments Pool 1, LLC ("SFR").

5. I make this declaration in support of SFR's Motion for Summary Judgment.

6. Based on my research, there were no lis pendens recorded by FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION ("FHHL" or "the Bank") against the property located at to **5069 Midnight Oil Dr., Las Vegas, NV 89122-8124; Parcel No. 161-26-111-017** (the "Property") prior to SFR purchasing the Property.

7. Neither SFR nor I have any relationship with or interest in Squire Village at Silver Springs Community Association (the "Association"), other than now owning property within the community.

8. Neither SFR nor I have any relationship with or interest in Alessi & Koenig, LLC ("Alessi"), outside of SFR's attendance at auctions, bidding and, occasionally, purchasing properties at publically-held auctions conducted by Alessi.

9. Based on my research, no release of the super-priority lien was recorded against the Property prior to SFR purchasing the Property. Prior to the Association sale, no Trustee's Deed Upon Sale was recorded by the Bank.

10. SFR has never attended a sale where there was only one qualified bidder in attendance.

11. I attended the public Association foreclosure sale on March 6, 2013 and made the highest bid for $7,000.00.

12. I received an e-mail from Alessi indicating the total amount due for the Property.

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

Attached hereto as **Exhibit 2-A** is a true and correct copy of the Alessi's e-mail received by SFR.

13. I paid $7,000.00 as purchase price, $35.70 in transfer taxes, and $17 for recording fee on behalf of SFR. Attached hereto as **Exhibit 2-B** are true and correct copies of the Cashier's Check and receipt.

14. SFR received a Trustee's Deed Upon Sale from Alessi. Attached hereto as **Exhibit 2-C** is a true and correct copy of the Association's Trustee's Deed upon Sale received by SFR.

15. SFR has no reason to doubt the recitals in the Trsutee's Deed Upon Sale. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale.

16. SFR has been paying periodic assessments to the Association since it acquired the Property. The account is current as of the date of this Declaration.

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

Dated this 23 day of March 2016.

Christopher Hardin

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

Ex. 2-A

Exhibit 2-A

Ex. 2-A

Chris Hrdin

From: George Bates <george@alessikoenig.com>
Sent: Thursday, March 7, 2013 4:01 PM
To: Chris Hardin
Cc: Mary Indalecio
Subject: 3/6/2013 Sale

Chris,

Following are the properties you purchased on March 6, 2013:

Total for payment: $88,233.80

1259 PANINI DR
Amount: $40,000
Tax: $204.00
Fee: $17.00

Total: $40,221.00

3060 Misty Moon Ave
Amount: $23,000.00
Tax: $117.30
Fee: $17.00

Total: $23,134.30

9883 TRAVIS LAKE CT
Amount: $10,000.00
Tax: $51.00
Fee: $17.00

Total: $10,068.00

5241 CROOKED VALLEY DR
Amount: $7,700.00
Tax: $40.80
Fee: $17.00

Total: $7,757.80

5069 MIDNIGHT OIL DR
Amount: $7,000.00
Tax: $35.70
Fee: $17.00

Total: $7,052.70

George Bates
Alessi & Koenig, LLC

Ex. 2-B

Exhibit 2-B

Ex. 2-B

Alessi & Koenig, LLC
9500 W Flamingo Rd Ste 205
Las Vegas, NV 89147
702-222-4043 Fax
702-222-4033 Phone

№ 7036

DATE 3/4/13

RECEIVED FROM SFR INVESTMENTS $ 86,229.50

XXX Eighty-Eight Thousand Two Hundred Thirty-Three & 50/100 DOLLARS

FOR 9 PROPERTIES

☐ CASH
☐ CHECK
☐ M.O.
☐ CREDIT CARD

AMOUNT OF ACCOUNT $ 86,229.50

AMOUNT PAID PAID IN FULL $ 86,229.50

BALANCE DUE $ _____ BY _____

Thank You!

PURPOSE/REMITTER: SFR INVESTMENTS POOL 1 LLC

usbank

CASHIER'S CHECK No. 7107504398

93-38
929

DATE: MARCH 08, 2013

PAY EIGHTY EIGHT THOUSAND TWO HUNDRED THIRTY THREE DOLLARS AND 80 CENTS

$ 88,233.80

TO THE ORDER OF: ALESSI KOENIG

Location: 7107 RAINBOW & SAHARA

NON NEGOTIABLE

U.S. Bank National Association
Minneapolis, MN 55480

AUTHORIZED SIGNATURE

MARLAND CLARKE [illegible]

IF THIS INSTRUMENT IS DESIGNATED ON ITS FACE AS A MONEY ORDER THE FOLLOWING APPLIES:

TERMS OF THIS MONEY ORDER

PURCHASER'S AGREEMENT:

You, the purchaser, agree to immediately complete this Money Order by filling in the front of the Money Order, signing it, and addressing it at the bottom. The terms of this Money Order bind you, your heirs, or others who receive this Money Order from you.

LIMITED RECOURSE:

The Money Order will not be paid if it has been forged, altered or stolen, and recourse is only against the endorser. This means that persons receiving this Money Order should accept it only from those known to them and against whom they have effective recourse.

Ex. 2-C

Exhibit 2-C

Ex. 2-C

Inst #: 201303180003508
Fees: $17.00 N/C Fee: $0.00
RPTT: $35.70 Ex: #
03/18/2013 03:14:46 PM
Receipt #: 1538706
Requestor:
ALESSI & KOENIG LLC
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
LAS VEGAS, NV 89119

A.P.N. No.**161-26-111-017** TS No. **30478-5069**

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **Squire Village at Silver Springs Community Association**
The amount of unpaid debt together with costs: $5,342.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$7,000.00**
The Documentary Transfer Tax: $35.70
Property address: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122-8124**
Said property is in [ ] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ANA TORRES**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001525**, in **Clark** County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SILVER SPRINGS-UNIT A LOT 46**, as per map recorded in Book **91**, Pages **36** as shown in the Office of the County Recorder of **Clark** County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 6, 2013** at the place indicated on the Notice of Trustee's Sale.

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

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 3/11/13

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 161-26-111-017
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 7,000.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 7,000.00
d. Real Property Transfer Tax Due $ 35.70

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi & Koenig LLC	Print Name: SFR Investments Pool 1, LLC
Address: 9500 W Flamingo Rd., Ste. 205	Address: 5030 Paradise Road, St. B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89119

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

Print Name: Alessi & Koenig LLC	Escrow # N/A Foreclosure
Address: 9500 W Flamingo Rd., Ste. 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

TAB 9

DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@KGElegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@KGElegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-679329-C Dept. No. XXVI **NOTICE OF HEARING ON SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on 5 day of April, 2016, in Department XXVI of the above-entitled Court, at the hour of 9:30a a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring SFR Investments Pool 1, LLC's Motion for Summary Judgment before this Court for hearing.

Dated this 3rd day of March 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **NOTICE OF HEARING ON SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, to the following parties:

Select All Select None

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TAB 10

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-679329-C Dept. No. XXVI **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO FIRST HORIZON HOME LOANS' MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC, ("SFR"), by and through counsel, Kim Gilbert Ebron, hereby opposes the Motion for Summary Judgment filed by FIRST HORIZON HOME LOANS, N.A. ("FHHL" or "the Bank").

This Opposition is made and based on the following Memorandum of Points and Authorities, any exhibits attached hereto, SFR's Motion for Summary Judgment, which is incorporated fully herein by reference, the papers and pleadings on file herein and any oral argument the Court permits at the hearing of this matter.

/ / /

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

RESPONSE TO "PLAINTIFF'S ALLEGATIONS

SFR does herein and has always alleged that FHHL did in fact receive and have notice of delinquent assessments, notices of default and election to sell and notice of trustee's sale.

II.

RESPONSE TO STATEMENT OF UNDISPUTED FACTS

SFR does not dispute FHHL's statement of facts with the exception of the following:

Disputed Fact No. 1: *Alessi & Koenig recorded the notice of delinquent assessment (lien) on March 22, 2012.* (FHHL Motion, 4:19). Alessi recorded the notice of delinquent assessment (lien) on February 22, 2012.

Disputed Fact No. 2: *Alessi purportedly sold the property to SFR.* (FHHL Motion, 4:21-22). It is a fact that Alessi foreclosed on the Property and as agent for the HOA sold the Property to SFR for $7,000.00 at the public auction.

Disputed Fact No. 3: *The CC&Rs prohibit foreclosure until FHHL is given an additional 30 day's notice of the amount owing.* (FHHL Motion, 5:1-9). Section 7.7 of the CC&Rs states, "[s]uch notice may be given at any time prior to or after delinquency of such payment." Section 7.7 references the notice to the member when it applies to Section 7.10 Foreclosure Sale, of the CC&Rs. Section 7.10 acknowledges that a Unit's Owner or Unit's Owner's Successor in interest could cure the deficiency within the required time frames. Here, no one, not the Unit's owner nor the successor in interest cured the deficiency and the sale proceeded in accordance with the CC&Rs.

Disputed Fact No. 4: *Alessi would have postponed the sale had it simply read FHHL's Notice of sale.* (FHHL Motion 5:10). David Alessi's deposition testimony is not as FHHL wants the Court to perceive. When looking at a larger portion of the testimony it is clear that Alessi would not have postponed the sale due to FHHL's Notice (**Exhibit 1**, Transcript of David Alessi's Deposition):

Q. Did Alessi know, when it held the auction for this property, that the property had

been foreclosed on and purchased by First Horizon?

THE WITNESS: Could you repeat that? (The following record was read by the court reporter: "Question: Did Alessi know when it—they would (sic) auction for this property that the property had been foreclosed on and purchased by First Horizon?)

Ms. Ebron: Form

THE WITNESS: I don't have any specific knowledge as to whether or not Alessi knew. My guess is that Alessi did not know.

Q. Why is that your guess?

A. My understanding is that the trustee's deed upon sale had not yet – had not been recorded at the time it went to sale. I – I'm assuming I believe that an NOD probably was, but ***there are a lot of NODs that are recorded by the bank that never go to sale,*** and we don't make it a practice of calling the bank to find out whether or not the NOD had been satisfied. (emphasis added).

So inasmuch as there was no record of the sale, my guess is that we didn't know about it.

Q. If Alessi had known that the lender had foreclosed days before the HOA forclosure sale, would it have moved forward with the sale?

Ms. Ebron: Calls for speculation, incomplete hypothetical.

Mr. Loizzi: Join, Go ahead.

THE WITNESS: I would answer the question that in general we would not.

Q. And why not?

A. ***Because there would have been a new – well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure*** and probably sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our poicy at that time. (emphasis added.)

Disputed Fact No. 5: *SFR "purchased the property for less than 10% of its fair market value."* (FHHL Motion, 6:1-4.). Fair market value has no bearing on the issues in this case.

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While the disputes over these facts defeat the Bank's motion for summary judgment, the truth or falsity of these facts have no bearing whatsoever on SFR's Motion for Summary Judgment, which can still be granted even if these facts were true.

III.

REQUEST FOR JUDICIAL NOTICE

SFR does not oppose the Court taking Judicial Notice of Exhibits B through L.

SFR does oppose the Court taking Judicial Notice of Exhibits O through R of FHHL's Motion as it appears FHHL is attempting to use these in arguing for State Action. There is no State Action here. Even if this Court opts to do a constitutional analysis, in derogation of the constitutional avoidance doctrine, it must begin with finding that FHHL's deprivation was caused by state action **and** a state actor. But FHHL's Motion is completely devoid of this analysis and therefore Judicial Notice of these exhibits should be denied.

IV.

LEGAL ARGUMENT

A. Summary Judgment Standard.

Summary judgment is only appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v. Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964).

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V.

LEGAL DISCUSSION

A. The HOA Foreclosure Sale is Valid under the CC&Rs.

FHHL alleges that it was entitled to an additional 30 days' notice pursuant to the CC&Rs. This is an inaccurate reading of the plain language of the CC&Rs. The CC&Rs do not prohibit foreclosure until FHHL is given an additional 30 days' notice of the amount owing. (FHHL Motion, 5:1-9). Section 7.7 of the CC&Rs states "[s]uch notice may be given at any time prior to or after delinquency of such payment." Section 7.7 references the notice to the member when it applies to Section 7.10 Foreclosure Sale, of the CC&Rs. Section 7.10 acknowledges that a Unit's Owner **or Unit's Owner's Successor-in-Interest** could cure the deficiency within the required time frames. Here, no one, not the Unit's owner nor the successor-in-interest cured the deficiency and the sale proceeded in accordance with the CC&Rs, and Nevada law.

B. The Sale Price was Adequate.[1]

FHHL claims the Nevada Supreme Court in Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, ___ P.3d ___, 2016 WL 347979 (Jan. 28, 2016) adopted the Restatement (Third) of Property: Mortgages § 8.3. FHHL is wrong. Instead, the Shadow Wood Court reaffirmed that inadequate sales price alone is insufficient to set aside a foreclosure sale; "there must also be a showing of fraud, unfairness, or oppression." Shadow Wood at *4 (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see Golden v. Tomiyasu, 79 Nev. 503, 504, 514, 387 P.2d 989, 995 (1964) (adopting the California rule that " inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of price" (internal citations omitted) (emphasis added); see also Bourne Valley Court Trust v. Wells Fargo, N.A., 80 F.Supp.3d 1131, 1136 (D.Nev. 2015). If this were not enough, the Nevada Supreme Court recently re-affirmed its

[1] SFR thoroughly addressed adequacy of price or commercial reasonableness as some lenders refer to it in its Motion for Summary Judgment, and as such will not reiterate all the arguments contained therein, but rather incorporates them by reference.

re-affirmance of price plus fraud, oppression and unfairness in Centeno v. JP Morgan Chase Bank, N.A. No. 67365 (Nev. March 18, 2016) (unpublished order) (remanding case finding "this court's reaffirmation in Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, __ P.3d ___ (2016), that a low sales price is not a basis for voiding a foreclosure sale absent 'fraud, unfairness, or oppression," undermines the second basis for district court's decision [to deny preliminary injunction]."

Here, there are no allegations of fraud, oppression or unfairness. Instead, Wells Fargo relies solely on the purported market value of the Property at the time of the sale[2] and compares that figure to the price paid by SFR at the auction, and then claims it is automatically commercially unreasonable. This argument fails. FHHL's argument relies on the fair market value. But fair market value has no bearing on a foreclosure sale. There is no purpose in looking at a retrospective appraisal of the Property because no one could control the bidding at the sale. In other words, neither the Association nor its agent could force the bidding to reach market value. The amount buyers are willing to bid is dictated by the market they are in, and ironically the market SFR and other bidders were in was created by the lenders themselves i.e. an uncertain market marred by litigation. Had lenders not disputed their extinguishment, the bids would have almost certainly been closer to market rates. But lenders, like FHHL, cannot have it both ways. They cannot on the one hand create the very uncertainty that drives the market and then cry foul when the prices paid reflect that uncertainty.

Additionally, there were no procedural flaws in the foreclosure sale. If there was any flaw it was created by FHHL by not immediately recording its sale deed until after the Association foreclosure sale commenced. The sale did not violate the CC&Rs and was proper under Nevada law. Alessi did not testify that if they would have simply "read the notice of sale" that the sale would not have proceeded. Instead, Alessi testified that a Trustee Deed was not recorded prior to the sale.[3] A notice of sale would not have changed the process. Additionally, Alessi testified that

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[2] Wells Fargo hired an expert who conducted a retrospective market analysis, and of course the market value was higher than the price paid by SFR. SFR intends to file a Motion to Exclude Wells Fargo's expert under Hallmark v. Eldridge, 189 P.3d 646 (Nev. 2008), based on the utter lack of applicability of the expert's market value appraisal to this forced sale transaction.

[3] See excerts from Deposition of David Alessi, 30(b)(6) Witness for Alessi & Koenig, LLC

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there are a lot of notices that are recorded by the bank that never go to sale.[4] Additionally, FHHL offers no evidence for the allegation that the Association's notices were "stale" by virtue of the FHHL's foreclosure. In reality, the Association still had a priority lien that survived the Bank foreclosure sale, and therefore in order for FHHL to avoid losing its property, it had to pay the super-priority portion of the Association lien before the Association sale. Having failed to do this, the Association sale divested FHHL of its interest in the Property.

C. FHA Insurance Does Not Conflict with NRS 116.

As for Washington & Sandhill Homeowners Ass'n, v. Bank of Am., N.A., No. 2:13-cv-01845-GMN, 2014 WL 4798565 (D. Nev. Sept. 25, 2014), that case did not determine that HUD insurance was a federal property interest. Washington & Sandhill, 2014 WL 47989565, at *6. Besides, Washington & Sandhill incorrectly relied on three distinguishable Ninth Circuit NHA decisions. Furthermore, and more recently, Judge Dorsey rejected Washington & Sandhill. In Freedom Mortgage Corp. v. Las Vegas Development Group, LLC, 2:14-cv-01928 JAD-NJK 2015 WL 2398402 (D.Nev. 2015), Judge Dorsey noted that the purpose of HUD is not frustrated by NRS 116 because Nevada HOA laws "are entirely consistent with [HUD's] goals of improving residential community development, eliminating blight, and preserving property values." Id. at *9. In fact, HUD's policy is not only consistent with Nevada HOA laws, it is harmonious because "[i]n superpriority lien states, the HUD-insured lenders' obligation to prevent foreclosure by satisfying HOA liens in not an aspirational goal; it's a requirement." Id. at *6.

In Freedom Mortgage, the loan was insured through the FHA by HUD. The borrower defaulted on the HOA assessments and the HOA conducted a proper non-judicial foreclosure sale. Id. at *1. The property was then sold to an investor. Id. Following the SFR decision, the lender filed a complaint and claimed that the property could not have been extinguished by the foreclosure sale because the loan was insured by HUD. Id. at *2.

Judge Dorsey held that there was no conflict preemption because a lender has the ability to comply with Nevada law and HUD's policies and procedures. Id. at *6. In fact, "[n]othing prevents

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("Alessi Depo"), at 48:25-49:2, attached to FHHL's Motion as Exhibit M.

[4] See Alessi Depo, Exhibit 1, at 49:2-6.

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a lender from simultaneously complying with HUD's program and Nevada's HOA-foreclosure laws." Id. HUD provides that lenders must make sure that all assessments (including HOA assessments) are paid so that liens do not attach to the property. Id. HUD specifically directs lenders to pay outstanding liens, which includes HOA fees and assessments, in order to prevent foreclosure in superpriority lien states – a directive that is in line with Nevada's HOA lien law. Id. at *7.

As such, Judge Dorsey found that the bank's loss was a result of its own failure to follow HUD's policies and procedures. Id. at *10. Judge Dorsey ultimately decided that the HOA foreclosure sale was not barred by the Supremacy Clause, and that the foreclosure sale extinguished the lender's security interest in the property. Id. Here, like the bank in Freedom Mortgage, FHHL ignored HUD's directive when it failed to pay the full super-priority lien owed on the subject property, and now FHHL can only blame itself for the loss. In short, NRS Chapter 116 does not conflict with FHA/HUD policies; instead, it comports with FHA/HUD policies, and therefore summary judgment in favor of FHHL must be denied.

Second, if the loan was insured by FHA, this is irrelevant to any of FHHL's defenses because FHHL lacks standing to assert a right that belongs to the federal government. In Freedom Mortgage, Judge Dorsey found that the bank lacked standing to assert the federal government's Property Clause challenge, noting that "the federal government is the best advocate of its own interests." Id. at *4. In support of her ruling, Judge Dorsey cited a 10th Circuit case which stated

> We 'must hesitate before resolving a controversy on the basis of the rights of third persons not parties to the litigation' for two reasons. 'First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders of those rights do not wish to assert them.' ... 'Second, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them.

Id. at *3 quoting The Wilderness Soc'y v. Kane Cnty., Utah, 632 F.3d 1162, 1169 (10th Cir.2011) (quoting Singleton v. Wulff, 428 U.S. 106, 113–14, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976)).

As elaborated in SFR's motion, Judge Bell also made the same finding after Wells Fargo attempted to assert this defense based on FHA insurance. See SFR Investments Pool 1, LLC v.

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Wells Fargo Bank, N.A., 2015 WL 4501851 (Nev. Dist.Ct.) (Trial Order July 21, 2015). There, Wells Fargo argued that the federal interest in the loan protected Wells Fargo's beneficial interest in the property. Judge Bell noted that the general rule is, "[o]ne may not claim standing in this Court to vindicate the constitutional rights of some third party." Id. at *12 quoting Singleton v. Wullf, 428 U.S. 106, 114 (1976) (internal quotation omitted). Judge Bell further noted that the exception to this rule requires (1) "the relationship between the litigant and the third party…be such that the former is fully, or very nearly as effective a proponent of the right as the latter" and (2) "there is some genuine obstacle to such assertion…[whereby] the party who is in court becomes by default the right's best available proponent." Id., 428 U.S. at 115-6.

Judge Bell concluded that Wells Fargo lacked standing to assert any claims the FHA may have in the matter because (1) "Wells Fargo cannot be found to be nearly as effective of proponent of [FHA's] alleged property right" and (2) "no evidence has been presented which would suggest that some genuine obstacle stands in the way of the federal government stepping in to protect its own property right." Id. at * 12. In the present case, the same analysis applies, such that if FHA insurance does exist, FHHL lacks standing to assert a claim that belongs to the federal government. As such, even FHA insurance, if it exists, does not entitle FHHL to summary judgment.

D. FHHL Received Actual Notice and Lacks Standing to Raise a Facial Challenge.

FHHL claims that the failure of NRS 116 is that it did not require actual notice to Lenders. Here, however, FHHL was provided notice of the sale as evidenced by SFR's Motion for Summary Judgment. FHHL admitted it received the Notice of Default.[5] FHHL admitted it received the Second Notice of Default.[6] FHHL admitted it received the Association's Notice of Trustee's Sale.[7] Thus, FHHL lacks standing to assert both a facial and as applied challenge. Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process); Green Tree Servicing, LLC v.

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[5] See excerpts from Deposition of Crystal Davis 30(b)(6) Witness for the Bank and Nationstar ("Davis Depo"), at 52:9-24, attached to Ebron Decl. as Exhibit 1-H, to SFR's Motion for Summary Judgment.

[6] Id. at 51:1-12.

[7] Id. at 53:1-3.

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Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional). Any irregularity in notice does not violate due process where one has actual notice of the action to be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 272, 130 S.Ct. 1367, 1378 (2010) (debtor's failure to serve a summons and complaint does not violate due process where creditor received "actual notice of the filing and contents of [debtor's Chapter 13] plan."); see also In re Medaglia, 52 F.3d 451, 455-56 (2d Cir. 1995) ("[D]ue process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.") (cited with favor in SFR, 334 P.3d at 418.) Here, the Bank received the notices and chose to allow the Association sale to proceed. It cannot claim injury as a result of the noticing provisions of the statute.

Although Nevada does not have the same Article III standing requirements as federal courts, "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." Kahn v. Dodds (In re AMERCO Derivative Litig.), 252 P.3d 681, 694, 2011 Nev. LEXIS 18, *19-20 (Nev. 2011) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). "In cases for declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements."[8] Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel, 122 Nev. 385, 393, 135 P.3d 220, 225-226 (2006) (citing Bryan, 102 Nev. at 525-26, 728 P.2d at 444-45); see also Sereika v. State, 114 Nev. 142, 151, 955 P.2d 175, 180 (1998) (holding that Sereika lacked standing to challenge the constitutionality of a potentially applicable statute on the basis that it may be unconstitutionally applied to others not at issue in the case). Specifically, to demonstrate constitutional standing, the Bank must demonstrate (1) it suffered an "injury in fact" to a legally protected interest; (2) there

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[8] To be sure, the Nevada Supreme Court in Stockmeier stated that "where the Legislature has provided the people of Nevada with certain statutory rights, we have not required constitutional standing to assert such rights but instead have examined the language of the statute itself to determine whether the plaintiff had standing to sue." 122 Nev. at 393, 135 P.3d at 226. Here, NRS 116.3116 does **not** establish the standing criteria for lawsuits against a homeowner association or their trustee for non-compliance with this chapter. For comparison, the Stockmeier court explained that the applicable NRS 241.037(2) stated "any person denied a right conferred by [NRS Chapter 241] may sue," id.; no such statement appears in NRS Chapter 116.

is a causal connection by what the injury and the conduct complained of; and (3) it is likely the injury would be redressed by a favorable decision." In this instance, the Bank has not been able to demonstrate that it has standing to claim the applicable statutes are unconstitutional. Miller v. Warden, Nevada State Prison, 112 Nev. 930, 936, 921, P.2d 882, 885 (1996). Its facial challenge fails.

The United States Supreme Court has clarified, due process, if it were required here, does not require actual notice be received: "our cases have never required actual notice." Dusenbery v. U.S., 534 U.S. 161, 171 (2002). Due process requires only that the noticing be "reasonably calculated…to apprise interested parties of the pendency of the action[.]" Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). If a notice identifies an event that will impact an individual's property interest, then due process is satisfied. United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 272 (2010) (bankruptcy plan's filing and contents); Jones v. Flowers, 547 U.S. 220, 239 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798 (tax sale).

Here, the notice the bank received satisfied due process because it was "reasonably calculated…to apprise [the Bank] of" the pendency of the Association's foreclosure. Mullane, 339 U.S. at 314. The notice gave the time, the place, the amount needed to stop the foreclosure process, the manner in which payment is to be made, who to contact, and that relief might be needed from the courts. The statutes worked just as recognized by the Nevada Supreme Court in the SFR decision, where both the majority and dissent recognized that notices of default and sale were required to be sent to junior lienholders like the Bank. SFR, 334P.3d at 411, 417, 418, 422 (noting the incorporation of NRS 107.090(3)(b) and (4) through NRS 116.31168). The Bank's (in)action caused its loss, not the statute, the Association, and certainly not SFR. The Bank's motion should be denied and SFR's motion should be granted.

1. The Noticing Statutes are Constitutional

a. Standard for a Constitutional Challenge

The Bank cannot meet the high standard of showing that NRS 116's non-judicial foreclosure noticing provisions are unconstitutional. Whether a statute is constitutional is a

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question of law. Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009). "'Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional.'" Id. quoting Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)). In reasonably interpreting the statute, the court should construe the words "'in light of public policy and the spirit of the law[,]'" giving it its plain meaning and giving meaning to all words or phrases. Id. (quoting Desert Valley Water Co. v. State, Engineer, 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1988)).

The Bank must show there is "no set of circumstances under which the statute would be valid." Déjà vu Showgirls v. State, Dept. of Tax., 130 Nev. ___, ____, 334 P.3d 392, 398 (2014); see Flamingo Paradise Gaming, 125 Nev. at 511, 217 P.3d at 552 (citing Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449, 128 S.Ct. 1184, 1190 (2008) (noting reaffirmance of the requirement that a statute be void in all its applications to be successful, when civil statutes are at issue). Courts disfavor facial challenges because they rest on speculation, and "run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Washington State Grange, 552 U.S. at 450-51.

"The most fundamental principle of constitutional adjudication" is the constitutional avoidance doctrine. U.S. v. Lovett, 328 U.S. 303, 320 (1946) (Frankfurter, J., concurring); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring). Courts "will not decide the constitutionality of a statute based upon a supposed or hypothetical case which might arise thereunder." Carlisle v. State, 98 Nev. 128, 131, 642 P.2d 596, 598 (1982). Thus, courts must "avoid considering the constitutionality of a statute unless it is absolutely necessary to do so." Sheriff v. Andrews, 128 Nev. ___, ___, 286 P.3d 262, 263 (2012).

2. *The Nevada Supreme Court Already Decided the Issue*

The Bank acts as if the Nevada Supreme Court never issued the SFR opinion. They are wrong. That case demonstrated at least one circumstance in which the statute was valid, and therefore their facial challenge cannot stand. Washington State Grange, 552 U.S. at 449 (the

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challenger must establish "'that no set of circumstances exists under which the Act would be valid,' *i.e.,* that the law is unconstitutional in all of its applications.'") (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)). The inquiry should stop here.

Additionally, the Nevada Supreme Court did both a facial and as applied analysis, rejecting both. Both the majority and dissent recognized that notice must be sent to all junior lienholders, noting the incorporation of NRS 107.090(3)(b)(4) which, in the case of a bank foreclosure sale, requires notice of sale to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust." SFR, 334 P.3d at 411, 422. In an association foreclosure sale those words must be read as notice to those with liens subordinate to the association's lien.

Further, the majority rejected the lender's due process arguments as "protean," and non-starters, noting that since Chapter 116 was adopted in 1991, the lender "was on notice that by operation of the statute, the [earlier recorded] CC&R's might entitle the HOA to a super priority lien at some future date which would take priority over a [later recorded] first deed of trust." Id. at 418 (quoting with approval 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F.Supp.2d 1142, 1152 (D. Nev. 2013) (rejecting a due process challenge to a non-judicial foreclosure of a super priority lien)).[9] "To the extent U.S. Bank argues that a statutory scheme that gives an HOA a superpriority lien that can be foreclosed nonjudicially thereby extinguishing an earlier filed deed of trust, offends due process, the argument is a nonstarter." Id. at 418.

The Bank's motion should be denied with prejudice. Conversely, summary judgment in favor of SFR is appropriate.

3. The Bank Fails to Do a Proper Analysis Required to find State Actor

Considerations of due process are only appropriate when the state seeks to deprive a person of life, liberty or property. See Mullane, 339 U.S. at 313; see also Whitehead v. Nevada Com'n on Judicial Discipline, 110 Nev. 380, 425, 873 P.2d 946, 974 (1994) ("[T]he Nevada Constitution protects individuals against deprivations by the state of life, liberty, or property without due process of law."). In order for due process to be implicated, there must be a state actor. Brentwood

[9] Limbwood recognized the notices as "statutorily required" to be sent to the lender. Limbwood, 979 F.Supp.2d at 1152 ("To the extent [the Bank] contends [the Association] failed to provide the required notices. . . .").

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Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001). If a state actor is not involved, then due process—including concerns about "notice"—is inapplicable. *Id.*; Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982) ("If the action of the respondent school is not state action, our inquiry ends."). In other words, for due process to apply, any deprivation must result from exercising a right or privilege arising from statute authority **and** the person the person causing the deprivation must be a state actor. Flagg Bros., Inc. v. Lefkowitz, 436 U.S. 149, 156 (1978), Apao v. Bank of New York, 324 F.3d 1091, 1093 (9th Cir. 2003)(holding that due process is not implicated in foreclosures without "direct state involvement in the execution the foreclosure."). The burden of proving a state actor is on the party claiming a deprivation of a constitutionally protected interest. Flagg Bros., 436 U.S. at 156. Such a burden is steep, hinging on a "necessarily fact-bound inquiry[.]" Brentwood, 531 U.S. at 298. Pursuant to the public function test, a private entity can be treated as a state actor if the entity performed a function that has been traditionally the **exclusive** function of the state. Flagg Bros., 436 U.S. at 158 ("While many functions have been traditionally performed by governments, very few have been 'exclusively reserved to the State.'"). Exclusivity is the test's sine qua non. Rendell-Baker, 457 U.S. at 842.

Here, Bank has offered no evidence that Association is a state actor, thereby failing to meet its burden. Instead, Bank opines that there is state **action** because of "Nevada's unique version of the UCIOA." This proposition fails for two reasons. First, assuming *arguendo* lien enforcement is a "traditional" state function, that designation is immaterial; exclusivity, not "tradition" must be established.[10] Flagg Bros., 436 U.S. at 158. Second, lien enforcement is not an **exclusive** state function. As one federal district court noted, "the power to impose fines or enforce liens are not traditional and exclusive governmental functions." Snowdon v. Preferred RV Resort Owners Ass'n, 2:08-cv-01094-RCJ-PAL, at 14:14-15 (D. Nev. Apr. 1, 2009), *aff'd*, 379 F. App'x 636 (9th

[10] This country's highest court has repeatedly described the public function test as follows, "We have held the question is whether the function performed has been "traditionally the *exclusive* prerogative of the State." Rendell-Baker, 457 U.S. at 842 (emphasis in original). See S.F. Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 544 (1987); Blum v. Yaretsky, 457 U.S. 991, 1005 (1982); Jackson v. Metro. Edison Co., 419 U.S. 345, 352 (1974). Thus, "[w]hile many functions have been traditionally performed by governments, very few have been 'exclusively reserved to the State.'" Flagg Bros., 436 U.S. at 158. Only the performance of an **exclusive** state function will meet the public function test. *Id.*

Cir. 2010) ("[Association] did not perform the traditional and exclusive public function of municipal governance." (citing Marsh v. Alabama, 326 U.S. 501 (1946)).[11] In sum, Association is not a state actor, negating Bank's due process concerns.

The United States Supreme Court has determined a right's origins (i.e. statutory or common law) do not dictate whether a private entity is a state actor. S.F. Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 547 (1987) ("Nor is the fact that Congress has granted the USOC exclusive use of the word 'Olympic' dispositive. All enforceable rights in trademarks are created by some governmental act, usually pursuant to a statute or the common law. The actions of the trademark owners nevertheless remain private."). Similarly, that Court has never held the enactment of a remedy transforms a private entity into a state actor. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 53 (1999) ("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it.").

Even the Ninth Circuit, in Charmicor v. Deaner, wherein it determined that a foreclosure sale under NRS 107 did not implicate due process, noted that the statutory source of a power or right "does not necessarily transform a private, nonjudicial foreclosure into state action." 572 F.2d 694, 695-696 (9th Cir.1988). Here, the Associaton hired a private trustee to carry out the foreclsoures. No public official like the sheriff or constable participated in or assisted the Association.

4. *Bank's State Actor Arguments are Impractical*

Bank's assertion that Association is a state actor is impractical because it will increase the amount of government intrusion into private decisions and relationships. Brentwood, 531 U.S. at

[11] The Ninth Circuit recognized this in evaluating non-judicial foreclosure pursuant to NRS 107. Charmicor, Inc. v. Deaner, 572 F.2d 694 (9th Cir. 1978). There, the court stated that statutes regulating a private non-judicial foreclosure did not constitute state action or make the foreclosing party a state actor. *Id.* at 696. A Texas federal court reached the same conclusion when looking at association non-judicial foreclosures. Williams v. Cheyenne Crossing Residential Ass'n, Inc., No. 4:10-cv-0034 Report and Recommendations, 2010 WL 5287509, at *3 (E.D. Tex. Dec. 17, 2010), aff'd 2011 WL 344118 (E.D. Tex. Jan. 31, 2011). Similarly, here, 116 regulates the power of sale arising from the CC&Rs. An association does not employ state resources in exercising its self-help remedy, unlike a mechanic's lien. Therefore, Association's foreclosure is more closely related to foreclosure arising from a deed of trust.

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295 (state actor requirement preserves area of individual freedom); Sullivan, 526 U.S. at 53; Blum, 457 U.S. at 1004; Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 172 (1972) ("In 1883, this Court in the *Civil Rights Cases* . . . set forth the essential dichotomy between discriminatory action by the State, which is prohibited by the Equal Protection Clause [of the Fourteenth Amendment], and private conduct, 'however discriminatory or wrongful,' against which that clause 'erects no shield.'") (internal citations omitted). Indeed, eroding the state actor requirement will cause the government to become more involved in private decisions and relationships. *Id.*

For example, Bank's "position would render every apartment complex, hotel, and resort throughout this country a state actor and open them to a whole new assault of litigation[.]" Snowdon v. Preferred RV Resort Owners Ass'n, 2:08-cv-01094-RCJ-PAL, at 13:12-13 (D. Nev. Apr. 1, 2009), aff'd No. 09-15877, 379 F. App'x 636, 2010 WL 1986189 (9th Cir. May 18, 2010) (unpublished).[12] Previously private relationships and decisions would — under Bank's view — be subjected to the rigors of due process. Such a move would increase litigation in Nevada and make corporate and private Nevadans more susceptible to liability. The absurdity of Bank's contention cannot be stressed enough; it would mean non-judicial foreclosures via NRS 107 would have to comport with due process, something the Ninth Circuit repudiated. Charmicor, Inc. v. Deaner, 572 F.2d 694, 696 (9th Cir. 1978). Even though the Association utilized a statutory remedy, due process is not implicated here because the Association is merely a private actor exercising a self-help remedy.

5. *Nothing in NRS 116 Compels an Association to Foreclose; that is the Association's Private Decision.*

Even most importantly, the Bank fails to focus its analysis on the very act that deprived it of its property interest – **the decision to foreclose** and act of foreclosure. As one federal district court noted, "the power to impose fines or enforce liens are not traditional and exclusive governmental functions." Snowdon v. Preferred RV Resort Owners Ass'n, 2:08-cv-01094-RCJ-PAL, at 14:14-15 (D. Nev. Apr. 1, 2009), aff'd, 379 Fed. Appx. 636 (9th Cir. 2010) ("[Association]

[12] If Bank has its way, then every alleged deprivation of property caused by a casino must satisfy due process, an impractical result that will burden, if not cripple, Nevada's most important industry.

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did not perform the traditional and exclusive public function of municipal governance." (internal citation omitted)). The United States Supreme Court has never held that the enactment of a remedy transforms a private entity into a state actor. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 53 (1999) ("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it."). Indeed, the United State Supreme Court held in Flagg Bros, New York's enactment of UCC 7-210 did not significantly encourage a warehouse owner's decision to send a letter threatening to sell belongings.[13] Flagg Bros., 436 U.S. at 165. Instead, the Court recognized that a State's mere acquiescence in private conduct does not constitute state action and enacting a statute to permit such action does not constitute "encouragement" or compulsion. Id. Indeed, the 9th Circuit has held that merely enacting statutes that provide a framework for non-judicial foreclosure under NRS 107 does not transform that private act into a state action. Charmicor v. Deaner, 572 F.2d 694, 695 (9th Cir. 1978). "[T]he statute creates only the right to act; it does not require that such action be taken." Id.

Nothing requires or compels an association to foreclose. That decision is purely private. See 116.3102(3) (granting the executive board the authority to determine whether to take enforcement action to collect unpaid assessments). Thus, the Bank's compulsion analysis fails.

6. *The Statutes Require Notice to All Junior Lienholders of Record*

Even if this Court were to continue the analysis in spite of the lack of state actor, due process is satisfied by NRS 116. Due process, if it applied here, would require only that the noticing provisions be "reasonably calculated…to apprise interested parties of the pendency of the action[.]" Mullane, 339 U.S. at 314. If a notice identifies an event that will impact an individual's property interest, then due process is satisfied. United Student Aid Funds, Inc., 559 U.S. at 272 (bankruptcy plan's filing and contents); Jones, 547 U.S. at 239 (tax sale); Dusenbery, 534 U.S. at

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[13] The Bank's reliance on pre-Flagg Bros. cases is both misleading and mistaken. (See Bank Mot. [DE 50, at 7-8].) As discussed in text, Flagg Bros. affirmed the need for both a statute and a state actor to implicate due process considerations. In none of the cases cited by the Bank is there a state actor analysis. Additionally, many of those cases involved liens arising solely from statute, not from an agreement such as the CC&Rs, which is required for a lien under NRS 116 to arise. See NRS 116.3116; NRS 116.3102(b) (which allows for the ability to collect assessments subject to the provisions of the declaration).

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168 (cash forfeiture); Mennonite, 462 U.S. at 798 (tax sale). Here, the Association's notices satisfied due process because, as set forth fully above, they were "reasonably calculated…to apprise [the Bank] of" the pendency of the Association's foreclosure. Thus, the Bank's motion should be denied and SFR is entitled to summary judgment.

7. The Notices Give Lenders the Iinformation Needed to Protect their Interests

A foreclosure sale is not complete until the gavel drops. Thus, it can be stopped any time prior to that moment. See In re Grant, 303 B.R. 205, 210 (Bankr. D.Nev. 2003) (citing Dazet v. Landry, 21 Nev. 291, 297, 30 P. 1064, 1067 (1892), overruled on other grounds by Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963). In a nonjudicial foreclosure under NRS 116, the opportunity to be heard is provided by: (a) the **thirty days** between mailing the notice of delinquent assessments and recording and mailing of the notice of default and election to sell (NRS 116.31162(1)(b)-(c), NRS 116.31163, and NRS 116.31168); (b) the **ninety days** between recording and mailing the notice of default and recording and mailing the notice of sale (NRS 116.311635, NRS 116.31163, NRS 116.31168); and (c) the **twenty-one days'** notice between the notice of sale and the actual sale (NRS 116.311635(1)(a), NRS 116.21.130(1)(c)). Each of these mandated periods give time for a party in interest to cure or seek judicial intervention, if necessary.

The Notice of Default and Election to Sell

The Bank received the Notice of Default that provides an explicit and clear warning that the Bank's security interest is in jeopardy:

- WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE.

The Notice of Default uses language that puts the unit owner and all subordinate lienholders that the lien being foreclosed includes delinquent assessments — in other words, it is not simply a junior lien for violations of the color of paint on the house or parking in the wrong place. See NRS 116.31162(4) ("The association may not foreclose a lien by sale based on a fine or penalty for a

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violation of the governing documents of the association. . . .").

- The sale may not be set until ninety days from the date this notice of default is recorded.

Like a foreclosure sale under NRS 107, NRS 116 provides notice to the unit owner and subordinate liens that there is at least ninety days in which they can contact the Association — at the address and to the entity whose information is also provided in the notice — to arrange for payment or otherwise seek intervention, such as filing a lawsuit, to stop the foreclosure.

- REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.
- A default in, the obligation for which said CC&R's has occurred in that the **payment(s) have not been made of homeowners assessments**. . . .

Thus, the Bank was on notice that assessments were delinquent.

The Notice of Trustee's Sale

Finally, in addition to the bold warnings given in the Notice of Default, the Association's Notice of Trustee's Sale also expressly provided the Bank with a phone number to contact for an updated payoff amount, the date, location, and time of the sale, the borrower's name, the property address, and how to go about paying off the lien. The Bank is wrong in its assertion that its foreclosure sale rendered these notices "stale." Nothing under NRS 116 requires that the Association start the foreclosure process over merely because the Bank foreclosed first. All the Bank's foreclosure did is affect the amount owed to the Association. In other words, unlike the former homeowner who owed the whole lien, the Bank as the new homeowner owed only the super-priority piece. But this is always the case for the Bank. Most importantly, however, at the time of the Association foreclosure, the super-priority piece was still being foreclosed upon and therefore the sale was proper under NRS 116 and rather than extinguished the Bank's security interest, now that the Bank was the homeowner, the Association sale divested the Bank of its title to the Property. Either way, the Bank lost its interest in the Property because it did not cure the

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delinquency prior to the Association sale.

8. The Bank had Multiple Opportunity to be Heard

Due process is flexible, which means the opportunity to be heard is not dictated by a single set of procedures. Cafeteria & Rest. Workers Union v. McElroy, 367 U.S. 886, 895 (1961). Instead, the opportunity to be heard and its corresponding procedures are tailored to a party's level of sophistication. Mathews v. Eldridge, 424 U.S. 319, 349 (1976)("All that is necessary is that the procedures be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard[.]'")(quoting Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970)). If a party has a meaningful opportunity to protect its interest, then due process has been met. Mathews, 424 U.S. at 349.

Here, the Bank is a sophisticated party that had several meaningful opportunities to protect its alleged deed of trust, and thereafter its ownership interest in the Property.[14] Along similar lines, the Bank had meaningful opportunities to: (i) contest Association's foreclosure; (iii) compel Association to accept payment of assessments; or (iii) enjoin the sale. See Shadow Wood, 2016 WL 347979 at *8. Indeed, the Bank could have resolved these issues by taking the Association to Chapter 38 mediation, followed by a lawsuit against the Association for Chapter 30 declaratory relief and a Chapter 33 injunction. Id. Consequently, it is disingenuous for the Bank to state it was not given an opportunity to protect its interest.

As such, summary judgment in favor of FHHL must be denied.

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[14] Additionally, 116.1108 — which the Bank overlooks — supplements 116 with property law principles, including the tenet "junior lienholders wanting to avoid this result [extinguishment] can preserve their security interests by buying out the senior lienholder's interest." Cape Jasmine Ct. Trust v. Cent. Mortg. Co., No. 2:13-cv-1125-APG-CWH, 2014 WL 1305015, at *5 (D. Nev. Mar. 31, 2014). Here, the Bank is a junior interest that can, pursuant to the aforementioned principle, "buy out" Association's senior interest. Id.

III.

CONCLUSION

For the foregoing reasons, SFR requests this Court deny FHHL's Motion for Summary Judgment.

DATED this 21st day of March 2016.

KIM GILBERT EBRON

/s/ Karen L. Hanks

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March 2016, pursuant to NCRP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO FIRST HORIZON HOME LOANS' MOTION FOR SUMMARY JUDGMENT**, to the following party:

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TAB 11

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

v.

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-679329-C
Dept. No. XXVI

FIRST HORIZON HOME LOAN'S OPPOSITION TO SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

First Horizon Home Loans (**First Horizon**) opposes SFR Investment Pool 1, LLC (**SFR**) for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

First Horizon is entitled to notice and an opportunity to be heard. The HOA trustee, Alessi & Koenig, LLC, admitted as much. It did not happen here. SFR's theory in this case, of foreclosure without notice, based on the fig leaf of deed recitals, violates *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016). Here, the auction price was a

fraction of the fair market value. Plus, the HOA foreclosed without notice, in violation of its own CC&Rs, against First Horizon. This Court should deny SFR's motion for summary judgment.

II.

PLAINTIFF'S ALLEGATIONS

First Horizon owned the property at via a foreclosure sale on February 26, 2013. (**Ex. A** at ¶23). SFR alleges it purchased the property at a homeowner's association foreclosure sale that occurred on March 6, 2013. (*Id.* at ¶6). SFR asserts that it paid a sufficient amount to pay the super priority portion of the homeowner's association lien and costs. (*Id.* at ¶16).

SFR does not allege that First Horizon, *as owner*, received a notice of delinquent assessment, a notice of default and election to sell, a notice of trustee's sale prior to First Horizon acquiring title. SFR does not allege that First Horizon, *as owner*, was in default on any assessments. SFR does not that First Horizon was delinquent in any assessments demanded of First Horizon by the HOA. SFR does not allege that the HOA requested that First Horizon pay a super priority amount. SFR does not allege that the HOA complied with its CC&Rs mandatory notice provision to First Horizon.

III.

GENUINE ISSUES OF MATERIAL FACT

A. SFR's Wilful Blindness to Facts Putting SFR on Notice to First Horizon's Foreclosure.

First, SFR's manager's declaration confirms that SFR wilfully blinded itself to the flaws in the HOA foreclosure sale. This is perfectly encapsulated by Chris Hardin's statement at paragraph 15: "SFR has no reason to doubt the recitals in the Trsutee's [sic] Deed Upon Sale. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale." (SFR's Motion at Exhibit 2, ¶15). This declaration is written passively to show that SFR undertook no affirmative steps to inquire with the HOA's trustee, the HOA, or First Horizon – whose foreclosure sale date was public record prior to SFR participating in the HOA auction.

Second, SFR's manager confirms that he only selectively reviewed the public records prior to the HOA foreclosure. He wrote at paragraph 9 of his declaration: "Based on my research, no release of the super-priority lien was recorded against the Property prior to SFR purchasing the Property. Prior to the Association sale, no Trustee's Deed Upon Sale was recorded by the Bank."

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(*Id.* at ¶9). This portion of SFR's declaration demonstrates that SFR did review the public records, albeit selectively.

Had Mr. Hardin reviewed First Horizon's notice of sale, the CC&Rs, or attended First Horizon's foreclosure sale, then he would have discovered the obvious flaws in the HOA's foreclosure sale.

B. Public Record Put SFR on Inquiry Notice of Flaws in the HOA Sale.

1. First Horizon's Notice of Sale.

Ana Torres defaulted on her home loan. A notice of default and election to sell was recorded on October 30, 2012. (**Ex. B**, NOD). A certificate of compliance with Nevada's Foreclosure Mediation Program was recorded on February 1, 2013. (**Ex. C**, Cert.). A notice of sale was recorded on February 7, 2013. (**Ex. D**, NOS). The notice of sale stated that the date for the public auction of the property was February 26, 2013. (*Id.*) These foreclosure notices put the public, including SFR, that a bank foreclosure was imminent and that parallel HOA foreclosure would be affected as there was going to be a new unit owner of the Property.

2. Unit Owner's Rights to Written Notice.

Section 7.7 of the CC&Rs is called "Rules Regarding Billing and Collection Procedures." (**Ex. E**, CC&Rs at pg. 31). This section, in relevant party, provides as follows:

> The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that that the Assessment or any installation thereof is or will be due and of the amount owing.

(*Id.*). There are no exceptions to the HOA's rule of 30 days' notice.

3. Alessi Would Have Postponed the Sale if it Read First Horizon's Notice of Sale.

David Alessi, testified as Alessi's person most knowledgeable. (**Ex. F**, Transcript of David Alessi's Deposition). He testified as to Alessi's procedures where a lender forecloses and becomes owner prior to a homeowner's association foreclosure:

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Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?

Ms. Ebron: Calls for speculation, incomplete hypothetical.

Mr. Loizzi: Join. Go Ahead.

A. I would answer the question that in general we would not.

Q. And why not.

A. Because there would have been a new – well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably would have sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that time.

(*Id.* at 49:9-25 and 50:1).[1]

IV.

LEGAL STANDARDS

Under Rule 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029, NRCP 56(c). Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.*

V.

LEGAL DISCUSSION

A. SFR's Claims for Quiet Title/ Declaratory Relief All Fail under Nevada State Law.

1. Flaws in the HOA Foreclosure Sale.

First, the HOA's foreclosure violated its own governing documents – the CC&Rs. CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). Here, First Horizon was the

[1] The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

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property. It was entitled to the benefit of the CC&Rs. The HOA denied First Horizon of the benefit of the CC&Rs' notice provision at Section 7.7.

Pursuant to Section 7.7 of the CC&Rs, First Horizon, as a unit owner, was entitled to written notice of default and written notice of the amount supposedly due. (**Ex. E**, *supra*, at pg. 31). The HOA made these notice provisions mandatory by stating that the "Assessment Lien therefor shall not be foreclosed," if these notice provisions are not complied with by the HOA. (*Id.*) SFR in its motion completely ignores this important notice provision.

Second, the HOA's trustee admitted in deposition that he would have restarted the collection process had he had known of First Horizon's foreclosure. The HOA trustee, Alessi, ignored the publicly recorded notice of sale that demonstrated that there would be a new owner entitled to have the collection process restarted. Importantly, there is no requirement that a lender who purchases property at a foreclosure sale immediately record the trustee's deed. To the contrary, Nevada law grants the purchaser or trustee 30 days to record the trustee's deed. *See* NRS §107.080(9)(a)-(b).

A trustee such as Alessi cannot simply ignore First Horizon's rights as an owner. Nevada law affirmatively imposes a duty of good faith onto Alessi's foreclosure activity on behalf of the HOA. *See* NRS §116.1113. Nevada's legislature took the concept of "good faith" directly from Nevada's then version of the Uniform Commercial Code at NRS §104.1203. (**Ex. G**, Legislative History of AB 221 at pg. 91). The duty of good faith required Alessi to act according to the reasonable expectations of First Horizon. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (Nev., 1991).[2] In addressing a similar concept involving the duty of a trustee in the bank foreclosure context, Washington's Supreme Court wrote as follows:

> The trustee of a deed of trust is not required to obtain the best possible price for the trust property. (Citation Omitted). Nonetheless, the trustee must "take reasonable and appropriate steps to avoid sacrifice of the debtor's property and his interest." (Citation Omitted).

Cox v. Helenius, 693 P.2d 683, 687 (Wash. 1985). Alessi was no notice that First Horizon's foreclosure was imminent and would occur prior to the HOA's foreclosure. Alessi was obligated

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[2] The meaning of good faith, whether under the UCC or the common law, is the same. *K Mart Corp. v. Ponsock*, 103 Nev. 39, 48-49, 732 P.2d 1364, 1370 n.8 (1987).

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under the CC&Rs to give First Horizon 30 days' notice of the amount due and owing after First Horizon became owner. Alessi, contrary to its duty of good faith and contrary to the CC&Rs, charged ahead with the HOA's foreclosure and sacrificed First Horizon's rights to notice and opportunity to pay the HOA.

2. Alessi's Conduct is in Addition to the Grossly Inadequate Price.

The *Shadow Wood* court adopted the analysis of Restatement (Third) of Property: Mortgages §8.3 (1997). *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15. Section 8.3 provides:

> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **unless the price is grossly inadequate**.
> (b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

(Emphasis added).

The Restatement authors went on to define what it means by "grossly inadequate:"

> "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. **While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.**

Id. at cmt. b. (Emphasis added).

Finally, the Restatement authors expressly embraced Nationstar's formula and method of proving gross inadequacy:

> This section articulates the traditional and widely held view that a foreclosure proceeding that otherwise complies with state law may not be invalidated because of the sale price unless that price is grossly inadequate. **The standard by which "gross inadequacy" is measured is the fair market value of the real estate.** For this purpose the latter means, not the fair "forced sale" value of the real estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

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Id. (Emphasis added). No one would be so daft as to argue a foreclosure sale should bring a fair market value. Indeed, the Restatement's authors note that forced sales such as foreclosures typically sell for less than fair market value in their introductory discussion in Section 8.3. *See* Restatement (Third) of Property: Mortgages §8.3 cmt.a (1997). The point of the Restatement approach adopted by the *Shadow Wood* court is to compare the fair market value of the property versus what it actually sold for at the foreclosure sale. *Id.* at cmt. b, Illustration 2. If the forced sale price is less than 20% of the fair market value, then the court should set aside the foreclosure sale as "grossly inadequate." Id.; *see also Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15.

The Court should note that the Restatement author's formula for arriving at "fair market value" is identical to Nevada law under NRS §375.010(2), the statute that the Clark County Assessor used to formulate the property's assessed value that appears on the trustee's deeds' declaration of value page.

In *Shadow Wood,* the amount paid was 23 percent amount, which was, to quote the Court, "not obviously inadequate." However, in the instant matter, the sales price SFR was able to obtain the Property for was less than 10% of appraised value. SFR paid $7,000. The appraised value was $94,000. In addition, there was a procedural flaws in the foreclosure sale. **First**, the HOA did not serve First Horizon with the notice required by Sec. 7.7 of the CC&Rs. **Second**, every HOA notice prior to First Horizon's foreclosure sale instantly became meaningless or stale once First Horizon foreclosed on February 26, 2013. First Horizon's foreclosure extinguished the sub-priority portion of the HOA's lien. **Third**, Alessi testified that it was its policy to restart the collection process where it knows that a bank has foreclosed. First Horizon's foreclosure at a public foreclosure sale was public information in the notice of sale. Alessi simply did not read the notice of sale. The Court is warranted therefore under *Shadow Wood* to set aside the foreclosure sale on summary judgment.

3. SFR is Not a BFP.

SFR has it wrong. It is SFR 's burden to prove that it is a bona fide purchaser for value. *Berge v. Fredericks*, 95 Nev. 183, 188, 591 P.2d 246, 248 (1979) ("In order to be entitled to the status of a bona fide purchaser without notice under NRS 111.325, respondent Valdez was required to show that legal title had been transferred to her before she had notice of the prior conveyance to

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appellant.") Under Nevada law, for a buyer to qualify as a *bona fide* purchaser, that buyer cannot have notice, actual or constructive, of another party's unrecorded interest in the property. *Huntington v. Mila, Inc.,* 119 Nev. 355, 356, 75 P.3d 354, 357 (2003). A duty of inquiry arises where circumstances put a reasonable person on notice of another's rights in the property. *Id.*

SFR mistakenly claims that the public records only showed (1) a deed of trust recorded, and (2) CC&Rs under which Torres was delinquent on assessments. (SFR's Motion at pgs. 10-11). However, SFR ignores the meaning of the duty of inquiry. The duty of inquiry is SFR's to bear. *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970). The duty of inquiry means that SFR cannot be passive. The duty of inquiry charges SFR with all of the facts that it could have learned through an investigation – even if SFR did not undertake such an investigation. *Id.* SFR did not attend First Horizons' publicly recorded foreclosure sale. SFR was on record notice of the First Horizon's foreclosure sale. SFR was on further record notice of First Horizon's rights to 30 days' notice as an owner under Section 7.7 of the CC&Rs. SFR chose be passive, but its non-investigation cannot save it from what a reasonable investigation would have uncovered; namely, First Horizon's status as owner and First Horizon's right to 30 days' notice to pay whatever remained owing to the HOA.

Bourne Valley Court Trust v. Wells Fargo, N.A., 80 F.Supp.3d 1131 (D. Nev. 2015) and *Golden v. Tomiyasu*, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963) are not on point. **First**, it was decided before Nevada's Supreme Court adopted the Restatement approach in *Shadow Wood*, supra. **Second**, SFR purchased the property for less than 10% of the fair market value. **Third**, SFR had inquiry notice of the defects in notice of this foreclosure sale. **Fourth**, SFR's is a professional bidder who should know better and cannot claim ignorance of facts that may have slipped by an amateur. *Albice v. Premier Mortg. Servs. of Washington, Inc.*, 239 P.3d 1148, 1157 (Wash. Ct. App. 2010) (purchasers experience in bidding at foreclosure sales, when coupled with a low sale price, sufficient to demonstrate that buyer was not a BFP); *see also Estate of Yates*, 25 Cal.App.4th 511, 513 (Cal. Ct. App. 1994) (*Yates* held the gross inadequacy in price was sufficient to put a skilled and experienced purchaser on notice of the actual procedural defect).

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4. Deed Recitals, Applicable to Torres, are Irrelevant to this Unique Case.

SFR relies on minimal recitals in the foreclosure deed as "conclusive" the HOA provided proper notice and followed all statutory procedures. SFR's argument is incorrect. **First**, the plain language of NRS 116.31166 does not support SFR's sweepingly broad interpretation. **Second**, SFR's argument eradicates any meaning from NRS 116.31164(3)(a). **Third**, SFR's expansive interpretation is completely at odds with NRS 116.31166's legislative history. **Fourth**, since Nevada's super priority foreclosure scheme is a novel change of the common law, then the deed recital statute should be strictly construed to avoid SFR's expansive interpretation. **Fifth**, SFR's interpretation is at odds with the Nevada Supreme Court's interpretation of NRS 116.31166 in *Shadow Wood Homeowners Association, et al. v. New York Comm. Bancorp*, 132 Nev. Adv. Opn. 5 (2016).

a. NRS 116.31166's Plain Language Does Not Support SFR.

The language of the statute should be given its plain language unless doing so violates the act's spirit. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). SFR's argument that NRS 116.31166's deed recital language is pertinent to this dispute between a senior position security interest holder and SFR violates the plain language rule.

First, there is no language in NRS 116.31166 that concerns security interest holders' rights, let alone a security interest owner that has attained title after a foreclosure parallel to the HOA's foreclosure.

Second, NRS 116.31166, by its terms, could only apply to the former owner, Torres. The statue lists the foreclosure events - default, mailing of the notice of delinquent assessment, recording of the notice of default and election to sell, the elapsing of 90 days, and the giving of notice of sale – that only pertain to the former unit owner, Torres. A senior mortgagee, like First Horizon prior to February 26, 2013, has no obligation to pay assessments prior to taking title. The CC&Rs provide that such assessments that became due prior to First Horizon's foreclosure sale are the personal obligation of the former owner, Torres. (**Ex. E**, supra, at pg. 33).[3]

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[3] Note, Section 7.8.3 is not a mortgage savings clause of the type ruled unenforceable in *SFR*. See *SFR Investments Pool 1, LLC,* 130 Nev. Adv. Op. 75 at 23-24. Indeed, Section 7.8.3 recites NRS 116.3116(2).

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b. *Shadow Wood Homeowners Association, Inc., et al. v. New York Comm. Bancorp* is contrary to SFR's Deed Recital Argument.

Nevada's Supreme Court recently interpreted NRS 116.31166's deed recital language in the *Shadow Wood* decision. The court in *Shadow Wood* expressly refused to interpret NRS 116.31166 as broadly as SFR proposes in its motion: "...the Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals." *Shadow Wood Homeowners Association, Inc., et al.*, 123 Nev. Adv. Opn. at 14. The court further wrote that deed recitals could not confirm a default where in fact no default had occurred. *Id.* at 11.

SFR's argument in this case is contrary to Shadow Wood. SFR asks this Court to find First Horizon in default based on irrelevant deed recitals where, in fact, no default occurred. This Court, like Nevada's Supreme Court, should decline to "give the default recital such a broad and unprecedented reading..." *Id.*

B. SFR's Claims for Quiet Title/ Declaratory Relief All Fail under Federal Law.

First Horizon incorporates by reference its arguments under federal law made in Section VI(B) in its motion for summary judgment. The HOA foreclosure sale must be set aside under the Federal Supremacy Clause and the Federal Due Process Clause – as applied to the facts of this case.

VI.

CONCLUSION

SFR is a professional bidder that wants to be treated as an amateur in the foreclosure market. SFR did not participate in First Horizon's foreclosure auction and now wants this Court to ignore (1) the facts that put SFR on notice of that sale and (2) First Horizon's rights to notice and an opportunity to be heard that necessarily arise because of First Horizon's ownership. *Worse still*, Alessi chose to steamroll ahead with the HOA foreclosure process, despite the fact that its policy was to restart the collection process with a new owner. Alessi's duty of good faith required it to do

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Thus, the HOA, in contrast to the HOA in *SFR*, is not waiving its rights to a super priority of assessments. Sections 7.7 and 7.8.3, when read together, provide a procedure for the HOA to collect the super priority lien amount after the mortgagee's foreclosure through 7.7's notice procedure.

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the opposite. Alessi's duty of good faith obligated Alessi to give due reference to First Horizon's rights and not to sacrifice First Horizon's right to notice and an opportunity to pay the HOA upon the alter of Alessi's version of efficiency. At a minimum, there is a genuine issue of material fact concerning the equities of this foreclosure under *Shadow Wood*. This Court should deny SFR's motion for summary judgment.

DATED this 21st day of March, 2016.

AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic notification system ("Wiznet") a true and correct copy of the **FIRST HORIZON HOME LOAN'S OPPOSITION TO SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** foregoing addressed to:

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EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company,

Plaintiff,

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

COMPLAINT

Arbitration Exemptions:
1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and requests injunctive relief against the above named defendants as follows:

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I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **5069 Midnight Oil Drive, Las Vegas, NV 89122; Parcel No. 161-26-111-017** (the "Property").

2. Upon information and belief, Defendant FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION, ("First Horizon"), is a foreign entity that may claim an interest in the Property via a 2013 Trustee's sale.

3. Upon information and belief, Defendant Ana Torres is an individual residing in Nevada and the former title owner of the Property.

4. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

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

6. Plaintiff acquired the Property on March 6, 2013, by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("HOA foreclosure sale"). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

7. On or about March 18, 2013, the resulting foreclosure deed was recorded in the Official

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Records of the Clark County Recorder as Instrument Number 201303180003508 ("HOA Foreclosure Deed").

8. The foreclosure sale was conducted by Alessi & Koenig, LLC, agent for Squire Village at Silver Springs Community Association ("Squire Village HOA"), pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Squire Village HOA governing documents (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on February 22, 2012 in the Official Records of the Clark County Recorder as Instrument Number 201202220001525 ("HOA Lien").

9. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

10. Plaintiff was not the only bidder to attend the HOA foreclosure sale.

11. Plaintiff's winning bid was in excess of the amount included in the HOA's notice of foreclosure sale as due and owing on the HOA Lien.

12. Pursuant to NRS 116.3116(2), the entire HOA Lien

> is prior to all other liens and encumbrances of unit except:
>
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

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

> [the HOA Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]

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14. Upon information and belief, the HOA took the necessary action to trigger the super-priority portion of the HOA Lien.

15. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating Squire Village HOA.

16. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

17. Upon information and belief, Squire Village HOA or its agent Alessi & Koenig, LLC distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

18. Upon information and belief, Defendants had actual or constructive notice of the HOA Lien, including the super-priority portion of the HOA Lien.

19. Upon information and belief, Defendants knew or should have known that the foreclosure of the HOA Lien, including the super-priority portion of the HOA Lien, would extinguish their security and ownership interests in the Property.

20. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the HOA Lien and the Notice of Default.

21. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

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

Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien

23. Upon information and belief, Defendant First Horizon obtained title to the Property on February 26, 2013 at a non-judicial foreclosure sale pursuant to the terms of a deed of trust and recorded against the Property on or about March 7, 2013 in the Official Records of the Clark

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County Recorder as Instrument No. 201303070003168. ("Bank foreclosure sale").

24. Upon acquiring the Property, First Horizon failed to satisfy the HOA Lien.

25. Defendant First Horizon's ownership interest in the Property was extinguished by the foreclosure of the HOA Lien.

26. Any interest in the Property via a deed of trust or other non-governmental lien was either extinguished by the Bank foreclosure sale or foreclosure of the super-priority portion of the HOA Lien.

27. Defendant Ana Torres' ownership interest in the Property was extinguished by foreclosure of the HOA lien.

III. FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against First Horizon Home Loans and Ana Torres)

28. Plaintiff repeats and realleges the allegations of paragraphs 1-27 as though fully set forth herein and incorporate the same by reference.

29. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in the Property.

30. Plaintiff acquired the Property on March 6, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 18, 2013.

31. Ana Torres, as previous title owner of the Property may assert a claim adverse to Plaintiff.

32. Defendant First Horizon as previous title owner of the Property may assert a claim adverse to Plaintiff.

33. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

34. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority over all liens and encumbrances on the Property except for: (1) liens and encumbrances recorded

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before the recordation of the declaration and (2) liens for real estate taxes and other governmental assessments or charges.

35. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

36. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the HOA foreclosure sale extinguished Defendants' ownership and security interests in the Property; and (4) Plaintiff's rights and interest in the Property are superior to any adverse interest claimed by Defendants.

37. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

V. SECOND CLAIM FOR RELIEF
(Unjust Enrichment against First Horizon and Ana Torres)

38. Plaintiff repeats and realleges the allegations of paragraphs 1- 37 as though fully set forth herein and incorporate the same by reference.

39. Plaintiff has expended funds and resources in connection with the acquisition and maintenance of the Property.

40. Defendants will benefit from the funds and resources expended by Plaintiff.

41. Should Plaintiff's quiet title claim be denied, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

42. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the Property and the benefit of the funds and resources Plaintiff expended on the Property.

43. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

44. Plaintiff is entitled to general and special damages in excess of $10,000.00.

VI. THIRDCLAIM FOR RELIEF
(Preliminary and Permanent Injunction against First Horizon)

45. Plaintiff repeats and realleges the allegations of paragraphs 1- 44 as though fully set forth herein and incorporate the same by reference.

46. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 6,

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2013.

47. Defendant First Horizon may claim an interest in the Property through the First Horizon Deed of Trust which was extinguished by the HOA foreclosure sale.

48. Defendants improperly proceeded with the sale or transfer of title to the Property and/or eviction proceedings based on a purported transfer of title through the non-judicial foreclosure of the First Horizon Deed of Trust.

49. Any non-judicial foreclosure sale based on the First Horizon Deed of Trust is invalid as Defendants lost their interest in the Property, if any, at the HOA foreclosure sale.

50. Any further sale or transfer of title to the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

51. Any attempt to take or maintain possession of the Property by Defendants is invalid because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

52. On the basis of the facts described herein, Plaintiff has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

53. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from beginning or continuing any eviction proceedings that would affect Plaintiff's possession of the Property.

54. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting Defendants from any sale or transfer that would affect the title to the Property.

VII. PRAYER FOR RELIEF

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing eviction proceedings, sale or transfer of the Property;

3. For general and special damages in excess of $10,000.00

4. For an award of attorney's fees and costs of suit; and

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5. For any further relief that the Court may deem just and proper.

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. Dept. No. **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

///

///

///

///

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

SFR INVESTMENTS POOL 1, LLC	$270.00
TOTAL	**$270.00**

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower

Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
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EXHIBIT B

EXHIBIT B

Inst #: 201210300002798
Fees: $224.00
N/C Fee: $0.00
10/30/2012 11:25:50 AM
Receipt #: 1382782
Requestor:
PREMIER AMERICAN TITLE
Recorded By: STN Pgs: 6
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

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

NDSC File No. : 12-00029-NS-NV
Title Order No. : 61200062

APN: 161-26-111-017

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 07/15/2008, executed by ANA TORRES, AN UNMARRIED WOMAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., ITS SUCCESSORS AND ASSIGNS as beneficiary recorded 07/25/2008 as Instrument No. 20080725-0003028 (or Book, Page) of the Official Records of CLARK County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of $136,923.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

The installments of principal and interest which became due on 09/01/2011 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Nationstar Mortgage, LLC
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: www.ndscorp.com/sales/

Loss Mitigation Contact: Michael Nguyen / 8888115281 Ext 73062
michael.nguyen@NationstarMail.com

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at: http://portal.hud.gov/portal/page/portal/HUD/localoffices.

The Property Address: 5069 MIDNIGHT OIL DRIVE , LAS VEGAS NV 89122

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated : October 29, 2012

National Default Servicing Corporation, As Trustee for Nationstar Mortgage, LLC, as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association

By: Julie Good, Trustee Sale Supervisor

State of: Arizona
County of: Maricopa

On October 29, 2012, before me, the undersigned, a Notary Public for said State, personally appeared Julie Good personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature

This is an attempt to collect a debt and any information obtained will be used for that purpose.

TS No: 12-00029-NS-NV
APN: 161-26-111-017

AB284 Affidavit

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Borrower/Trustor:

ANA TORRES, A SINGLE WOMAN

Property Address:

5069 MIDNIGHT OIL DRIVE
LAS VEGAS NV 89122

Trustee Address:
7720 N. 16th Street, Suite 300
Phoenix AZ 85020

Deed of Trust Document Instrument Number
20080725-0003028

STATE OF TEXAS)
) ss:
COUNTY OF DENTON)

The Affiant, Blaze Randazzo, being first duly sworn upon oath, attest that I am an individual over the age of eighteen years and an employee of NATIONSTAR MORTGAGE LLC and am employed in the capacity of Limited Vice President. I have obtained personal knowledge of the information stated herein based upon my review of loan servicing records, and/or recorded documents or public records. I am familiar with the manner that the records are kept and maintained by employees of Nationstar Mortgage LLC.

To the best of my knowledge, the following is true and accurate:

A. All records have been maintained in the ordinary course of business, updated at, or near the time of the events recorded and/or described therein;

B. First Horizon Home Loans, a division of First Tennessee Bank, National Association is the current Beneficiary of the Deed of Trust or the authorized representative of the Beneficiary of the Deed of Trust described above, and described in the Notice of Default and Election to Sell to which this affidavit is attached;

C. Pursuant to NRS 107.080(c):

1. The full name and business address of the current Trustee or the Trustee's representative or assignee is:

National Default Servicing Corporation	7720 N. 16th Street, Suite 300 Phoenix, Maricopa County, AZ 85020
Full Name	Street, City, County, State, Zip

The full name and business address of the current holder (or constructive holder) of the Note secured by the Deed of Trust is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

The full name and business address of the current Beneficiary of record of the Deed of Trust is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

Nationstar Mortgage LLC	350 Highland Drive, Lewisville, Denton County, TX 75067
Full Name	Street, City, County, State, Zip

2. The full name and last known business address of the current and every prior known Beneficiary of the Deed of Trust, is:

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

(List additional known Beneficiaries in the same format)

First Horizon Home Loans, a division of First Tennessee Bank, National Association	4000 Horizon Way, Irving, Dallas County, TX 75063
Full Name	Street, City, County, State, Zip

Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a division of First Tennessee Bank, National Association	1818 Library Street, Suite 300, Reston, Fairfax County, VA 20190
Full Name	Street, City, County, State, Zip

3. The Beneficiary, successor in interest of the Beneficiary has actual or constructive possession of the note secured by the Deed of Trust.

4. The Trustee has been authorized to exercise the power of sale under Chapter 107 of NRS with respect to the property encumbered by the Deed of Trust, pursuant to the instruction of the Beneficiary of record (or the authorized representative of the same) and the current holder of the Note secured by the Deed of Trust (or the authorized representative of the same).

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

I. ACTUAL

Original Principal Balance	$136,923.00	
Current Unpaid Principal Balance		$132,014.81
Amount of Missed Payment (PITI)	$13,017.90	
# of Payments:8	$1,003.80	
# of Payments:5	$997.50	
Interest Rate at 6.50% from 8/1/11 to 9/4/12 (14 Months at $715.08 Per Month)		$10,011.12

Actual Fees Charged:

Late Charges	$0.00
NSF Fees	$0.00
Attorney's Fees	$0.00
Foreclosure or Trustee Fees	$0.00
Legal Costs (Non-Judicial Foreclosure)	$0.00
Legal Costs	$0.00
Title Costs	$0.00
Recorder Costs	$0.00
Appraisal or BPO Costs	$0.00
Property Inspection Costs	$96.00
Tax Advances	$472.25
Home Owners Insurance Advances	$249.00
Mortgage Insurance	$699.26
HOA Advances	$0.00

Other	$0.00
Suspense	$0.00
Total	$143,542.44

ESTIMATE

II. Good faith estimate of all fees and costs to be imposed by the Beneficiary or its representative because of the default is **$8,400.00.**

III. Good faith estimate of the total costs and fees to be imposed in connection with the exercise of the power of sale is **$2,830.95.**

6. Exhibit "A" contains the date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

Dated this 6 day of September, 20 12.

Affiant Name: Blaze Randazzo Title - ~~Assistant Secretary~~ OR Limited Vice President

Signature: 9/6/12 (RWS)

Nationstar Mortgage LLC as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association.

STATE OF Texas)
) ss:
COUNTY OF Denton)

On this 6th day of September, 2012, personally appeared before me, a Notary Public, in and for said County and State, Blaze Randazzo, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

ROBERT WARNER SHARP
Notary Public, State of Texas
My Commission Expires
December 16, 2014

Exhibit "A"

TS #: 12-00029-NS-NV
Title Order # 61200062

Subject Deed of Trust Information:

Deed of Trust Dated: July 15, 2008

Deed of Trust Recorded: 07-25-2008 as 20080725-0003028, Official Records

Original Loan Amount: $136,923.00

Original Trustor:

Ana Torres, an Unmarried Woman

Original Beneficiary:

Mortgage Electronic Registration Systems, Inc. MERS, solely as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns

Original Trustee:

United Title of Nevada

Assignments:

The beneficial interest in the Deed of Trust was purportedly assigned by an assignment recorded 08-17-2012 as 201208170001261, of Official Records.

Assignor: Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns
Assignee: First Horizon Home Loans, a Division of First Tennessee Bank, National Association

EXHIBIT C

EXHIBIT C

APN: 161-26-111-017
Alt. APN:
Recording requested by:

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

When recorded, mail to:

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

612.00062

Inst #: 201302010003558
Fees: $17.00
N/C Fee: $0.00
02/01/2013 03:13:13 PM
Receipt #: 1482864
Requestor:
PREMIER AMERICAN TITLE
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

CERTIFICATE

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

Property Owner(s):
Torres, Ana

Property Address:
5069 Midnight Oil Dr
Las Vegas, NV 89122
Clark Co.
Instrument Number:

Trustee: 13-0089-NS-NV
National Default Servicing Corporation
7720 N 16th St, Ste 300
Phoenix, AZ 85020

Deed of Trust Doc Number:
20080725-0003028

Book: Page:

☐ **Mediation Waived:** The Beneficiary may proceed with the foreclosure process.

■ **Non-Applicable Property:** The Beneficiary may proceed with the foreclosure process.

☐ **No Agreement:** A Foreclosure Mediation Conference was held on N/A. The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with the foreclosure process.

☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on N/A. The parties agreed homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.

☐ **Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference or failed to produce the necessary disclosure forms. The Beneficiary may proceed with the foreclosure process.

☐ **Certificate Reissuance:** The Beneficiary may proceed with the foreclosure process.

☐ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 10-30-2013 Proof of Service Date: 11-07-2012

Certificate Issued Date: 01-11-2013

FMP CERT: 2013-01-11-0089

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM
VERISE V. CAMPBELL
DEPUTY DIRECTOR

EXHIBIT D

EXHIBIT D

Inst #: 201302070001593
Fees: $19.00
N/C Fee: $0.00
02/07/2013 12:23:48 PM
Receipt #: 1489408
Requestor:
PREMIER AMERICAN TITLE
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

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

NDSC File No. : 12-00029-NS-NV
Title Order No. : 61200062
APN No. : 161-26-111-017

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 07/15/2008 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY; IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **ANA TORRES, AN UNMARRIED WOMAN**, dated **07/15/2008** and recorded **07/25/2008** as Instrument No. **20080725-0003028** (or Book, Page) and Re-Recorded on **01/11/2013** as Instrument No. **201301110003297** (or Book, Page) for the reason of 'Correct legal' of the Official Records of **CLARK** County, State of **NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **10/30/2012** as Instrument No. **201210300002798** (or Book , Page) of said Official Records.

Date and Time of Sale: 02/26/2013 at 10:00 A.M.
Place of Sale: At the front entrance to the Nevada Legal News 930 S. 4th St., Las Vegas, NV 89101

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

5069 MIDNIGHT OIL DRIVE
LAS VEGAS, NV 89122

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **$148,344.78**. The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and /or the fair market of the property.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 02/05/2013

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

By: _____
Nichole Alford, Trustee Sales Representative

State of: Arizona
County of: Maricopa

On 25, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Nichole Alford personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

TAMMY JOHNSON
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 12-17-13

Signature _____

Exhibit A

NDSC Notice of Sale Addendum

NDSC No.	:	12-00029-NS-NV
PROP. ADDRESS	:	5069 MIDNIGHT OIL DRIVE LAS VEGAS, NV 89122
COUNTY	:	CLARK

LEGAL DESCRIPTION :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

EXHIBIT E

EXHIBIT E

APNs: 161-26-111-015 thru 030
161-26-111-039 thru 044

20010917
.01331

WHEN RECORDED, RETURN TO:

Steven L. Lisker
Bryan Cave LLP
Two North Central Avenue
Suite 2200
Phoenix, Arizona 85004-4406

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

200109 17
.01331

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

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.01331

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SQUIRE VILLAGE AT SILVER SPRINGS, a planned community (this "Declaration") is made as of this 14th day of September, 2001, by Beazer Homes Holdings Corp., a Delaware corporation (the "Declarant").

ARTICLE 1

DEFINITIONS

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Uniform Common-Interest Ownership Act, N.R.S. § 116.1101, et seq., as amended from time to time.

1.2 Defined Terms. The following capitalized terms shall have the general meanings described in the Act and for purposes of this Declaration shall have the specific meanings set forth below.

1.2.1 "Act" means the Uniform Common-Interest Ownership Act, N.R.S. § 116.1101, et seq., as amended from time to time.

1.2.2 "Additional Property" means the real property located in Clark County, Nevada, which is described on **Exhibit B** attached to this Declaration, together with all buildings and other Improvements located thereon.

1.2.3 "Architectural Committee" means the committee of the Association to be created pursuant to **Section 6.11** of this Declaration.

1.2.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to **Section 6.11** of this Declaration, as amended or supplemented from time to time.

1.2.5 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.2.6 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to **Article 7** of this Declaration.

1.2.7 **"Assessment Lien"** means the lien granted to the Association by the Act to secure the payment of Assessments, fines and other charges owed to the Association.

1.2.8 **"Association"** means Squire Village at Silver Springs Community Association, a Nevada nonprofit corporation, its successors and assigns.

1.2.9 **"Board of Directors"** means the Board of Directors of the Association.

1.2.10 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.2.11 **"Common Elements"** means any real estate within the Community owned or leased by the Association, other than the Units.

1.2.12 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, including (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon, including clustered mailboxes, private streets, gated entryways, street lights and recreational facilities; (ii) the cost of maintenance, repair and replacement of the parts of the Units for which the Association has the responsibility of maintaining; (iii) the cost of centrally metered utilities which serve the Units and or the Common Elements and the cost of trash removal for the Units if so elected by the Board of Directors, (iv) the cost of all obligations of the Association pursuant to the Easement and Maintenance Agreement; (v) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, the costs of bonding the members of the Board of Directors, and the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Association, including fees, charges and costs payable to any governmental entity pursuant to law; (vi) the costs of rendering to the Units' Owners all services required to be rendered by the Association under the Governing Documents; (vii) such amount as is established by the Association as a reserve for the cost of repair and replacement for the major components of the Common Elements, which may be used only for Common Expenses that involve major repairs or replacement, including repairing and replacing roads and sidewalks and which may not be used for daily maintenance, (viii) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (ix) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community for the common benefit of the Units' Owners.

1.2.13 **"Common Expense Assessment"** means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.14 **"Common Expense Liability"** means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.15 "Community" means the real property located in Clark County, Nevada, which is described in **Exhibit A** attached to this Declaration, together with all Improvements located thereon, and any portion of the Additional Property which is annexed by the Declarant pursuant to **Section 2.8** of this Declaration, together with all Improvements located thereon.

1.2.16 "Declarant" means Beazer Homes Holdings Corp., a Delaware corporation, and its successors and any person or entity to whom it may transfer any Special Declarant's Right.

1.2.17 "Declarant Party" or "Declarant Parties" means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

1.2.18 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.2.19 "Developmental Rights" means any right or combination of rights reserved by the Declarant in this Declaration to do any of the following:

(i) Add real estate to the Community;

(ii) Create Units, Common Elements and Limited Common Elements within the Community;

(iii) Subdivide Units or convert Units into Common Elements; or

(iv) Withdraw real estate from the Community.

1.2.20 "Dewatering System" means the underground drainage pipes and other drainage facilities installed within the Common Elements, those portions of the Units encumbered by a "10' Dewatering Easement" as shown on the Plat and the Sterling Community.

1.2.21 "Dwelling" means any building, or portion of a building, situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence.

1.2.22 "Easement and Maintenance Agreement" means that certain Easement and Maintenance Agreement Recorded on September 14, 2001, in Book 20010914 as Instrument No. 001052, between and among the Association, the Sterling at Silver Springs Homeowners Association, a Nevada nonprofit corporation, Declarant and Plaster Development Company, Inc., a Nevada corporation, the declarant under that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463, as described in **Section 3.8** of this Declaration.

1.2.23 **"First Mortgage"** means any mortgage or deed of trust on a Unit with first priority or any other mortgage or deed of trust on the same Unit.

1.2.24 **"First Mortgagee"** means the holder of any First Mortgage.

1.2.25 **"Governing Documents"** means this Declaration and the Articles, Bylaws, Rules and the Architectural Committee Rules.

1.2.26 **"Identifying Numbers"** means the number assigned to a particular Unit which identifies only that one Unit in the Community and which is shown on the Plat as a "Lot Number."

1.2.27 **"Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Community, including buildings, basketball hoops and poles, play equipment, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

1.2.28 **"Include" or "including"** means include or including, without limitation.

1.2.29 **"Limited Private Utility and Access Easement"** means the easements shown on the Plat and described in **Subsections 3.1.2 and 3.2.2** which provide for the placement of utilities within Units and vehicular and pedestrian ingress and egress to a Unit over a portion of one or more other Units.

1.2.30 **"Member"** means any Person who is or becomes a member of the Association.

1.2.31 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of:

(i) Sixty (60) days after the conveyance of seventy-five percent (75%) of the Units that may be created to Units' Owners other than the Declarant; or

(ii) Five (5) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) Five (5) years after any right to add new Units was last exercised.

1.2.32 **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.2.33 "**Plans**" means the plans referred to in Subsection 5 of N.R.S. 116.2109, including drawings of improvements which are filed with agencies which issue permits but do not need to be Recorded.

1.2.34 "**Plat**" means the Final Map of Silver Springs - Unit A, which plat has been Recorded in Book 91, page 36 of Plats, and any amendments, supplements or corrections thereto.

1.2.35 "**Purchaser**" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit's Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant's Right.

1.2.36 "**Recording**" means placing an instrument of public record in the office of the County Recorder of Clark County, Nevada, and "**Recorded**" means having been so placed of public record.

1.2.37 "**Resident**" means each individual occupying or residing in any Unit.

1.2.38 "**Rules**" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.39 "**Special Assessment**" means any assessment levied against the Units pursuant to Section 7.4 of this Declaration.

1.2.40 "**Special Declarant's Rights**" means rights reserved for the benefit of the Declarant in this Declaration or by the Act to do any of the following:

(i) Construct Improvements provided for in this Declaration or shown on the Plat or the Plans;

(ii) Exercise any Developmental Right;

(iii) Maintain sales offices, management offices, models and signs advertising the Community;

(iv) Use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property;

(v) Make the Community subject to a master association;

(vi) Merge or consolidate the Community with another common-interest community of the same form of ownership; or

(xii) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.41 **"Sterling Community"** means all real property located in Clark County, Nevada, lying within the Final Map of Silver Springs - Unit B, as shown by the plat Recorded in Book 85, page 96 of Plats, which has been encumbered by that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservations of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463.

1.2.42 **"Unit"** means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

1.2.43 **"Unit's Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit's Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit's Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of a Unit, the fee simple title to which is vested in a trustee under a deed of trust, the Trustor shall be deemed to be the Unit's Owner. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit's Owner.

1.2.44 **"Visible From Neighboring Property"** means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of such neighboring property; provided, however, that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person six (6) feet tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron fence were a solid fence.

ARTICLE 2

SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES

2.1 Submission of Property. Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Act for the purpose of creating

a planned community in accordance with the provisions of the Act and hereby declare that the real property described on **Exhibit A** attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, and any part of the Additional Property annexed pursuant to **Section 2.8** of this Declaration, together with all Improvements situated thereon and easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 **Name of Planned Community.** The name of the planned community created by this Declaration is Squire Village at Silver Springs.

2.3 **Name of Association.** The name of the Association is Squire Village at Silver Springs Community Association.

2.4 **Identifying Numbers of Units.** The Identifying Numbers of the Units are as set forth on **Exhibit A**.

2.5 **Unit Boundaries.**

2.5.1 The boundaries of each Unit are as shown on the Plat.

2.5.2 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's votes in the Association and Common Expense Liabilities subject to and in accordance with the Act.

2.6 **Allocation of Common Expense Liabilities.** The liability for the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Expenses of the Association shall be 1/22. If the Community is expanded by the annexation of all or any part of the Additional Property pursuant to **Section 2.8** of this Declaration, the votes in the Association and the liability for the Common Expenses of the Association shall be reallocated in the manner set forth in **Subsection 2.8.1(iv)** of this Declaration. The maximum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/22. The minimum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/238. Nothing contained in this **Section 2.6** shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under **Articles 5, 7** and other provisions of this Declaration.

2.7 **Allocation of Votes in the Association.** The total votes in the Association shall be equal to the number of Units in the Community. The votes in the Association shall be allocated equally among all the Units, with each Unit having one (1) vote.

2.8 **Expansion of the Planned Community.**

2.8.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the planned community created by this Declaration, without the consent of any other Unit's Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the planned community by preparing and Recording in the records of every county in which any portion of the Community is located an amendment to this Declaration containing the following:

(i) a legal description of the portion of the Additional Property being annexed,

(ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit;

(iii) a description of the Common Elements created;

(iv) a reallocation to each Unit of a percentage liability in the Common Expenses of the Association and in the votes in the Association, all of which shall be allocated equally to each Unit, and

(v) a description of any Developmental Rights reserved by the Declarant within the Additional Property being annexed.

2.8.2 Unless otherwise provided in the amendment adding Additional Property, the effective date for reallocating to each Unit a percentage undivided interest in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing additional Units is Recorded in the records of every county in which any portion of the Community is located.

2.8.3 This option to expand the planned community shall expire seven (7) years from the date of the Recording of this Declaration.

2.8.4 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property submitted to the Community need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

2.8.5 There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

2.8.6 The Additional Property, when and if added to the Community, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Governing Documents

2.8.7 Any Improvements placed, constructed, replaced, or reconstructed on the Additional Property will be consistent with the existing Units in the Community as to quality of construction.

2.8.8 Declarant reserves the right to create and develop, directly or through merchant builders to which the various Units may be conveyed, up to an aggregate maximum of two hundred thirty-eight (238) improved Units in the Community to wit: twenty-two (22) Units on the real property described in **Exhibit A** and two hundred sixteen (216) Units on the Additional Property described in **Exhibit B**, in the event Declarant exercises its right of annexation pursuant to the terms of this Declaration. Declarant makes no representations, assurances or warranties whatsoever that (i) all of such Units and Improvements will be created or developed, nor that the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is Recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the sequence, timing or location of further development; (iv) the use of any property subject to this Declaration will not be changed in the future. Unless otherwise expressly provided elsewhere herein, any "Developmental Rights" or "Special Declarant's Rights" (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Community or Additional Property at different times, and the exercise of such rights in a portion of the Community or Additional Property shall not necessitate the exercise of any such right in all or any portion of the remaining Community or Additional Property.

ARTICLE 3

EASEMENTS

3.1 Utility Easement.

3.1.1 There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements

3.1.2 Limited Private Utility and Access Easements have been granted and conveyed on the Plat to the utility providers named therein over, under and across Units for the construction and maintenance of utilities together with the right of ingress and egress to such utilities.

3.2 **Easements for Ingress and Egress.**

3.2.1 There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Units' Owners and occupants of the Units and their guests, families, tenants and invitees.

3.2.2 Every Unit Owner, for the benefit of such Unit's Owner and occupants of the Unit and their guests, families, tenants and invitees, shall have a right and easement for ingress and egress for pedestrian and vehicular traffic over, through and across any Limited Private Utility and Access Easement necessary to gain access to the Unit's Owner's Unit, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Limited Private Utility and Access Easements, and

(ii) All rights and easements set forth in this Declaration and the Plat, including the rights and easements granted to the Declarant by **Sections 3.4 and 3.5** of this Declaration.

A Unit's Owner's right and easement for ingress and egress as set forth in this **Subsection 3.2.2** shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.3 **Unit Owners' Easements of Enjoyment.**

3.3.1 Every Unit's Owner shall have a right and easement of enjoyment in and to the Common Elements (including the right to use any private streets for ingress and egress to the Unit's Owner's Unit), which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements.

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Act and in **Section 6.12** of this Declaration;

(iii) All rights and easements set forth in this Declaration, including the rights and easements granted to the Declarant by **Sections 3.4 and 3.5** of this Declaration; and

(iv) The right of the Association to suspend the right of a Unit's Owner and any Resident of the Unit to use the Common Elements for any period during which the Unit's Owner or any Resident of the Unit is in violation of any provision of the Governing Documents, provided, however, that any such suspension shall not affect the easement granted pursuant to **Section 3.2** of this Declaration nor the right of a Unit's Owner and such Unit's Owner's family, Residents and guests to use any private streets for ingress or egress to the Unit's Owner's Unit, including any area used for parking as permitted under this Declaration.

3.3.2 If a Unit is leased or rented, the lessee and the Residents residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit's Owner shall have no right to use the Common Elements until the termination or expiration of the lease, except for the right to use any private streets for ingress and egress to the Unit's Owner's Unit.

3.3.3 The guests and invitees of any Unit's Owner or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1** of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to **Subsection 3.3.2** of this Declaration may use the Common Elements provided they are accompanied by a Unit's Owner, lessee or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1 or 3.3.2** of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.3.4 A Unit's Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4 Declarant's Use for Sales And Leasing Purposes.

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, a design center, construction offices, model homes and parking areas (collectively, "Sales and Construction Facilities") throughout the Community and to maintain one or more advertising, identification or directional signs on the Common Elements. Declarant

reserves the right to place Sales and Construction Facilities on any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate Sales and Construction Facilities to different locations within the Community. Upon the relocation of Sales and Construction Facilities from a portion of the Community constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as Declarant is marketing Units in the Community, Declarant shall have the right to restrict the use of the parking spaces, including the right to reserve such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.4.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Community any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.5 The Declarant reserves the right to allow the gated entrances to remain open during business and construction hours for the period of time necessary to sell and construct all Units and other Improvements in the Community.

3.5 Declarant's Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat, the Plans and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Community.

3.5.2 Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 The Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

3.5.4 The Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant's Rights whether arising under the Act or reserved in this Declaration.

3.6 **Common Elements Easement in Favor of the Association.** The Common Elements shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.7 **Units Easement in Favor of Association.** The Units are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.7.1 For inspection of the Units in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

3.7.2 For inspection, maintenance, repair and replacement of the Common Elements situated in or accessible from such Units;

3.7.3 For inspection, maintenance, repair and replacement of those portions of Units to be maintained by the Association as set forth in **Section 5.1** of this Declaration.

3.7.4 For correction of emergency conditions in one or more Units or casualties to the Common Elements or the Units.

3.7.5 For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Governing Documents and the Easement and Maintenance Agreement, and

3.7.6 For inspection, at reasonable times and upon reasonable notice to the Units' Owners, of the Units in order to verify that the provisions of the Governing Documents and the Easement and Maintenance Agreement are being complied with by the Units' Owners, their guests, tenants, invitees and the other occupants of the Units.

3.8 **Easement Over Common Elements and Units in Favor of Others.** Pursuant to the Easement and Maintenance Agreement, certain portions of the Common Elements and Units shall be subject to an easement in favor of the Sterling at Silver Springs Homeowners Association, a Nevada non-profit corporation, for the purpose of maintaining certain common improvements described in the Easement and Maintenance Agreement, including the Desilting System, and allocating between the Community and the Sterling Community the cost of potable

water delivered through two master water meters. The easements, rights and obligations granted and imposed by the Easement and Maintenance Agreement are incorporated herein and made a part hereof.

3.9 **Easement Data.** The Recording data required to be contained herein pursuant to N.R.S. 116.2105(1)(m), for any easements or licenses appurtenant to or included in this common-interest community or to which any portion of this common-interest community is or may become subject by means of a reservation of this Declaration is as follows: The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by the Plat is the same as the Recording data for the Plat.

3.10 **Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of the original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on the Common Elements or any Unit by a Unit's Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 **Architectural Control.**

4.1.1 All Improvements constructed on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

4.1.2 No excavation or grading work shall be performed on any Unit without the prior written approval of the Architectural Committee.

4.1.3 No Improvement shall be constructed or installed on any Unit without the prior written approval of the Architectural Committee.

4.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme of any Unit, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

4.1.5 Any Unit's Owner desiring approval of the Architectural Committee for excavation or grading, or for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of such Unit, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other

work which the Unit's Owner desires to perform. Any Unit's Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Unit's Owner who had requested approval of such plans.

4.1.6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

4.1.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Unit's Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

4.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

4.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

4.1.10 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

4.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

4.1.12 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such

construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation

4.2 **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee

4.3 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Unit or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 **Diseases and Insects.** No person shall permit any thing or condition to exist upon any Unit or other property which shall induce, breed or harbor infectious plant diseases or noxious insects

4.5 **Repair of Building.** No Dwelling, building or structure on any Unit shall be permitted to fall into disrepair and each such Dwelling, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling, building or structure is damaged or destroyed, then, subject to the approvals required by Section 4.1 of this Declaration, such Dwelling, building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.6 **Antennas** Except as permitted by law or as set forth in the Architectural Committee Rules, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including satellite or microwave dishes, shall be erected, used, or maintained on any Unit without the prior written approval of the Architectural Committee

4.7 **Mineral Exploration**. No Unit shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.8 **Trash Containers and Collection**. No garbage or trash shall be placed or kept on any Unit, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Units and other property and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Unit The Board of Directors shall have the right to contract with one or more third parties (including a municipality) for the collection of garbage, trash or recyclable materials for the benefit of the Units' Owners and Residents, with any costs to be Common Expenses or billed separately to the Units' Owners The Board of Directors shall have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection

4.9 **Clothes Drying Facilities**. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Unit so as to be Visible From Neighboring Property

4.10 **Utility Service**. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Unit unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee

4.11 **Overhead Encroachments**. No tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

4.12 **Residential Use**. All Dwellings shall be used, improved and devoted exclusively to residential use No trade or business may be conducted on any Unit or in or from any Dwelling,

except that an Owner or other Resident of a Dwelling may conduct a business activity within a Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Community; (iii) the business activity does not involve persons coming on to the Unit or the door-to-door solicitation of Owners or other Residents in the Community and; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Community, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a provider's Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Dwelling by the Unit's Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.13 **Animals**. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Unit, except that two (2) dogs, cats, parakeets (or similar household birds) or common domestic pets may be kept on a Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Unit except that a dog or cat may be permitted to leave an Owner's Unit if such dog or cat is at all times kept on a leash not to exceed six (6) feet in length and is not permitted to enter upon any other Unit. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Unit's Owner, Resident or other person who brings or permits an animal to be on the Common Elements or any Unit shall be responsible for immediately removing any solid waste deposited by said animal.

4.14 **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit, except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Community.

4.15 **Signs** No signs whatsoever (including commercial, political, "for sale," "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Unit except

(i) Signs required by legal proceedings;

(ii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee, and

(iii) One (1) "For Sale" sign provided, the size, color, design, message content, location and type has been approved in writing by the Architectural Committee

4.16 **Restriction on Further Subdivision, Property Restrictions and Rezoning** No Unit shall be further subdivided or separated into smaller units or parcels by any Unit's Owner other than the Declarant, and no portion less than all of any such Unit shall be conveyed or transferred by any Unit's Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be Recorded by any Unit's Owner or other Person other than the Declarant against any Unit without the provisions thereof having been first approved in writing by the Architectural Committee No application for rezoning, variances or use permits pertaining to any Unit shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration

4.17 **Trucks, Trailers, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; and (ii) boats and vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair.

4.18 **Motor Vehicles.**

4.18.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Unit or other property in the Community, and no inoperable vehicle may be stored or parked on any such Unit so as to be Visible From Neighboring Property or to be visible from any Common Element or any street.

4.18.2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Community except in garages of Units.

4.18.3 The parking of any motor vehicle on streets and within the Limited Private Utility and Access Easement is prohibited.

4.19 **Towing of Vehicles**. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit's Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

4.20 **Drainage**. No Dwelling, structure, building, landscaping, fence, wall or other improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Community, or any part thereof, or for any Unit as shown on the drainage plans on file with the county or municipality in which the Community is located.

4.21 **Garages and Driveways**. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

4.22 **Rooftop Air Conditioners Prohibited**. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other building so as to be Visible From Neighboring Property without the prior written consent of the Architectural Committee.

4.23 **Leasing**.

4.23.1 Subject to the terms of this Section, an entire Unit may be leased to a lessee from time to time by a Unit's Owner provided that each of the following conditions is satisfied:

(1) The lease or rental agreement must be in writing.

(iii) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration and the other Governing Documents and that any violation of any of the foregoing shall be a default under the lease or rental agreement.

(iii) Before commencement of the lease term or rental agreement, the Unit's Owner shall provide the Association with the names of the lessees and each person who will reside in the Dwelling and the address and telephone number of the Unit's Owner.

4.23.2 Any Unit's Owner that leases or rents such Unit's Owner's Unit shall keep the Association informed at all times of the Unit's Owner's address and telephone number. Any lease or rental agreement shall be subject to the Governing Documents, and any breach of the Governing Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any lessee breaches any restriction contained in the Governing Documents, the Unit's Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the lessee. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and the Governing Documents.

4.24 **Restrictions on Landscaping within Dewatering Easement.** Underground pipes have been installed on certain Units within areas designated on the Plat as "10' Dewatering Easement." No trees shall be planted or maintained within the 10' Dewatering Easement area, and only ground cover, grass and small shrubs will be permitted within such easement areas. If any landscaping within the 10' Dewatering Easement is damaged or destroyed in the course of maintaining the underground pipes, each Unit Owner, at its sole cost and expense, shall be responsible for the repair of such damage.

4.25 **Variances; Diminution of Restrictions.** The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this **Article 4** if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit's Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Unit's Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. If any restriction set forth in this **Article 4** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

4.26 **Change of Use.** Upon (i) adoption of a resolution by the Board of Directors stating that, in the Board of Directors' opinion, the then present use of a designated part of the Common

Elements is no longer in the best interests of the Units' Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such part of the Common Elements under the terms of this Declaration, the Board of Directors shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board of Directors to accommodate the new use), provided such new use shall be for the benefit of the Units' Owners and shall be consistent with any zoning regulations restricting or limiting the use of that part of the Common Elements.

ARTICLE 5

MAINTENANCE AND REPAIR OF

COMMON ELEMENTS AND UNITS

5.1 Duties of the Association

5.1.1 The Association shall maintain, repair and replace all Common Elements. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Common Elements, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Section.

5.1.2 The Association shall maintain, repair and replace (i) all paving and curbing Improvements lying within the Limited Private Utility and Access Easements (specifically excluding any portion thereof which constitutes a driveway located between such curbing and the Dwelling), (ii) all portions all private sewer and water lines and appurtenant facilities and all other utility Improvements lying within the Limited Private Utility and Access Easements and not maintained by a utility company (the Improvements in (i) and (ii) being collectively referred to herein as the "Easement Improvements"), and (iii) those portions of Dewatering System lying within the Community. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Easement Improvements and those portions of the Dewatering System lying within the Community, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Subsection.

5.2 Duties of Unit's Owners.

5.2.1 Each Unit's Owner shall maintain, repair and replace, at such Unit's Owner's expense, all portions of such Unit's Owner's Unit and all Improvements situated thereon

not required to be maintained, repaired and replaced by the Association pursuant to **Section 5.1** in good condition and repair, including grass, hedges, shrubs, vines, plants and other landscaping. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Units upon which no Dwelling has been constructed shall be maintained in a weed free and attractive manner.

5.2.2 Each Unit's Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon and the Easement Improvements which results from the negligence or willful conduct of the Unit's Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit's Owner shall be paid by the Unit's Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 **Unit's Owner's Failure to Maintain.** If a Unit's Owner fails to maintain the Unit's Owner's Unit in good condition and repair as required by this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit's Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit's Owner pursuant to **Subsection 7.2.4** of this Declaration.

5.4 **Common Walls.** The rights and duties of Unit's Owners of Units with respect to common walls shall be as follows:

5.4.1 The Units' Owners of contiguous Units who have a common wall shall both equally have the right to use such wall provided that such use by one Unit's Owner does not interfere with the use and enjoyment of same by the other Unit's Owner.

5.4.2 If any common wall is damaged or destroyed through the act of a Unit's Owner, it shall be the obligation of such Unit's Owner to rebuild and repair the common wall without cost to the other Unit's Owner or Units' Owners.

5.4.3 If a common wall is damaged or destroyed by some cause other than the act of one of the adjoining Units' Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then all adjoining Units' Owners shall rebuild or repair the common wall at their joint and equal expense.

5.4.4 The right of any Unit's Owner to contribution from any other Unit's Owner under this Section shall be appurtenant to the land and shall pass to such Unit's Owner's successors in title.

5.4.5 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit's Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Units' Owners; and

5.4.6 If any common wall encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Units' Owners of the Units which share such common wall.

5.5 **Maintenance of Walls other than Common Walls.**

5.5.1 Walls (other than common walls) located on a Unit shall be maintained, repaired and replaced by the Unit's Owner.

5.5.2 Any wall which is placed on the boundary line between a Unit and the Common Elements shall be maintained, repaired and replaced by the Unit's Owner, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Elements.

5.5.3 Any wall which is placed on the boundary line between a Unit and public right-of-way, the outside of which is decorative (i.e., patterned block or stuccoed and or painted) as installed by Declarant to promote the identity of the Community, shall be maintained, repaired and replaced by the Unit's Owner except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way. Any such wall, the outside of which is not decorative, shall be maintained, repaired and replaced by the Unit's Owner.

ARTICLE 6

THE ASSOCIATION

6.1 **Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a Nevada nonprofit corporation. The Association shall be the entity through which the Units' Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital improvements in the Community by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit's Owners representing more than fifty percent (50%) of the votes in the Association.

6.2 **Directors and Officers.**

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, whom do not have to be Units' Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Units' Owners shall elect the Board of Directors which must consist of at least three (3) members, at least a majority of whom must be Units' Owners. The Board of Directors elected by the Units' Owners shall then elect the officers of the Association.

6.2.3 The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.2.4 No later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created to Units' Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created to Units' Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant.

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given and taken by the Board of Directors. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, shall have the power to levy reasonable fines against a Unit's Owner for a violation of the Governing Documents by the Unit's Owner, a guest of the Unit's Owner, a lessee of the Unit's Owner or by any Resident of the Unit's Owner's Unit.

6.3 **Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations (collectively, the "Rules"). Except as otherwise provided in this Declaration or under the Act, the Rules may, among other things, restrict and govern the use of any area by any Unit's Owner, by the family of such Unit's Owner, or by any invitee, licensee or lessee of such Unit's Owner.

6.4 **Composition of Members.** Each Unit's Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the

Units' Owners. A Unit's Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit's Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit's Owner's ownership ceases for any reason, at which time, such Unit's Owner's membership in the Association shall automatically cease.

6.5 **Personal Liability**. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 **Implied Rights**. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

6.7 **Voting Rights**. Subject to Section 6.8 below, each Unit's Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit's Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and or Bylaws.

6.8 **Voting Procedures**. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit's Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit's Owner was acting with the authority and consent of all other Unit's Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 **Transfer of Membership**. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as

may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit's Owner thereof. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit's Owner of a Unit.

6.10 **Suspension of Voting Rights.** If any Unit's Owner fails to pay any Assessments or other amounts due to the Association under the Governing Documents within fifteen (15) days after such payment is due or if any Unit's Owner violates any other provision of the Governing Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit's Owner of the violation, the Board of Directors shall have the right to suspend such Unit's Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Governing Documents are corrected.

6.11 **Architectural Committee.** The Association may, in the discretion of the Board of Directors from time to time, have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. In the event no Architectural Committee is formed, the Board of Directors shall perform all functions of the Architectural Committee except as provided herein to the contrary or as waived in writing by the Board of Directors. The Architectural Committee shall be a Committee of the Board of Directors. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Unit, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Unit, the members of the Architectural Committee shall be appointed by the Board of Directors. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Unit, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

6.12 **Conveyance or Encumbrance of Common Element.** The Common Elements shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Units' Owners representing at least two-thirds (2/3) of the votes allocated to Units' Owners other than the Declarant.

6.13 **Commencement of Civil Action.** The Association may not commence a civil action without the prior written consent or affirmative vote of Units' Owners to which at least a majority of the votes of the Members of the Association are allocated. At least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Units' Owners that includes a reasonable estimate of the costs of the civil action, including reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced (i) to enforce the payment of an Assessment, (ii) to enforce the Governing Documents, (iii) to proceed with a counterclaim, or (iv) to protect the health, safety and welfare of the Members of the Association

ARTICLE 7

ASSESSMENTS

7.1 **Preparation of Budgets.**

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including contributions to be made to the reserve fund, and (ii) a budget to maintain a reserve fund for the repair, replacement and restoration of the major components of the Common Elements prepared in accordance with applicable law. The budget described in (i) above shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to **Subsection 7.2.4 or 7.2.5** of this Declaration.

7.1.2 Within thirty (30) days after the adoption of the budgets, the Board of Directors shall send to each Unit's Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit's Owner in accordance with Section 7.2 of this Declaration and shall set a date for the meeting of the Units' Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Units' Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Units' Owners must be continued until such time as the Units' Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit's Owner's obligation to pay such Unit's Owner's

allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit's Owner shall continue to pay the Common Expense Assessment against such Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.2 **Common Expense Assessment.**

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration, for the purpose of providing funds for the Association to pay Common Expenses. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The maximum Common Expense Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum annual Common Expense Assessment for each Unit shall be eight hundred forty dollars ($840.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Board of Directors may, without a vote of the Members, increase the maximum Common Expense Assessment during each fiscal year of the Association by the greater of (a) fifteen percent (15%) of the maximum Common Expense Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84 = 100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

$$A \times \frac{\text{Consumer Price Index for September of the calendar year immediately preceding the year in which the Common Expense Assessments commenced.}}{}$$

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Common Expense Assessment is to be determined

SEX

X = multiplied by the maximum Common Expense Assessment for the then current fiscal year equals the amount by which the maximum Common Expense Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index that shall be used for computing the increase in the maximum Common Expense Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board of Directors.

(iii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum Common Expense Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with **Subsection 7.2.1** of this Declaration.

7.2.4 If any Common Expense is caused by the misconduct of any Unit's Owner, the Association shall assess that Common Expense exclusively against such Unit's Owner's Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

7.2.6 All Assessments, fines and other fees and charges levied against a Unit shall be the personal obligation of the Unit's Owner of the Unit at the time the Assessments, fines or other fees and charges became due. The personal obligation of a Unit's Owner for Assessments, fines and other fees and charges levied against such Unit shall not pass to the Unit's Owner's successors in title unless expressly assumed by them.

7.3 **Uniform Rate of Assessment.** The amount of the Common Expense Assessment levied against each Unit shall be equal and at the uniform rate established by the Board of Directors, and shall be determined by dividing the budgeted Association funds by the number of

Units then subject to assessment. Accordingly, the Common Expense Assessment shall be allocated to each Unit based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then subject to assessment.

7.4 **Special Assessments.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Units' Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Units' Owners.

7.5 **Assessment Period.** The period for which the Common Expense Assessment is to be levied (the "Assessment Period") shall be the calendar year. The first Assessment Period, and the obligation of the Units' Owners to pay Common Expense Assessments, shall commence upon the first day of the month following the conveyance of the first Unit to a Purchaser and shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors, in its sole discretion from time to time, may change the Assessment Period.

7.6 **Commencement Date of Assessment Obligation.** All Units described on **Exhibit A** to this Declaration shall be subject to Assessments upon the first day of the month following the conveyance of the first Unit to a Purchaser. Units annexed pursuant to **Section 2.8** of this Declaration shall be subject to Assessments on the first day of the month following the date which the amendment annexing the additional Units is Recorded. Upon the annexation of any portion of the Additional Property, the amount of the Common Expense Assessment levied against each Unit shall be recalculated based upon a fraction, the numerator of which is one (1) and the denominator of which is the new number of Units then subject to Assessments.

7.7 **Rules Regarding Billing and Collection Procedures.** Common Expense Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board of Directors. Special Assessments may be collected as specified by the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth in **Section 7.10** below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after

delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment Period, but successor Units' Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Units' Owners.

7.8 **Effect of Nonpayment of Assessments; Remedies of the Association.**

7.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the maximum rate allowable under Nevada law. In addition, the Board of Directors may establish a late fee to be charged to any Unit's Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

7.8.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit's Owner of the Unit; (iii) all fines levied against the Unit's Owner of the Unit, (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit's Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Unit's Owner of a Unit; and (v) any amounts payable to the Association pursuant to Section 5.2 or 5.3 of this Declaration. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Unit's Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit's Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Unit.

7.8.3 The Assessment Lien shall have priority over all liens and encumbrances except for: (i) liens and encumbrances recorded prior to the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any bona fide First Mortgage Recorded prior to the date the delinquent Assessment(s) first accrued, provided, however, that the Assessment Lien is also prior to any such First Mortgage to the extent of Common Expense Assessments which became due during the six (6) months immediately preceding the date of filing the Notice of Lien described in Section 7.9 below. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit

through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person except for Common Expense Assessments which became due during the six (6) months immediately prior to the date of filing of the Notice of Default described in **Section** 7.10 below. Any Assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit's Owner of the Unit. Any delinquent Assessments, fines and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense.

7.8.4 Except as otherwise provided in **Section** 7.9 or in the Act, the Association shall not be obligated to release the Assessment Lien as to any portion of Assessments due until all such delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Unit's Owner of the Unit have been paid in full.

7.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including (i) bringing an action at law against the Unit's Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided under the Act. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.9 **Notice of Lien**. No action shall be brought to enforce any Assessment Lien herein unless a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, to the Unit's Owner of the Unit and a copy thereof has been Recorded by the Association. Such Notice of Lien must state (i) the amount of the Assessment and interest, costs (including attorneys' fees) and penalties, (ii) a description of the Unit against which the assessment was made, and (iii) the name of the record Unit's Owner of the Unit. The Notice of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied. However, a lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if a Unit's Owner subject to the lien under this Article files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled under thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Court is lifted.

7.10 **Foreclosure Sale**. In the event that a Unit's Owner has failed to comply with the thirty (30) days written notice provided for in **Section** 7.7 above, the Association may enforce the

lien by sale of the applicable Unit. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens. Unless otherwise permitted by law, no sale to foreclose an Assessment Lien may be conducted until (i) the Association, its agent or attorney has first executed and recorded a notice of default and election to sell the Unit or cause its sale to satisfy the Assessment Lien ("Notice of Default"), and (ii) the delinquent Unit's Owner or such Unit's Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the later of (a) the day on which the Notice of Default is recorded, or (b) the day upon which a copy of the Notice of Default is mailed by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Unit. The Notice of Default must describe the deficiency in payment, the name of the Unit's Owner and a legal description of the Unit. The Association, its agent or attorney shall, after the expiration of such (60) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

7.11 **Curing of Default.** Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Association shall record an appropriate Release of Lien, upon payment by the defaulting Unit's Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of preparing and recording such release.

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

7.13 **Exemption of Unit Owner.** No Unit's Owner may claim an exemption from liability for payment of Assessments, fines and other fees and charges levied pursuant to the Governing Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

7.14 **Certificate of Payment.** The Association on written request shall furnish to a lienholder, Unit's Owner or person designated by a Unit's Owner a Recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit's Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.15 **No Offsets** All Assessments, fines and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, fines, other fees and charges shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or the Act

7.16 **Working Capital Fund**. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Unit's Owner of the Unit, a sum equal to one-sixth (1/6) of the current annual Common Expense Assessment for the Unit Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.17 **Surplus Funds**. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Units' Owners pro rata in accordance with each Unit's Owner's Common Expense Liability or be credited on a pro rata basis to the Units' Owners to reduce each Unit's Owner's future Common Expense Assessments.

7.18 **Transfer Fee**. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Unit's Owner a transfer fee in such amount as is established from time to time by the Board of Directors.

7.19 **Payments Pursuant to Easement and Maintenance Agreement**. Each Unit Owner acknowledges that certain portions of the Common Elements and Units are subject to the Easement and Maintenance Agreement, and the Association is obligated to pay fees and charges imposed or levied pursuant to the Easement and Maintenance Agreement (the "Easement Payments"). Each Unit Owner authorizes the Association to collect all Easement Payments attributable to the Association and agrees that all Easement Payments shall be a Common Expense of the Association and secured by the Assessment Lien.

ARTICLE 8

INSURANCE

8.1 **Scope of Coverage.**

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement

cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy

(ii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than $1,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use or ownership of the Common Elements or arising out of or incident to the performance by the Association of its maintenance and other obligations under the Governing Documents, whether on the Common Elements, any Unit or any public or private right-of-way. Such policy shall include (a) a cross liability clause to cover liabilities of the Units' Owners as a group to a Unit's Owner, (b) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles, and (c) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Nevada.

(iv) Directors' and officers' liability insurance covering all the directors, officers and committee members of the Association in such limits as the Board of Directors may determine from time to time.

(v) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the officers, the members of any committee or the Units' Owners.

(vi) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) Each Unit's Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest to the Common Elements or his membership in the Association

(b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit's Owners and members of their household.

(c) No act or omission by any Unit's Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(d) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit's Owners or their mortgagees or beneficiaries under deeds of trust.

(e) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit's Owner because of the negligent acts of the Association or other Unit's Owners.

(f) The Association shall be the insured for use and benefit of the individual Units' Owners (designated by name if required by the insurer).

(g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any insurance trust agreement will be recognized by the insurer.

(i) "Agreed Amount" and "Inflation Guard" endorsements.

8.1.2 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit's Owner, the Association's policy shall provide primary coverage.

8.2 **Payment of Premiums.** Premiums for all insurance and fidelity bonds obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.3 **Insurance Obtained by Unit Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit's Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

8.4 **Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Units' Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in N.R.S. 116.31135.

8.5 **Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on

written request, to any Unit's Owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit's Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.6 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Elements which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Units' Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Elements are not repaired or replaced, insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.1 **First Mortgagee's Right of Inspection of Records.** Any First Mortgagee will be entitled, upon written request, to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.2 **Limitation on Partition and Subdivision.** No Unit shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.

9.3 **Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or Units' Owners (other than the Declarant or other sponsor, developer or builder of the Community) of the Units have given their prior written approval, the Association shall not be entitled to:

9.3.1 Seek to abandon, partition, subdivide, sell or transfer the Common Elements owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this Subsection;

9.3.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit's Owner;

9.3.3 Change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units or the maintenance of the Common Elements,

9.3.4 Fail to maintain fire and extended coverage insurance for all Common Elements on a current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value; or

9.3.5 Use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

9.4 **No Priority over First Mortgagees**. No provision of this Declaration gives or shall be construed as giving any Unit's Owner or other Person priority over any rights of a First Mortgagee of a Unit in the case of the distribution to such Unit's Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Elements.

9.5 **Failure of First Mortgagees to Respond**. Any First Mortgagee who receives a written request from the Board of Directors to respond or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.6 **Liens Prior to First Mortgage**. All taxes, assessment and charge which may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Community as a whole.

9.7 **Conflicting Provisions**. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Governing Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Governing Documents with respect to the number or percentage of Units' Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Community or (iii) certain actions of the Association as specified in **Section 9.3** of this Declaration, the provision requiring the consent of the greatest

number or percentage of Units' Owners or First Mortgagees shall prevail. Notwithstanding the foregoing or anything herein to the contrary, so long as Declarant retains effective control of the Association, the Declarant, and thereafter the Board of Directors, without the consent of any Unit's Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association (the "FNMA"), the Federal Home Loan Mortgage Corporation (the "FHLMC"), the Federal Housing Administration (the "FHA"), the Veterans Administration (the "VA") or any federal, state or local governmental agency whose approval of the Community, the Plat or the Governing Documents is required or requested by the Declarant or the Board of Directors.

ARTICLE 10

RESERVATION OF DEVELOPMENTAL AND SPECIAL DECLARANT'S RIGHTS

Pursuant to N.R.S. 116.2105(1)(h), Declarant reserves all of the developmental and special declarant's rights in the Community including any Additional Property annexed hereafter, afforded under N.R.S. 116.11034 and N.R.S. 116.110386, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

10.1 **Developmental Rights.** Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration, all developmental rights under N.R.S. 116.110334

10.2 **Right to Complete Improvements and Construction Easement.** Declarant hereby reserves the right, for a period of seven (7) years following the recordation of this Declaration, to complete the construction of improvements in the Community and an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

10.3 **Exercise of Developmental Rights.** Declarant reserves the right to exercise all developmental rights reserved pursuant to Section 10.1 above, until the seventh (7th) anniversary of the recordation of this Declaration.

10.4 **Offices, Model Homes and Promotional Signs.** Declarant reserves the right to maintain offices for sales and management and models as provided in Section 3.4 above, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Community.

10.5 **Use of Easements.** Declarant reserves the right to use easements through the Common Elements for the purpose of making improvements within the Community or within the Additional Property.

10.6 **Master Association.** Declarant reserves the right to make the Community subject to any additional master homeowners association.

10.7 **Merger or Consolidation.** Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

10.8 **Appointment and Removal of Directors and Officers.** Declarant reserves the right to appoint and remove a majority of the Board of Directors and the officers of the Association or any master association or any member of the Board of Directors as set forth in **Section 6.2** above, for the time period set forth therein.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Enforcement.** The Association, or any Unit's Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Unit's Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

11.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.3 **Duration.** Unless amended in accordance with the provisions of **Section 11.5** below, the covenants and restrictions of this Declaration shall run with and bind the Community, for a term of twenty (20) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

11.4 **Termination of Community.** The Community may be terminated only in the manner provided for in the Act.

11.5 **Amendment.**

11.5.1 Except in cases of amendments that may be executed by a Declarant under N.R.S. 116.2109 or 116.2110, by the Association under N.R.S. 116.1107, 116.2106, Subsection 3 of N.R.S. 116.2108 or N.R.S. 116.2113 or by certain Units' Owners under Subsection 2 of N.R.S. 116.2108, 116.2112 or 116.2118 and except as limited by **Section 11.5.2** of this Declaration, this

Declaration, including the Plat and Plans, may be amended only by a vote of the Units' Owners to which more than seventy-five percent (75%) of the votes in the Association are allocated

11.5.2 Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not create or increase Special Declarant's Rights, increase the number of Units, change the boundaries of any Unit, change the allocated Interests of a Unit, or change the use as to which any Unit is restricted, in the absence of unanimous consent of the Units' Owners affected and the consent of a majority of the Units' Owners of the remaining Units in the Community.

11.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant's Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

11.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit's Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit's Owner, (iii) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including the VA, the FHA, the FNMA or the FHLMC, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Community, the Plat or the Governing Documents is required by law or requested by Declarant

11.5.5 To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of amendment, and to the extent that it is required by any regulations governing FHA/VA mortgages, during the Period of Declarant Control, any amendment to the Declaration or the Plat must be approved by the VA or the FHA.

11.5.6 Any amendment adopted by the Units' Owners pursuant to **Subsection 11.5.1** of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to **Subsection 11.5.4** of this Declaration or the Act shall be executed by the Declarant and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any amendment shall be effective only upon Recordation.

11.5.7 No amendment or modification to this Declaration shall have the effect of modifying or amending the obligations of the Association pursuant to the Easement and

Maintenance Agreement unless the Easement and Maintenance Agreement is modified concurrently therewith.

11.6 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive

11.7 **Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit's Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit's Owner, at the address which the Unit's Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit's Owner. A Unit's Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) of the Unit's Owners shall constitute notice to all Unit's Owners of the same Unit. Each Unit's Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address

11.8 **Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Community, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Units' Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Units' Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit

11.9 **Gender.** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the

provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 **Topic Headings**. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

11.11 **Survival of Liability**. The termination of membership in the Association shall not relieve or release any such former Unit's Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Unit's Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

11.12 **Construction**. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, the Rules or the Architectural Committee Rules, the provisions of this Declaration shall prevail.

11.13 **Joint and Several Liability**. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit's Owners set forth in, or imposed by, the Governing Documents shall be joint and several.

11.14 **Guests and Tenants**. Each Unit's Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Governing Documents. A Unit's Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit's Owner by reason of such Unit's Owner's own noncompliance

11.15 **Attorneys' Fees**. In the event the Declarant, the Association or any Unit's Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit's Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action

11.16 **Number of Days**. In computing the number of days for purposes of any provision of the Governing Documents, all days shall be counted including Saturdays, Sundays and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.17 **Notice of Violation**. The Association shall have the right to Record a written notice of a violation by any Unit's Owner of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain

substantially the following information: (i) the name of the Unit's Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit's Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit's Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Unit against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

11.18 **FHA/VA Approval**. To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of the following described actions, and to the extent that it is required by any regulations governing FHA/VA mortgages, until the expiration of the Period of Declarant Control, the following actions will require the prior approval of the FHA or the VA: (i) annexation of additional properties; (ii) mergers and consolidations; (iii) mortgaging or dedication of Common Elements; (iv) amendment of this Declaration; and (v) termination of the Community.

11.19 **References to VA and FHA**. In various places throughout the Governing Documents, references are made to the VA and the FHA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Governing Documents to meet certain requirements of such agencies should Declarant request approval of the Community by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Community by either or both of such agencies. Unless and until the VA or the FHA have approved the Community as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

11.20 **No Absolute Liability**. No provision of the Governing Documents shall be interpreted or construed as imposing on any Unit's Owner absolute liability for damage to the Common Elements or the Units. A Unit's Owner shall only be responsible for damage to the Common Elements or Units caused by the Unit's Owner's negligence or intentional acts.

11.21 **Governing Law**. The provisions of this Declaration shall be liberally construed to promote and effectuate the purpose of the Association as set forth in this Declaration. The provisions of this Declaration shall be construed and governed by the laws of the State of Nevada.

This Declaration is intended to comply with the provisions of the Act. In the event any provision of this Declaration is held to be in violation of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

11.22 **Interpretation**. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control except to the extent the Declaration is inconsistent with the Act. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

11.23 **References to this Declaration in Deeds**. Deeds to and instruments affecting any Unit or any other part of the Community may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee, Unit's Owner or other Person claiming through any instrument and such grantee's, Unit's Owner's or other Person's heirs, executors, administrators, successors and assigns.

11.24 **Construction Defect Dispute Notification and Resolution Procedure**. All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Community, including but not limited to, the Declaration or any other Governing Documents, the use or condition of the Community or the design or construction of or any condition on or affecting the Community, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Community or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this **Section** 11.24. Declarant and each Unit Owner acknowledge that the provisions set forth in this **Section** 11.24 shall be binding upon current and future Unit Owners of the Community and upon the Association, whether acting for itself or on behalf of any Unit Owner(s)."

11.24.1 Claim Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing within sixty (60) days after becoming aware of the Dispute by certified mail, return receipt requested, of the claim, which writing shall include (i) in reasonable detail, the defects or any damages or injuries to each Improvement that is the subject of the Dispute, (ii) in reasonable detail, the cause of the defects if the cause is known, the

nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each Improvement, and (iii) an expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects based on a representative sample of the components of the Improvements involved in the Dispute (the "Claim Notice").

11.24.2 Right to Inspect. Within forty-five (45) days after receipt of the Claim Notice, the Declarant and the Declarant's representatives, upon written request to the claimant, shall be entitled to inspect the property that is the subject of the Dispute to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. After reasonable notice to the claimant and at reasonable times, Declarant shall have the right to conduct inspections, testing and/or destructive or invasive testing (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing unless such repairs are covered by a policy of insurance) provided that all such activities are reasonably necessary to establish the existence of the defect, which right shall continue until such time as the Dispute is resolved as provided in **Subsection 11.24.3**.

11.24.3 Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Community or some other mutually acceptable place to discuss the Dispute. The parties shall negotiate in good faith in an attempt to resolve the Dispute. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Community and the property which is the subject of the Dispute at reasonable times and upon reasonable notice to the claimant to take and complete corrective action.

11.24.4 No Additional Obligations, Irrevocability and Waiver of Right. Nothing set forth in **Subsections 11.24.2 and 11.24.3** shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Community for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Community and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of Clark County, Nevada.

11.24.5 Mediation. If the parties to the Dispute cannot resolve the Dispute pursuant to the procedures described in **Subsection 11.24.3** above, the parties must select a mediator and submit the matter to the mediator. The mediator shall be selected by the claimant and agreed to by Declarant. If the Declarant and the claimant fail to agree upon a mediator within forty-five (45) days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service and acceptable to the parties for the

appointment of a mediator qualified in the area pertaining to the Dispute. No person shall serve as a mediator in the Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Declarant without complying with the procedures described in this **Subsection 11.24.5.**

(i) Position Memoranda, Dispute Materials; Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within fifteen (15) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not

limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

11.24.6 Arbitration. Should mediation pursuant to **Subsection 11.24.5** above not be successful in resolving the Dispute, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules as modified or as otherwise provided in this **Subsection 11.24.6**. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this **Subsection 11.24.6**, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Community is located.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Community. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein or in the manner prescribed by the American Arbitration Association.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Prehearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in **Subsection 11.24.2** above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Limitation on Remedies/Prohibition on the Award of Punitive Damages. The arbitrator shall not have the power to award punitive damages or other damages on account of any damage, loss or injury which does not result directly and immediately from the

defect or action, including, without limitation, the reduction in market value of a Dwelling ("Consequential Damages"). As further provided below, the right to punitive and Consequential Damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

(vii) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(viii) Arbitration Award. The arbitrator's award may be enforced as provided for in N.R.S. § 38.105 and Nevada Arbitration Rule 19, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

11.24.7 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS **SECTION 11.24** AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS **SECTION 11.24**. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS **SECTION 11.24**, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

11.24.8 Statutes of Limitation. Nothing in this **Section 11.24** shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

11.24.9 Required Consent of Declarant to Modify. This **Section 11.24** shall not be amended except in accordance with **Subsection 11.5.1** of this Declaration and with the express written consent of the Declarant.

11.25 Gated Entrances; Release of Claims. The Declarant intends to construct gated entrances leading into the Community from Tropicana Avenue and Broadbent Boulevard in order to limit vehicular access and to provide some privacy for the Units' Owners and Residents. Each Unit's Owner and Resident for itself and its family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant Parties make no representations or warranties that gated entrances will provide security and safety to the Units' Owners, Residents and their family, invitees and licensees.

Each Unit's Owner and Resident, for itself and its family, invitees and licensees, assumes the risk that any such gated entrances may not provide security and safety and may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit's Owner, Resident or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrances. **Each Unit's Owner and Resident, for itself and its family, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 11.25.**

11.26 **Rule Against Perpetuities**. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board of Directors who are living at the time the period of perpetuities starts to run on the challenged interest.

BEAZER HOMES HOLDINGS CORP., a Delaware corporation

By: _____
Patrick J. Helfrich

Its: _____

STATE OF NEVADA)
) ss.
County of Clark)

The foregoing instrument was acknowledged before me this 15 day of September, 2001, by Patrick J. Helfrich, the Vice President of Beazer Homes Holdings Corp., a Delaware corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

July 21, 2004

Notary Public - State of Nevada
County of Clark
TRACI W COMBS
My Appointment Expires
No. 00-63915-1 July 21, 2004

20010917
01331

EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

Lots 44 through 59, inclusive; Lots 74 through 79, inclusive; and Common Element Lots A through F, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

20010917
01331

EXHIBIT B

ADDITIONAL PROPERTY

Lots 1 through 43, inclusive; Lots 60 through 73, inclusive; and Lots 80 through 238, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

[illegible]

[illegible]

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
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09-17-2001 13:24 GWC 6:
BOOK: 20010917 OFFICIAL RECORDS INST: 01331
FEE: 17.00 RPTT: .00

EXHIBIT F

EXHIBIT F

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Plaintiff,

vs.

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., a national association; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

CASE NO. A-13-679329-C
DEPT. NO. XXVI

CONDENSED TRANSCRIPT

DEPOSITION OF DAVID ALESSI

30(b)(6) REPRESENTATIVE FOR ALESSI & KOENIG, LLC

Taken on Monday, January 11, 2016

At 3:20 p.m.

At All-American Court Reporters

1160 North Town Center Drive, Suite 300

Las Vegas, Nevada

Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706

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DEPOSITION OF DAVID ALESSI, taken at All-American Court Reporters, 1160 North Town Center Drive, Suite 300, Las Vegas, Nevada, on Monday, January 11, 2016, at 3:20 p.m., before Cindy K. Johnson, Certified Court Reporter on behalf of All-American Court Reporters.

APPEARANCES:

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For ALESSI & KOENIG, LLC & SQUIRE VILLAGE AT SILVER SPRINGS COMMUNITY ASSOCIATION:
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(702) 222-4033

* * * * *

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Whereupon --

DAVID ALESSI,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MS. MORGAN:

Q. Please state your name?
A. David Alessi.
Q. Are you employed?
A. Yes.
Q. Where are you employed?
A. Alessi & Koenig.
Q. What is your title at Alessi & Koenig?
A. I'm a manager. The LLC. It is an LLC.
Q. Okay. And you have had your deposition taken before; is that correct?
A. Yes.
Q. And you have had it taken within the past few months by me and others, correct?
A. Yes.
Q. Are you comfortable waiving the standard admonitions?
A. Yes.
Q. All right. I'll just remind you that your

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testimony here is under oath and you are under the same penalties of perjury, if you don't tell the truth, as though we were in a court of law. Do you understand that?
A. Yes.
Q. Are you familiar with Squire Village HOA?
A. Yes.
Q. Okay. And how are you familiar with that HOA?
A. It is an HOA that we had done business with for a number of years. It was actually one of Alessi & Koenig's first clients, if I remember correctly.
Q. Does Alessi represent Squire Village in capacity as its collection agent and in capacity as its counsel?
A. It did. I don't believe it does any longer.
Q. Okay. And which one does it not?
A. Both. I don't think we represent Squire Village in any capacity currently.
Q. I'm going to hand you what we'll mark as Exhibit A, the Notice -- First Amended Notice of Rule 30(b)(6) Deposition.
A. Thank you.
(Exhibit A marked for identification.)
MS. LOIZZI: Thank you.
/////

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BY MS. MORGAN:
Q. Have you reviewed this document before?
A. Just briefly today.
Q. And are you the individual designated as the 30(b)(6) deponent?
A. Yes.
Q. For today's deposition, when I refer to the HOA, I'll be referring to Squire Village HOA and, when I speak about the property, I'll be referring to the property located at 5069 Midnight Oil Drive, Las Vegas, Nevada 89122. Is that okay?
A. Yes.
Q. What did you do to prepare for your deposition today?
A. I reviewed the foreclosure documents briefly. I briefly reviewed the ledger and a couple of demands.
Q. I'm going to hand you what we'll mark as Exhibit B.
(Exhibit B marked for identification.)
BY MS. MORGAN:
Q. These are documents that have been produced to my office in response to a subpoena, and they are Bates Stamp A&K 000001 through -261. Let me know when you have had a chance just to flip through those.
A. Okay. I have.

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Q. Did you have any part in compiling these documents in response to the subpoena?
A. Minor. I reviewed them prior to them going out, I believe. A great portion of this is the CC&Rs.
Q. Right. The CC&Rs stop at page -62.
A. Mine go to -83.
Q. There are a few recorded documents after -62.
A. They are part of the governing docu- -- oh, I see. Deed of trust.
Q. Yeah. On page -62 there is a grant, bargain, sale deed. On -64 there is a notice of trustee's sale. On -66 there is a special warranty deed and on -71 is a deed of trust.
A. Yes.
Q. Okay. Do you know who was responsible for compiling the documents responsive to the subpoena?
A. I believe it was one of the paralegals in our office. I am not sure who, though.
Q. Are the documents in your office maintained by property address? HOA? Homeowner? How is that organized?
A. You can search for the documents with any one of those search engines. We also have an internal fingerprint, as it were, which we call the "HO number," the homeowner number. It is usually a four-digit or five-digit number that we assigned to the property.

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Q. Okay. Is there a contact between Squire Village HOA and Alessi & Koenig?
A. I am not sure. There may be -- there -- there no longer is. I believe at one time there was a retainer, but I'm not sure about that.
Q. Do you know when this particular account was first referred to Alessi for collection?
A. No. I could find that out for you, but not off the top of my head.
Q. Okay. Let's look to page -96.
A. Yes.
Q. Are you familiar with this document?
A. Yes. This is a notice of delinquent assessment lien recorded by Alessi & Koenig on behalf of Squire Village on February 6, 2012.
Q. All right. So would -- the file then would have been referred to Alessi prior to February 22, 2012; is that accurate?
A. Right. This document has a signature date of February 6th and recording date of February 22nd, so I would say it was referred to us sometime prior to February 6th.
Q. The middle of that notice of delinquent assessment lien states, "The owner of record is

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reflected on the public record as of today's date is Ana Torres." Do you see that?
A. Yes.
Q. How does Alessi identify which individual should be listed as the owner of record in the notice of delinquent assessment lien?
A. One of the ways is by pulling the real property parcel record, which is AK -- Bates AK-90, and on that document it shows the owner to be Ana Torres, and it gives her mailing address and also the property address.
We also -- that is our primary reference. Oftentimes, the owner name will be on the account ledger that is sent to us by management.
Q. Okay. And so the primary way is the assessor's website?
A. Yes.
Q. And the notice of delinquent assessment lien states that the amount due was $1,055 -- I'm sorry. That is page -96.
A. Yes.
Q. And how would -- where would Alessi look to determine the amount to place on the notice of delinquent assessment lien?
A. We would start with the amount shown on the

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account ledger. I don't know if this was the account ledger that we were actually sent at the time the file was opened, but I'm looking at page -97, and it shows a February -- a balance, as of February 16, 2012, of $515. We would then add the management company audit fee, if any, which approximates -- well, now it's statutorily set at $200. We would add our lien fee, which, I believe, at this time was between $295 and $325. There would also be the addition of the intent-to-lien fee, which is a document that management sends certified and regular mail to the delinquent owner. That charge is approximately 150. And then the costs for recording the notice of delinquent assessment, as well as the release and then cost for mailings.

Q. All right. Do you know, as you sit here today, whether Alessi, the person who prepared the notice of delinquent assessment lien, referred to the account history report reflected on Bates No. -97?

A. I don't.

Q. Can you tell by looking at the notice of delinquent assessment lien how many months of assessments were due and owing at the time it was recorded?

A. No.

Q. Can you tell, by looking at the notice of

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delinquent assessment lien, which portion of the lien amount represents assessments only?

A. No.

Q. In February of 2012, what was Alessi's understanding of what amounts comprise an HOA super-priority lien?

MS. LOIZZI: Objection. Calls for a legal conclusion. But to the extent that you have an opinion or an answer, you can answer.

THE WITNESS: We didn't have a formal opinion as to what -- what that meant. We were aware of the cases being litigated through the district courts so that it -- to that extent, we understood the way the courts were interpreting the provision, but we didn't have, ourselves, an opinion about it.

BY MS. MORGAN:

Q. And in 2012, what was Alessi's understanding of how the courts were interpreting the provision?

A. That some courts were interpreting it to mean nine months of assessments, that some courts were interpreting super-priority language to mean a variety of different things. There were many issues dealing with the language, super priority, at this time.

MS. EBRON: Can you be more specific on when in 2012?

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MS. MORGAN: February.

THE WITNESS: Yeah. I mean, at this time, it was -- my recollection is still fairly new -- a fairly new issue, but I don't have any specific recollection as to what our opinion about the litigation at this time was.

BY MS. MORGAN:

Q. Did Alessi -- well, let me back up.

Does the notice of delinquent assessment lien specify whether the lien encompasses the HOA super-priority lien?

MS. EBRON: Form.

THE WITNESS: Other than a general reference to Nevada Revised Statutes and the association's governing documents and the inferences contained there with regard to a super-priority lien, there is no specific language in this -- in the notice of delinquent assessment referencing a super-priority lien.

BY MS. MORGAN:

Q. And the notice of delinquent assessment also does not specify an amount for the super-priority lien; is that accurate?

A. Yes.

MS. EBRON: Form.

THE WITNESS: There are no words

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"super-priority lien" on this document.

BY MS. MORGAN:

Q. Did Alessi provide a copy of this document to First Horizon Home Loans?

A. No.

Q. Did Alessi provide a copy of this document to Mortgage Electronic Registration Systems?

A. Not that I'm aware of.

Q. To whom did Alessi provide a copy of this notice of delinquent assessment lien?

A. To the delinquent homeowner via regular and certified mail at the property address and, if different, their mailing address.

Q. And how did -- well, did Alessi also determine who the homeowner was or who they should -- let me back up.

In determining who should receive a copy of the notice of delinquent assessment lien, did Alessi also rely on the information on the assessor's website?

MS. EBRON: Form.

THE WITNESS: Yes.

BY MS. MORGAN:

Q. And how would Alessi determine whether there was another address, other than the property address, to send the notice of delinquent assessment lien?

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A. Generally, we would determine that by reviewing the assessor's page.
Q. Okay. Turning to page -109 --
A. Yes.
Q. -- are you familiar with this document?
A. Yes. This is a notice of default and election to sale recorded by Alessi & Koenig on behalf of Squire Village on 4-20-2012. It was signed on March 28, 2012.
Q. And what is the lien amount as reflected in this notice of default?
A. $2,089.
Q. And does the notice of default specify which portion of that is for assessments?
A. No. It just gives one lump sum total.
Q. Does the notice of default specify how many months the homeowner was delinquent?
A. No.
Q. Does the notice of default state whether the HOA super-priority lien is being foreclosed on?
A. There are no references on this notice of default to a super-priority lien.
Q. So then does -- would you agree that the notice of default does not specify the amount of the HOA super-priority lien?
A. Yes.

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Q. How did Alessi identify which party should receive a copy of the notice of default?
A. We would order -- we order a report from a title company. In this case, it was First American Title. We also have an in-house research person that confirms all of the addresses for accuracy.
Q. Okay. Let's turn to page -112.
A. Yes.
Q. Are you familiar with this document?
A. Yes.
Q. Oh, wait. Not -112 --
A. I'm very familiar with this document.
Q. -- because we just talked about it. -119.
A. Yes. Okay. I'm looking at a second notice of default that was recorded on August 13, 2012.
Q. And do you know why Alessi would have recorded a second notice of default?
A. No.
Q. And the amount due under this second notice of default is 2,699; is that accurate?
A. Yes.
Q. Does the August 13, 2012 notice of default specify which portion of that amount is assessments?
A. Just give me a second.
Q. Yep.

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A. Do you know the date of the sale?
Q. The HOA sale was March 6, 2013.
A. Oh. No, there was no reference made to a super-priority interest on this document.
Q. Okay. Can you tell which portion of the lien amount is for assessments?
A. No, not just for assessments. The document just gives one total amount due which includes assessments.
Q. And there is no way to tell by looking at this document how many months the homeowner is in arrears? Would you agree with that?
MS. EBRON: Form.
THE WITNESS: Well, you could, by looking at the document, see the phone number of the office and call and find out. But in the document itself, there is no reference to how many months the homeowner is in arrears.
BY MS. MORGAN:
Q. And the dollar amount for the HOA super-priority lien is not specified in the August 15, 2012 notice of default; is that correct?
MS. EBRON: Form. Calls for a legal conclusion.
MS. LOIZZI: Join.

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THE WITNESS: Correct.
BY MS. MORGAN:
Q. Turning to page -122.
A. Yes.
Q. What is this document?
A. This is a copy of the parties that were mailed the notice of default that got recorded in August of 2012.
Q. Okay. And then starting on page -124 through page -128 there are a series of copies of what appear to be envelopes.
A. Yes.
Q. What are those copies of?
A. Those are copies of the envelopes that the notice of default was mailed in to the parties listed on page -122, so the envelope should correspond with the mailing list on -122.
Q. And on -122 there is a certified mail receipt to Ana Torres. Do you see that?
A. Yes.
Q. Were the other mailings mailed certified mail?
A. I don't know. It appears to me that they were mailed regular mail. I did not see any copies of the NODs having been mailed certified.
Q. On page -129 there is another account history

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report. Is this a document that was created by the HOA, its management company, or Alessi & Koenig?
A. By the management company for the HOA.
Q. Okay. How would Alessi receive access to the account history report?
A. Usually, e-mail. It looks like this one may have been faxed on November 29, 2012.
MS. EBRON: Sorry, Counsel. What page was that?
MS. MORGAN: It was on -129.
MS. EBRON: All right. Thank you.
BY MS. MORGAN:
Q. Okay. And turning to page -150.
A. Yes.
Q. Okay. Are you familiar with this document?
A. This is a notice of -- copy of the notice of trustee's sale recorded February 5, 2013 by Alessi & Koenig on behalf of Squire Village.
Q. And what is the amount due as listed in the notice of trustee's sale?
A. $4,109.
Q. Does the notice of trustee's sale specify which portion of that is for assessments?
A. No, not -- it just gives one lump-sum total which includes assessments.

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Q. Does the notice of trustee's sale state whether the foreclosure sale is going to be of the HOA super-priority lien?
A. No.
Q. Does the notice of trustee's sale specify the amount of the HOA super-priority lien?
MS. EBRON: Form. Calls for a legal conclusion.
MR. LOIZZI: Join, but you can answer.
THE WITNESS: It makes no reference to a super-priority lien in this document.
BY MS. MORGAN:
Q. In its collection efforts with respect to this account, did Alessi ever look at the recorder's website?
A. Yes.
Q. Did Alessi have an understanding as to whether there was a deed of trust recorded against this property?
A. Yes.
Q. And what was the understanding?
A. I believe there was -- I believe there was a deed of trust recorded on the property, and, in which case, Alessi, trustee, would have an understanding of that.
Q. Okay. Did Alessi have an understanding as to

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whether the -- well, I'll just say the bank -- the bank was attempting to foreclose under that deed of trust at the same time that Alessi was undertaking its collection efforts?
A. I don't know. I don't know if we had an understanding that it was at the same time. I did not see where -- the bank's notice of default yet, so I don't know when that was recorded, so I don't know if we had an understanding that the bank was foreclosing at approximately the same time.
Q. Has Alessi ever had the situation where, during its collection efforts, the bank did complete a foreclosure?
MS. EBRON: Form.
THE WITNESS: I don't -- I don't recall. I don't know. I don't have any specific recollection of a file where that occurred.
BY MS. MORGAN:
Q. All right.
MS. EBRON: Are you talking about besides this one?
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. Just in general, you know, while the HOA is attempting to foreclose on its lien, the bank is also

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attempting to foreclose under its deed of trust and the bank just happens to foreclose first. Is that a situation that Alessi has encountered?
A. I don't have any specific -- I don't have a specific recollection, but I would be surprised if it is not a scenario that was encountered by us over the years.
Q. Yeah. Is it Alessi's experience that, when the bank does foreclose, it satisfies the HOA's lien?
MR. LOIZZI: Objection. Calls for a legal conclusion, but you can answer to the extent you have an answer.
THE WITNESS: I don't -- we don't have a formal opinion on that. We would just defer to the courts.
MS. EBRON: And can you repeat your question? I'm not sure I understood it.
MS. MORGAN: I'm just -- I was just asking if it was Alessi's experience that, when a bank forecloses, if the HOA's lien would be paid shortly thereafter?
MR. LOIZZI: If it would be paid shortly thereafter?
THE WITNESS: Oh, I thought you said it was wiped out.
MR. LOIZZI: That's what I thought you said,

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too.
MS. MORGAN: Huh-uh. Let's repeat the question so we're clear.
(The following record was read by the court reporter: "Question: Is it Alessi's experience that, when the bank does foreclose, it satisfies the HOA's lien?)
MS. EBRON: That's not clear --
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. And by "satisfy," I mean, when the bank forecloses, the HOA's lien gets paid shortly thereafter. Is that Alessi's experience?
MS. EBRON: Incomplete hypothetical.
THE WITNESS: Yeah. And I don't have any specific recollection.
MR. LOIZZI: I'm going to withdraw my objection while he's thinking -- my previous objection.
THE WITNESS: If we were to get paid subsequent to a bank foreclosure, in the past, my recollection is, it would have been by the purchaser of the property at that foreclosure, but I -- like I said, I don't have any specific recollection of any files having transpired in that way.
/////

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BY MS. MORGAN:
Q. What documentation did Alessi review in order to determine which party should be sent a copy of the notice of trustee's sale?
A. The report we ascertained from title, as well as the public records in Clark County.
Q. Okay. So let's look at the report that was obtained from the title company in this case.
A. -105?
Q. -105?
A. I think so, yeah. I think there were two, actually. Let me see.
Q. Is it generally the practice to obtain a title report at the time the notice of default is recorded and then a date down at the time the notice of sale is recorded?
A. Yes.
MS. MORGAN: Let's go off the record real quick.
(Discussion held off the record.)
THE WITNESS: I don't think -- my understanding of this file, though, is that I don't think a pub date down or a sale date down would have shown a deed having -- a trustee's deed having been recorded by your client, but that is just my

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understanding of the file, though, that the trustee's deed recorded on behalf of the bank was recorded after the HOA sale.
COURT REPORTER: Is that supposed to be on the record or off?
MS. MORGAN: It could be on.
MR. LOIZZI: It doesn't matter.
MS. MORGAN: Yeah, it can be on.
MS. LOIZZI: Yeah. I'm okay with it being on it, as well.
BY MS. MORGAN:
Q. All right. So let's just break it down. So the notice of trustee's sale on Bates -150 is dated January 16, 2013, recorded February 5, 2013; is that accurate?
A. Yes.
Q. And it lists a sale date of March 6, 2013?
A. Yes.
Q. At what point would Alessi have obtained the date-down report in order to determine which party should be sent a copy of the notice of trustee's sale?
A. The day on or before the date of the first publication. The date of the first publication, I believe, was -- I see one here for January 16, so on or before January 16, 2013.

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Q. Did anyone from Alessi attend the HOA foreclosure auction?
A. We would have had a representative there crying the sale.
Q. Is there any document that would reflect what was said by the individual who cried the sale for this property?
A. Well, no. We don't record our auctions.
Q. Was there a script that the individual crying the sale would go off of back in March of 2013?
A. Generally, yes. We would -- as we do now, we would give the APN of the property, as well as the common address, the amount of the opening bid and then we would open the bidding to the floor.
Q. Do you know what the opening bid was in this case?
A. It was $4,109 plus any -- let me see -- fees or costs or assessments that accrued after the date of the document; that is, the notice of trustee's sale. And I'm looking at the trustee's deed upon sale now, AK-179, and it appears that the opening bid was $5,342, and I'm getting that from the trustee's deed upon sale.
Q. And the trustee's deed upon sale, at the last paragraph that -- the last sentence -- I'm sorry, second to last sentence of the last paragraph that starts with

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"all requirements of law" --
Do you see that sentence?
A. Yes.
Q. What did Alessi do -- or did Alessi do anything at the time this trustee's deed upon sale was prepared to verify that that sentence was accurate?
MS. EBRON: Form.
THE WITNESS: We -- we have several different departments or employees, attorneys, paralegals, legal assistants reviewing the file at all stages of the process, specifically a Nevada licensed attorney --
(Interruption by cell phone).
THE WITNESS: I'm sorry.
MS. MORGAN: That's okay.
THE WITNESS: -- to, to the best of our ability, help us ensure that that sentence is true.
BY MS. MORGAN:
Q. Is it important to Alessi that all of the information reflected on the trustee's deed upon sale is true and accurate?
A. We would certainly prefer that, so in that regard, I would say it's important.
Q. Did Alessi do anything to verify that the identity of the trustor is accurate at the time the trustee's deed upon sale was prepared?

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A. Well, we review the public records to confirm that the owner of record is the same as the trustor former owner that is shown on the trustee's deed upon sale. So, yes.
Q. And the individual that was foreclosed on in this case, as reflected on the trustee's deed upon sale, was Ana Torres?
A. I believe that's what the public record showed at the time.
Q. All right. And that's what the trustee's deed states; is that accurate?
A. Yes.
Q. So it was her interest in the property that was foreclosed upon by way of the March 6, 2013 foreclosure?
MS. EBRON: Form.
THE WITNESS: That would be something for the court to decide, not me.
BY MS. MORGAN:
Q. All right. But you would agree that that is what the trustee's deed upon sale states?
MS. EBRON: Form.
THE WITNESS: No, it doesn't say anything about that. I wouldn't agree.
/////

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BY MS. MORGAN:
Q. Okay. Would you agree that it states that the former owner who was foreclosed on was Ana Torres?
A. Yes.
Q. Does the trustee's deed upon sale anywhere state that First Horizon was foreclosed on?
MS. EBRON: Form.
THE WITNESS: No.
BY MS. MORGAN:
Q. Does the trustee's deed upon sale identify First Horizon as a former owner?
MS. EBRON: Form.
THE WITNESS: No. The trustee's deed upon sale makes no reference to First Horizon.
BY MS. MORGAN:
Q. Let's turn to page -170.
A. Yes.
Q. Okay. Let me know when you've had a second to look at that document.
A. Yes. This is a trustee's deed upon sale. It was recorded by National Default Servicing on behalf of First Horizon on March 7, 2013.
Q. All right. And this document reflects that there was a public auction on February 26, 2013 on page -171. Do you see that?

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A. Yes.
Q. And on page -172 do you see where about two-thirds of the way down it says "buyer/grantee information, First Horizon Home Loans"?
A. Yes.
Q. Following the HOA's March 6, 2013 foreclosure, did Alessi still continue to act as the HOA's collection agent?
MS. EBRON: Form.
THE WITNESS: You mean in general did we still collect assessments for Squire Village or --
BY MS. MORGAN:
Q. Yes, just in general.
A. -- on this specific property?
Q. Start in general.
A. Yes. Yes.
Q. And did Alessi continue collection efforts at some point in time after the HOA foreclosure sale for this specific property?
A. It is my understanding that we did.
Q. Going back real quick, I forgot to ask you a few questions about the sale itself. There is a series of documents entitled "Bidder Qualification and Purchase Sheet" starting at -155 and ending at -169.
A. Bear with me.

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Q. Uh-huh.
A. Okay.
Q. What are these sheets?
A. This is Alessi & Koenig bidder qualification and purchase sheets. These sheets show the bidder purchaser -- bidder's names who attended the auction and the units that they purchased.
Q. Okay. So --
A. If any.
Q. -- because the auction --
More than one property was sold at the auction; is that accurate?
A. Yes. The first thing these documents do is they qualify each bidder up to a certain amount, and then, if the bidder ends up purchasing a property at the trustee's sales on calendar for that day, that information would be put in the spaces below.
Q. Okay. How does Alessi determine -- well, let me back up. Does Alessi determine the qualification amount for each bidder?
A. Yes, we qualify bidders. They can show us a line of credit, I believe, at a bank or a cashier's check, money orders, cash, or letters of deposit.
Q. Who was the buyer for this particular property on March 6th?

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A. My understanding is it was SFR.
Q. All right. Is there a bidder qualification and purchase sheet for SFR contained within Bates -155 to -169?
A. I don't see one. It may be that -- I don't know. Yeah. I don't see a bidder qualification sheet for an entity named SFR. A couple of these aren't 100 percent legible, so I don't know if one of them could have been a representative of SFR, so I'm not sure.
Q. Okay. It has been represented to us during SFR's deposition that the auction would have been attended by a gentleman named Christopher Harden.
A. March 2013. I believe that's right.
Q. All right. Does that help you determine whether there is a bidder qualification purchase sheet for SFR within here?
A. Well, there is a couple of bidder purchaser names that are something-something real estate and are just -- one looks to be "TAG," but I don't see any that say "Chris Harden" or "SFR" on them.
Q. Have you ever seen a bidder qualification and purchase sheet with either SFR or Mr. Harden's name on it?
A. I believe this is only, out of the dozens of depositions I've done, the second time that I've

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actually seen that we retained the bidder qualification sheets, so I have not, not to my recollection. It is my recollection that SFR was qualified by way of a letter from, I believe, the bank that SFR banked at confirming that SFR had a certain amount of funds on deposit. I don't know what that specific amount was, but I believe that that is the way we qualified SFR.
AK-169 has a "C" something-something for 20,000. I don't know who that was.
Q. Okay.
A. But it does start with a C.
I can see on page -173 that there was an e-mail that -- to Chris Harden from George Bates showing that they had purchased five properties at the sale, so that would lead me to believe that there is not a bidder qualification sheet since none of them list five properties.
Q. Okay. Do you know whether – well, let me strike that.
In March 2013 did Alessi --
(Discussion held off the record.)
MR. LOIZZI: Sorry.
BY MS. MORGAN:
Q. In March 2013 did Alessi have an understanding of the effect the HOA's foreclosure sale had on the

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ledger's deed of trust?
A. We did not have a formal opinion about that.
Q. Okay. Did Alessi have an informal opinion about that?
A. No.
Q. How did Alessi determine which party to look to for payment of HOA assessments following an HOA foreclosure sale?
A. Well, if the property was purchased by an investor at the HOA foreclosure sale, that would be one way of us determining.
THE WITNESS: Could you repeat the question?
(The following record was read by the court reporter: "Question: How did Alessi determine which party to look to for payment of HOA assessments following an HOA foreclosure sale?")
THE WITNESS: So that would be one way of determining which party to look to. Another would be the public records and a third would be the management company.
BY MS. MORGAN:
Q. When Alessi resumed its collection efforts following the March 6, 2013 HOA foreclosure, which party did it look to for payment of assessments?

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A. I don't know. I think I saw a document that showed First Horizon as the recipient. Let me just double-check.
Q. Okay. We are going to go through them, so --
A. Okay.
Q. -- turn to page -187.
A. Yes.
Q. Okay. What is this document?
A. This is a lien letter that was sent to First Horizon Home Loans on July 15, 2013, and attached to it would have been the lien shown on page -190 that was recorded July 23, 2013.
Q. And that lien lists the owner of record as First Horizon Home Loans; is that accurate?
A. Yes.
Q. Is it accurate, then, that in July 15, 2013, it was Alessi's opinion that First Horizon was a party responsible for payment of the HOA foreclosure -- or the HOA assessments?
A. No, I would say it was Alessi & Koenig's opinion that First Horizon Home Loans was the party that most likely showed up on title, but we would have had no opinion as to who was inevitably responsible for the assessments.
Q. In July 2013 was it Alessi's practice to send

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collection letters to parties that weren't responsible for payment of assessments?
A. It was our practice to send the letter -- the lien letters to the owner of record per the Clark County recorder's office and assessor's page. I mean, there are scenarios where the party could fraudulently deed a unit into their own name and they would show up as the owner of record. It would not necessarily mean they were the proper party.
Q. Okay. Do you know whether First Horizon appeared as the owner of record in the public record on July 15, 2013?
A. I am assuming they did, since this lien letter was mailed to them. I haven't seen the recorder's parcel -- let me see here. But, yes, I'm assuming they were. And I'm looking -- well. . .
So, yes. On -- AK-185 shows that on July 11, 2013, First Horizon Home Loans showed up on the real property parcel record for Clark County as the owner of record.
Q. All right.
A. And we have -- we mailed out the lien within a couple of days of this printout.
Q. Okay. So the July 15, 2013 lien letter on page -187, the party -- Alessi determined it should be

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sent to First Horizon by referencing the printout from the assessor's web page on page -185?
A. Correct.
Q. Did Alessi ever look at the recorder's website to determine which party should receive -- I don't know what you call this -- a demand letter -- lien letter?
A. Yes. We just discussed that. That would have been the July 11th document printout.
Q. Well, that is from the assessor's website. Did Alessi ever look to the recorder's website?
A. I don't know.
Q. When Alessi recorded the notice of delinquent assessment lien in July of 2013, that was just a few months after it had sold the property to SFR on the HOA's behalf; is that accurate?
A. I believe it was four months later. Yes.
Q. Did Alessi undertake any investigation to determine whether the notice of delinquent assessment lien should list SFR as the owner of record?
A. We did not take a position. We obviously did not list them. I'm looking at AK page -184. This would have been the account ledger that came over from the management company on July 3rd which states First Horizon Home Loans. So we would have taken that information and cross-referenced it to AK-185 and seen

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that they were the same, and we would have mailed the lien letter out accordingly.
I don't think that -- that at that time anybody would have formed an opinion as to whether or not that was the correct owner.
Q. So page -194 is an account history report that Alessi received from the management company?
A. Yes.
Q. And do you know whose handwriting that is that lists the Louisville, Texas address?
A. I saw that and I don't.
Q. Does page -184 indicate to you that -- well, do you see at the top it says "05" and then it says "First Horizon Home Loans"?
A. Yes.
Q. Does this account history report indicate to you that the HOA's management company was considering First Horizon Home Loans to be the owner of the property?
MS. EBRON: Calls for speculation.
MS. LOIZZI: Join.
THE WITNESS: I would say that it infers that the management company saw the same thing that we saw when -- on the assessor's website, that First Horizon was listed as the owner. I don't think that the

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management company would have formed a legal opinion as to whether or not they actually were.
BY MS. MORGAN:
Q. Okay. But to know for sure, I would need to ask a representative from the management company?
A. Yeah.
Q. But regardless, we know that, at least in July of 2013, the management company was looking to First Horizon for payment of monthly assessments?
A. Yes.
Q. Okay. Starting on page -191 there is a document called "Real Estate Listing Report." It appears to go through page -200.
A. Yes.
Q. Do you know what this document is?
A. Well, I mean, it is a real estate listing report that we apparently purchased from Stewart Title. I'm not too clear on what it is beyond that. If I had a date to cross-reference.
Q. Yeah.
A. So this is September 2013. This would have been part of our processes in determining who to mail the notice of default to.
Q. And that notice of default you are referring to, is that document -207?

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A. -207, yes. So this report was purchased on or around September 20 of 2013, and the notice of default was dated and recorded approximately a month after that, so I believe these -- this was a report that was purchased in relation to the subsequent notice of default.
Q. And the notice of default was First Horizon Home Loans as the owner?
A. It is.
Q. And on page -208 and -209 --
A. Yes.
Q. -- what are those documents?
A. These are proofs of mailing for the notice of default that was recorded October 21, 2013, NOD 10-day mailings. It shows that the NOD was mailed certified mail to: First Horizon at the Irving, Texas address; Howard Kim & Associations at their Henderson address; National Default Servicing at their Phoenix, Arizona address; First Horizon at the property address, 5069 Midnight Oil.
Q. Do you know why Howard Kim's office would have been mailed a copy of the notice of default?
A. I was just wondering that. I'm assuming that it was because there was a lis pendens, maybe, recorded on the property at that time, but I don't know that. I

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haven't -- I don't know why.
Q. And these notices of default were mailed via certified mail?
A. Yes.
Q. And the notices of default we referenced earlier in the deposition that were recorded in 2012, do you recall that those were just noticed via regular mail with the exception of the mailing to the homeowner, Ana Torres?
A. Correct.
Q. Was there a change in Alessi & Koenig's policy with respect to mailings of notices of default between the one we were discussing earlier and the October 2013 notice of default?
A. Well, there was with -- at least with regard to this file, but I am not sure. I don't have any specific recollection of a policy change at this time. Our position would be that both notices of default were mailed correctly.
Q. Is it accurate that in October of 2013, approximately six months after the HOA foreclosure, Alessi was looking to First Horizon for payment of the HOA assessments?
MS. EBRON: Form.
THE WITNESS: Yes, that is correct.

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BY MS. MORGAN:
Q. Okay. Turning to page -217, what is this document?
A. What is that?
Q. Yes.
A. What was that? What was the --
Q. Oh. -217.
A. Yes. I'm there.
Q. Uh-huh. What is this document?
A. Oh. This is a demand that was sent on behalf of Squire Village to First Horizon Home Loans. Well, the First Horizon Home Loans field says "to." That would have been pulled over from the program. It doesn't necessarily mean it went to First Horizon Home Loans. There is no fax number or e-mail, so I'm not really sure if this was just an internal document that was generated in May of 2014 or whether this was a document that was provided to First Horizon.
It could have been provided to SFR. It still would have put First Horizon's name in the "to" field, because the way our program works is, if the owner is listed as First Horizon and somebody such as SFR or the association or just internally, if we were to generate this document, that data field would pull over to the "to" column even if it wasn't going to that entity.

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And the fact that there is no e-mail or fax number would lead me to believe that it just maybe wasn't intended for First Horizon.

Q. Okay. That was a lot of information that didn't answer my question, but I appreciate that.

A. Okay.

Q. Regardless, is it accurate that, at least looking at this document, as of May 13, 2014, Alessi & Koenig was looking to First Horizon for payment of HOA assessments and other related costs?

A. So I would just apply my previous answer to that question.

Q. Okay.

A. I'm not sure.

Q. We know this letter was generated. We just don't know whether it was sent; is that accurate?

A. Whether it was sent or to whom it was sent, yeah.

Q. Okay. And turning to page -222.

A. And I'm not trying to be clever on that. That is just the way the program works, so. . .

Q. Okay. Page -222 appears to be some kind of a ledger. Is this a document generated by Alessi & Koenig?

A. Yes. -222. No, this would have been

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generated by the management company --

Q. Okay.

A. -- Mesa Management.

Q. And the -- it doesn't appear that this ledger's date -- well, there is a date at the bottom that says May 13, 2014. Do you see that?

A. Yeah.

Q. And it appears that the last entry on the ledger is from May of 2014.

A. Yes.

Q. Okay. So is it accurate by, at least, looking at this document that as of May of 2014, Mesa Management was looking to First Horizon Home Loans for payment of the assessments?

MS. EBRON: Calls for speculation. Form.

MR. LOIZZI: Join.

THE WITNESS: Oh, I would say actually no. As of May of 2014 -- and I'm just going through documents -- you can see that -- well, on May 22, 2014 there was a demand sent to SFR by our office.

BY MS. MORGAN:

Q. Right. But I'm just talking about --

A. On page -222?

Q. But I'm talking about this one document that I am looking at, page -222.

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A. I think this would have been sent to Alessi & Koenig. So as of May of 2013, I would -- I think it would be more accurate to say that the management company wasn't looking -- what didn't -- didn't send this to Alessi & Koenig because they were looking to First Horizon for payment. They just sent it to Alessi & Koenig. It happens that First Horizon's name is listed on it because they were -- or I believe they were the record owner at the time. But you would have to ask Mesa Management what their intent was.

Q. Sure. So --

A. But from our stand- -- for Alessi & Koenig, we were actually looking at this time, I think, to SFR for payment. We had sent SFR a breakdown.

Q. Right. There is no question pending right now. I'll get to that in a second.

A. Okay.

Q. Let's stay on page -222, if we can, for now, and then we'll turn to that other document that I know you're talking about.

A. Okay.

Q. So is this a ledger that Mesa Management would have provided to Alessi?

A. Yes.

Q. Okay. And does this document on -222

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reference SFR anywhere?

A. No.

Q. And then you were referring to, I believe, Bates No. -220 and -221, which appears to be a demand much like the one we saw on Bates -217, and that one says "to SFR"; is that accurate?

A. Yeah. And I am also referring to the e-mail on -219 addressed to Chris Harden.

Q. Who is on the "from" line, Sara Aslinger? Do you know who that is?

A. She is a legal assistant with Alessi & Koenig.

Q. Okay.

A. Was a legal assistant with Alessi & Koenig.

Q. Were there any communications between Mesa Management and Alessi & Koenig regarding First Horizon's connection to this property compared with SFR's connection to this property?

A. Not that I'm aware of.

Q. Would you agree that there seemed to be some confusion as to who the record owner was following the HOA foreclose sale with Mesa Management?

MS. EBRON: Form. Calls for a legal conclusion.

MR. LOIZZI: Join.

MS. EBRON: Calls for speculation.

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MR. LOIZZI: Join.
THE WITNESS: I'm not sure.
BY MS. MORGAN:
Q. Okay. Was there some -- was there some confusion as to the identity of the record owner following the HOA foreclosure sale on Alessi's behalf?
MS. EBRON: Form. Calls for a legal conclusion.
MS. LOIZZI: Join.
THE WITNESS: Well, I think that the record owner, as far as Alessi was concerned, was who the record owner was. I don't know that there was any confusion in that regard. The assessor's site, from what I just reviewed, showed the record owner to be First Horizon Home Loans. I don't think there were any documents -- yeah, that is all.
BY MS. MORGAN:
Q. Okay. So if we take a point in time, such as when the notice of default was recorded, that is just -- take that date, October 21, 2013, Alessi knew that it had sold the property to SFR a few months earlier; is that accurate?
A. I -- we certainly had the -- I don't -- I don't know if the employee of Alessi & Koenig at the time they recorded the subsequent notice of default --

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that is, the notice of default that was recorded after the trustee's sale -- was this same employee that handled the -- the first foreclosure or had any direct knowledge that there had been a foreclosure.
Q. Okay.
A. Certainly, the documents were in the public record to show that a trustee's deed had been recorded into SFR's name. Subsequently, a trustee's deed recorded the ownership, I believe, into either the bank or a third party's name, the bank's names. So I don't know what the employee of Alessi & Koenig was aware of at the time that they recorded the notice of default.
Q. Did Alessi have any communications with anyone at First Horizon at any point in time about the specific account?
A. I'm not sure. There was the one great demand that had First Horizon listed as the -- in the two-line -- I'm not sure if that is the same --
Q. Yeah. I'm not talking about any of the written documents we've looked at already. I mean like any e-mails, any phone calls.
A. Not that I'm aware of.
MS. EBRON: Are you talking about before litigation began or just anytime?
MS. MORGAN: From the date of the -- well, we

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can say from the date of the notice of delinquent assessment lien in 2012 through the litigation.
THE WITNESS: I haven't seen any communications with First Horizon. I'm not aware of any other than the ones we -- the possible ones we discussed.
MS. EBRON: And we are excluding the subpoena?
MS. MORGAN: Yeah.
BY MS. MORGAN:
Q. Did Alessi know, when it held the auction for this property, that the property had been foreclosed on and purchased by First Horizon?
THE WITNESS: Could you repeat that?
(The following record was read by the court reporter: "Question: Did Alessi know when it -- they would (sic) auction for this property that the property had been foreclosed on and purchased by First Horizon?")
MS. EBRON: Form.
THE WITNESS: I don't have any specific knowledge as to whether or not Alessi knew. My guess is that Alessi did not know.
BY MS. MORGAN:
Q. Why is that your guess?
A. My understanding is that the trustee's deed

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upon sale had not yet -- had not been recorded at the time it went to sale. I -- I'm assuming I believe that an NOD probably was, but there are a lot of NODs that are recorded by the bank that never go to sale, and we don't make it a practice of calling the bank to find out whether or not the NOD had been satisfied.
So inasmuch as there was no record of the sale, my guess is that we didn't know about it.
Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?
MS. EBRON: Calls for speculation, incomplete hypothetical.
MR. LOIZZI: Join. Go ahead.
THE WITNESS: I would answer the question that in general we would not.
BY MS. MORGAN:
Q. And why not?
A. Because there would have been a new -- well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that

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time.
Q. When you prepared for this deposition, did you specifically look for any payments made by First Horizon after the -- or after its foreclosure sale?
A. I did look for payments by First Horizon after its foreclosure sale. I didn't see any.
Q. Okay. Did you look for those payments with the thought in mind that they were tendering the super-priority amount, like we have seen in other cases, or did you look for payments that would typically be made following the bank's foreclosure as it pays off junior liens?
A. Not really for any reason in particular. Just to see if that would -- just in reviewing the file that -- I'm not sure I even specifically thought to look for those -- any payments. I just don't believe I saw any. I don't have any specific recollection that I said to myself, "I'm going to look for payments by the bank."
Q. Okay. So in this case, we have the HOA foreclosure on March 6, 2013 and the trustee's deed upon sale from the bank's foreclosure recorded on March 7, 2013, and I'm looking at page -170.
MS. EBRON: Can we repeat the question, please?
(The following record was read by the court

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reporter: "Question: So in this case, we have the HOA foreclosure on March 6, 2013 and the trustee's deed upon sale from the bank's foreclosure recorded on March 7, 2013, and I'm looking at page -170.")
THE WITNESS: That appears to be right. Yes.
BY MS. MORGAN:
Q. So had the lender recorded its trustee's deed upon sale a day earlier and Alessi had seen it, it would not have moved forward with the HOA foreclosure; is that accurate?
A. Yeah. That is my recollection of our policy at that time. Yes.
MS. MORGAN: That is all I have.
EXAMINATION
BY MS. EBRON:
Q. Good afternoon. I'm Diana Ebron. I represent SFR Investments Pool 1, LLC, in this matter.
Earlier you were talking about the notice of delinquent assessments and you testified that it was not to provide it to First Horizon or to MERS. Is there a reason why a notice of delinquent assessment was not provided to First Horizon or MERS?
A. Because our Nevada counsel does not feel that that is necessary to be in compliance with the statutes.

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Q. And it was recorded publicly, correct?
A. Yes.
Q. Is there a reason why the trustee's deed upon sale to SFR did not identify First Horizon as the former owner?
A. Because they were not the successful bidder at the sale.
Q. Oh, sorry. As the former owner.
A. As the former owner? Because First Horizon, it is my understanding, had not yet -- had not recorded a trustee's deed upon sale deeding the property into their name.
Q. Okay.
A. So we were not aware of the previous day's foreclosure.
Q. Okay. We've been through this before at several depositions, but just so we can have a complete transcript here, does anyone who has an interest or works for Alessi have any ownership interest in SFR Investments Pool 1, LLC?
A. No.
Q. Same question but for SFR Investment, LLC.
A. No.
Q. SFR Funding, LLC.
A. Same answer, no.

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Q. Does anyone who works at or has an interest in Alessi have any management control over SFR Investments Pool 1, LLC?
A. No.
MS. EBRON: Thank you.
MS. LOIZZI: Yay.
MS. MORGAN: All right.
COURT REPORTER: Do you need a transcript, Diana?
MS. EBRON: Please. E-tran.
COURT REPORTER: For both depositions?
MS. EBRON: Yes.
THE WITNESS: We don't want one.
(The deposition concluded at 4:42 p.m.)

-oOo-

CERTIFICATE OF COURT REPORTER

I, Cindy Johnson, a duly certified court reporter in and for the State of Nevada do hereby certify: That I reported the deposition of David Alessi, commencing on Monday, January 11, 2016, at 3:20 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. Transcript review pursuant to NRCP 30(e) was not requested.

I further certify that I am not a relative or employee of counsel or any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the state of Nevada, this 14th day of January 2016.

Cindy K. Johnson, RPR, CCR No. 706

EXHIBIT G

EXHIBIT G

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-sixth Session
May 23, 1991

The Senate Committee on Judiciary was called to order by Chairman Dina Titus, at 8:30 a.m., on Thursday, May 23, 1991, in Room 231 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Dina Titus, Chairman
Senator Ernest E. Adler, Vice Chairman
Senator R. Hal Smith
Senator Joseph M. Neal, Jr.
Senator Ron Cook
Senator Bill O'Donnell
Senator Stephanie S. Tyler

STAFF MEMBERS PRESENT:

Dennis Neilander, Senior Research Analyst
Denise Pinnock, Committee Secretary

OTHERS PRESENT:

Stephen Hartman, Member, Business Law Section, Nevada State Bar Association
Frank Daykin, Uniform Law Commissioner
Dennis McGarvey, Southern Nevada Chapter, Community Associations Institute
Larry Wissbeck, Chief Deputy, Secretary of State, State of Nevada

Senator Titus called the meeting to order and opened the hearing on Assembly Bill (A.B.) 221.

A.B. 221: Enacts Uniform Common-Interest Ownership Act.

Steve Hartman, member, Business Law Section, Nevada State Bar Association, testified in favor of the proposed bill. He submitted a handout titled UCIOA Conversion Table (A.B. 221) (Exhibit C). He stated the federal government had passed a lot of responsibility in this area to the states; states passed it on to the local governments, and the local governments had passed it on to common interest projects. The bill would regulate those common interest groups.

Senator Titus asked how the time-share bill the committee had

passed earlier this session would interact with the bill being considered. Mr. Hartman stated the time-share bill was mainly a clean up bill for the time-share industry.

Senator Neal requested a description of the relation between the association and the master association mentioned in the bill. Mr. Hartman explained, in each housing project there are numerous associations, such as condominium, apartment, commercial, and large estate associations. There is also an "umbrella", or master association, which deals with the common elements of the various sub-associations.

Frank Daykin, Uniform Law Commissioner, spoke briefly to help clarify the bill.

Senator Neal asked for clarification of the special declarant rights sections. Mr. Hartman stated those sections attempted to take into consideration the reality of what goes on in a large project. He said at any given point of time in a project, someone could come in and take over as the developer. Sections 83 and 84 deal with the responsibilities of the successor developer.

Senator O'Donnell asked what protection the bill would give to participants of a condominium project who suspect the association of impropriety or mismanagement of funds. Mr. Daykin stated the proposed legislation went into much more detail about the management of associations and the rights of the members.

Dennis McGarvey, Property Manager, Spanish Trail; President, Southern Nevada Chapter, Community Associations Institute, testified in favor of the bill. He stated he would prefer an amendment to section 82. He felt the meeting required by that section to be unnecessary. Mr. McGarvey said his current procedure was to advise the tenants in a newsletter that the budget was complete and they were invited to his office to receive a copy of it and have any questions answered.

Senator Titus closed the hearing on A.B. 221 and opened the hearing on A.B. 330.

* * * * *

A.B. 330: Makes various changes to Uniform Securities Act.

Larry Wissbeck, Chief Deputy, Secretary of State, explained the Deputy for Securities, Mark Griffin, was unable to testify and had asked Mr. Wissbeck to read his testimony. He stated

the proposed bill made necessary changes and closed certain loop-holes.

Senator Titus asked about the section that dealt with registration and exemption from registration, in relation to an earlier bill which addressed the NASDAQ exception. Mr. Wissbeck explained a previous bill had dealt with some of the problems with registration, especially the penny stock companies. The bill under discussion would deal with the remaining loop-holes.

In response to a query from Senator Titus, Mr. Wissbeck said the actions taken with A.B. 330 reflected a national move.

Senator Titus closed the hearing on A.B. 330 and opened the hearing on Senate Bill (S.B.) 260.

* * * * *

S.B. 260: Enacts Uniform Custodial Trust Act.

Senator Titus explained she had received correspondence regarding the bill and read a letter from Michael J. Melarkey (Exhibit D). The letter advocated including in the annual accounting provisions a requirement that the custodial trustee render an accounting to the beneficiary and an adult member of the beneficiary's family or to a court of competent jurisdiction. She asked Mr. Daykin to comment.

Mr. Daykin said he was not sure whether an accounting to another family member would deter unscrupulous trustees. He felt reporting to a court would create an unfair burden to the court.

Senator Adler felt there were not enough checks on the trustee.

SENATOR NEAL MOVED TO INDEFINITELY POSTPONE.

SENATOR ADLER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR O'DONNELL MOVED TO DO PASS A.B. 221.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

UCIOA CONVERSION TABLE (AB 221)

UCIOA	AB 221	Explanation; Comments	Fn 1
1-101	2	Short title "UCIOA". (Bill hyphenates "common-interest".)	
1-102	3	Applicability governed by Secs. 47 - 54	
1-103	4 - 36	Definitions	
1-103(1)	5	"affiliate of a declarant"	
1-103(2)	6	"allocated interests"	
1-103(3)	7	"association"	
1-103(4)	8	"common elements"	A
1-103(5)	9	"common expenses"	
1-103(6)	22	"liability for common expenses" (vs. "common expense liability" in UCIOA")	
1-103(7)	10	"common-interest community"	C
1-103(8)	11	"condominium"	
1-103(9)	12	"converted building"	
1-103(10)	13	"cooperative"	
1-103(11)	14	"dealer"	
1-103(12)	15	"declarant"	D
1-103(13)	16	"declaration"	
1-103(14)	17	"developmental rights" (vs. "development rights" in UCIOA)	
1-103(15)	18	"dispose" or "disposition"	
1-103(16)	19	"executive board"	
1-103(17)	20	"identifying number"	
1-103(18)	21	"leasehold common-interest community"	
1-103(19)	23	"limited common element"	
1-103(20)	24	"master association"	
1-103(21)	25	"offering"	
1-103(22)	26	"person" includes .... See NRS 0.039	

UCIOA	AB 221	Explanation; Comments	Fn 1
1-103(23)	27	"planned community"	
1-103(24)	28	"proprietary lease"	
1-103(25)	29	"purchaser"	E
1-103(26)	30	"real estate"	
1-103(27)	31	"residential purposes"	F
1-103(28)	32	"security interest"	
1-103(29)	33	"special declarant's rights" (UCIOA no possessive)	G
1-103(30)	34	"time share"; See NRS 119A	
1-103(31)	35	"unit"	
1-103(32)	36	"unit's owner" (UCIOA no possessive)	
1-104	37	Variation by agreement.	
1-105	38	Coop interest is personal property, unless declaration says real estate; UCIOA homestead reference missing, but see Sec. 129. Separate title and taxation for units and allocated interests.	H
1-106	39	No discrimination under bldg. codes and zoning ord. for similar type structures, regardless of ownership form.	I
1-107	40	Effect of eminent domain.	
1-108	41	Supplemental general principles of law applicable. Compare NRS 104.1103 (UCC).	
1-109	42(1)	Construction against implicit repeal.	
1-110	42(2)	Uniform construction.	
1-111	--	Severability. See NRS 0.020	
1-112	43	Unconscionability determinations. Compare NRS 104.2302 (UCC, Art. 2)	
1-113	44	Obligation of good faith. Compare NRS 104.1203 (UCC)	
1-114	45	Remedies to be liberally administered. Limitation on certain damages.	

UCIOA	AB 221	Explanation; Comments	Fn 1
1-115	46	Adjustment of dollar amounts per CPI.	
1-201	47	Act applies to common interest communities est. after Oct. 1, 1991.	L
1-202	48	Coops: Nonresidential proj. and projects with 12 or less units and no dev. rights (sec. 17), subject only to 1-106 and 1-107, unless declaration applies entire Act.	
1-203	49	Planned communities: Nonresid. proj. and projects with 12 or less units and no dev. rights (sec. 17) or common exp. (excl. user fees and ins.) less than $100, subject only to 1-106 and 1-107, unless declaration applies entire Act.	J
1-204	50	Applicability to preexisting common interest communities. Except as stated in 1-205, Sections 1-105, 1-106, 1-107, 2-103, 2-104, 2-121, 3-102(a)(1)-(6) and (11)-(16), 3-111, 3-116, 3-118, 4-109 and 4-117 (and appropriate defin.) apply to existing common interest communities, but only re events and circumstances after Oct. 1, 1991.	
1-205	51	Coops and planned communities: less than 12 units and no dev. rights: subject only to 1-105, 1-106, 1-107, unless decl. amended per 1-205, in which case sections in 1-204 apply.	
1-206	52	Amendments to existing declaration and other docs. re results under this Act.	K
1-207	53	Condos: Act does not apply to nonresid. condo project. In mixed project (res./nonres.), act applies only if decl. so provides or res. condos alone covered.	
1-208	54	Act does not apply to out of state projects, unless offering statement or contracts used in Nevada.	
2-101	55	Creation of common interest community.	

UCIOA	AB 221	Explanation; Comments	Fn 1
2-102	56	Unit boundaries.	O
2-103	57	Perpetuities rule and NRS 111.103 et seq. inapplicable. Act controls over decl., decl controls over other docs. Marketability not tied to act.	
2-104	58	Legally sufficient description.	
2-105	59	Required contents of declaration.	M
2-106	60	Leasehold common interest communities.	
2-107	61	Allocation of allocated interests.	N
2-108	62	Limited common elements.	
2-109	63	Plats and plans.	O
2-110	64	Exercise of development rights.	P
2-111	65	Alteration of units.	
2-112	66	Relocation of boundaries between adjoining units.	Q
2-113	67	Subdivision of units.	
2-114	68	Monuments as boundaries (UCIOA Alternative B.)	
2-115	69	Use for sales purposes.	
2-116	70	Easement rights of declarant and unit owners.	R
2-117	71	Amendment of declaration.	Q, S, T
2-118(a) - (f)	72	Termination of common interest community.	
2-118(g), (h)	73	Ownership/liens on proceeds and assets following termination.	
2-118(j)	74	Determination of respective interests of unit owners on termination.	
2-118(k), (l)	75	Foreclosure of liens on project or portion.	
2-119	76	Rights of secured lenders.	U

UCIOA	AB 221	Explanation; Comments	Fn1
2-120	77	Master associations.	
2-121	78	Merger or consolidation of common interest communities.	
2-122	79	Addition of unspecified real estate, i.e., annexation.	V
3-101	80	Organization of unit owners' association. Nonprofit corp. law?	
3-102	81	Powers of unit owners' association. Nonprofit corp law?	W
3-103	82	Executive board members and officers. Includes duties of directors/officers — applicability of nonprofit law?	X, Y
3-104(a) - (d)	83	Transfer of special declarant rights.	Z
3-104(e)	84	Liability of successor declarant.	
3-104(f)	85	Successor declarant's liability limited to claims under UCIOA and declaration.	
3-105	86	Termination of contracts and leases of declarant.	
3-106	87	Bylaws.	AA
3-107	88	Upkeep of common interest community.	
3-108	89	Meetings. Nonprofit corp. law?	
3-109	90	Quorums. Nonprofit corp. law?	
3-110	91	Voting; proxies. Nonprofit corp. law?	BB
3-111	92	Tort and contract liability.	CC
3-112	93	Conveyance or encumbrance of common elements.	DD
3-113(a) - (c), (f)	94	Insurance requirements.	EE
3-113(d), (e),(g)	95	Insurance policies req'ts.	
3-113(h)	96	Repair of insured common elements.	

UCIOA	AB 221	Explanation; Comments	Fn 1
3-113(i)	97	UCIOA insurance requirements may be waived in non-residential common interest community.	
3-114	98	Surplus funds of association.	
3-115	99	Assessments for common expenses.	B, F F
3-116 (a) - (i), (j)(3)	100	Assessment liens in general. Foreclosure of assessment lien in coop, if coop personal property (NRS 104.9101 et seq.).	G G H H
3-116 (j) (1)(2)	101	Foreclosure of lien in condo or planned community. Compare NRS 117.070, 117.075. (Eliminates notice of lien, requires only notice of default and election to sell, then 60 day period.) Optional 3-116(k) (RE fcl. on coop. omitted.)	H H
---	102	Foreclosure sale procedures of assessment lien. See NRS 117.070(3), 107.030(6),(7).	
---	103	Deed recitals in assessment lien foreclosure sale. See NRS 107.030(8).	
---	104	Request for notice and recession of notice of default. See NRS 107.090.	
3-117	105	Other liens, e.g., judgment liens.	
3-118	106	Association records.	
3-119	107	Association as trustee. Duty of third parties to inquire into powers.	
4-101	108	Applicability of Article 4 (public offering statement). Exemptions.	I I
4-102	109	Declarant required to prepare public offering statement (POS).	J J
4-103(a), (c)	110	Requirements of POS. Amendments.	K K
4-103(b)	111	Certain requirements of POS optional, if 12 or fewer units and no dev. rights [sec. 1-103(14)].	

UCIOA	AB 221	Explanation; Comments	Fn 1
4-104	112	POS req'ts. where dev. rights exist.	
4-105	113	POS req'ts. where time shares.	L L
4-106	114	POS req'ts. where conversions.	M M
4-107	115	POS req'ts. if common interest registered with SEC.	
4-108	116	Purchaser's right to cancel.	N N
4-109	117	Resales of units. Seller must furnish certain information.	O O B
4-110	118	Escrow of deposits.	
4-111	119	Release of liens before sale of unit.	P P
4-112	120	Conversion of buildings.	Q Q
4-113	121	Express warranties of quality: affirmation of fact, units conform to models or physical descriptions, units conform to description in plat, permitted use is warranty that same use is lawful.	R R
4-114	122	Implied warranties of quality: generally: free from defects, constructed per applicable law and in workmanlike manner. Exclusion permitted.	S S
4-115	123	Exclusion or modification of implied warranties.	
4-116	124	Statute of limitation for warranties.	
4-117	125	Effect of violations on rights of action; attorney's fees.	
4-118	126	Labelling of promotional material: "MUST BE BUILT" vs. "NEED NOT BE BUILT".	
4-119	127	Declarant's obligation to complete and restore.	
4-120	128	Substantial completion of units.	

UCIOA	AB 221	Explanation; Comments	Fn 1
Article 5	n.a.	Optional Article 5 (registration of common interest communities) not included.	
	129	Adds new subsection (c) to NRS 115.005(2), homesteads permitted on units existing pursuant to UCIOA.	
	130	Amends NRS 115.010 (3)(b) to refer to UCIOA assessment lien (Sec. 100) as permitted lien on homestead.	
	131	Effectiveness of NRS Chapter 117 limited to condominiums created before Oct. 1, 1991.	
	132	Amends "one action rule" exemption, NRS 40.433, to include UCIOA ass't. lien action as excluded.	
	133	Adds new subsection 4 (deletes subsection 1) to NRS 278.010 to refer to "common interest community".	
	134	Subsection 4 of NRS 278.0201 amended to add reference to 278.360, deletes references to 278.360, 278A.510.	
	135	Amends NRS 278.320 to include a common interest community of five or more units within definition of "subdivision". Applicability of certain statutes.	
	136	Amends NRS 278.374 re title company certificate on final map.	
	137	Amends NRS 278.461 to include a common interest community of four units or less within the parcel map requirements. Applicability of certain statutes.	
	138	Amends NRS 278A.130: if common open space, common interest community required. Deletes references enabling ordinance for assessments.	
	139	Amends NRS 278A.170 to add reference to UCIOA.	
	140	Limits applicability of NRS 278A.180 to HOA formed before Oct. 1, 1991.	

UCIOA	AB 221	Explanation; Comments	Fn 1
	141	Repeals NRS 117.025 (specifications for condo map), 117.027 (title co. certificate on condo map), 117.120 ((condo as subdivision of land), 278A.140 (common open space org. must keep funds in trust account and keep records), 278A.150 (liens for assessments in PUD), 278A.160 (sale under PUD ass't lien), 361.243 (separate ass't of condos).	

1. Footnote references are to lettered comments on Memorandum dated January 17, 1990, from Gurdon H. Buck to Members, Committee h-5 Uniform Laws, Group H Condominiums, Cooperatives amd Associations of C-Owners, copy attached hereto, together with follow up memorandum.

TAB 12

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Plaintiff, vs. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-679329-C Dept. No. XXVI **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") files its reply in support of its Motion for Summary Judgment. This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Michael L. Brunson, attached hereto as **Exhibit 1**, and any oral argument this Court may entertain. This reply is also based on SFR's Motion for Summary Judgment ("SFR's Mot."), and SFR's Opposition to FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION's ("FHHL" or "the Bank") Motion for Summary Judgment, ("SFR's Opp."), which are incorporated fully herein by reference.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nothing in the Bank's opposition ("Bank's Opp") provides a reason against granting summary judgment in favor of SFR: (1) Because there were no irregularities with the sale constituting fraud, unfairness or oppression, SFR can rely on the conclusive recitals in the foreclosure deed; (2) the Bank's commercial reasonableness argument lacks merit because price alone is never enough, and there is no evidence of fraud, unfairness or oppression; (3) besides, SFR is a bonafide purchaser for value; (4) the Bank's due process argument is a non-starter because due process is not implicated, but even if it is, the Bank lacks standing because it received actual notice; (5) the Bank's constitutional argument is futile as the Nevada Supreme Court has already decided the issue in SFR[1] ("SFR" or "the SFR decision"); (6) the Bank's Supremacy Clause argument fails because it lacks standing to bring a claim on behalf of the federal government and besides NRS 116 does not conflict with a federal law.

II. ARGUMENT

A. Objections to Request for Judicial Notice

For the reasons stated in SFR's Opposition[2][3], the SFR continues its objection to the Bank's request for judicial notice of Exhibits O through R of FHHL's Motion as it appears FHHL is attempting to use these in arguing for State Action. There is no State Action here.

B. The Association Foreclosure Deed is Presumed Valid, and SFR Can Rely on the Recitals Contained Therein as Conclusive Proof of the Association's Compliance.

As fully discussed in SFR's Opposition,[4] foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18). "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." Yeager v. Harrah's Club, Inc.,

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[1] SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. ___, 334 P.3d 408, 419 (2014).

[2] SFR further incorporates its Statement of Disputed and Undisputed facts in both its Motion and Opposition, respectively, as though fully set forth herein.

[3] See SFR's Opp., 4:5-12.

[4] See SFR's Opp., 12:1-24.

111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." Id. (citing NRS 47.180.). Here, in order to prevail, the Bank had the burden to prove that it is more probable than not that the Association foreclosure sale and the resulting foreclosure deed are invalid. Specifically, to overcome the presumption of validity the Bank had to plead and prove a claim for fraud with particularity, or allege some unfairness or oppression that is not overshadowed by its own (in)action. The Bank failed to meet its burden or overcome the presumption of validity of either the sale or SFR's deed.[5]

Furthermore, as fully discussed in SFR's Motion[6], a foreclosure deed "*reciting* compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons.'"[7] SFR, 334 P.3d at 411-412 (quoting NRS 116.31166(2)). In fact, the recitals "are conclusive proof of the matters recited." NRS 116.31166(1). In addition, while here SFR is a bona fide purchaser for value,[8] under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh'g (Jan. 31, 2001)(holding that no limitation of bona fide purchaser can be read into a statute providing a conclusive presumption).

While the deed recitals contained in NRS 116.31166 are generally conclusive as to those matters asserted, the court may still set aside a defective foreclosure sale on equitable grounds. Shadow Wood, 132 Nev. ___, ___ P.3d ___, 2016 WL 347979 at *5-8 (Jan. 28, 2016). The deed recitals can only be overcome with evidence of fraud, unfairness and oppression, similar to a commercial reasonableness analysis. Id.

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[5] See SFR's Opp., Section V(B).

[6] SFR's Mot., pp. 7-10.

[7] There is no conflict between NRS 116.31164(3) and 116.31166. Just as NRS 107.030(7) and (8) do not conflict. Both allow conclusive recitals as to those matters but do not warrant that superior liens (like tax liens) are satisfied. The Bank cannot mean that NRS 107.030 has mislead purchasers at those sales since those provisions were adopted.

[8] See SFR's Mot., Section III(D); see also Section II(C), infra.

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Contrary to the Bank's assertions, Bourne Valley is directly on point in this case. It is also consistent with the above holding in Shadow Wood. Here, the foreclosure deed stated as follows:

> This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on March 6, 2013 at the place indicated on the Notice of Trustee's Sale.[9]

Faced with similar recitals, the Bourne Valley court held the buyer "met its burden of showing the required statutory notices were sent to the bank, reasoning that "[g]iven that the foreclosure deed recites there was a default, the proper notices were given, the appropriate amount of time has lapsed between notice of default and sale, and notice of the sale was given, under § 116.31166(1), the foreclosure deed constitutes 'conclusive proof' that the required statutory notices were provided." Bourne Valley, 80 F.Supp.3d at 1135. The court continued that the bank was then "required to come forward with evidence that a genuine issue of material fact remains for trial as to notice." Id. Just like the bank in Bourne Valley, here the Bank does not allege that it did not receive the notices. Id. In fact, here actual notice is admitted.[10] Furthermore, there are no procedural irregularities related to the sale that would explain the Bank's failure to pay the lien. Bourne Valley, 30 F. Supp.3d at 1135. Therefore, ". . . no issue of fact remains as to whether the required statutory notices were provided." Bourne Valley, 30 F. Supp.3d at 1135.

Again, the Bank has presented no evidence sufficient to set aside the foreclosure sale. Because there are no grounds to set aside the sale, SFR is entitled to rely on the conclusive proof of the recitals and summary judgment in their favor is appropriate.

C. No Issues of Material Fact Exist as to Commercial Reasonableness.

As fully elaborated in SFR's Motion and Opposition, The Bank's claim that the

[9] See SFR's Mot., Ex. 2-C.

[10] See Davis Depo, attached to SFR's Motion as Ex. 1-H at 52:20-25.

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foreclosure sale was commercially unreasonable is flawed for several reasons.[11] **First**, NRS §116.31164 and §116.31166 are clear and unambiguous. Neither contain a requirement that the sale be "commercially reasonable" nor that the purchaser at the sale satisfy the requirements of a "bona fide purchaser." **Second**, Bank's claim that the price paid for the Property was commercially unreasonable is untenable, as a commercial reasonableness analysis does not mean simply comparing the price paid to value.[12] The Nevada Supreme Court recently held that "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression." Shadow Wood, 2016 WL 347979 at *4 (citing Long v. Towne, 639 P.2d 528, 530 (Nev. 1982)). Shadow Wood also affirmed that Nevada had adopted the California rule that "inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of price[.]" Shadow Wood, 2016 WL 347979 at *5 (quoting Golden, 387 P.2d at 995 (internal citations omitted) (emphasis added); see also Bourne Valley, 80 F.Supp.3d at 1136. If this were not enough, the Nevada Supreme Court recently re-affirmed its re-affirmance of price plus fraud, oppression and unfairness in Centeno v. JP Morgan Chase Bank, N.A. No. 16-67365 (Nev. March 18, 2016) (unpublished order) (remanding case finding "this court's reaffirmation in [Shadow Wood], that a low sales price is not a basis for voiding a foreclosure sale absent 'fraud, unfairness, or oppression," undermines the second basis for district court's decision [to deny preliminary injunction].").[13]

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[11] See SFR's Mot., pp. 12-16, nd SFR's Opp., pp. 5-7, for a full discussion of commercial reasonableness.

[12] As discussed in SFR's Opp., the Bank's expert provides no relevant information for this Court and SFR will file a motion in limine if trial is necessary, which it should not be. SFR's Opp., pp.6 n.2. SFR's prior disclosed rebuttal expert disagreed with the Bank's expert's methodology and results. See Declaration of Michael L. Brunson, Ex. 1 and 1-A.

[13] A copy of the Nevada Supreme Court unpublished order is attached hereto, as **Exhibit 2**, for the Court's convenience. In Centeno, the purchaser paid $5,950 at the association's auction. The lender in that case subsequently foreclosed with a credit bid of $145,550. While the district court made no finding on the "value" of the property, it noted that the association sale price was 3.7% of the loan amount. Yet, the court still held that the district court erred in concluding that the low price alone demonstrated the sale breached a duty of good faith or was commercially unreasonable as a matter of law. A copy of the district court's order is available at

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Third, the Bank not only failed to cite any authority in support of its allegation that failure to follow a confidential internal policy of a collection company constitutes oppression, fraud, or unfairness, but also misinterpreted and misapplied Alessi's testimony. David Alessi in the deposition stated that if a **trustee's deed was recorded** by the Bank Alessi would have probably **sought payment by the bank** of the amount due and Alessi would have restarted the collection process if there had been **a trustee's deed recorded**.[14] Furthermore, the Bank ignores undisputed facts that the Bank neither recorded its Trustee's Deed nor notified Alessi or the Association regarding the change of the ownership and the Bank's foreclosure sale prior to the Association foreclosure sale.[15] Finally, the Bank provides no evidence that it knew of or relied on this purported policy such that it was unfair to the Bank, and, more importantly, that this unfairness resulted in the allegedly insufficient price paid at auction.

Finally, despite the Bank's wish that it were so, the Nevada Supreme Court did not adopt the Restatement (Third) of Property: Mortgages § 8.3 ("Restatement") in support of the argument that the purchase price at a foreclosure sale which is less than twenty percent of a purported fair market value is "grossly inadequate."[16] Despite its reference to the Restatement in dicta,[17] as discussed above, the Shadow Wood court reaffirmed Nevada's adoption of the California rule that inadequacy of price alone, however gross, is insufficient to void a sale. Shadow Wood, 2016 WL 347979 at *6. This is why a full reading of the comments and examples for the twenty percent figure used by the Restatement shows that not one California case is cited for adopting that standard.[18] In fact, the only California cases cited by the Restatement are in the section for looking at price plus more—the Nevada rule of law.

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(continued)

http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567, as Doc. 15-03956 (Notice of Appeal, at p.11-16 of 41 in the pdf.

[14] See Bank's Opp, 4:7-11.

[15] See SFR's Mot., Ex. 1-R.

[16] See Bank's Opp., p. 7. As stated in SFR's Opp., the Bank's expert witness report is irrelevant as to determining

[17] Shadow Wood, 2016 WL 347979 at *6 and n.3.

[18] See Restatement (Third) of Property § 8.3 (1997), attached hereto as **Exhibit 3**, for the Court's convenience.

Moreover, nothing in the Restatement contemplates the facts and conditions surrounding association foreclosure sales in Nevada at the time of this sale. As discussed fully in SFR's Motion,[19] purchasers such as SFR were constantly forced to litigate to defend against lenders like the Bank attempting to foreclose on their extinguished deeds of trust or ownership interest (when bank foreclosed first) following association foreclosure sales.[20] See Bourne Valley, 80 F.Supp.3d at 1136. This was not the typical mortgage foreclosure sale where the purchaser knows if there is a senior lien recorded on the property that will survive the sale, like when purchasing at a second mortgagee's sale. Here, every sale was under attack by lenders, and remains so to this day. The Bank cannot create and perpetuate the situation that bidders have to consider the high risk and cost of litigation into their bidding, thereby keeping prices lower than at NRS 107 sales, and then complain that the prices are too low. The banks cannot, by their actions, cause low market prices and then cry foul at the outcome. They want to use their refusal to accept the meaning of NRS 116.3116(2) as both a sword and shield. The Bank can point to nothing in the Restatement that would contemplate allowing such an outcome.

Although not required, the Association foreclosure sale was commercially reasonable. Therefore, summary judgment should be granted in favor of SFR and against the Bank.

D. SFR is a Bona Fide Purchaser for Value.

As fully discussed in SFR's Motion[21], even if the Bank proffered evidence to support its position that the Association sale was invalid, SFR has the valid defense of being a bonafide purchaser for value (BFP). While Nevada law does not require that SFR be a bona fide purchaser, if there were any irregularities with the Association sale, so long as SFR did not participate in causing the irregularities, they cannot be imputed to SFR.

A BFP purchases real property: (i) for value; and (ii) without notice of a competing or

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[19] See SFR's Mot., pp. 12-15. See specifically, the discussion regarding market value inapplicability to a forced sale situation. Bourne Valley, 80 F.Supp. at 1136; BFP v. Resolution Trust Corporation, 512 U.S. 1247, 114 S.Ct. 1757 (1994).

[20] SFR's rebuttal expert report is consistent with this analysis. Ex. 1-A. As detailed therein, uncertainty of title due to the disputes with banks affected the price purchasers were willing to pay for properties at these foreclosure sales.

[21] SFR's Mot., pp. 11-12.

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superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). A "purchaser for value" is one who has given "valuable consideration" as opposed to receiving the property as a gift. Id. at 186-187, 591 P.2d at 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971). Here, SFR paid valuable consideration for the Property and had no notice of a competing or superior interest in the Property.[22] It is not the amount of the valuable consideration SFR paid—here, cash—but the fact that it is valuable, which cannot be contested. Shadow Wood, 2016 WL 347979 at *10. Furthermore, as the Nevada Supreme Court emphasized, mere knowledge that a party may bring a equitable claim is insufficient to put a purchaser like SFR on "notice of any potential future dispute as to title[]" which could defeat BFP status. Shadow Wood, 2016 WL 347979 at *11.

Additionally, SFR has no relationship with the Association or Alessi & Koneig, LLC ("Alessi"), except as a purchaser of Property.[23] Therefore, nothing known to the Association or Alessi about any purported irregularities in the foreclosure process could be deemed known by SFR.[24] The Bank relies on Huntington v. Mila, Inc., 119 Nev. 355, 357, 75 P.3d 354, 356 (2003) to suggest that SFR had inquiry notice of the Bank's possible sale and, therefore, is not a BFP. The Bank is wrong. This is simply another attempt by the Bank to place the blame for its failure to protect its interest on anyone other than its own bad business judgment. In Huntigton the Court stated: "A duty of inquiry arises "when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights.." Id. Here, the Bank, not the

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[22] More than a year after the SFR decision, the Bank still erroneously claims its interest was superior to the Association. It was not superior, and therefore, at the time of the foreclosure sale, all SFR had notice of was an **inferior** interest in the subject property. There needs to be finality to a foreclosure sale, so that buyers will attend and bid, without the continued threat of lawsuits challenging their title. Moeller v. Lien, 25 Cal.App.4th 822, 831-833, 30 Cal. Rptr. 777 (Cal. Ct. App. 1994)..

[23] See SFR's Mot., Ex. 2, ¶¶ 8, 9.

[24] The Bank misleadingly cites to SFR Investments Pool 1, LLC v. The Bank Mortgage, LLC, Case No. A-13-684596-C and Design 3.2 LLC v. Bank of New York Mellon, Case No. A-10-621628, for the proposition that the buyer was not a bona fide purchaser. But the Bank fails to mention that in both of these cases, the Nevada Supreme Court vacated the district court's order and remanded the matter back to district court.

SFR, was in possession of all of the facts and Bank's foreclosure postponements. SFR may have known that the Bank was attempting to foreclose, but it had no reasonable belief that it had, since the Bank failed to record its foreclosure deed, and did not appear at the Assocation's sale to announce it. In fact, even if the Bank's sale had taken place, the Association's super-priority lien survived the Bank's sale, and, therefore, without actual notice that the Bank had paid off the Association, a reasonable man would know that the Associaton's sale would trump the Bank's sale.

Assuming arguendo that the Bank could present some credible evidence that SFR somehow knew that the Bank's interest was superior for some reason other than the Bank's faulty interpretation of the NRS Chapter 116, the Bank would nonetheless have to prove that (a) SFR was not a BFP, **and** (b) SFR somehow induced the Association to fraudulently sell the Property to SFR. Bailey v. Butner, 64 Nev. 1, 8-9, 176 P.2d 226, 229-230 (1947). The Association still had a lien superior to the Bank's and had every right to foreclose. There is absolutely no evidence of fraud, and therefore SFR is entitled to summary judgment.

Assuming arguendo, if there were any irregularities with the sale, which there are not, those irregularities must have caused the low price. See Shadow Wood, 2016 WL 347979, at *5 (citing Golden, 79 Nev. at 514, 387 p.2d at 995 (recognizing the adoption of adopting the California rule that any element of fraud unfairness or oppression **as accounts for an brings about** the inadequacy of price") (internal citations omitted) (emphasis added)). As discussed above, the Bank has provided no evidence of fraud, oppression or unfairness, and certainly has not shown that any of its alleged arguments **brought about** the price of which it complains. Instead, it is the actions of lenders, like the Bank, that **brought about** the low prices at auctions.

Even if the Court goes further, courts in equity "must consider the entirety of the circumstances that bear upon the equities[,]" including the actions and inactions of the parties and "whether an innocent party [a BFP] may be harmed by granting the desired relief." Shadow Wood, 2016 WL 347979 at *9 (referencing In re Petition of Nelson, 495 N.W.2d 200, 203 (Minn. 1993) and citing Smith v. United States, 373 F.2d 419, 424 (4th Circ. 1966).) This is true **even when there are potential irregularities in the foreclosure process**, such as pre-sale

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disputes between the association and the lender, **where the buyer has no knowledge** or participation in the irregularities. Shadow Wood, 2016 WL 347979 at *10 (emphasis added). Such consideration of harm to the innocent purchaser is particularly important where the lender has failed to avail itself of the legal remedies available to it to prevent the foreclosure sale. Id. at 21, n.7. Here, between the date of the Notice of Sale was recorded and the date SFR purchased the Property, and despite receiving notice, the Bank failed to take any steps to protect its interest, including recording a lis pendens or other document to notify innocent third parties that there was a dispute with the Association or any other challenge to the foreclosure process or the foreclosure sale; the Bank even failed to record its foreclosure deed before the HOA foreclosure sale.[25] Neither did it attend the sale and announce its alleged dispute with the Association or Alessi.

The Bank has provided no admissible evidence that SFR is anything but a bonafide purchaser for value and innocent party, who would be harmed if the foreclosure sale was set aside. Shadow Wood, 2016 WL 347979 at *9-10.

In sum, although not required in Nevada, SFR is a bonafide purchaser for value. Because SFR is a BFP, it can rely on this defense so long as it did not know of or participate in any purported irregularities in the sale process. SFR did not know of or participate in any such irregularities, and indeed the Bank has presented no evidence of such knowledge or participation, fraudulent or otherwise. Lastly, in seeking equitable relief, the court must also take into account and weigh the Bank's own "(in)actions." Id. at *9. Here, the Bank — with actual notice of the pending foreclosure sale — did nothing. SFR would be harmed by any belated claim to set aside the sale on those grounds. Therefore, SFR is entitled to summary judgment.

E. Actual Notice is not Required to Satisfy Due Process, But Even if it Was, the Bank Lacks Standing to Raise a Facial Challenge as it Received Actual Notice

As fully explained in SFR's Opposition,[26] even if due process here were required, which it is not, the Bank lacks standing to assert a facial due process violation because the Bank

[25] See SFR's Mot., Ex, 2.¶¶ 6, 10

[26] See SFR's Opp., PP. 9-11.

acknowledged that it **received actual notice** of both the Notice of Default and Notice of Sale Here, the Bank received copies of the Notice of Default and Notice of Sale.[27]

"[R]eceipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process. Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process); see Green Tree Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional). Any irregularity in notice does not violate due process where one has actual notice of the action to be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 272, 130 S.Ct. 1367, 1378 (2010) (debtor's failure to serve a summons and complaint does not violate due process where creditor received "actual notice of the filing and contents of [debtor's Chapter 13] plan."). Here, the Bank knew about the Association foreclosure proceedings when it received both notices required to be sent by NRS 116, and it still chose not to take action to prevent the sale. The Bank, therefore, cannot claim injury as a result of the noticing provisions of the statute.

However, even if the Bank had not received the notices, which it did, its argument that this alleged lack of notice deprived it of due process would still fail. The Bank's citations to the Mennonite and Mullane decisions to support its position that any party must receive actual notice to satisfy due process are patently inaccurate, constituting a rejection of United States Supreme Court precedent. To be clear, due process, if it were required here, does not require actual notice. Specifically, "our cases have never required actual notice." Dusenbery v. U.S., 534 U.S. 161, 171, 122 S.Ct. 694 (2002). Due process requires only that the noticing be "reasonably calculated…to apprise interested parties of the pendency of the action[.]" Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652 (1950). If a notice identifies an event that will impact an individual's property interest, then due process is satisfied. United Student Aid Funds, Inc., 559 at 272 (bankruptcy plan's filing and contents); Jones v. Flowers,

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[27] See SFR's Mot. Ex. 1-H at 53:1-3; see also, SFR Mot. Ex. 1-H at 52:20-25; see also, proof of mailings for Association's Notice of Trustee's Sale, attached to Ebron Decl. as Exhibit 1-P.

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547 U.S. 220, 239, 126 S.Ct. 1708 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798, 103 S.Ct. 2706 (tax sale).

In sum, actual notice is not required. However, even if it was, because the Bank was provided with actual notice of the Association's non-judicial foreclosure sale, it lacks standing to assert its claim that NRS116.3116 facially violates its due process rights. Therefore, summary judgment should be granted in favor of SFR.

F. NRS 116 is Constitutional.

As fully explained in SFR's Opposition[28], even if this Court were to consider the Bank's facial due process challenge to NRS 116, it also fails because the Nevada Supreme Court has already decided the issue and has done so in a manner that honors the constitutional avoidance doctrine, which is why the Bank's reliance on Small Engine[29] fails. Bank's Mot., 20:9-18. Further, The Bank fails to identify a state actor, even if it has potentially identified state action. For due process to be implicated, both must exist.

1. The Bank Misapplies the Analyses Required to find State Actor.

The Bank's due process analysis still cannot overcome the lack of state actor. If there is no state actor, then due process — including concerns about "notice" — is inapplicable. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001); Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982) ("If the action of the respondent school is not state action, our inquiry ends."). Moreover, **the burden of establishing a state actor is on the party claiming a deprivation of a constitutionally protected interest**. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). Such a burden is steep and "necessarily fact-bound[.]" Brentwood, 531 U.S. at 289.

2. Nothing in NRS 116 Compels an Association to Foreclose; that is the Association's Private Decision.

The Bank misleads this Court by claiming there is "government compulsion." Bank's

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[28] See SFR's Opp., pp. 20-27. SFR incorporates that argument by reference as though fully set forth herein. Accordingly, SFR does not repeat the entire argument here.

[29] Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 892-93 (5th Cir. 1989).

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Opp., 15:13-14. The Bank cannot make such a blatant statement regarding the existence of the right coming only through statute, however. Prior to 1992, a common-interest community could have acquired its lien and had the power to foreclose through the declaration of CC&Rs. It is impossible to know if any given association created after 1992 would have chosen to incorporate such power in the absence of NRS 116. More importantly, The Bank fails to focus its analysis on the very act that deprived it of its property interest – **the decision to enforce the lien** and act of foreclosure. As this court has noted, "the power to impose fines or enforce liens are not traditional and exclusive governmental functions." Snowdon v. Preferred RV Resort Owners Ass'n, No. 2:08-cv-01094-RCJ-PAL, at *14:14-15 (D. Nev. Apr. 1, 2009), aff'd, 379 Fed. Appx. 636 (9th Cir. 2010) ("[Association] did not perform the traditional and exclusive public function of municipal governance." (internal citation omitted)). The United States Supreme Court has never held that the enactment of a remedy transforms a private entity into a state actor. Sullivan, 526 U.S. at 53 ("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it."). Indeed, the United States Supreme Court held in Flagg Bros, New York's enactment of UCC 7-210 did not significantly encourage a warehouse owner's decision to send a letter threatening to sell belongings. Flagg Bros., 436 U.S. at 165. Instead, the Court recognized that a State's mere acquiescence in private conduct does not constitute state action and enacting a statute to permit such action does not constitute "encouragement" or compulsion. Id. Indeed, the 9th Circuit has held that merely enacting statutes that provide a framework for non-judicial foreclosure under NRS 107 does not transform that private act into a state action.[30] Charmicor v. Deaner, 572 F.2d 694, 695 (9th Cir. 1978). "[T]he statute creates only the right to act; it does not require that such action be taken." Id. Nothing requires or compels an association to foreclose. That decision is purely private. See 116.3102(3).

[30] Neither does SFR seeking to quiet title change the nature of the statute into state action/actor for a due process analysis. As the 9th Circuit has stated, the rule under Shelley v. Kramer, 334 U.S. 1 (1948) is "confined to the context of discrimination claims under the Equal Protection Clause." Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 998-1000 (9th Cir. 2013).

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3. The Statutes Require Notice to All Junior Lienholders of Record.

The Bank argues that any party must receive actual notice to satisfy due process. The Bank's Mot., pp. 18-20. This is patently inaccurate, constituting a rejection of United States Supreme Court precedent. To be clear, due process, if it were required here, does not require actual notice. Specifically, "our cases have never required actual notice." Dusenbery v. U.S., 534 U.S. 161, 171 (2002). Due process requires only that the noticing be "reasonably calculated…to apprise interested parties of the pendency of the action[.]" Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). If a notice identifies an event that will impact an individual's property interest, then due process is satisfied. United Student Aid Funds, 559 U.S. at 272 (bankruptcy plan's filing and contents); Jones v. Flowers, 547 U.S. 220, 239 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798 (tax sale). Here, the Association's notice satisfied due process because it was "reasonably calculated…to apprise [The Bank] of" the pendency of the Association's foreclosure. Mullane, 339 U.S. at 314.

Furthermore, despite The Bank's assertions to the contrary, NRS 116 is not an "opt in" statute. Both the majority and the dissent in the SFR decision recognized that, through incorporation of NRS 107.090, including subsection 3(a) and 4, requires notice to all junior lienholders of record. SFR, 334 P.3d at 411, 422.

Even if The Bank was correct about the statue, which it is not, it mischaracterizes the Fifth Circuit's holding in Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 892-93 (5th Cir. 1989). The Bank's Mot., 20:9-18. The Small Engine court did not strike down any statute.[31] Rather, it expressly held that the request notice statute at issue "acts only to supplement Louisiana's preexisting constructive notice scheme in Louisiana foreclosure actions." Id. The court, out of adherence to the constitutional avoidance doctrine, articulated a way for courts to read "request-notice" statutes constitutionally. Id. at 890. As in Small Engine, if NRS Chapter

[31] The Bank insists that Small Engine struck down a "request-notice" statute as unconstitutional; this disregards that case's admonition that "[b]ecause Small Engine did not request notice under La.Rev.Stat.Ann. 13:3886, we do not decide whether the provisions of the statute are constitutional in their entirety." Small Engine, 878 F.2d at 893 n.9.

116's had request-notice provisions, they would be constitutional, especially when construed in conjunction with Nevada's recording laws, (NRS Chapter 111), and with the requirements of NRS 116.31168 and NRS 107.090. At bottom, Small Engine provides this Court with a blueprint for how to give request-notice provisions a constitutional construction. Small Engine, 878 F.2d at 889.[32] In sum, the non-judicial noticing requirements of NRS 116 require notice to lenders.

G. The Bank, as a Lienholder, is Not Entitled to an Equitable Remedy.

The Bank argues that the Nevada Supreme Court recently found that while the deed recitals contained in NRS 116.31166 are generally conclusive as to those matters asserted, the court may still set aside a defective foreclosure sale on equitable grounds pursuant to Shadow Wood.[33] Shadow Wood is silimar to the instant case since the Bank is the homeowner.

If this Court were to balance equities, court must also take into account and weigh the Bank's own "(in)actions[,]" especially when a third party purchaser is involved. Shadow Wood, 2016 WL 347979 at *8, 9, n.7. There, even when the bank made an attempt to pay, the Court noted it still had remedies it did not take. Id. Here, **the Bank** - with notice – **did nothing and even failed to record its Trustee's Deed prior to the HOA foreclosure sale**. Furthermore, as in Shadow Wood, the Bank did not dispute that notice had been given, that a default existed, and the Bank here had access to the facts surrounding the owner's default on assessments, its own foreclosure, the knowledge that at least a portion of the Association's lien survived, and did nothing to inform third parties like SFR. Therefore, "'equity should . . . not interfere, especially where the rights of third parties might be prejudiced thereby.'" Shadow Wood, 2016 WL 347979 at *8, 11 (quoting Nussbaumer v. Superior Ct. in & for Yuma Cty., 489 P.2d 843, 846 (Ariz.

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[32] As this Court stated in rejecting a facial constitutional argument, "[t]he first mortgagee has no better notice-based argument against an HOA than the second mortgagee has against the first mortgagee." The Bank Mortgage, LLC v. Rob and Robbie, LLC, No. 2:13-cv-01241-RCJ-PAL, 2014 WL 3661398 at *3 (Order) (D.Nev. July 23, 2014) (order rejecting the lender's due process arguments and denying lender's motion for summary judgment). The Court recognized that, like a second mortgagee, the first mortgagee as a junior lienholder to the association "is aware when deciding whether to take its security interest that the putative that the senior party may foreclose upon a future delinquency." Id. This court went so far as to admonish the first deed holder, stating that "[a] junior secured party cannot be heard to complain that he was too lazy or disorganized to keep abreast of the freely available public notices as to the property in which he has an interest." Id.

[33] See Bank's Opp., 7:13-23

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1971). SFR would be harmed by any belated claim to set aside the sale on those grounds or to somehow encumber SFR's absolute title free and clear of the Bank's interest. Finally, it is presumed "[t]hat a person intends the ordinary consequences of that person's voluntary act. NRS 47.210(2). Here, the Bank knew the Association intended to foreclose, and that such foreclosure would divest the owner of title and extinguish all subordinate liens. Shadow Wood, at *10. Thus, by doing nothing, sitting on its toolbox of potential remedies, the Bank must have intended that the Association foreclose and extinguish any interest the Bank had in the Property.

Put simply, the scales of equity weigh heavily in SFR's favor. Therefore, SFR is entitled to summary judgment.

H. The Bank cannot use the Supremacy Clause to Displace Nevada Law

As fully elaborated in SFR's Opposition[34], the Bank cannot use the Supremacy Clause to displace Nevada law. [35] In short, NRS Chapter 116 does not conflict with HUD policies; instead, it comports with HUD policies, and therefore summary judgment in favor of SFR is appropriate.

I. The HOA Foreclosure Sale is Valid under the CC&Rs.

FHHL alleges that it was entitled to an additional 30 days' notice pursuant to the CC&Rs. This is an inaccurate reading of the plain language of the CC&Rs. The CC&Rs do not prohibit foreclosure until FHHL is given an additional 30 days' notice of the amount owing. (Bank Opp, 5:3-7.) Section 7.7 of the CC&Rs states "[s]uch notice may be given at any time prior to or after

[34] See SFR's Opp., pp. 7-9.

[35] The Bank's reliance on Washington & Sandhill and Saticoy Bay is misplaced. As for Washington & Sandhill Homeowners Ass'n, v. Bank of Am., N.A., No. 2:13-cv-01845-GMN, 2014 WL 4798565 (D. Nev. Sept. 25, 2014), that case did not determine that HUD insurance was a federal property interest. Washington & Sandhill, 2014 WL 47989565 at *6. It expressly never reached the issue. Id. Besides, Washington & Sandhill incorrectly relied on the three distinguishable Ninth Circuit NHA decisions, in which the actual property interest was already transferred to HUD. Similarly, The Bank's reliance on Saticoy Bay, LLC is also misplaced as that case never concluded that HUD insurance was federal property either. Saticoy Bay, LLC v. SRMOF II 2012-1 Trust, 2:13-cv-1199 JCM-VCF, 2015 WL 1990076 (D. Nev. April 30, 2015). Further, Judge Dorsey rejected Washington & Sandhill. In Freedom Mortgage Corp., the court recognized that the purpose of HUD is **not** frustrated by NRS 116 because Nevada HOA laws "are entirely consistent with [HUD's] goals of improving residential community development, eliminating blight, and preserving property values." Freedom Mortgage Corp. v. Las Vegas Development Group, LLC, No. 2:14-cv-01928 JAD-NJK 2015 WL 2398402 *9 (D.Nev. 2015) (emphasis added). In fact, HUD's policy is not only consistent with Nevada HOA laws, it is harmonious because "[i]n superpriority lien states, the HUD-insured lenders' obligation to prevent foreclosure by satisfying HOA liens in not an aspirational goal; it's a requirement." Id. at *6.

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delinquency of such payment." Section 7.7 references the notice to the member when it applies to Section 7.10 Foreclosure Sale, of the CC&Rs. Section 7.10 acknowledges that a Unit's Owner **or Unit's Owner's Successor-in-Interest** could cure the deficiency within the required time frames. Here, no one, not the Unit's owner nor the successor-in-interest cured the deficiency and the sale proceeded in accordance with the CC&Rs, and Nevada law.

III. CONCLUSION

Based on the above, the Court should enter summary judgment in favor of SFR, stating that SFR is the title holder of the Property and that the Bank's interest was extinguished when the Association foreclosed its superpriority lien, which had survived the Bank's foreclosure sale. SFR also seeks an order that the former homeowner/borrower Torres' interest in the Property is also extinguished.

DATED this 29th day of March, 2016.

KIM GILBERT EBRON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of March 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, to the following parties:

Select All Select None

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/s/Jacqueline A. Gilbert
An employee of Kim Gilbert Ebron

Ex. 1

EXHIBIT 1

Ex. 1

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DECLARATION OF MICHAEL BRUNSON

I, Michael L. Brunson, declare as follows:

1. I am over the age of eighteen years old and am competent to testify.

2. I am a resident of Clark County, Nevada.

3. I am a Nevada certified residential appraiser and AQB certified USPAP Instructor. I am also a Member of the Nevada Real Estate Division Appraisal Advisory Review Committee.

4. On or about October 6, 2015, I was retained as a rebuttal expert witness in the matter styled SFR Investments Pool 1, LLC v. First Horizon Home Loans, et al., Case No. A-13-679329-C. A true and correct copy of my Rebuttal Report is attached hereto as Exhibit 1-A.

5. As part of my retention, I examined the expert appraisal report completed by Ms. Tammy L. Howard and Mr. Matthew Lubawy (the "Howard/Lubawy Report" or "Howard/Lubawy appraisal"), and provided an independent opinion of retrospective value.

6. The Howard/Lubawy Report is a retrospective, market value appraisal of the fee simple interest of real property located at 5069 Midnight Oil Drive, Las Vegas, Nevada 89122 (the "Property").

7. With respect to my examination of Howard/Lubawy's Report, the Report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the overall Report to be misleading and to lack credibility.

8. In my opinion, HOA foreclosure properties have limitations on their bundle of rights, i.e. the right to use, sell, lease, enter, or give away, to name a few. These limitations preclude the use of traditional owner-equity sales (as used by Howard/Lubawy) in an analysis of value. Similar HOA foreclosure sales and consideration of "current" market conditions provide the best measure of value for the type of transaction at play in this litigation, i.e. an HOA foreclosure sale.

9. In my opinion, the appropriate measurement of value that pertains to HOA foreclosure sale like the one in this litigation is retrospective disposition value, as this definition most closely captures the circumstances of an HOA foreclosure sale under NRS 116.

10. Howard/Lubawy's analysis is based on fair market value using the sales comparison approach to value. This approach is based on the economic principal of substitution. This principle states that when comparably equivalent goods or services are available, a buyer in an open market will choose the one with the lowest price.

11. A key factor in the validity of the sales comparison approach is that the comparables are truly similar to the subject. Howard/Lubawy use age restricted comparables. The subject is not in the age-restricted portion of the subdivision. Even ignoring the circumstances of the HOA foreclosure, the Howard/lubawy analysis lacks credibility. In this case, the subject Property is an HOA foreclosure acquired at auction. It is distinctly different from a traditional, owner-seller, equity sale. Because of the unique circumstances associated with a property acquired at an HOA auction, it is also distinctly different from a REO sale or short-sale.

12. As such, the most logical type and definition of value for the assignment would be disposition value or a custom definition that incorporates the property rights and risk associated with the purchase of an HOA auction property. The most reasonable sales would be similar HOA auction sales.

13. Buyers of HOA foreclosure properties can face limitations on any or all of the bundle of rights, i.e. right to sell, use, lease, enter or give away. Use and occupancy can be limited by pending litigation and/or prior owners/tenants that refuse to vacate. Transferability is limited by the inability to obtain clear title.

14. Clearly, these properties contain a measure of risk not present in a traditional sale, a short-sale or a non-HOA foreclosure. In fact, these risks and their associated costs will likely reduce the number of potential buyers; the most likely buyer being an investor.

15. As of the retrospective effective date, March 6, 2013, there was no title company in Southern Nevada willing to issue title insurance following an HOA foreclosure.

16. An additional risk in the purchase of HOA foreclosure properties in March 2013 was the likelihood of litigation. The typical buyer would have been aware of numerous district court cases that ended with decisions both against and in favor of a buyer's position.

17. These risks are not present in the purchase of a traditional foreclosure property, a REO

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sale, short-sale or a traditional sale. The risk can be compared to buying a car without being able to turn the ignition or open the hood. Another comparison would be buying a dented can of food that is missing a label. In these circumstances, the typical buyer will demand a significant discount.

18. In order to determine the disposition value, I compared 13 other HOA foreclosures under NRS 116 which occurred between March 1, 2012 and July 1, 2013. These comparable 116 sales are similar to the subject in livable area, era of construction, and location.

19. During this period of time, taxable value was utilized to calculate the real property transfer tax, and auction prices revealed that prices were between 1.3% and 19.3% of the taxable value.

20. SFR Investments Pool 1, LLC paid $7,000.00 for the Property at auction, which equates to 11.4% of retrospective assessed value. This result falls just above the overall trend and is well within the range of contemporaneous transactions.

21. The conditions of the HOA foreclosure in this case meet the conditions of the definition of disposition value. Therefore, in my opinion, the retrospective disposition value of the Property as of March 6, 2013 was $7,000.00.

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

Dated this 29th day of March, 2016.

/s/Michael L. Brunson
Michael L. Brunson

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

Ex. 1-A

EXHIBIT 1-A

Ex. 1-A

November 5, 2015

SFR Investments Pool 1, LLC,
Represented by attorneys Karen L. Hanks, Jacqueline A. Gilbert and Diana S. Cline
Howard Kim & Associates
1055 Whitney Ranch Dr., Suite 110
Henderson, NV 89014

RE: SFR Investments Pool 1, LLC v First Horizon Home Loans, et al
(Case #A-13-679329-C)

Dear Misses Hanks, Gilbert, and Cline:

Per your request, I have examined the expert appraisal report completed by Ms. Tammy L. Howard and Mr. Matthew Lubawy of Valbridge Property Advisors, Inc. (Howard/Lubawy report or Howard/Lubawy appraisal). The Howard/Lubawy report is a retrospective, fair market value appraisal of the fee simple interest of the subject as of March 6, 2013. Communication is via a general-purpose residential form with numerous narrative and graphic addenda. The Howard/Lubawy report contains 19 pages in total; includes development of the sales comparison approach, utilizing three comparable sales; and was signed on October 6, 2015.

Federal law and/or state law requires professional appraisers to comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect as of the effective date of their work. The USPAP require specific professional ethics, disclosure, and performance when an appraiser is engaged to perform a service requiring his or her appraisal expertise. The USPAP are promulgated by the Appraisal Foundation and are the recognized measure of professional due diligence for all licensed or certified appraisers.

This assignment falls under the category of Appraisal Review as defined by the USPAP. It complies with the current edition of that document. This is a desktop assignment. All opinions, conclusions, and analysis are developed and communicated without advocacy or bias. They are communicated in a manner that is meaningful and not misleading within the context of the intended use, intended users, and scope of work for this assignment.

It is assumed under an Extraordinary Assumption that the factual data presented in the Howard/Lubawy report is accurate. The independent opinion of value is based on the assumption that the subject was in average condition as of the retrospective effective date. ***Use of these assumptions is reasonable but may have affected the assignment results.*** In the case of conflicting data, additional research will be conducted (if necessary) to determine which information is most reliable in order to allow my report to arrive at credible assignment results.

The client for this assignment is SFR Investments Pool 1, LLC. The Intended Use is for litigation in the case noted above. Intended Users include the Client represented by Howard Kim & Associates. The Scope of Work for my assignment includes an appraisal review (as defined) of the Howard/Lubawy report and an independent opinion of the retrospective disposition value. My review emphasizes compliance with the USPAP and generally accepted appraisal methodology. I have examined the techniques and methodology of the Howard/Lubawy appraisal in order to determine the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work.

The accompanying appraisal review report complies with USPAP Standards Rules 3-4, 3-5 and 3-6. It contains statements and summary discussions of the data, reasoning, and analyses that used in the process of developing my opinions. Supporting documentation concerning the data, reasoning, and analyses is in my work file.

The depth of discussion within this report is specific to the client and intended use stated below. Neither I, nor Brunson-Jiu, LLC is responsible for unauthorized use of this review.

Conclusions – Howard/Lubawy Expert Appraisal Report

The appraisal report completed by Howard/Lubawy ignores central facts of the case. The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the overall appraisal report to be misleading and to lack credibility.

Conclusions – Independent Opinion of Value

HOA foreclosure properties have limitations on their bundle of rights. These limitations preclude the use of traditional owner-equity sales, and limit the use of traditional foreclosure sales in an analysis of value. Similar HOA foreclosure sales and consideration of "current" market conditions provide the best measure of value for this type of transaction.

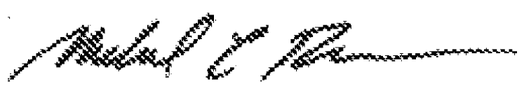
As an HOA foreclosure property, affected by a Class II detrimental condition, the impaired, fee simple, disposition value as of March 6, 2013 was:

$7,000
Seven Thousand Dollars

Specific findings in support of these conclusions appear in the individual sections of the report that follows this letter. Readers of this report should refer to appropriate versions of the USPAP or relevant cited documents for proper understanding of this appraisal review report. I invite your attention to the accompanying report, from which the above opinions were derived.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Howard/Lubawy report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Respectfully submitted,



Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor
Nevada Certified General Appraiser #A.0207222-CG
November 5, 2015

Assumptions and Limiting Conditions

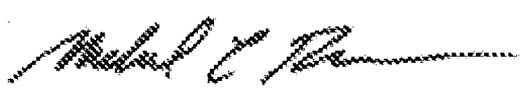
The submitted report is subject to underlying assumptions and limiting conditions qualifying the information it contains as follows:

1. Possession of this review or copy thereof does not carry with it the right of publication.
2. The purpose of the assignment is to review the appropriateness of the conclusions and the compliance with the USPAP determined within the submitted report.
3. This review is intended solely for the use of the identified Client and Intended User(s). Neither all nor any part of the contents of this review shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent of the reviewer.
4. Unless stated otherwise in the review, the analyses, opinions, and conclusions in this review are based solely on the data, analyses, and conclusions contained in the appraisal report, appraisal review report, and/or the workfile under review.
5. All analyses, opinions, and conclusions expressed by the reviewer are limited by the scope of the review process as defined herein.
6. The conclusions apply only to the property specifically identified and described herein and in the reviewed, appraisal review reports, appraisal reports, and/or associated workfiles.
7. The reviewer has made no legal survey, nor has he commissioned one to be prepared; therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
8. No responsibility is assumed for legal matters existing or pending outside of the existing case.
9. Disclosure of the contents of this review is governed by the Nevada Commission of Appraisers and the USPAP.
10. The compensation received for this assignment is in no manner contingent upon the conclusion of the review.
11. Reviewer Competency: Michael L. Brunson is an AQB Certified USPAP Instructor and is fully competent regarding the proper interpretation and application of the USPAP. He is also a Certified General Appraiser in Nevada and has the geographic competency to appraise the subject and similar properties within the Southern Nevada area.

Appraiser Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the properties that are the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no other services, as an appraiser or in any other capacity, regarding the properties that are the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the properties that are the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made no inspection of the subject of the work under review.
- No one provided significant professional appraisal review assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor
NV Certified General Appraiser # A.0207222-CG

November 5, 2015

DEFINITIONS

For the purpose of this report, the following definitions apply:

Appraisal[1]

(noun) The act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

Appraisal Review[2]

The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Assumption[3]

That which is taken to be true.

Class II Detrimental Condition – Transactional Conditions[4]

Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays more than necessary to acquire a property or a seller disposes of a property at a discount.

Detrimental Condition[5]

Any issue or condition that may cause a diminution in value to real estate.

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[1] USPAP 2014-2015 Edition, The Appraisal Foundation.
[2] Ibid.
[3] Ibid.
[4] Randall Bell; with Orell C. Anderson, Michael V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions, 2nd ed. (Chicago: Appraisal Institute, 2008), p. 62
[5] Ibid, p. 374.

Disposition Value[6]

The most probable price that a specified interest in real property should bring under the following conditions:
1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Extraordinary Assumption[7]

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Fee Simple Estate[8]

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

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[6] The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).
[7] USPAP 2014-2015 Edition, The Appraisal Foundation.
[8] The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Highest and Best Use[9]

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

Hypothetical Condition[10]

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value[11]

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

Liquidation Value[12]

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a short time period.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under extreme compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. A normal marketing effort is not possible due to the brief exposure time.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

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[9] Ibid.

[10] USPAP 2014-2015 Edition, The Appraisal Foundation.

[11] Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 378.

[12] The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Market Area[13]

The area associated with a subject property that contains its direct competition.

Market Value[14]

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Neighborhood[15]

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.

Sales Comparison Approach[16]

The process of deriving a value indication for the subject property by comparing market information for similar properties with the property being appraised, identifying appropriate units of comparison and making qualitative comparisons with or quantitative adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.

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[13] The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

[14] Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), [Pub. L. No. 101-73 103 Stat. 183 (1989)], 12 U.S.C. 3310, 3331-3351, and Section 5 (b) of the Bank Holding Company Act, 12 U.S.C. 1844 (b); Part 225, Subpart G: Appraisals; Paragraph 225.62(f).

[15] The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

[16] Ibid.

Unimpaired Value[17]

The value as if no detrimental condition exists.

[17] Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 385

Appraisal Review

INTRODUCTION

File No.: 1511.2340

Client:

SFR Investment Pool 1, LLC. Engaged by Howard Kim & Associates.

Review Appraiser:

Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor
Nevada Certified General Appraiser #A.0207222-CG
Brunson-Jiu, LLC

Intended User(s):

Client only. Use of this report by others is not intended. Parties to this litigation other than the Client might be granted access to the report and related workfile. However, as noted in Statement 9 of the USPAP,

> *Parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser's client do not become intended users of the report unless they were specifically identified by the appraiser at the time of the assignment.*

Intended Use:

Litigation in the matter of SFR Investments Pool 1, LLC v First Horizon Home Loans, et al (Case #A-13-679329-C). This report is not intended for any other use or in any other case.

Appraisers Who Completed the Work under Review:

Tammy L. Howard, Nevada Certified General Appraiser #A.0000253-CG
Matthew J. Lubawy, MAI, Nevada Certified General Appraiser #A.0000044-CG

Identification of the Work under Review:

The Howard/Lubawy report is a general-purpose form report that includes 19 pages. It is a retrospective appraisal with an effective date of March 6, 2013 and a signed date of October 6, 2015.

Subject Property Address:	5069 Midnight Oil Drive Las Vegas, Nevada 89122
APN:	161-26-111-017
Location:	East – Silver Springs
Property Type:	Detached single-family residential
Owner of Record:	Torres, Ana (Current: SFR Investment Pool 1, LLC.)
Interest Appraised:	Fee Simple.

Purpose and Scope of Assignment:

The purpose of this assignment is to develop a credible and reliable opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review. This opinion is developed in the context of compliance with the USPAP and generally accepted appraisal methodology. An independent value opinion is part of the scope of this assignment. The following scope of work was developed in accordance with the objective of the assignment and in compliance with the USPAP.

- Collected and analyzed pertinent background information about the subject property.
- Examined various documents provided and requested of the client.
- Examined the expert report completed by Howard/Lubawy.
- Verified relevant data from the work under review with the cited source when available or other reliable source as applicable.
- Noted compliance and lack of compliance with relevant sections of the USPAP.
- Noted compliance or lack of compliance with generally accepted appraisal methodology
- Developed opinions of the quality of the work under review.
- Developed an independent opinion of retrospective value.
- Concluded to final opinions.

My Appraisal Review Report is a summary report of the data, analysis, and conclusions. Supporting documentation is retained in the work file. Future stages of the assignment may include additional valuation services, including but not limited to additional analysis, consulting, deposition, and/or testimony.

Relevant Dates:

Transmittal date of Howard/Lubawy appraisal:	October 6, 2015
Effective date of Howard/Lubawy appraisal:	March 6, 2013
Date subject viewed by Howard:	October 3, 2015
Date subject acquired at auction:	March 6, 2013

Additional relevant dates are noted in the body of the review.

Effective date of appraisal review:

The effective date of this appraisal review is March 6, 2013 corresponding to the effective date of the work under review. The 2014-2015 version of the USPAP is relevant to both the Howard/Lubawy appraisal and this review.

Reviewer Competency and Professional Assistance:

The Competency Rule of the USPAP states in part that, "Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently…" As an AQB Certified USPAP Instructor, I am competent concerning the Uniform Standards and their application. As a Certified General Appraiser, I am competent concerning the type of property and the analytical methods necessary to produce credible assignment results. My primary area of practice is Southern Nevada. I am competent concerning the geographic area and market.

USPAP Background:

The Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Foundation, are the recognized measure of professional due diligence for all licensed or certified appraisers. The preamble of the USPAP provides a brief overview as to the purpose and intent of the Uniform Standards, stating in part:

> The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to **intended users** of their services in a manner that is **meaningful** and **not misleading**…
> (Bold added for emphasis).