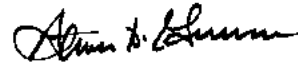


EXHIBIT 17

EXHIBIT 17



CLERK OF THE COURT

J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
Charles@coopercoons.com
Nevada Bar No. 13540
Thomas@coopercoons.com
COOPER COONS, LTD.
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
(702) 998-1500
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

R VENTURES VIII, LLC, a Nevada series
limited liability company of the container R
VENUTERS, LLC under NRS § 86.296,

Plaintiff,

v.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP., a Florida corporation;
WELLS FARGO BANK, N.A., a national
association; BANK OF AMERICA, N.A., a
national association; SOUTHERN TERRACE
HOMEOWNERS' ASSOCIATION, a Nevada
domestic non-profit coop corporation; JOYCE
PIERCE, an individual; CARRINGTON
MORTGAGE HOLDINGS, LLC; DOES I
through X, and ROH CORPORATIONS II
through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

**PLAINTIFF'S RENEWED MOTION FOR
SUMMARY JUDGMENT**

R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd.
("Cooper Coons"), hereby moves this Court for summary judgment against Defendant
CARRINGTON MORTGAGE SERVICES, LLC ("Carrington Mortgage Services"), to declare
Plaintiff the rightful owner of the real property commonly known as **6175 Novelty Street, Las
Vegas, Nevada 89148; Parcel No. 163-31-713-027** ("Property") and Defendants have no right,
title, or interest in the Property.

///

1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, all pleadings on file herein, and any and all oral arguments at the time of the hearing.

3 Plaintiff is title owner of a property that may face a bank non-judicial foreclosure sale by
4 parties based on a deed of trust that was previously extinguished by the foreclosure of a superior
5 lien. Plaintiff seeks permanent injunctive relief to restrain Defendant from disposing of the
6 Property at a trustee's sale or auction and a declaration Defendants have no right, title, or interest
7 in the Property.

8 **NOTICE OF HEARING FOR SUMMARY JUDGMENT**

9 THE COURT HEREBY sets the hearing for Plaintiff's Motion for Summary
10 Judgment on the 29 day of March, 2016, in Department 06 of the above-
11 entitled Court, at the hour of 8:30 am a.m./p.m., or as soon thereafter as counsel may be
12 heard.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Plaintiff is title owner of the Property that may face a bank foreclosure sale based on a
16 deed of trust that was previously wiped out by the foreclosure of a superior lien. A homeowner
17 association's super priority lien has priority over a first security interest on a property if it is not
18 paid; a foreclosure sale extinguishes the first security interest. *SFR Investment Pool vs U.S. Bank,*
19 *N.A.*, No. 63078 (Nev., September 18, 2014), 130 Nev., Advance Opinion 75; *See also* NRS
20 116.3116(2).

21 Plaintiff purchased the Property at an HOA foreclosure sale after Defendants failed to
22 cure the super priority portion of an HOA lien. Defendant Carrington Mortgage Services is
23 attempting to foreclose on a deed of trust that was extinguished on May 31, 2013 at an HOA
24 foreclosure sale. Defendants should be permanently restrained from conducting a foreclosure
25 sale which will further cloud title to the Property and complicate Plaintiff's ability to clear title
26 by adding a third-party purchaser.

27 Plaintiff is entitled to a declaration Defendants have no right, title, or interest in the
28 Property and a permanent injunction against Defendants from initiating or continuing foreclosure

1 proceedings on the Property. As set forth in the data below, Plaintiff is entitled to judgment as a
2 matter of law because Defendants can raise no genuine dispute to a material fact.

3 II. PROCEDURAL HISTORY

4 Plaintiff initiated the above-captioned action by filing a complaint seeking to quiet title in
5 its favor, a declaration that Defendants have no right, title, or interest in the Property, and a
6 permanent injunction against Defendants from initiating or continuing foreclosure proceedings
7 on the Property. Pl.'s Complaint ¶ 58 (June 26, 2013) ("Complaint").

8 Plaintiff filed a Motion for Preliminary Injunction on October 4, 2013 to prevent a sale of
9 the Property. The Court denied Plaintiff's Motion for Preliminary Injunction on November 5,
10 2013 due to a lack of proof regarding irreparable harm. At the hearing, the Court denied the
11 preliminary injunction and continued the motion to dismiss.

12 Defendant Bank of America filed a Motion to Dismiss on October 21, 2013. At the
13 hearing for this motion on December 3, 2013, the Court ordered a stay pending a ruling from the
14 Nevada Supreme Court.

15 On December 9, 2013, Plaintiff and Defendant Southern Terrace HOA stipulated to
16 dismiss the Southern Terrace HOA based on their satisfaction of lien. This order was entered on
17 January 13, 2014.

18 Plaintiff filed a Motion for Summary Judgment on January 23, 2015 in light of the recent
19 *SFR* decision. Defendants filed their Opposition on February 17, 2015. Plaintiff filed their Reply
20 on February 23, 2015. Defendants filed their Reply on February 27, 2015. The Court granted
21 Plaintiff's motion with respect to the recitals and granted Defendant's request for 56(f) Relief on
22 the remaining issues of tender and commercial reasonableness on March 3, 2015. The Court
23 further ordered an injunction to prevent the transfer or foreclosure of the Property with \$100.00
24 bond. Counsel for Bank of America was to prepare the order.

25 Counsel for Bank of America did not prepare the order and Plaintiff's counsel drafted the
26 order on April 9, 2015 and sent it to Counsel for Bank of America. Ultimately the order was filed
27 on May 14, 2015. On August 11, 2015, Plaintiff posted a bond in the amount of \$100.00.

28 ///

1 Defendant Carrington Mortgage Holdings, LLC was added as a defendant on May 11,
2 2015. Defendant Carrington Mortgage Holdings, LLC filed its Answer and Counterclaim on July
3 27, 2015. Plaintiff filed its Reply to Counterclaim on September 2, 2015.

4 Discovery began on October 12, 2015 with the filing of the Joint Case Conference
5 Report. Discovery closed on January 25, 2016.

6 Defendant Bank of America filed a Motion to Dismiss based on its assignment to
7 Defendant Carrington Mortgage Services, LLC which this Court granted on February 16, 2016.

8 **III. CONCISE STATEMENT OF UNDISPUTED FACTS**

9 Plaintiff acquired the Property on or about May 31, 2013 by successfully bidding on the
10 Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et seq.* ("HOA
11 foreclosure sale"). Exhibit 1. The HOA foreclosure deed was recorded on June 3, 2013.

12 Red Rock Financial Services, LLC trustee for Southern Terrace Homeowner's
13 Association ("Southern Terrace HOA"), recorded a lien for delinquent assessments on
14 September 10, 2012 as Instrument No. 201209100001428. Exhibit 2. The lien was based on
15 delinquent assessments. Exhibits 3-5.

16 Red Rock Financial Services, LLC trustee for Southern Terrace HOA, recorded a notice
17 of default for delinquent assessments on November 14, 2012 as Instrument No.
18 201211140000905. Exhibit 6. Bank of America or its predecessor in interest was mailed this
19 notice of default. *Id.*

20 Pursuant to a request from Bank of America, Red Rock Financial Services, LLC, trustee
21 for Southern Terrace HOA, provided a demand for payment for the amount \$4,248.62. Exhibit 7.

22 On January 10, 2013, Bank of America, offered to pay the HOA or its Trustee \$655.14
23 under the condition that any acceptance is "express agreement that BANA's financial obligations
24 towards the HOA in regards to the real property located at 6175 Novelty Street have now been
25 'paid in full'." Exhibit 8. On or about February 27, 2013, Bank of America recorded the offer to
26 pay as rejected. Exhibit 9.

27 United Legal Services, Inc., trustee for Southern Terrace HOA, recorded a notice of sale
28 for delinquent assessments on May 9, 2013 as Instrument No. 201305090001356. Exhibit 10.

1 Bank of America was mailed this notice of sale. *Id.*

2 Robert Atkinson, as 30(b)(6) designation for United Legal Services, Inc., provided
3 deposition testimony they had no contact with Plaintiff regarding the Property prior to the
4 auction. Exhibit 11, page 48. The opening bid was \$99.00 and attended by at least fifteen
5 bidders. *Id.* at 46-47. According to Mr. Atkinson, who called the auction, "each one of the
6 properties that day had vigorous and active bidding from multiple parties." *Id.* Further, United
7 Legal Services, Inc., recorded the entirety of the auction for May 31, 2013. Exhibit 12.

8 R Ventures VIII, LLC had no contact with United Legal Services, Inc. regarding the
9 Property prior to the auction. *See Affidavit of Deroll W. Wynn*. Exhibit 13. R Ventures VII, LLC
10 had no knowledge of any purported tender. At the beginning of the Auction, Mr. Atkinson stated
11 the properties where a tender had been accepted. Exhibit 12. The Property was not among those
12 mentioned. *Id.*

13 III. LEGAL ARGUMENT

14 A. Summary Judgment Standard.

15 In Nevada, a motion for summary judgment shall be rendered if the pleadings,
16 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
17 any, show that there are no genuine issues as to any material facts and that the moving party is
18 entitled to judgment as a matter of law. NRCP 56(c). The Nevada Supreme Court holding *Wood*
19 *v. Safeway*, 121 P.3d 1026 (Nev. 2005), adopted the standard employed by the U.S. Supreme
20 Court in the 1986 trilogy of cases, *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), *Celotex v.*
21 *Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. Ltd. v. Zenith Corp.*, 475 U.S. 574
22 (1986). In determining which facts are material, the court shall look to the substantive law of the
23 claims, and only disputes over facts that might affect the outcome of the suit under the governing
24 law will properly preclude the entry of summary judgment. *Wood*, 121 P.3d at 1030. Factual
25 disputes that are irrelevant or unnecessary will not be considered. *Id.*

26 Plaintiff is entitled to summary judgment against Defendant Carrington Mortgage
27 Services because a properly conducted HOA foreclosure sale extinguishes a first Deed of Trust.
28 This sale was proper because Plaintiff has provided undisputed factual material of notice of the

1 foreclosure documents to the interested parties, the validity of the lien, and the absence of fraud
2 or other irregularities in the sale.

3 **B. Defendant Cannot Raise A Genuine Issue of Material Fact.**

4 Plaintiff's request for summary judgment should be granted because no genuine issue of
5 material fact exists. A material fact must affect the outcome of the suit. *Wood v. Safeway, Inc.*
6 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). A genuine dispute is when the evidence is such
7 that a reasonable jury, applying the applicable quantum of proof, could return a verdict for the
8 non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); see also
9 *Sustainable Growth Initiative Comm. V. Jumpers, LLC*, 122 Nev. 53, 128 P.3d 452, 458 (2006);
10 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

11 Here, Plaintiff has provided incontrovertible evidence of the legal sufficiency of the sale
12 through the deed's conclusive presumption. Additionally, Plaintiff has provided undisputed
13 evidence of notice of the sale and Defendant Carrington Mortgage Services can produce no
14 evidence of any irregularity in the sale of the Property.

15 **i. Proof of Notice**

16 Pursuant to NRS 116.31166: "[t]he recitals in a deed made pursuant to NRS 116.31164
17 of: (a) Default, the mailing of the notice of delinquent assessment, and the recording of the
18 notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The giving of
19 notice of sale, are conclusive proof of the matters recited." A conclusive presumption *requires*
20 the trier of fact to find the existence of a presumed fact from the finding of a basic fact. The
21 opposing party may not offer any evidence to rebut the existence of the presumed fact. See
22 *Melendrez v. D & I Investment, Inc.* 127 Cal.App.4th 1238, 1255, 1250, fn. 17. (2005). Deed
23 recitals in HOA foreclosure deed legally sufficient proof of all statutory prerequisites to a valid
24 HOA lien foreclosure sale. *Shadow Wood* at 10. However, such information is relevant to an
25 action in equity to set aside a foreclosure sale. *Id.* at 14.

26 Here, Plaintiff acquired title to the Property through a Foreclosure Deed Upon Sale
27 pursuant to a foreclosure of a super priority HOA lien which constituted legal sufficiency to
28 conduct the sale. Exhibit 1. Because the HOA Foreclosure Deed is conclusive proof of the

1 matters recited, Defendants have no genuine material factual dispute that will invalidate the
2 HOA Foreclosure Sale based on statutes.

3 Examining these facts under equity, the proof of mailings of the foreclosure documents
4 are indisputable actual notice to Bank of America, predecessor in interest to Defendant
5 Carrington Mortgage Services. Exhibits 6, 10.

6 *ii. No Indicia of Fraud*

7 The Nevada Supreme Court has held that mere "inadequacy of price is not sufficient to
8 justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." *Long*
9 *v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). *See also Golden v. Tomiyasu*, 79 Nev. 503,
10 504, 387 P.2d 989 (1963) (remanded the setting aside of a foreclosure sale holding that
11 "inadequacy of price, without proof of some element of fraud, unfairness or oppression as accounts
12 for and brings about the inadequacy of price is not sufficient" to set aside the sale). *See also*
13 *Shadow Wood Homeowners Ass'n vs New York Community Bancorp, Inc.*, No. 63180 (Nev.,
14 January 28, 2016), 132 Nev., Advance Opinion 5. The foreclosure sale at which Plaintiff purchased
15 the Property was properly conducted in all respects. "Mere inadequacy of price... is not sufficient
16 to support a judgment setting aside the sale." *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989
17 (1963). Even in cases where a discrepancy in price and value necessitated scrutiny into the
18 commercial reasonableness of the disposition of collateral, courts focus on the manner of the sale
19 that might have caused such a discrepancy. In *Levers v. Rio King Land & Inv. Co.*, the Nevada
20 Supreme Court found that the secured party failed to provide reasonable notice to the debtor and
21 took no steps to publicize the sale in any manner, and therefore the debtor was entitled to a credit
22 equal to the fair market value rather than the sale price. *Levers v. Rio King Land & Inv. Co.*, 560
23 P.2d 917, 920 (Nev. 1977).

24 Here, Defendant Carrington Mortgage Services cannot claim the HOA foreclosure sale is
25 commercially unreasonable. The 30(b)(6) deposition of United Legal Services, Inc. confirms the
26 foreclosure sale was properly conducted. It was a publicly advertised auction with multiple
27 bidders. Exhibit 11. Further, the verbatim audio recording transcription supports this deposition
28 testimony. Exhibit 12. Despite extensive discovery, Defendant Carrington Mortgage Services

1 cannot produce one scintilla of evidence of any impropriety in the HOA foreclosure sale.

2 This Court may look to the price attained at the auction and inquire as to why the
3 purchase price was low in comparison to a traditional foreclosure of a first deed of trust. Here,
4 the price was low for two reasons. First, bidders did not have upward pressure to raise the price.
5 The lender could not make a credit bid for the Property and the bidding began at the balance of
6 the lien. Second, the purchase price was artificially low due to the market's uncertainty of the
7 title conveyed at the time of the sale combined with the necessary costs of quieting title after any
8 purchase of the property. These factors drove down the purchase price. Defendant Carrington
9 Mortgage Services cannot provide any evidence that fraud or unfairness even contributed to the
10 purchase price much less rise to the level of causation required to set aside a sale under *Levers*.

11 **C. Plaintiff is Entitled to Protection as a Bona Fide Purchaser.**

12 **i. Legal Standard.**

13 NRS 111.180(1) codifies protection for the bona fide purchaser for value. It states "[a]ny
14 purchaser who purchases an estate or interest in any real property in good faith and for valuable
15 consideration and who does not have actual knowledge, constructive notice of, or reasonable
16 cause to know that there exists a defect in, or adverse rights, title or interest to, the real property
17 is a bona fide purchaser." A defect detectable in an examination of recorded documents places a
18 subsequent purchaser on inquiry notice. *Hewitt v. Glaser Land & Livestock Co.*, 626 P.2d 268,
19 269, 97 Nev. 207, 209 (Nev. 1981). "A subsequent purchaser with notice, actual or constructive,
20 of an interest in the land superior to that which he is purchasing is not a purchaser in good faith,
21 and not entitled to the protection of the recording act." *Allison Steel Mfg. Co. v. Bentonite, Inc.*,
22 86 Nev. 494, 471 P.2d 666, 669 (1970).

23 Even constitutional defects of notice are not open to challenge against a bona fide
24 purchaser. *Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977) (rights of bona fide purchasers not
25 voided by constitutional defects in execution sale). In *Swartz*, a judgment creditor sold two
26 parcels of real property to himself without mailing the owners notice of the sales. *Id.* The parcels
27 were purchased by the judgment creditor for \$2,000 and \$4,201.54 with their worth \$10,000 and
28 \$53,000 respectively. Ultimately, the sales were found to violate the 14th Amendment for lack of

1 adequate notice; however, rescinding the sale “may no longer be done without injury to innocent
2 third parties who are bona fide purchasers of the property.” *Id* at 77.

3 Further, the Nevada Supreme Court recently remanded an order granting summary
4 judgment in favor of a lender in a NRS 116 HOA foreclosure sale where the lender failed to
5 produce any evidence of fraud, unfairness, or oppression. *Shadow Wood Homeowners Ass’n vs*
6 *New York Community Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance
7 Opinion 5. The Court goes on to discuss bona fide purchaser protection under the common law.
8 A bona fide purchaser is a purchaser of the property “for a valuable consideration and without
9 notice of the prior equity, and without notice of facts which upon diligent inquiry would be
10 indicated and from which notice would be imputed to him, if he failed to make such inquiry.” *Id.*
11 at 22.

12 Here, Plaintiff qualifies as a bona fide purchaser for value. Plaintiff had no actual,
13 constructive, or inquiry knowledge with respect to any equitable argument. Defendant
14 Carrington Mortgage Services’ failed to notify bidders of the purported tender due to their
15 inaction. Finally, Plaintiff paid valuable consideration. Because Plaintiff is an innocent third
16 party purchaser, the equities weigh heavily in Plaintiff’s favor that proscribe any claim by
17 Defendant Carrington Mortgage Services to set aside the sale.

18 **ii. Notice of Purported Tender**

19 Here, Plaintiff purchased the property at an auction without notice of any purported
20 defense of Defendant Carrington Mortgage Services. While Plaintiff had record notice of the
21 deed of trust, a properly conducted HOA sale would extinguish this interest, permitting Plaintiff
22 to take the Property without notice of any claim of superior title. It is undisputed Plaintiff had no
23 knowledge of any purported defect in the sale of the Property. Thus, no actual defect in the
24 foreclosure sale would defeat Plaintiff’s claim because it did not have any notice. This protection
25 extends even to when a sale did not comply with constitutionally required notice under *Mullane*.
26 *See Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977).

27 The lender can provide no evidence that the purchaser knew or should have known about
28 the disputed lien amount or attempts to pay the lien; and, consequently, the potential harm to the

1 purchaser must be taken into account. *Shadow Wood*, at 24. Plaintiff's affidavit definitively
2 affirms Plaintiff had no knowledge of any tender. Exhibit 13. Further, the audio recording of the
3 auction has Mr. Atkinson list the properties where a partial payment has been at issue. Exhibit
4 12. Notably, the Property was not among that list. Consequently, Plaintiff would never had been
5 required to inquire about the status of a purported tender, especially with the disclosure at the
6 auction.

7 **iii. Lender Failed to Act**

8 Defendant Carrington Mortgage Services claims are barred by the equitable defenses of
9 unclean hands and laches. Unclean hands generally bars a party from receiving equitable relief
10 because of that party's own inequitable conduct. *Las Vegas Fetish & Fantasy v. Ahern Rentals*,
11 182 P.3d 764, 766 (Nev. 2008). The inquiry for unclean hands is two-fold. The Court must
12 weigh the egregiousness of the misconduct and the seriousness of the harm caused by the
13 misconduct. *Id.* at 767. Laches applies where delay by one party prejudices another party.
14 *Besnillian v. Wilkinson*, 117 Nev. 519, 520 (2001).

15 In *Shadow Wood*, the Nevada Supreme Court held the district court should have
16 conducted a full hearing on the equities, noting the lender's inaction, "NYCB knew the sale had
17 been scheduled and that it disputed the lien amount, yet it did not attend the sale, request
18 arbitration to determine the amount owed, or seek to enjoin the sale pending judicial
19 determination of the amount owed," weighed heavily against the lender. *Id.* at 19. "Where the
20 complaining party has access to all the facts surrounding the questioned transaction and merely
21 makes a mistake as to the legal consequences of his act, equity should normally not interfere,
22 especially where the rights of third parties might be prejudiced thereby." *Shadow Wood*
23 *Homeowners Ass'n vs New York Community Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016),
24 132 Nev., Advance Opinion 5 at 24.

25 *SFR* requires a lender to exercise due diligence and take necessary steps to preserve its
26 rights including "paying the entire amount and requesting a refund of the balance." *Id.* at 418.
27 According to the payment scheme under NRS 116.31164(3)(c), the lender would be able to
28 recover a substantial majority of the bid price in excess of the super-priority amount as their

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

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

15 Laches Defendant Carrington Mortgage Services from coming before this Court after
16 the sale had been completed. If Defendant Carrington Mortgage Services had exercised
17 reasonable judgment by taking any one of several options to protect their interest, they would
18 not be here today.

19 Unclean hands prevents Defendant Carrington Mortgage Services from achieving
20 equitable relief. First, Defendant Carrington Mortgage Services failed to act or give notice to
21 any third party. While not necessarily egregious in isolation, applying the attempted tender to
22 undermine a sale would result in a great inequity to Plaintiff. The harm, the loss of the Property,
23 is substantial and irreplaceable.

24 Because Defendant Carrington Mortgage Services failed to take reasonable steps to
25 protect their interest, they cannot now avail themselves of the equitable relief of the legal
26 process.

27 ///

28 ///

1 *iv. Plaintiff Provided Valuable Consideration.*

2 To be considered a bona fide purchaser, the Plaintiff must have purchased the Property
3 with valuable consideration. Merely paying less than one party's valuation does not negate
4 valuable consideration. *Shadow Wood* at 22. Valuable consideration is satisfied if it was
5 valuable, regardless of adequacy. *Id.*

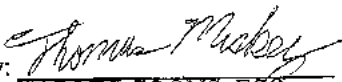
6 Because Plaintiff has provided uncontested evidence regarding the sufficiency of
7 consideration and Plaintiff's lack of notice of any adverse claim, Plaintiff qualifies as a bona fide
8 purchaser for value, entitled to the protection of an innocent third party purchaser.

9 **CONCLUSION**

10 Plaintiff requests summary judgment from this Court. For the reasons set forth herein,
11 Plaintiff requests the Court grant Plaintiff's Motion for Summary Judgment declaring Plaintiff the
12 rightful owner of the title to the Property, and that the Defendants be declared to have no right,
13 title, or interest in the Property.

14 Dated this 24th day of February, 2016.

15 COOPER COONS, LTD.
16 *Attorneys at Law*

17 By: 
18 J. CHARLES COONS, ESQ.
19 Nevada Bar No. 10553
20 THOMAS MISKEY
21 Nevada Bar No. 13540
22 10655 Park Run Drive, Suite 130
23 Las Vegas, Nevada 89144
24 V: (702) 998-1500
25 F: (702) 998-1503
26 *Attorneys for Plaintiff*

27 There are no social security numbers contained in this document.
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies on February 24, 2016, a true and correct copy of the above and foregoing was serve to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

_____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Las Vegas, Nevada;

_____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions;

_____ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Las Vegas, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a);

 X **BY E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addressee(s) having consented to electronic service, I via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

Akerman LLP

Name	Email	Select	
Akerman Las Vegas Office	akermanlas@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ariel E. Stern, Esq.	ariel.stern@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Christine M. Parvan, Esq.	christine.parvan@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Elizabeth Streible	elizabeth.streible@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/ Kim Hexamer

An Employee of COOPER COONS, LTD.

Exhibit 1

21

Inst #: 201306030002860
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$865.55 Ex: #
06/03/2013 11:55:08 AM
Receipt #: 1840070
Requestor:
RR VENTURES LLC
Recorded By: MQM Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 163-31-713-027

Return document and mail tax statements to:

R Ventures LLC
4815 Russell Rd Suite 8H
Las Vegas NV 89118

FORECLOSURE DEED UPON SALE

Foreclosing lienholder **SOUTHERN TERRACE HOMEOWNERS ASSOCIATION**, under power of sale pursuant to NRS Chapter 116, does hereby sell, without warranty, expressed or implied, to:


R VENTURES VIII LLC, a series of R Ventures LLC, a Nevada Limited Liability Company

the real property situated in Clark County, Nevada legally described as:

SEE EXHIBIT A ATTACHED FOR LEGAL DESCRIPTION

and commonly known as 6175 NOVELTY ST, LAS VEGAS NV 89148.

This conveyance is made pursuant to the powers conferred upon Agent by NRS Chapter 116, the foreclosing Association's governing documents (CC&R's), and the notice of the Lien for Delinquent Assessments, recorded on September 10, 2012 as instrument 201209100001428 in the Official Records of the Recorder of Clark County, Nevada. Default occurred as set forth in the Notice of Default and Election to Sell, recorded on November 14, 2012 as instrument 201211140000905 in the Official Records of the Recorder of Clark County, Nevada. All requirements of law have been complied with, including, but not limited to, the elapsing of the 90 days, the mailing of copies of the notice of Lien of Delinquent Assessment, and Notice of Default, and the mailing, posting, and publication of the Notice of Foreclosure Sale. Agent, in compliance with the Notice of Foreclosure Sale and in exercise of its power under NRS § 116.31164, sold the property at public auction on May 31, 2013.

By: 
Robert Opdyke, Esq.
United Legal Services Inc.
As authorized agent for, and on behalf of, foreclosing Association

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me
on May 2nd, 2013, by: Robert Opdyke.


CRYSTAL BENNETT
NOTARY PUBLIC



EXHIBIT A

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

PARCEL ONE (1):

LOT EIGHT HUNDRED TWENTY-FIVE (825) IN BLOCK THIRTY-THREE (33) OF RUSSELL/FORT APACHE - UNIT 13 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 109 OF PLATS, PAGE 96, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT AND PUBLIC UTILITY PURPOSES ON, OVER AND ACROSS THE PRIVATE STREETS AND COMMON AREAS ON THE MAP REFERENCED HEREINABOVE, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-31-713-027
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
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 130,406.00 DW

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

c. Transfer Tax Value: _____

d. Real Property Transfer Tax Due _____

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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: GRANTEE

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

Print Name: Southern Terrace Homeowners Association
Address: 9710 W. Oquendo Road
City: Las Vegas
State: NV Zip: 89148

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: R Ventures VIII
Address: 4815 W. Russell, Suite 814
City: Las Vegas
State: NV Zip: 89118

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

Print Name: _____
Address: _____
City: _____

Escrow # _____
State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

RECEIPT OF SALE

United Legal Services Inc.


(702) 617-3263

PROPERTY INFORMATION:	
APN	PROPERTY STREET ADDRESS
163-31-713-027	6175 Novelty St, Las Vegas NV

SALE INFORMATION:	
SALE DATE	WINNING BID AMOUNT (\$):
5/31/13	\$10,100

BUYER INFORMATION:	
BUYER (OR REPRESENTATIVE'S) NAME	CONTACT INFORMATION
Derrol Wynn	4815 Russell Rd Suite 830, Las Vegas NV 89118
VESTING - RECORD TITLE AS SHOWN	R VENTURES VIII LLC, A SERIES OF R VENTURES LLC, A NEVADA LIMITED LIABILITY COMPANY

PAYMENT INFORMATION:			
AMOUNT	DRAWN ON (or WIRE FROM)	DATE RECEIVED by AGENT	INITIALS
\$10,100	US BANK (25500) \$100 CASH	5/31/13	RA

CERTIFICATION OF AGENT:	
I hereby certify that the information above is accurate.	
Signature:  ROBERT ATKINSON, ESQ.	

ALL SALES OF PROPERTY ARE ON ANY "AS IS" BASIS, WITH NO WARRANTIES,
EXPRESS OR IMPLIED.

CARRINGTON000378

Exhibit 2

Assessor Parcel Number: 163-31-713-027
File Number: R805962

Inst #: 201209100001428
Fees: \$17.00
N/C Fee: \$0.00
09/10/2012 08:36:12 AM
Receipt #: 1301170
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Accommodation

LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Southern Terrace Homeowners Association, herein also called the Association, in accordance with Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 08/09/2001, in Book Number 20010809, as Instrument Number 01455 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:

6175 Novelty St, Las Vegas, NV 89148

RUSSELL FORT APACHE-UNIT 13 PLAT BOOK 109 PAGE 96 LOT 825 BLOCK 33, in the

County of Clark

Current Owner(s) of Record:

JOYCE PIERCE

The amount owing as of the date of preparation of this lien is **\$2,581.69.

This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.

** The said amount may increase or decrease as assessments, late fees, interest, fines/violations, collection fees, costs or partial payments are applied to this account.

Dated: August 29, 2012

Rebecca Tom
Prepared By Rebecca Tom, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

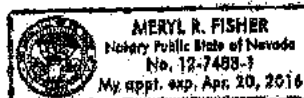
STATE OF NEVADA

COUNTY OF CLARK

On August 29, 2012, before me, personally appeared Rebecca Tom, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Meryl R. Fisher
When Recorded Mail To: Red Rock Financial Services
7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



RV00014

JA000133

Exhibit 3



Red Rock Financial Services
Accounting Ledger
Information as of: April 30, 2013

Account Number: 805962
Association: Southern Terrace Homeowners Association
Property Address: 6175 Novelty St, Las Vegas, NV 89148
Ledger Balance: \$4,654.93
Homeowner(s): Joyce Pierce;BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS
SERVICING, LP;BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOAN
SERVICING, LP;MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS
NOMINEE;MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE;MOR
ELECTRONIC REGISTRATION SYSTEMS, INC. Using Disclosures Disc

Posting	Description	Amount	Balance	Pmt Ref	Memo
	Master Assessments	\$62.00	\$62.00		Master As
2/11/2009	Master Assessments	\$62.00	\$124.00		Master As
2/11/2009	Master Assessments	\$57.00	\$181.00		Master As
2/11/2009	Master Assessments	\$57.00	\$238.00		Master As
2/11/2009	Master Assessments	\$57.00	\$295.00		Master As
2/11/2009	Master Assessments	\$57.00	\$352.00		Master As
2/11/2009	Master Assessments	\$57.00	\$409.00		Master As
2/11/2009	Monthly Assessment	\$8.00	\$417.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$425.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$433.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$441.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$449.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$457.00		Monthly A:
2/11/2009	Monthly Assessment	\$8.00	\$465.00		Monthly A:
2/11/2009	Monthly Assessment	\$65.00	\$530.00		Monthly A:
3/1/2009	Master Assessments	\$62.00	\$592.00		Master As
3/1/2009	Monthly Assessment	\$8.00	\$600.00		Monthly A:
3/18/2009	Association Mgmt Payment	(\$80.00)	\$520.00	00491	Lockbox P
3/18/2009	Association Mgmt Payment	(\$130.00)	\$390.00	00490	Lockbox P
3/30/2009	Late Fees	\$10.00	\$400.00		Late Fees
4/1/2009	Master Assessments	\$62.00	\$462.00		Master As
4/1/2009	Monthly Assessment	\$8.00	\$470.00		Monthly A:
4/3/2009	Association Mgmt Payment	(\$70.00)	\$400.00	00453	Lockbox P
4/15/2009	Association Mgmt Payment	(\$200.00)	\$200.00	00464	Lockbox P
4/21/2009	Association Mgmt Payment	(\$200.00)	\$0.00	00467	Lockbox P
4/30/2009	Association Mgmt Payment	(\$70.00)	(\$70.00)	00469	Lockbox P
5/1/2009	Master Assessments	\$62.00	(\$8.00)		Master As
5/1/2009	Monthly Assessment	\$8.00	\$0.00		Monthly A:
5/28/2009	Association Mgmt Payment	(\$70.00)	(\$70.00)	00434	Lockbox P

CARRINGTON000558

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Services is a debt collector and is attempting to collect a debt. Any information obtained will be us

6/1/2009	Master Assessments	\$62.00	(\$8.00)		Master As
6/1/2009	Monthly Assessment	\$8.00	\$0.00		Monthly As
7/1/2009	Master Assessments	\$62.00	\$62.00		Master As
7/1/2009	Monthly Assessment	\$8.00	\$70.00		Monthly As
7/30/2009	Late Fees	\$10.00	\$80.00		Late Fees
8/1/2009	Master Assessments	\$62.00	\$142.00		Master As
8/1/2009	Monthly Assessment	\$8.00	\$150.00		Monthly As
8/3/2009	Association Mgmt Payment	(\$70.00)	\$80.00	00415	Lockbox P
8/21/2009	Association Mgmt Payment	(\$80.00)	\$0.00	00424	Lockbox P
9/1/2009	Master Assessments	\$62.00	\$62.00		Master As
9/1/2009	Monthly Assessment	\$8.00	\$70.00		Monthly As
9/30/2009	Late Fees	\$10.00	\$80.00		Late Fees
10/1/2009	Master Assessments	\$62.00	\$142.00		Master As
10/1/2009	Monthly Assessment	\$8.00	\$150.00		Monthly As
10/15/2009	Association Mgmt Payment	(\$80.00)	\$70.00	00590	Lockbox P
10/29/2009	Association Mgmt Payment	(\$90.00)	(\$10.00)	00551	Lockbox P
11/1/2009	Master Assessments	\$62.00	\$52.00		Master As
11/1/2009	Monthly Assessment	\$8.00	\$60.00		Monthly As
12/1/2009	Master Assessments	\$62.00	\$122.00		Master As
12/1/2009	Monthly Assessment	\$8.00	\$130.00		Monthly As
12/9/2009	Association Mgmt Payment	(\$80.00)	\$50.00	00604	Lockbox P
1/1/2010	Master Assessments	\$62.00	\$112.00		Master As
1/1/2010	Monthly Assessment	\$8.00	\$120.00		Monthly As
1/19/2010	Association Mgmt Payment	(\$50.00)	\$70.00	00618	Lockbox P
1/30/2010	Late Fees	\$10.00	\$80.00		Late Fees
2/1/2010	Master Assessments	\$62.00	\$142.00		Master As
2/1/2010	Monthly Assessment	\$8.00	\$150.00		Monthly As
3/1/2010	Master Assessments	\$62.00	\$212.00		Master As
3/1/2010	Monthly Assessment	\$8.00	\$220.00		Monthly As
3/2/2010	Late Fees	\$10.00	\$230.00		Late Fees
3/30/2010	Late Fees	\$10.00	\$240.00		Late Fees
4/1/2010	Master Assessments	\$62.00	\$302.00		Master As
4/1/2010	Monthly Assessment	\$8.00	\$310.00		Monthly As
4/2/2010	Association Mgmt Payment	(\$70.00)	\$240.00	31173	Lockbox P
4/30/2010	Late Fees	\$10.00	\$260.00		Late Fees
5/1/2010	Master Assessments	\$62.00	\$312.00		Master As
5/1/2010	Monthly Assessment	\$8.00	\$320.00		Monthly As
5/10/2010	Association Mgmt Payment	(\$70.00)	\$250.00	40273	Lockbox P
5/31/2010	Late Fees	\$10.00	\$260.00		Late Fees
6/1/2010	Master Assessments	\$62.00	\$322.00		Master As
6/1/2010	Monthly Assessment	\$8.00	\$330.00		Monthly As
6/14/2010	Association Mgmt Payment	(\$70.00)	\$260.00	40836	Lockbox P
6/30/2010	Association Mgmt Payment	(\$330.00)	(\$70.00)	063010	RRFS PIF
7/1/2010	Master Assessments	\$62.00	(\$8.00)		Master As
7/1/2010	Monthly Assessment	\$8.00	\$0.00		Monthly As
8/1/2010	Master Assessments	\$62.00	\$62.00	CARRINGTON000559	Master As

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8/1/2010	Monthly Assessment	\$8.00	\$70.00		Monthly As
8/19/2010	Association Mgmt Payment	(\$70.00)	\$0.00	41364	Lockbox P
9/1/2010	Master Assessments	\$82.00	\$62.00		Master As
9/1/2010	Monthly Assessment	\$8.00	\$70.00		Monthly As
9/30/2010	Late Fees	\$10.00	\$80.00		Late Fees
10/1/2010	Master Assessments	\$82.00	\$142.00		Master As
10/1/2010	Monthly Assessment	\$8.00	\$150.00		Monthly As
10/18/2010	Association Mgmt Payment	(\$70.00)	\$80.00	42107	Lockbox P
10/18/2010	Association Mgmt Payment	(\$70.00)	\$10.00	42106	Lockbox P
11/1/2010	Master Assessments	\$82.00	\$72.00		Master As
11/1/2010	Monthly Assessment	\$8.00	\$60.00		Monthly As
11/16/2010	Association Mgmt Payment	(\$70.00)	\$80.00	42487	Lockbox P
12/1/2010	Master Assessments	\$82.00	\$172.00		Master As
12/1/2010	Monthly Assessment	\$8.00	\$180.00		Monthly As
12/13/2010	Association Mgmt Payment	(\$70.00)	\$160.00	42898	Lockbox P
1/1/2011	Master Assessments	\$62.00	\$372.00		Master As
1/1/2011	Monthly Assessment	\$8.00	\$360.00		Monthly As
1/30/2011	Late Fees	\$10.00	\$590.00		Late Fees
2/1/2011	Master Assessments	\$62.00	\$652.00		Master As
2/1/2011	Monthly Assessment	\$8.00	\$660.00		Monthly As
2/17/2011	Association Mgmt Payment	(\$70.00)	\$740.00	43307	Lockbox P
3/1/2011	Master Assessments	\$62.00	\$852.00		Master As
3/1/2011	Monthly Assessment	\$8.00	\$860.00		Monthly As
3/2/2011	Late Fees	\$10.00	\$920.00		Late Fees
3/16/2011	Association Mgmt Payment	(\$70.00)	\$950.00	43608	Lockbox P
3/30/2011	Late Fees	\$10.00	\$1,060.00		Late Fees
4/1/2011	Master Assessments	\$82.00	\$1,122.00		Master As
4/1/2011	Monthly Assessment	\$8.00	\$1,130.00		Monthly As
4/11/2011	Association Mgmt Payment	(\$70.00)	\$1,110.00	44079	Lockbox P
4/30/2011	Late Fees	\$10.00	\$1,270.00		Late Fees
5/1/2011	Master Assessments	\$82.00	\$1,332.00		Master As
5/1/2011	Monthly Assessment	\$8.00	\$1,340.00		Monthly As
5/11/2011	Association Mgmt Payment	(\$70.00)	\$1,370.00	44393	Lockbox P
5/26/2011	Association Mgmt Payment	(\$70.00)	\$1,400.00	44641	Lockbox P
6/1/2011	Master Assessments	\$82.00	\$1,462.00		Master As
6/1/2011	Monthly Assessment	\$8.00	\$1,470.00		Monthly As
6/30/2011	Late Fees	\$10.00	\$1,480.00		Late Fees
7/1/2011	Master Assessments	\$82.00	\$1,542.00		Master As
7/1/2011	Monthly Assessment	\$8.00	\$1,550.00		Monthly As
7/8/2011	Association Mgmt Payment	(\$70.00)	\$1,480.00	45042	Lockbox P
7/30/2011	Late Fees	\$10.00	\$1,490.00		Late Fees

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8/1/2011	Master Assessments	\$62.00	\$1,552.00		Master As
8/1/2011	Monthly Assessment	\$8.00	\$1,560.00		Monthly As
8/3/2011	Association Mgmt Payment	(\$70.00)	\$1,490.00	45464	Lockbox P
8/30/2011	Late Fees	\$10.00	\$1,500.00		Late Fees
9/1/2011	Master Assessments	\$62.00	\$1,562.00		Master As
9/1/2011	Monthly Assessment	\$8.00	\$1,570.00		Monthly As
9/12/2011	Association Mgmt Payment	(\$70.00)	\$1,500.00	46016	Lockbox P
9/30/2011	Late Fees	\$10.00	\$1,510.00		Late Fees
10/1/2011	Master Assessments	\$62.00	\$1,572.00		Master As
10/1/2011	Monthly Assessment	\$8.00	\$1,580.00		Monthly As
10/13/2011	Association Mgmt Payment	(\$70.00)	\$1,510.00	48393	Lockbox P
11/1/2011	Master Assessments	\$62.00	\$1,572.00		Master As
11/1/2011	Monthly Assessment	\$8.00	\$1,580.00		Monthly As
11/15/2011	Association Mgmt Payment	(\$70.00)	\$1,510.00	67141	Lockbox P
11/30/2011	Late Fees	\$10.00	\$1,520.00		Late Fees
12/1/2011	Master Assessments	\$62.00	\$1,582.00		Master As
12/1/2011	Monthly Assessment	\$8.00	\$1,590.00		Monthly As
12/16/2011	Association Mgmt Payment	(\$70.00)	\$1,520.00	47135	Lockbox P
12/30/2011	Late Fees	\$10.00	\$1,530.00		Late Fees
1/1/2012	Master Assessments	\$62.00	\$1,592.00		Master As
1/1/2012	Monthly Assessment	\$8.00	\$1,600.00		Monthly As
1/20/2012	Association Mgmt Payment	(\$70.00)	\$1,530.00	47589	Lockbox P
1/30/2012	Late Fees	\$10.00	\$1,540.00		Late Fees
2/1/2012	Master Assessments	\$62.00	\$1,602.00		Master As
2/1/2012	Monthly Assessment	\$8.00	\$1,610.00		Monthly As
2/17/2012	Association Mgmt Payment	(\$70.00)	\$1,540.00	47908	Lockbox P
3/1/2012	Master Assessments	\$62.00	\$1,602.00		Master As
3/1/2012	Monthly Assessment	\$8.00	\$1,610.00		Monthly As
3/2/2012	Late Fees	\$10.00	\$1,620.00		Late Fees
3/13/2012	Association Mgmt Payment	(\$70.00)	\$1,550.00	00004	Lockbox P
3/30/2012	Late Fees	\$10.00	\$1,560.00		Late Fees
4/1/2012	Master Assessments	\$62.00	\$1,622.00		Master As
4/1/2012	Monthly Assessment	\$8.00	\$1,630.00		Monthly As
4/4/2012	Association Mgmt Payment	(\$70.00)	\$1,560.00	48480	Lockbox P
4/30/2012	Late Fees	\$10.00	\$1,570.00		Late Fees
5/1/2012	Master Assessments	\$62.00	\$1,632.00		Master As
5/1/2012	Monthly Assessment	\$8.00	\$1,640.00		Monthly As
5/31/2012	Late Fees	\$10.00	\$1,650.00		Late Fees
6/1/2012	Master Assessments	\$62.00	\$1,712.00		Master As
6/1/2012	Monthly Assessment	\$8.00	\$1,720.00		Monthly As
6/30/2012	Late Fees	\$10.00	\$1,730.00		Late Fees
7/1/2012	Master Assessments	\$62.00	\$1,792.00		Master As
7/1/2012	Monthly Assessment	\$8.00	\$1,800.00		Monthly As
7/18/2012	Management Company Collection Cost	\$150.00	\$1,950.00		Management
7/18/2012	Intent to Lien Letter	\$125.00	\$2,075.00		Collection
7/18/2012	Mailing Costs	\$8.97	\$2,083.97		

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JA000138

7/18/2012	Mailing Costs	\$8.97	\$2,092.94	
7/31/2012	Late Fees	\$10.00	\$2,102.94	Late Fees
8/1/2012	Master Assessments	\$62.00	\$2,164.94	Master As
8/1/2012	Monthly Assessment	\$8.00	\$2,172.94	Monthly As
8/29/2012	Association Interest	\$1.81	\$2,224.75	
8/29/2012	Mailing Costs	\$8.97	\$2,233.72	
8/29/2012	Lien for Delinquent Assessment	\$275.00	\$2,508.72	
8/29/2012	Mailing Costs	\$8.97	\$2,517.69	
8/29/2012	Lien Recording Costs	\$34.00	\$2,551.69	
8/29/2012	Lien Release	\$30.00	\$2,581.69	
8/31/2012	Late Fees	\$10.00	\$2,591.69	Late Fees
9/1/2012	Master Assessments	\$62.00	\$2,653.69	Master As
9/1/2012	Monthly Assessment	\$8.00	\$2,661.69	Monthly As
9/29/2012	Association Interest	\$2.07	\$2,713.76	
9/30/2012	Late Fees	\$10.00	\$2,723.76	Late Fees
10/1/2012	Master Assessments	\$62.00	\$2,785.76	Master As
10/1/2012	Monthly Assessment	\$8.00	\$2,793.76	Monthly As
10/25/2012	Intent to NOD	\$90.00	\$2,883.76	
10/30/2012	Association Interest	\$2.38	\$2,886.14	
10/31/2012	Late Fees	\$10.00	\$2,896.14	Late Fees
11/1/2012	Master Assessments	\$62.00	\$2,958.14	Master As
11/1/2012	Monthly Assessment	\$8.00	\$2,966.14	Monthly As
11/6/2012	Trustee Sale Guarantee	\$280.00	\$3,256.14	
11/6/2012	NOD Release	\$30.00	\$3,286.14	
11/6/2012	NOD Recording Costs	\$17.00	\$3,303.14	
11/6/2012	NOD Release Recording Costs	\$17.00	\$3,320.14	
11/8/2012	NOD Mailing Costs	\$69.70	\$3,409.84	
11/6/2012	Notice of Default	\$400.00	\$3,809.84	
11/6/2012	NOD Mailing Charges Adjustment	(\$28.91)	\$3,782.93	
11/29/2012	Association Interest	\$2.89	\$3,785.62	
11/30/2012	Late Fees	\$10.00	\$3,795.62	Late Fees
12/1/2012	Master Assessments	\$62.00	\$3,857.62	Master As
12/1/2012	Monthly Assessment	\$8.00	\$3,865.62	Monthly As
12/12/2012	Payoff Demand	\$150.00	\$4,015.62	Noble Title
12/27/2012	Payoff Demand	\$150.00	\$4,165.62	Miles Loge
12/30/2012	Association Interest	\$3.00	\$4,168.62	
12/31/2012	Late Fees	\$10.00	\$4,178.62	Late Fees
1/1/2013	Master Assessments	\$62.00	\$4,240.62	Master As
1/1/2013	Monthly Assessment	\$8.00	\$4,248.62	Monthly As
1/1/2013	Master Assessments	(\$62.00)	\$4,186.62	Master As
1/1/2013	Monthly Assessment	(\$8.00)	\$4,178.62	Adj 01/13 Assessments Master As
1/1/2013	Master Assessments	\$72.00	\$4,250.62	
1/21/2013	Intent to NOS	\$90.00	\$4,340.62	
1/29/2013	Association Interest	\$3.31	\$4,343.93	
2/1/2013	Master Assessments	\$72.00	\$4,415.93	Master As

CARRINGTON000562

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2/11/2013	Payoff Demand	\$50.00	\$4,465.93	Noble Title
3/1/2013	Master Assessments	\$72.00	\$4,537.93	Master As
3/2/2013	Late Fees	\$10.00	\$4,547.93	Late Fees
3/14/2013	Intent to Conduct Foreclosure	\$25.00	\$4,572.93	
3/31/2013	Late Fees	\$10.00	\$4,582.93	Late Fees
4/1/2013	Master Assessments	\$72.00	\$4,654.93	Master As

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© RED ROCK FINANCIAL SERVICES 4776 W. Teco Avenue, Suite 140, Las Vegas, NV 89118 Phone:(702) 832-8887 Fax:(702) 341-7733 Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose only.

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© RED ROCK FINANCIAL SERVICES 4775 W. Taco Avenue, Suite 140, Las Vegas, NV 89118 Phone:(702) 932-6887 Fax:(702) 341-7733 Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be us

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© RED ROCK FINANCIAL SERVICES 4775 W. Taco Avenue, Suite 140, Las Vegas, NV 89118 Phone:(702) 932-8887 Fax:(702) 341-7733 Red Rock Financial
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© RED ROCK FINANCIAL SERVICES 4775 W. Tropic Avenue, Suite 140, Las Vegas, NV 89118 Phone:(702) 932-6987 Fax:(702) 341-7733 Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be us

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© RED ROCK FINANCIAL SERVICES 4775 W. Teco Avenue, Suite 140, Las Vegas, NV 89118 Phone:(702) 932-6887 Fax:(702) 341-7733 Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose only.

JA000146

Exhibit 4

03/12/2013 9:15:58 AM



Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119



1485 03 Joyce Pierce
6176 Novelty St
Las Vegas, NV 89148
Current Credit History Code: AC
9850 N 73rd St # 2104
Scottsdale, AZ 85258
Effective Date: 07/16/2012

						Reg Bal	00.00
Charge	02/11/2009	MA	02/09 Monthly Assessment			08.00	08.00
Charge	02/11/2009	MA	01/09 Monthly Assessment			08.00	16.00
Charge	02/11/2009	MA	12/08 Monthly Assessment			08.00	24.00
Charge	02/11/2009	MA	11/08 Monthly Assessment			08.00	32.00
Charge	02/11/2009	MA	10/08 Monthly Assessment			08.00	40.00
Charge	02/11/2009	MA	09/08 Monthly Assessment			08.00	48.00
Charge	02/11/2009	MA	08/08 Monthly Assessment			08.00	56.00
Charge	02/11/2009	MA	trsf del from prior			65.00	121.00
Charge	02/11/2009	MAST	02/09 Master Assessment			62.00	183.00
Charge	02/11/2009	MAST	01/09 Master Assessment			62.00	245.00
Charge	02/11/2009	MAST	12/08 Master Assessment			57.00	302.00
Charge	02/11/2009	MAST	11/08 Master Assessment			57.00	359.00
Charge	02/11/2009	MAST	10/08 Master Assessment			57.00	416.00
Charge	02/11/2009	MAST	09/08 Master Assessment			57.00	473.00
Charge	02/11/2009	MAST	08/08 Master Assessment			57.00	530.00
Charge	03/01/2009	MA	Monthly Assessment			08.00	538.00
Charge	03/01/2009	MAST	Master Assessments			62.00	600.00
Pay	03/18/2009		Lockbox Payment	00490		-130.00	470.00
Pay	03/18/2009		Lockbox Payment	00491		-80.00	390.00
Charge	03/30/2009	LF	Late Fees			10.00	400.00
Charge	04/01/2009	MA	Monthly Assessment			08.00	408.00
Charge	04/01/2009	MAST	Master Assessments			62.00	470.00
Pay	04/03/2009		Lockbox Payment	00453		-70.00	400.00
Pay	04/15/2009		Lockbox Payment	00464		-200.00	200.00
Pay	04/21/2009		Lockbox Payment	00467		-200.00	00.00
Pay	04/30/2009		Lockbox Payment	00469		-70.00	-70.00
Charge	05/01/2009	MA	Monthly Assessment			08.00	-62.00
Charge	05/01/2009	MAST	Master Assessments			62.00	00.00
Pay	05/28/2009		Lockbox Payment	00434		-70.00	-70.00
Charge	06/01/2009	MA	Monthly Assessment			08.00	-62.00
Charge	06/01/2009	MAST	Master Assessments			62.00	00.00
Charge	07/01/2009	MA	Monthly Assessment			08.00	08.00
Charge	07/01/2009	MAST	Master Assessments			62.00	70.00
Charge	07/30/2009	LF	Late Fees			10.00	80.00
Charge	08/01/2009	MA	Monthly Assessment			08.00	88.00
Charge	08/01/2009	MAST	Master Assessments			62.00	150.00
Pay	08/03/2009		Lockbox Payment	00415		-70.00	80.00
Pay	08/21/2009		Lockbox Payment	00424		-80.00	00.00
Charge	09/01/2009	MA	Monthly Assessment			08.00	08.00
Charge	09/01/2009	MAST	Master Assessments			62.00	70.00
Charge	09/30/2009	LF	Late Fees			10.00	80.00
Charge	10/01/2009	MA	Monthly Assessment			08.00	88.00
Charge	10/01/2009	MAST	Master Assessments			62.00	150.00
Pay	10/15/2009		Lockbox Payment	00590		-80.00	70.00

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Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119



1465 03	Joyce Pierca	9850 N 73rd St # 2104
	6175 Novalty St	Scottsdale, AZ 85258
	Las Vegas, NV 89148	Effective Date: 07/16/2012
Current Credit History Code:		AC
Pay	10/29/2009	Lockbox Payment 00551 -80.00 -10.00
Charge	11/01/2009	MA Monthly Assessment 06.00 -02.00
Charge	11/01/2009	MAST Master Assessments 62.00 60.00
Charge	12/01/2009	MA Monthly Assessment 08.00 68.00
Charge	12/01/2009	MAST Master Assessments 62.00 130.00
Pay	12/09/2009	Lockbox Payment 00604 -80.00 50.00
Charge	01/01/2010	MA Monthly Assessment 06.00 56.00
Charge	01/01/2010	MAST Master Assessments 62.00 120.00
Pay	01/19/2010	Lockbox Payment 00618 -50.00 70.00
Charge	01/30/2010	LF Late Fees 10.00 80.00
Charge	02/01/2010	MA Monthly Assessment 08.00 88.00
Charge	02/01/2010	MAST Master Assessments 62.00 150.00
Charge	03/01/2010	MA Monthly Assessment 08.00 158.00
Charge	03/01/2010	MAST Master Assessments 62.00 220.00
Charge	03/02/2010	LF Late Fees 10.00 230.00
Charge	03/30/2010	LF Late Fees 10.00 240.00
Charge	04/01/2010	MA Monthly Assessment 08.00 248.00
Charge	04/01/2010	MAST Master Assessments 62.00 310.00
Pay	04/02/2010	Lockbox Payment 31173 -70.00 240.00
Charge	04/30/2010	LF Late Fees 10.00 250.00
Charge	05/01/2010	MA Monthly Assessment 08.00 258.00
Charge	05/01/2010	MAST Master Assessments 62.00 320.00
Pay	05/10/2010	Lockbox Payment 40273 -70.00 250.00
Charge	05/31/2010	LF Late Fees 10.00 260.00
Charge	06/01/2010	MA Monthly Assessment 08.00 268.00
Charge	06/01/2010	MAST Master Assessments 62.00 330.00
Pay	06/14/2010	Lockbox Payment 40635 -70.00 260.00
Pay	06/30/2010	RRFS PIF 6/10 063010 -330.00 -70.00
Charge	07/01/2010	MA Monthly Assessment 08.00 -62.00
Charge	07/01/2010	MAST Master Assessments 62.00 00.00
Charge	08/01/2010	MA Monthly Assessment 06.00 06.00
Charge	08/01/2010	MAST Master Assessments 62.00 70.00
Pay	08/19/2010	Lockbox Payment 41364 -70.00 00.00
Charge	09/01/2010	MA Monthly Assessment 06.00 06.00
Charge	09/01/2010	MAST Master Assessments 62.00 70.00
Charge	09/30/2010	LF Late Fees 10.00 80.00
Charge	10/01/2010	MA Monthly Assessment 06.00 86.00
Charge	10/01/2010	MAST Master Assessments 62.00 150.00
Pay	10/18/2010	Lockbox Payment 42106 -70.00 80.00
Pay	10/18/2010	Lockbox Payment 42107 -70.00 10.00
Charge	11/01/2010	MA Monthly Assessment 08.00 18.00
Charge	11/01/2010	MAST Master Assessments 62.00 80.00
Charge	11/03/2010	FINE 10/26/2010 replace dead 50.00 130.00
Pay	11/16/2010	Lockbox Payment 42487 -70.00 60.00
Charge	11/30/2010	FINE rake leaves tree debris 50.00 110.00

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03/12/2013 9:15:56 AM



Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119

1465 03	Joyce Pierce	9850 N 73rd St # 2104		
	6175 Novelty St	Scottsdale, AZ 85258		
	Las Vegas, NV 89148	Effective Date: 07/16/2012		
	Current Credit History Code:	AC		
	Charge	12/01/2010 MA Monthly Assessment	08.00	118.00
	Charge	12/01/2010 MAST Master Assessments	62.00	180.00
	Charge	12/08/2010 FINE dead shrubs 12-8-10	50.00	230.00
	Pay	12/13/2010 Lockbox Payment 42698	-70.00	160.00
	Charge	12/15/2010 FINE dead shrubs 12-15-10	50.00	210.00
	Charge	12/22/2010 FINE dead shrubs 12-22-10	50.00	260.00
	Charge	12/29/2010 FINE dead shrubs 12-29-10	50.00	310.00
	Charge	01/01/2011 MA Monthly Assessment	08.00	318.00
	Charge	01/01/2011 MAST Master Assessments	62.00	380.00
	Charge	01/05/2011 FINE dead shrubs 1-5-11	50.00	430.00
	Charge	01/12/2011 FINE dead shrubs 1-12-11	50.00	480.00
	Charge	01/19/2011 FINE dead shrubs 1-19-11	50.00	530.00
	Charge	01/26/2011 FINE dead shrubs 1-26-11	50.00	580.00
	Charge	01/30/2011 LF Late Fees	10.00	590.00
	Charge	02/01/2011 MA Monthly Assessment	08.00	598.00
	Charge	02/01/2011 MAST Master Assessments	62.00	660.00
	Charge	02/02/2011 FINE dead shrubs 2-2-11	50.00	710.00
	Charge	02/09/2011 FINE dead shrubs 2-9-11	50.00	760.00
	Charge	02/16/2011 FINE dead shrubs 02.16.11	50.00	810.00
	Pay	02/17/2011 Lockbox Payment 43307	-70.00	740.00
	Charge	02/24/2011 FINE dead shrubs 02.23.11	50.00	790.00
	Charge	03/01/2011 MA Monthly Assessment	08.00	798.00
	Charge	03/01/2011 MAST Master Assessments	62.00	860.00
	Charge	03/02/2011 FINE dead shrubs	50.00	910.00
	Charge	03/02/2011 LF Late Fees	10.00	920.00
	Charge	03/08/2011 FINE dead shrubs	50.00	970.00
	Charge	03/16/2011 FINE dead shrubs	50.00	1,020.00
	Pay	03/16/2011 Lockbox Payment 43606	-70.00	950.00
	Charge	03/23/2011 FINE dead shrubs	50.00	1,000.00
	Charge	03/30/2011 FINE dead shrubs	50.00	1,050.00
	Charge	03/30/2011 LF Late Fees	10.00	1,060.00
	Charge	04/01/2011 MA Monthly Assessment	08.00	1,068.00
	Charge	04/01/2011 MAST Master Assessments	62.00	1,130.00
	Charge	04/07/2011 FINE 4/6/2011 dead shrubs	50.00	1,180.00
	Pay	04/11/2011 Lockbox Payment 44078	-70.00	1,110.00
	Charge	04/13/2011 FINE dead shrubs	50.00	1,160.00
	Charge	04/20/2011 FINE dead shrubs	50.00	1,210.00
	Charge	04/27/2011 FINE dead shrubs	50.00	1,260.00
	Charge	04/30/2011 LF Late Fees	10.00	1,270.00
	Charge	05/01/2011 MA Monthly Assessment	08.00	1,278.00
	Charge	05/01/2011 MAST Master Assessments	62.00	1,340.00
	Charge	05/04/2011 FINE dead shrubs	50.00	1,390.00
	Charge	05/11/2011 FINE dead shrubs	50.00	1,440.00
	Pay	05/11/2011 Lockbox Payment 44393	-70.00	1,370.00
	Charge	05/16/2011 FINE dead shrubs	50.00	1,420.00

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03/12/2013 9:15:56 AM



Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119



1465 03	Joyce Pierce	9850 N 73rd St # 2104			
	6175 Novelty St	Scottsdale, AZ 85258			
	Las Vegas, NV 89148	Effective Date: 07/16/2012			
Current Credit History Code:		AC			
Charge	05/25/2011	FINE dead shrubs		50.00	1,470.00
Pay	06/26/2011	Lockbox Payment	44641	-70.00	1,400.00
Charge	06/01/2011	MA Monthly Assessment		08.00	1,408.00
Charge	06/01/2011	MAST Master Assessments		62.00	1,470.00
Charge	06/30/2011	LF Late Fees		10.00	1,480.00
Charge	07/01/2011	MA Monthly Assessment		08.00	1,488.00
Charge	07/01/2011	MAST Master Assessments		62.00	1,550.00
Pay	07/08/2011	Lockbox Payment	45042	-70.00	1,480.00
Charge	07/30/2011	LF Late Fees		10.00	1,490.00
Charge	08/01/2011	MA Monthly Assessment		08.00	1,498.00
Charge	08/01/2011	MAST Master Assessments		62.00	1,560.00
Pay	08/03/2011	Lockbox Payment	45484	-70.00	1,490.00
Charge	08/30/2011	LF Late Fees		10.00	1,500.00
Charge	09/01/2011	MA Monthly Assessment		08.00	1,508.00
Charge	09/01/2011	MAST Master Assessments		62.00	1,570.00
Pay	09/12/2011	Lockbox Payment	46016	-70.00	1,500.00
Charge	09/30/2011	LF Late Fees		10.00	1,510.00
Charge	10/01/2011	MA Monthly Assessment		08.00	1,518.00
Charge	10/01/2011	MAST Master Assessments		62.00	1,580.00
Pay	10/13/2011	Lockbox Payment	46393	-70.00	1,510.00
Charge	11/01/2011	MA Monthly Assessment		08.00	1,518.00
Charge	11/01/2011	MAST Master Assessments		62.00	1,580.00
Pay	11/15/2011	Lockbox Payment	67141	-70.00	1,510.00
Charge	11/30/2011	LF Late Fees		10.00	1,520.00
Charge	12/01/2011	MA Monthly Assessment		08.00	1,528.00
Charge	12/01/2011	MAST Master Assessments		62.00	1,590.00
Pay	12/16/2011	Lockbox Payment	47135	-70.00	1,520.00
Charge	12/30/2011	LF Late Fees		10.00	1,530.00
Charge	01/01/2012	MA Monthly Assessment		08.00	1,538.00
Charge	01/01/2012	MAST Master Assessments		62.00	1,600.00
Pay	01/20/2012	Lockbox Payment	47569	-70.00	1,530.00
Charge	01/30/2012	LF Late Fees		10.00	1,540.00
Charge	02/01/2012	MA Monthly Assessment		08.00	1,548.00
Charge	02/01/2012	MAST Master Assessments		62.00	1,610.00
Pay	02/17/2012	Lockbox Payment	47908	-70.00	1,540.00
Charge	03/01/2012	MA Monthly Assessment		08.00	1,548.00
Charge	03/01/2012	MAST Master Assessments		62.00	1,610.00
Charge	03/02/2012	LF Late Fees		10.00	1,620.00
Pay	03/13/2012	Lockbox Payment	00004	-70.00	1,550.00
Charge	03/30/2012	LF Late Fees		10.00	1,560.00
Charge	04/01/2012	MA Monthly Assessment		08.00	1,568.00
Charge	04/01/2012	MAST Master Assessments		62.00	1,630.00
Pay	04/04/2012	Lockbox Payment	48480	-70.00	1,560.00
Charge	04/30/2012	LF Late Fees		10.00	1,570.00
Charge	05/01/2012	MA Monthly Assessment		08.00	1,578.00

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09/12/2013 9:15:56 AM



Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119

1485 03 Joyca Pierce 9850 N 73rd St # 2104
8175 Novelty St Scottsdale, AZ 85258
Las Vegas, NV 89148
Current Credit History Code: AC Effective Date: 07/16/2012

Charge	05/01/2012	MAST	Master Assessments	62.00	1,640.00
Charge	05/31/2012	LF	Late Fees	10.00	1,650.00
Charge	06/01/2012	MA	Monthly Assessment	08.00	1,658.00
Charge	06/01/2012	MAST	Master Assessments	62.00	1,720.00
Charge	06/30/2012	LF	Late Fees	10.00	1,730.00
Charge	07/01/2012	MA	Monthly Assessment	08.00	1,738.00
Charge	07/01/2012	MAST	Master Assessments	62.00	1,800.00
Charge	07/31/2012	LF	Late Fees	10.00	1,810.00
Charge	08/01/2012	MA	Monthly Assessment	08.00	1,818.00
Charge	08/01/2012	MAST	Master Assessments	62.00	1,880.00
Charge	08/08/2012	FINE	Replace Dead Plant	50.00	1,930.00
Charge	08/31/2012	LF	Late Fees	10.00	1,940.00
Charge	09/01/2012	MA	Monthly Assessment	08.00	1,948.00
Charge	09/01/2012	MAST	Master Assessments	62.00	2,010.00
Charge	09/10/2012	FINE	Replace Dead Plant	50.00	2,060.00
Charge	09/30/2012	LF	Late Fees	10.00	2,070.00
Charge	10/01/2012	MA	Monthly Assessment	08.00	2,078.00
Charge	10/01/2012	MAST	Master Assessments	62.00	2,140.00
Charge	10/31/2012	LF	Late Fees	10.00	2,150.00
Charge	11/01/2012	MA	Monthly Assessment	08.00	2,158.00
Charge	11/01/2012	MAST	Master Assessments	62.00	2,220.00
Charge	11/30/2012	LF	Late Fees	10.00	2,230.00
Charge	12/01/2012	MA	Monthly Assessment	08.00	2,238.00
Charge	12/01/2012	MAST	Master Assessments	62.00	2,300.00
Charge	12/31/2012	LF	Late Fees	10.00	2,310.00
Charge	01/01/2013	MA	Monthly Assessment	08.00	2,318.00
Charge	01/01/2013	MAST	Master Assessments	62.00	2,380.00
Charge	01/01/2013	MAST	Master Assessments	72.00	2,452.00
Credit	01/01/2013	MA	Adj 01/13 Monthly Asses	-08.00	2,444.00
Credit	01/01/2013	MAST	Master Assessments	-62.00	2,382.00
Charge	02/01/2013	MAST	Master Assessments	72.00	2,454.00
Charge	03/01/2013	MAST	Master Assessments	72.00	2,526.00
Charge	03/02/2013	LF	Late Fees	10.00	2,536.00
			Res Balance		2,536.00

CARRINGTON001219

Exhibit 5

04/30/2013 2:57:45 PM

Resident Transaction Report
SOTE Southern Terrace Homeowners
Association
Date: 01/01/2013 - 04/30/2013

Building: 0001 SOTE - Main & Autumn Hills
630 Trade Center Dr #100

Las Vegas, NV 89119

Res ID	Resident Name	Unit Address	Type	Date	Charge/Credit Desc	Check No	Amount	Balance
1465 03	Joyce Pierce	6175 Novelty St Las Vegas, NV 89148			9850 N 73rd St # 2104 Scottsdale, AZ 85258			
	Current Credit History Code:		AC		Effective Date: 07/16/2012			
							Beg Bal	860.00
			Charge	01/01/2013	MA Monthly Assessment		08.00	868.00
			Charge	01/01/2013	MAST Master Assessments		82.00	950.00
			Charge	01/01/2013	MAST Master Assessments		72.00	1,002.00
			Credit	01/01/2013	MA Adj 01/13 Monthly Asses		-08.00	994.00
			Credit	01/01/2013	MAST Master Assessments		-62.00	932.00
			Charge	02/01/2013	MAST Master Assessments		72.00	1,004.00
			Charge	03/01/2013	MAST Master Assessments		72.00	1,076.00
			Charge	03/02/2013	LF Late Fees		10.00	1,086.00
			Charge	03/31/2013	LF Late Fees		10.00	1,096.00
			Charge	04/01/2013	MAST Master Assessments		72.00	1,168.00
							Res Balance	1,168.00

CARRINGTON000393

Exhibit 6



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

Joyce Pierce
9850 N 73rd St # 2104
Scottsdale, AZ 85258

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear Joyce Pierce:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. If no account debits your electronic payment, we will have a disbursement of your account. Please contact the Accounts Receivable Department at 702-932-6887 to learn about other payment options you have or to have your payment processed in the manner

CARRINGTON001315



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Navajo St.
Las Vegas, NV 89148
Title Order Number: 7461292-A3

Inst #: 20121140000905
Fees: \$17.00
N/C Fee: \$0.00
11/10/2012 09:16:58 AM
Receipt #: 1381385
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 09/10/2012, in Book Number 20120910, as Instrument Number 0001428, reflecting JOYCE PIERCE as the owner(s) of record on said land, land legally described as RUSSELL FORT APACHE UNIT 13 PLAT BOOK 189 PAGE 95 LOT 825 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2001, in Book Number 20010002, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with notification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the sixty-first (61) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$ 2,359.84. This amount will continue to increase until paid in full.

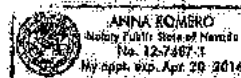
[Signature]
Dated: November 6, 2012.
Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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]
When Recorded: Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your checks there, you are authorizing Red Rock Financial Services to use the information on your checks to make more than one electronic debit from your account at the financial institution of your choice. This electronic debit will be for the amount of your check or additional amount will be added to the amount. If we cannot collect your electronic payment, we will have a debit against your account. Please contact the Accounts Receivable Department at 702-932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001316

JA000157



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP
FKA COUNTRYWIDE HOME LOANS SERVICING, LP
451 7TH ST. SW #B-133
WASHINGTON, DC 20410

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a routine electronic debit from your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check (a additional amount will be added to the amount). (If we cannot collect your electronic payment, we will leave a short notice on your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed by this means.

CARRINGTON001317



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Novally St
Las Vegas, NV 89148
Title Order Number: 7461292-43

Inst #: 201211140000805

Fee: \$17.00

N/C Fee: \$0.00

11/14/2012 09:10:58 AM

Receipt #: 1281386

Requester:

FIRST AMERICAN NATIONAL DEF

Recorded By: SAO Fax: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS**

• IMPORTANT NOTICE •

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 09/10/2012, in Book Number 20120910, as Instrument Number 0001428 reflecting JOYCE PIERCE as the owner(s) of record on said lien, and legally designated as RUSSELL FORT APACHE UNIT 13 PLAT BOOK 100 PAGE 56 LOT 415 BLOCK 41, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2001, in Book Number 20010809, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$2,339.54. This amount will continue to increase until paid in full.

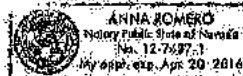
Funnel Watson
Dated: November 6, 2012
Prepared By: Funnel Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Funnel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
902-932-6887



Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check, no additional amount will be added to the amount. If we cannot collect your electronic payment, we will send a notification to your account. Please contact your account manager for more information. Account Receivable Department, at (702) 932-6887 for more about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001318



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP
FKA COUNTRYWIDE HOME LOANS SERVICING, LP
C/O CORELOGIC ATTN: RELEASE DPET.
450 E. BOUNDARY ST.
CHAPIN, SC 29036

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are releasing Red Rock Financial Services from the liability on your check to make a one-time electronic debit from your account on the payment indicated on your check. This electronic debit will be for the amount of your check plus additional service fee as shown on the amount. (If we cannot collect your electronic payment, we will also debit your account.) Please contact the accounts receivable department at (702) 932-6887 or write about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001319



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Novato St
Las Vegas, NV 89148
Title Order Number: 7461252-A5

Inst #: 201211140009805
Fee: \$47.00
NAC Fee: \$0.00
11/14/2012 09:16:08 AM
Receipt #: 1381389
Requestor:
FIRST AMERICAN NATIONAL DET
Recorded By: SAC Page: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 09/10/2012, in Book Number 20120910, as Instrument Number 0001426, reflecting TOYCE PIERCE as the owner(s) of record on said lot, and legally described as RUSSELL FORT APACHE UNIT 13 FLAT ROCK 100 PAGE 96 LOT 823 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2001, in Book Number 20010809, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts accrued as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$2,359.84. This amount will continue to increase until paid in full.

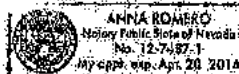
Michael Watson
Dated: November 6, 2012
Prepared By: Michael Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Michael Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702.341.7733



Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on the check to make a one-time electronic debit from your account at the financial institution followed by your check. The electronic debit will be for the amount of your check no different amount will be added to the amount. (If you receive collect your electronic payment, we will have a debit against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should your prefer to not have your payment processed in this manner.

CARRINGTON001320



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

Joyce Pierce
6175 Novelty Street
Las Vegas, NV 89148

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear Joyce Pierce:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9450 Fax: 702-341-7733

By using your credit, please be aware that you are assuming full responsibility. Please do not use the information on your credit to make a new loan. Payment date for your account is the 15th of the month. Payment is due on the 15th of the month. If we cannot collect your payment, we will take a credit against your account. Please contact the credit file number with all the details of your credit to determine amount will be added to the amount. If we cannot collect your payment, we will take a credit against your account. Please contact the account manager department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment reported to the credit.

CARRINGTON001321



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Novelty St
Las Vegas, NV 89148
Title Order Number: 7461292-85

Inet#: 20121114000805

Fee: \$17.00

N/C Fee: \$0.00

11/14/2012 09:16:58 AM

Receipt #: 1381369

Requestor:

FIRST AMERICAN NATIONAL DEF

Recorded By: SAO Page: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 09/10/2012, in Book Number 20120910, as Instrument Number 0001424, reflecting JOYCE PIERCE as the owner(s) of record on said lien, land legally described as RUSSELL FORT APACHE UNIT 13 PLAT BOOK 109 PAGE 96 LOT 813 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2001, in Book Number 20010809, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 716, no sale date may be set with the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$ 1,359.84. This amount will continue to increase until paid in full.

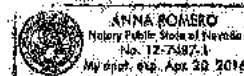
Margaret Watson Dated: November 6, 2012
Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA)
COUNTY OF CLARK)

On November 6, 2012, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-5887



Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rfs.com

Phone: 702-932-5887 Toll Free: 888-319-9460 Fax: 702-341-7793

By sending your check, note or money order to Red Rock Financial Services to use the information on your check to make sure the electronic debit from your account is the branch institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. If we cannot collect your electronic payment, we will issue a draft against your account. Please contact the account holder for more information. If you have any questions, please call 1-800-932-5887. If you have any questions, please call 1-800-932-5887.

CARRINGTON001322

JA000163



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
1901 E VOORHEES STREET, SUITE C
DANVILLE, IL 61834

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make same-day electronic cash from your account at the financial institution indicated on your check. This electronic cash will be for the amount of your check; no additional amount will be added to the amount. If we cannot collect your electronic payment, we will begin making against your account; please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001323



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Novaty St.
Las Vegas, NV 89148
Title Order Number: 746129-2-03

Inst #: 20121140000005
Fee: \$17.00
N/G Fee: \$0.00
11/14/2012 09:16:58 AM
Receipt #: 1381385
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: BAC Pg: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 06/10/2012, in Book Number 20120910, as Instrument Number 0001428, reflecting JOYCE PIERCE as the owner(s) of record on said lien, land legally described as RUSSELL FORT APACHE UNIT 13 PLAT BOOK 109 PAGE 56 LOT 825 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2001, in Book Number 20010809, as Instrument Number 01435, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid:

Above stated, the Association has equipped Red Rock Financial Services with verification of this obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 11.06, no sale date may be set until the ninety-first (91) day after the recorded date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$2,359.84. This amount will continue to increase until paid in full.

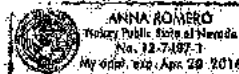
Eungel Watson
Dated: November 6, 2012
Prepared By Eungel Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Arnigo Street, Suite 100
Las Vegas, Nevada 89119
702-332-6887



Red Rock Financial Services 7251 Arnigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, there is a risk that you are submitting Red Rock Financial Services to use the information on your check to make a credit check, electronic debit from your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check to be submitted. A fee will be added to the amount. (3) We cannot collect your money. (Printed: we will issue a debit payment your account.) Please contact the Account Receivable Department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001324



Red Rock Financial Services

November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE
P.O. BOX 2026
FLINT, MI 48501-2026

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rvfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Arriaga Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be advised that you are authorizing Red Rock Financial Services to use the information on your check to make a wire-transfer electronic debt from your account at the financial institution indicated on your check. This electronic debt will be for the amount of your check; no additional amount will be added to the principal. If we do not collect your electronic payment, we will begin a delinquency (your account). Please contact the Accounts Receivable Department at (702) 932-6887 to learn about your payment status should you prefer to not have your payment processed in this manner.

CARRINGTON001325



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R806902
Property Address: 6175 Novaty St
Las Vegas, NV 89148
Title Order Number: 7161292-AX

Inet #: 201211140000905
Fee: \$17.00
N/C Fee: \$0.00
11/14/2012 09:10:56 AM
Receipt #: 1381388
Requester:
FIRST AMERICAN NATIONAL DEF
Recorded By: SAG Page: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 08/02/02, in Book Number 20120910, as Instrument Number 0001428, reflecting JOYCE PERCS as the owner(s) of record on said lien, land legally described as RUSSELL FORT APACHE UNIT 12 PLAT BOOK 109 PAGE 96 LOT 825 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/09/2004, in Book Number 29010809, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, including the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 118, no sale may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$2,339.84. This amount will continue to increase until paid in full.

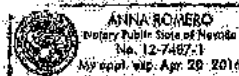
Michael Watson
Prepared By: Michael Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association.
Dated: November 6, 2012

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Fungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Aringo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



Red Rock Financial Services 7251 Aringo Street, Suite 100 Las Vegas, NV 89119

www.rifs.com

Phone: 702-932-6887 Toll Free: 888-319-9450 Fax: 702-341-7733

By reading your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to verify bank account information and to verify your account with the Financial Institution. We will use this information to verify your account and to collect your payments. If we cannot collect your payments, we will close your account. Please contact the lender if you have any questions or if you need to make any changes to your account. If you need to make any changes to your account, please contact the lender. Account receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001326



November 19, 2012

VIA CERTIFIED AND FIRST CLASS MAIL

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE
C/O TAYLOR, BEAN AND WHITAKER MORTGAGE CORP.
1417 NORTH MAGNOLIA AVE.
OCALA, FL 34475

Re: 6175 Novelty St Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Dear MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the **Notice of Default and Election to Sell** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the **Notice of Default and Election to Sell**.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rfrs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rifs.com

☎ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

Phone: 702-932-6607 FAX: 702-932-6608

CARRINGTON001327



Red Rock Financial Services

Assessor Parcel Number: 163-31-713-027
File Number: R805962
Property Address: 6175 Novalty St
Las Vegas, NV 89148
Title Order Number: 7461292-43

Inst #: 201211140000805
Page: 617.03
N/C Fee: \$0.00
11/14/2012 09:12:58 AM
Receipt #: 1381389
Requestor:
FIRST AMERICAN NATIONAL DEF
Recorded By: SAC Page: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS
♦ IMPORTANT NOTICE ♦**

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, officially assigned as agent by the Southern Terrace Homeowners Association, under the Lien for Delinquent Assessments, recorded on 09/10/2012, in Book Number 20120910, as Instrument Number 8001438, reflecting JOYCE PIERCE as the owner(s) of record on said lien, and legally described as RUSSELL FORT APACHE UNIT 11 PLAT BOOK 109 PAGE 96 LOT 823 BLOCK 33, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 08/10/2001, in Book Number 20010809, as Instrument Number 01455, has been breached. As of 02/01/2012 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restrictions in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 6, 2012, the amount owed is \$ 2359.84. This amount will continue to increase until paid in full.

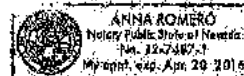
Amirah Watson
Dated: November 6, 2012
Prepared By: Amirah Watson, Red Rock Financial Services, on behalf of Southern Terrace Homeowners Association

STATE OF NEVADA
COUNTY OF CLARK

On November 6, 2012, before me, personally appeared Amirah Watson, personally known to me (or arrived 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 they executed the same in their authorized capacity, and that by their 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.

Anna Romero
When Recorded: Red Rock Financial Services
Mail To: 7251 Aringo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



Red Rock Financial Services ■ 7251 Aringo Street, Suite 100 Las Vegas, NV 89119

www.rfrs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702-341-7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one time electronic debit from your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check, as indicated on the check, to be added to the amount. If we cannot collect your payment, we will issue a draft against your account. Please contact the account servicer for more information. (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001328

Exhibit 7



Red Rock Financial Services

Numbers of Pages 12

December 27, 2012

Miles, Bauer, Bergstrom & Winters, LLP
Attn: Diane Brown
Via Email: dbrown@mileslegal.com

Re: 6175 Novelty St, Las Vegas, NV 89148
Southern Terrace Homeowners Association / R805962

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

The current balance is \$4,248.62. This demand and its balance due will expire on 1/11/13. You MUST request an update as this balance will only be valid through the date above. Payment received after the expiration date will not be accepted if the balance has changed. Failure to remit the balance by the expiration date may result in the continuation of the collection process at an additional cost. Check(s) should be made payable to Red Rock Financial Services and mailed to the address below.

Southern Terrace Homeowners Association and/or the management company's set up fees, as well as other fees and costs that are due at closing, if any, such as future assessments, are not included. You must contact RMI Management directly at www.rmimc.com to request their demand statement for those additional amounts prior to closing.

If you have any questions, please contact our office at 702-932-6887.

Regards,

Red Rock Financial Services

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

■ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a direct electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the account. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

CARRINGTON001261

Jason Cernak

From: Jason Cernak
Sent: Thursday, December 27, 2012 4:34 PM
To: dbrown@mifeslegal.com
Cc: Elizabeth Cernak
Subject: 4936 river glen dr
Attachments: 806882_20121227162246.pdf; 29070_20121227162217.pdf; 806211_20121227162157.pdf; 806726_20121227162133.pdf; 806766_20121227162107.pdf; 792978_20121227162037.pdf; 806768_20121227162010.pdf; 805962_20121227161937.pdf

Good afternoon,
I've attached the payoff demands you requested for the above mentioned property.

Thank you,

Jason Cernak
Finance and Accounting
Red Rock Financial Services
o. 702.932.6887 | f. 702.341.7733 | www.RRFS.com



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Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 1

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
02/11/2009	Master Assessments	\$62.00	\$62.00	
02/11/2009	Master Assessments	\$62.00	\$124.00	
02/11/2009	Master Assessments	\$57.00	\$181.00	
02/11/2009	Master Assessments	\$57.00	\$238.00	
02/11/2009	Master Assessments	\$57.00	\$295.00	
02/11/2009	Master Assessments	\$57.00	\$352.00	
02/11/2009	Master Assessments	\$57.00	\$409.00	
02/11/2009	Assessment	\$8.00	\$417.00	
02/11/2009	Assessment	\$8.00	\$425.00	
02/11/2009	Assessment	\$8.00	\$433.00	
02/11/2009	Assessment	\$8.00	\$441.00	
02/11/2009	Assessment	\$8.00	\$449.00	
02/11/2009	Assessment	\$8.00	\$457.00	
02/11/2009	Assessment	\$8.00	\$465.00	
02/11/2009	Assessment	\$65.00	\$530.00	
03/01/2009	Master Assessments	\$62.00	\$592.00	
03/01/2009	Assessment	\$8.00	\$600.00	
03/18/2009	Association Mgmt Payment	-\$80.00	\$520.00	00491
03/18/2009	Association Mgmt Payment	-\$130.00	\$390.00	00490
03/30/2009	Late Fee	\$10.00	\$400.00	
04/01/2009	Master Assessments	\$62.00	\$462.00	
04/01/2009	Assessment	\$8.00	\$470.00	
04/03/2009	Association Mgmt Payment	-\$70.00	\$400.00	00453

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12
CARRINGTON001263

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 2

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
04/15/2009	Association Mgmt Payment	-\$200.00	\$200.00	00464
04/21/2009	Association Mgmt Payment	-\$200.00	\$0.00	00467
04/30/2009	Association Mgmt Payment	-\$70.00	-\$70.00	00469
05/01/2009	Master Assessments	\$62.00	-\$8.00	
05/01/2009	Assessment	\$8.00	\$0.00	
05/28/2009	Association Mgmt Payment	-\$70.00	-\$70.00	00434
06/01/2009	Master Assessments	\$62.00	-\$8.00	
06/01/2009	Assessment	\$8.00	\$0.00	
07/01/2009	Master Assessments	\$62.00	\$62.00	
07/01/2009	Assessment	\$8.00	\$70.00	
07/30/2009	Late Fee	\$10.00	\$80.00	
08/01/2009	Master Assessments	\$62.00	\$142.00	
08/01/2009	Assessment	\$8.00	\$150.00	
08/03/2009	Association Mgmt Payment	-\$70.00	\$80.00	00415
08/21/2009	Association Mgmt Payment	-\$80.00	\$0.00	00424
09/01/2009	Master Assessments	\$62.00	\$62.00	
09/01/2009	Assessment	\$8.00	\$70.00	
09/30/2009	Late Fee	\$10.00	\$80.00	
10/01/2009	Master Assessments	\$62.00	\$142.00	
10/01/2009	Assessment	\$8.00	\$150.00	
10/15/2009	Association Mgmt Payment	-\$80.00	\$70.00	00590
10/29/2009	Association Mgmt Payment	-\$80.00	-\$10.00	00551
11/01/2009	Master Assessments	\$62.00	\$52.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12
CARRINGTON001264

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 3

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
11/01/2009	Assessment	\$8.00	\$60.00	
12/01/2009	Master Assessments	\$62.00	\$122.00	
12/01/2009	Assessment	\$8.00	\$130.00	
12/09/2009	Association Mgmt Payment	-\$80.00	\$50.00	00604
01/01/2010	Master Assessments	\$62.00	\$112.00	
01/01/2010	Assessment	\$8.00	\$120.00	
01/19/2010	Association Mgmt Payment	-\$50.00	\$70.00	00618
01/30/2010	Late Fee	\$10.00	\$80.00	
02/01/2010	Master Assessments	\$62.00	\$142.00	
02/01/2010	Assessment	\$8.00	\$150.00	
03/01/2010	Master Assessments	\$62.00	\$212.00	
03/01/2010	Assessment	\$8.00	\$220.00	
03/02/2010	Late Fee	\$10.00	\$230.00	
03/30/2010	Late Fee	\$10.00	\$240.00	
04/01/2010	Master Assessments	\$62.00	\$302.00	
04/01/2010	Assessment	\$8.00	\$310.00	
04/02/2010	Association Mgmt Payment	-\$70.00	\$240.00	31173
04/30/2010	Late Fee	\$10.00	\$250.00	
05/01/2010	Master Assessments	\$62.00	\$312.00	
05/01/2010	Assessment	\$8.00	\$320.00	
05/10/2010	Association Mgmt Payment	-\$70.00	\$250.00	40273
05/31/2010	Late Fee	\$10.00	\$260.00	
06/01/2010	Master Assessments	\$62.00	\$322.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-8887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12
CARRINGTON001265

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 4

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
06/01/2010	Assessment	\$8.00	\$330.00	
06/14/2010	Association Mgmt Payment	-\$70.00	\$260.00	40636
06/30/2010	Association Mgmt Payment	-\$330.00	-\$70.00	063010
07/01/2010	Master Assessments	\$62.00	-\$8.00	
07/01/2010	Assessment	\$8.00	\$0.00	
08/01/2010	Master Assessments	\$62.00	\$62.00	
08/01/2010	Assessment	\$8.00	\$70.00	
08/19/2010	Association Mgmt Payment	-\$70.00	\$0.00	41364
09/01/2010	Master Assessments	\$62.00	\$62.00	
09/01/2010	Assessment	\$8.00	\$70.00	
09/30/2010	Late Fee	\$10.00	\$80.00	
10/01/2010	Master Assessments	\$62.00	\$142.00	
10/01/2010	Assessment	\$8.00	\$150.00	
10/18/2010	Association Mgmt Payment	-\$70.00	\$80.00	42107
10/18/2010	Association Mgmt Payment	-\$70.00	\$10.00	42106
11/01/2010	Master Assessments	\$62.00	\$72.00	
11/01/2010	Assessment	\$8.00	\$80.00	
11/03/2010	Fine	\$50.00	\$130.00	
11/16/2010	Association Mgmt Payment	-\$70.00	\$60.00	42487
11/30/2010	Fine	\$50.00	\$110.00	
12/01/2010	Master Assessments	\$62.00	\$172.00	
12/01/2010	Assessment	\$8.00	\$180.00	
12/08/2010	Fine	\$50.00	\$230.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12
CARRINGTON001266

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 5

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
12/13/2010	Association Mgmt Payment	-\$70.00	\$160.00	42698
12/15/2010	Fine	\$50.00	\$210.00	
12/22/2010	Fine	\$50.00	\$260.00	
12/29/2010	Fine	\$50.00	\$310.00	
01/01/2011	Master Assessments	\$62.00	\$372.00	
01/01/2011	Assessment	\$8.00	\$380.00	
01/05/2011	Fine	\$50.00	\$430.00	
01/12/2011	Fine	\$50.00	\$480.00	
01/19/2011	Fine	\$50.00	\$530.00	
01/26/2011	Fine	\$50.00	\$580.00	
01/30/2011	Late Fee	\$10.00	\$590.00	
02/01/2011	Master Assessments	\$62.00	\$652.00	
02/01/2011	Assessment	\$8.00	\$660.00	
02/02/2011	Fine	\$50.00	\$710.00	
02/09/2011	Fine	\$50.00	\$760.00	
02/16/2011	Fine	\$50.00	\$810.00	
02/17/2011	Association Mgmt Payment	-\$70.00	\$740.00	43307
02/24/2011	Fine	\$50.00	\$790.00	
03/01/2011	Master Assessments	\$62.00	\$852.00	
03/01/2011	Assessment	\$8.00	\$860.00	
03/02/2011	Fine	\$50.00	\$910.00	
03/02/2011	Late Fee	\$10.00	\$920.00	
03/09/2011	Fine	\$50.00	\$970.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12
CARRINGTON001267

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

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Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
L.P. / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
03/16/2011	Fine	\$50.00	\$1,020.00	
03/16/2011	Association Mgmt Payment	-\$70.00	\$950.00	43606
03/23/2011	Fine	\$50.00	\$1,000.00	
03/30/2011	Fine	\$50.00	\$1,050.00	
03/30/2011	Late Fee	\$10.00	\$1,060.00	
04/01/2011	Master Assessments	\$62.00	\$1,122.00	
04/01/2011	Assessment	\$8.00	\$1,130.00	
04/07/2011	Fine	\$50.00	\$1,180.00	
04/11/2011	Association Mgmt Payment	-\$70.00	\$1,110.00	44079
04/13/2011	Fine	\$50.00	\$1,160.00	
04/20/2011	Fine	\$50.00	\$1,210.00	
04/27/2011	Fine	\$50.00	\$1,260.00	
04/30/2011	Late Fee	\$10.00	\$1,270.00	
05/01/2011	Master Assessments	\$62.00	\$1,332.00	
05/01/2011	Assessment	\$8.00	\$1,340.00	
05/04/2011	Fine	\$50.00	\$1,390.00	
05/11/2011	Fine	\$50.00	\$1,440.00	
05/11/2011	Association Mgmt Payment	-\$70.00	\$1,370.00	44393
05/18/2011	Fine	\$50.00	\$1,420.00	
05/25/2011	Fine	\$50.00	\$1,470.00	
05/26/2011	Association Mgmt Payment	-\$70.00	\$1,400.00	44641
06/01/2011	Master Assessments	\$62.00	\$1,462.00	
06/01/2011	Assessment	\$8.00	\$1,470.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-6867 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12

CARRINGTON001268

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 7

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
06/30/2011	Late Fee	\$10.00	\$1,480.00	
07/01/2011	Master Assessments	\$62.00	\$1,542.00	
07/01/2011	Assessment	\$8.00	\$1,550.00	
07/08/2011	Association Mgmt Payment	-\$70.00	\$1,480.00	45042
07/30/2011	Late Fee	\$10.00	\$1,490.00	
08/01/2011	Master Assessments	\$62.00	\$1,552.00	
08/01/2011	Assessment	\$8.00	\$1,560.00	
08/03/2011	Association Mgmt Payment	-\$70.00	\$1,490.00	45464
08/30/2011	Late Fee	\$10.00	\$1,500.00	
09/01/2011	Master Assessments	\$62.00	\$1,562.00	
09/01/2011	Assessment	\$8.00	\$1,570.00	
09/12/2011	Association Mgmt Payment	-\$70.00	\$1,500.00	46016
09/30/2011	Late Fee	\$10.00	\$1,510.00	
10/01/2011	Master Assessments	\$62.00	\$1,572.00	
10/01/2011	Assessment	\$8.00	\$1,580.00	
10/13/2011	Association Mgmt Payment	-\$70.00	\$1,510.00	46393
11/01/2011	Master Assessments	\$62.00	\$1,572.00	
11/01/2011	Assessment	\$8.00	\$1,580.00	
11/15/2011	Association Mgmt Payment	-\$70.00	\$1,510.00	67141
11/30/2011	Late Fee	\$10.00	\$1,520.00	
12/01/2011	Master Assessments	\$62.00	\$1,582.00	
12/01/2011	Assessment	\$8.00	\$1,590.00	
12/16/2011	Association Mgmt Payment	-\$70.00	\$1,520.00	47135

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

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Printed: 12/27/12

CARRINGTON001269

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association
Information as of: December 27, 2012

Page 8

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
12/30/2011	Late Fee	\$10.00	\$1,530.00	
01/01/2012	Master Assessments	\$62.00	\$1,592.00	
01/01/2012	Assessment	\$8.00	\$1,600.00	
01/20/2012	Association Mgmt Payment	-\$70.00	\$1,530.00	47569
01/30/2012	Late Fee	\$10.00	\$1,540.00	
02/01/2012	Master Assessments	\$62.00	\$1,602.00	
02/01/2012	Assessment	\$8.00	\$1,610.00	
02/17/2012	Association Mgmt Payment	-\$70.00	\$1,540.00	47908
03/01/2012	Master Assessments	\$62.00	\$1,602.00	
03/01/2012	Assessment	\$8.00	\$1,610.00	
03/02/2012	Late Fee	\$10.00	\$1,620.00	
03/13/2012	Association Mgmt Payment	-\$70.00	\$1,550.00	00004
03/30/2012	Late Fee	\$10.00	\$1,560.00	
04/01/2012	Master Assessments	\$62.00	\$1,622.00	
04/01/2012	Assessment	\$8.00	\$1,630.00	
04/04/2012	Association Mgmt Payment	-\$70.00	\$1,560.00	48480
04/30/2012	Late Fee	\$10.00	\$1,570.00	
05/01/2012	Master Assessments	\$62.00	\$1,632.00	
05/01/2012	Assessment	\$8.00	\$1,640.00	
05/31/2012	Late Fee	\$10.00	\$1,650.00	
06/01/2012	Master Assessments	\$62.00	\$1,712.00	
06/01/2012	Assessment	\$8.00	\$1,720.00	
06/30/2012	Late Fee	\$10.00	\$1,730.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-8887 Fax: (702) 341-7733

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Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 9

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
07/01/2012	Master Assessments	\$62.00	\$1,792.00	
07/01/2012	Assessment	\$8.00	\$1,800.00	
07/16/2012	Management Company Collection Cost	\$150.00	\$1,950.00	
07/18/2012	Intent to Lien Letter	\$125.00	\$2,075.00	
07/18/2012	Intent Mailing Costs	\$8.97	\$2,083.97	
07/18/2012	Intent Mailing Costs	\$8.97	\$2,092.94	
07/31/2012	Late Fee	\$10.00	\$2,102.94	
08/01/2012	Master Assessments	\$62.00	\$2,164.94	
08/01/2012	Assessment	\$8.00	\$2,172.94	
08/08/2012	Fine	\$50.00	\$2,222.94	
08/29/2012	Association Interest	\$1.81	\$2,224.75	
08/29/2012	Lien Mailing Costs	\$8.97	\$2,233.72	
08/29/2012	Lien for Delinquent Assessment	\$275.00	\$2,508.72	
08/29/2012	Lien Mailing Costs	\$8.97	\$2,517.69	
08/29/2012	Lien Recording Costs	\$34.00	\$2,551.69	
08/29/2012	Lien Release	\$30.00	\$2,581.69	
08/31/2012	Late Fee	\$10.00	\$2,591.69	
09/01/2012	Master Assessments	\$62.00	\$2,653.69	
09/01/2012	Assessment	\$8.00	\$2,661.69	
09/10/2012	Fine	\$50.00	\$2,711.69	
09/29/2012	Association Interest	\$2.07	\$2,713.76	
09/30/2012	Late Fee	\$10.00	\$2,723.76	
10/01/2012	Master Assessments	\$62.00	\$2,785.76	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 12/27/12

CARRINGTON001271

Red Rock Financial Services
Account Detail
Southern Terrace Homeowners Association

Page 10

Information as of: December 27, 2012

Red Rock Financial Services Account Number: R805962

Property Address: 6175 Novelty St, Las Vegas, NV 89148

BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING,
 LP, / MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., / MORTGAGE
 ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, / Pierce, Joyce

Detailed Summary

Date	Description	Amount	Balance	Check#
10/01/2012	Assessment	\$8.00	\$2,793.76	
10/25/2012	Intent to NOD	\$90.00	\$2,883.76	
10/30/2012	Association Interest	\$2.38	\$2,886.14	
10/31/2012	Late Fee	\$10.00	\$2,896.14	
11/01/2012	Master Assessments	\$62.00	\$2,958.14	
11/01/2012	Assessment	\$8.00	\$2,966.14	
11/06/2012	NOD Mailing Charges Adjustment	-\$26.91	\$2,939.23	
11/06/2012	Trustee Sale Guarantee	\$290.00	\$3,229.23	
11/06/2012	NOD Release	\$30.00	\$3,259.23	
11/06/2012	NOD Recording Costs	\$17.00	\$3,276.23	
11/06/2012	NOD Release Recording Costs	\$17.00	\$3,293.23	
11/06/2012	NOD Mailing Costs	\$89.70	\$3,382.93	
11/06/2012	Notice of Default	\$400.00	\$3,782.93	
11/29/2012	Association Interest	\$2.69	\$3,785.62	
11/30/2012	Late Fee	\$10.00	\$3,795.62	
12/01/2012	Master Assessments	\$62.00	\$3,857.62	
12/01/2012	Assessment	\$8.00	\$3,865.62	
12/12/2012	Payoff Demand	\$150.00	\$4,015.62	
12/27/2012	Payoff Demand	\$150.00	\$4,165.62	
12/30/2012	Association Interest	\$3.00	\$4,168.62	
12/30/2012	Late fee	\$10.00	\$4,178.62	
1/1/2013	assessment	\$8.00	\$4,186.62	
1/1/2013	assessment	\$62.00	\$4,248.62	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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 CARRINGTON001272

Exhibit 8

JOHN T. ASHES
Also Admitted in California &
Illinois

JEREMY T. BERGSTROM

Also Admitted in Arizona

GINA M. CURENA

ROCK K. JUNG

KRISTA J. NELSON

JOHN C. GARABEDIAN

THOMAS M. BJORLAN

Admitted in California

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW B. EASTWICK

Also Admitted in Arizona &
California

PATRICIO C. JURANI



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1983

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

CALIFORNIA OFFICE
3331 E. Lynn Blvd., Suite 100
San Jose, CA 95128
Phone: (415) 381-9100
Fax: (415) 461-9941

RICHARD J. BAUER, JR.
ERED TIMOTHY WINTERS
KEENONE MCLENNAN
MARK T. BOMBYER
Also Admitted in the District of
Columbia & Virginia

TAMIE CROSBY
L. BRYANT JACQUEZ
VY T. PHAM
HARDY R. GRYER-ALJ
BRIAN H. TRAN
COBI B. JONES
CATHERINE K. STASON
CHRISTINE A. CHUNG
DANH T. NGUYEN
THOMAS B. SONG
S. SHELLEY RAINZORER
SHANNON C. WILLIAMS
LAWRENCE R. BOIVIN
BICKI E. SPERLEMAN
BRIAN M. LUNA

January 10, 2013

RED ROCK FINANCIAL SERVICES

7251 Amigo Street, Suite 100
Las Vegas, NV 89119

Re: Property Address: 6175 Novelty Street
Account ID: R803962
LOAN #. [REDACTED] 0256
MBBW File No. 12-H2384



Dear Sir/Madam:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,248.62. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

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

CARRINGTON001257

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

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

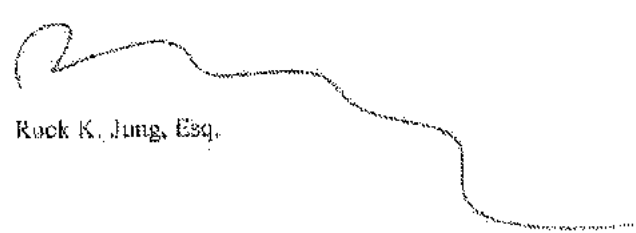
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.3103(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$583.14.

Thus, our client has authorized us to make payment to you in the amount of \$655.14, which takes into account both the maximum 9 months worth of common assessments as well as reasonable collection costs to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$655.14. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 6175 Novelty Street have now been "paid in full".

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

Sincerely,

AGLES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

CARRINGTON001258

12-H2384 Initials: SAC
Date: 1/7/2013 Amount: 655.14

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
1/7/2013	R005862	110 Cure HOA Delinquency	\$55.14			

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0256

Pay \$~~xxxxxx~~Six Hundred Fifty & 14/100 Dollars

RED ROCK FINANCIAL SERVICES

50-100587-344

CARRINGTON001259

Exhibit 9

Exhibit 10

APN: 163-31-713-027
ULS#: NV-SO3-09

When recorded mail to:
United Legal Services Inc.
A Nevada Law Firm
9434 South Eastern Ave. #163
Las Vegas, NV 89123
Phone: (702) 617-3263

Inst #: 201305090001356
Fees: \$17.00
N/C Fee: \$0.00
06/09/2013 08:58:43 AM
Receipt #: 1808348
Requestor:
UNITED LEGAL SERVICES INC.
Recorded By: SCA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**

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 UNITED LEGAL SERVICES INC. AT (702) 617-3263. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907.

YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS, notice of which was recorded on September 10, 2012 as Instrument 201209100001428 in the Official Records of the Recorder of Clark County, Nevada ("Official Records"), by the Southern Terrace Homeowners Association. The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on November 14, 2012 as instrument 201211140000905 in the Official Records. The property owner(s) of record is/are: Joyce Pierce. The total amount necessary to satisfy the lien as of the proposed sale date is \$4,431.93.

UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT WILL BE SOLD AT PUBLIC SALE. United Legal Services Inc. ("ULS") has the collections file on this account. Any payments to satisfy the lien must be in cash, cashier's check, or wire transfer, and must be actually received by ULS prior to the sale. If payment in full is not received prior to the date/time below, the property will be auctioned. All auction sales are final and late payments will be returned. If you need an explanation of this notice or its contents, you should contact an attorney.

NOTICE IS HEREBY GIVEN THAT on May 31, 2013 at 9:00 AM at 8965 S. Eastern Ave, Suite 350, Las Vegas, NV 89123, United Legal Services Inc., as duly authorized agent for sale pursuant to NRS 116, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the property commonly known as: 6175 Novelty St, Las Vegas, Nevada 89148. Payment by the winning bidder must be made at the conclusion of the auction and in cash or a cashier's check drawn on a bank or credit union authorized to do business in the State of Nevada. The sale will be made without covenant or warranty, expressed or implied, regarding, but not limited to, title, possession, encumbrances, or obligations to satisfy any secured or unsecured liens.

Date: May 7, 2013

By: 
Mia Fregosi
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Southern Terrace Homeowners Association

CARRINGTON000363

APN: 163-31-713-027

ULS#: NV-SO3-09

When recorded mail to:
United Legal Services Inc.
A Nevada Law Firm
9484 South Eastern Ave. #163
Las Vegas, NV 89123
Phone: (702) 617-3263

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS


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 UNITED LEGAL SERVICES INC. AT (702) 617-3263. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907.

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Date: May 7, 2013

By: 
Mia Fregeau
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Southern Terrace Homeowners Association

CARRINGTON000364

NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes, eviction proceedings may begin against you after you have been given a notice to quit.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

- (1) Delivering a copy to you personally in the presence of a witness;
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

- (1) You will be given at least 10 days to answer a summons and complaint;
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.

CARRINGTON000365

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
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 For delivery information visit our website at www.usps.com

OFFICIAL USE

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

Postmark
 Here

7030 3090 0000 5820 4221

MAILED
 MAY 8 2013
 LAS VEGAS NV 89102-8102

Sent to
 JOYCE PIERCE
 OR CURRENT RESIDENT
 6175 NOVELTY ST
 LAS VEGAS NV 89148-4735

PS Form 3800, August 2006 See Reverse for Instructions

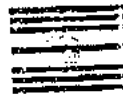
CARRINGTON000366

UNITED LEGAL SERVICES INC.
9484 SOUTH EASTERN AVE #163
LAS VEGAS, NV 89123

CERTIFIED MAIL



7010 3090 0000 5820 4221



\$6.110
US POSTAGE
FIRST CLASS
FROM 89123
MAY 03 2013
002290000-143/22



JOYCE PIERCE
OR CURRENT RESIDENT
6175 NOVELTY ST
LAS VEGAS NV 89148-4735

891 DE 1 00 05/10/13
MIXIE

RETURN TO SENDER
VACANT
UNABLE TO FORWARD

89123398754 0694-06702-06-42
891233987

CARRINGTON000367

SECTION 104 OF 104
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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

JOYCE BIERCE
OR CURRENT RESIDENT
6175 NOVELTY ST
LAS VEGAS NV 89148-4735

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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☐ Registered ☐ Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from mailing label)

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PS Form 3817 February 2004

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UNITED LEGAL SERVICES INC.
 9484 SOUTH EASTERN AVE #163
 LAS VEGAS, NV 89123

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☐ Delivery Confirmation
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JOYCE PIERCE
 OR CURRENT RESIDENT
 6175 NOVELTY ST
 LAS VEGAS NV 89148-4735

OFFICE OF THE OMBUDSMAN
 ATTN: ANNE MOORE
 LAS VEGAS REAL ESTATE DIVISION
 2501 EAST SAHARA AVE SUITE 202
 LAS VEGAS, NV 89104-4137

BANK OF AMERICA, N.A.
 #B-133
 451 7TH ST. SW
 WASHINGTON DC 20410-0002

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 LAS VEGAS NV 89123

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UNITED LEGAL SERVICES INC.
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LAS VEGAS, NV 89123



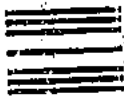
JOYCE PIERCE
OR CURRENT RESIDENT
6175 NOVELTY ST
LAS VEGAS NV 89148-4735

NIXIE 891 DE 1 00 05/19/13

RETURN TO SENDER
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UNABLE TO FORWARD

89123 81987

SC: 89123398784 *0654-06614-06-83



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FIRST CLASS
FROM 89123
NOV 10 2013
STAMPS
09250008443722

CARRINGTON000370

AFFIDAVIT OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK }

ss:

Mia Fregeau, being duly sworn, says: That at all times herein affiant was and is over 18 years of age. That on May 8, 2013, affiant served the below listed documents at the addresses and in the manner stated:

8071 Mild Wind St., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

8141 Yucca Fields Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

8175 Novelty St., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

8844 Knotweed Ave., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

8734 Mild Weather Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

8788 Gentle Spirit Dr., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

CARRINGTON000371

9772 Gentle Spirit Dr., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

9775 Colored Wind Ave., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

9783 Colored Wind Ave., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

9828 Maidenfair Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the front door of the residence.

6123 Yucca Fields Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

6117 Yucca Fields Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

9484 Moon Vista Ave., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

5984 Lingering Breeze St., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

CARRINGTON000372

6056 Amazing Grace Ct., Las Vegas, Nevada 89148

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

9933 Wonderful Day Dr., Las Vegas, Nevada 89148

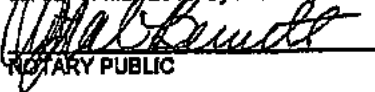
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
- NOTICE TO TENANTS OF THE PROPERTY

by posting the Notices conspicuously on the garage door of the residence.

I declare under penalty of perjury under the law,
of the State of Nevada that the foregoing is true and correct

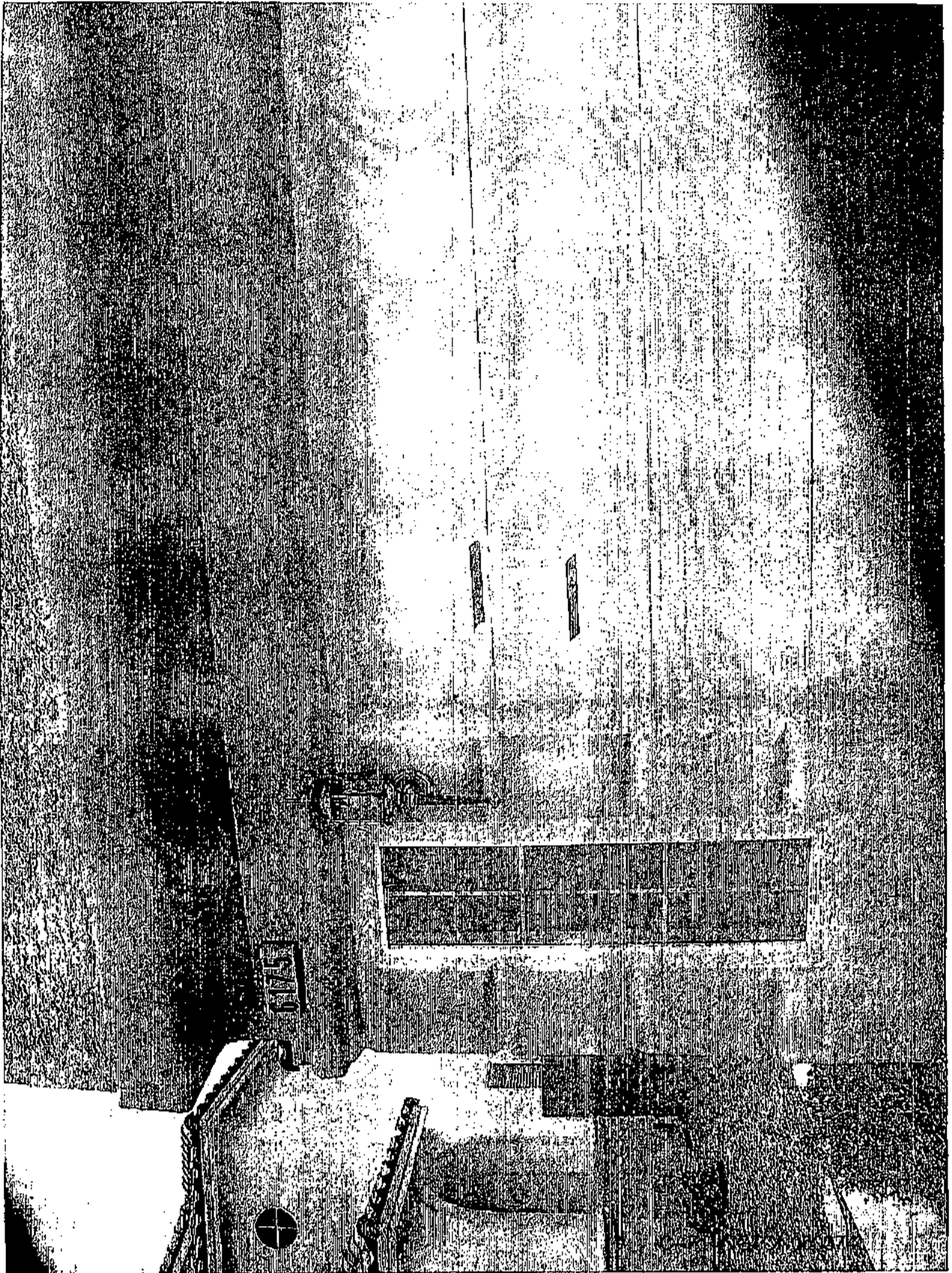

MIA FREGEAU

SIGNED and SWORN to before me on
9th day of May 2012, by Mia Fregeau


NOTARY PUBLIC



CARRINGTON000373



AFFIDAVIT OF POSTING

STATE OF NEVADA }
COUNTY OF CLARK }

ss:

Mia Fregeau, being duly sworn, says: That at all times herein affiant was and is over 18 years of age.
That on May 8, 2013, affiant posted a copy of the below listed documents:

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6071 Mild Wind St., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6141 Yucca Fields Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6176 Novelty St., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6544 Knotweed Ave., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6734 Mild Weather Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6768 Gentle Spirit Dr., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6772 Gentle Spirit Dr., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6776 Colored Wind Ave., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6783 Colored Wind Ave., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6828 Maldenfair Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6123 Yucca Fields Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6117 Yucca Fields Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6484 Moon Vista Ave., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6884 Lingerling Breeze St., Las Vegas, Nevada 89148

CARRINGTON000375

- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 6055 Amazing Grace Ct., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 9833 Wonderful Day Dr., Las Vegas, Nevada 89148
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 2532 Willow Wren Drive, North Las Vegas, Nevada 89084
- NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS
Regarding 7255 W. Sunset Rd Unit 2140, Las Vegas, Nevada 89113

In each the following locations:

- The public board located near the elevators on the first floor of the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89101
- The public board located in the Clerk of Court's office for the Eighth Judicial District, located on the third floor of the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89101
- The public board located on the first floor of the Grant Sawyer Building, 555 East Washington Ave., Las Vegas, Nevada 89101

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


MIA FREGEAU

SIGNED and SWORN to before me on
9th day of May, 2013, by Mia Fregeau


NOTARY PUBLIC



CARRINGTON000376

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR
DELINQUENT ASSESSMENTS

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 UNITED LEGAL SERVICES INC. AT (702) 817-3293. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 828-9907.

YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS, notice of which was recorded on September 10, 2012 as Instrument 201209100001428 in the Official Records of the Recorder of Clark County, Nevada (Official Records), by the Southern Terrace Homeowners Association. The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on November 14, 2012 as Instrument 201211140000905 in the Official Records. The property owner(s) of record is/are: Joyce Pierce. The total amount necessary to satisfy the lien as of the proposed sale date is \$4,431.93.

UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT WILL BE SOLD AT PUBLIC SALE. United Legal Services Inc. ("ULS") has the collections file on this account. Any payments to satisfy the lien must be in cash, cashier's check, or wire transfer, and must be actually received by ULS prior to the sale. If payment in full is not received prior to the date/time below, the property will be auctioned. All auction sales are final and late payments will be returned. If you need an explanation of this notice or its contents, you should contact an attorney.

APN: 163-31-713-027
ULS#: NY-SO3-09

NOTICE IS HEREBY GIVEN THAT on May 31, 2013 at 9:00 AM at 8865 S. Eastern Ave, Suite 350, Las Vegas, NV 89123, United Legal Services Inc., as duly authorized agent for sale pursuant to NRS 118, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the property commonly known as: 6175 Novelly St, Las Vegas, Nevada 89148. Payment by the winning bidder must be made at the conclusion of the auction and in cash or a cashier's check drawn on a bank or credit union authorized to do business in the State of Nevada. The sale will be made without covenant or warranty, expressed or implied, regarding, but not limited to, title, possession, encumbrances, or obligations to satisfy any secured or unsecured liens.

Date: May 7, 2013

By: Mia Fregau
An employee of United Legal Services Inc.
As authorized agent for, and on behalf of, Southern
Terrace Homeowners Association

PUBLISHED
05/10/2013, 05/17/2013 & 05/24/2013

CLARK COUNTY LEGAL NEWS
CLARK & NYE COUNTY, NEVADA
CCLN FILE 130510e.aspx

Affidavit of Publication

This is to confirm that, on the aforementioned dates, the attached Legal Notice was published in the Clark County Legal News newspaper, a newspaper of general and subscription circulation in both Clark County, Nevada and Nye County, Nevada.

Per NRS 235.030, the Clark County Legal News newspaper is printed and published in whole or in part in both Clark County and Nye County, Nevada.

WITNESS my hand on this

5-24-13

Glenda Bauer
GLENDA BAUER,
legal notice assistant,
Clark County Legal News newspaper


STATE OF NEVADA

COUNTY OF CLARK

On May 24th 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared:
Glenda Bauer,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that it was executed by said person.

WITNESS my hand and official seal

Robert Heamlin
Notary Public in and for said State

 ROBERT HEAMLIN
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 12-06-18
Certificate No: 13-9971-1

CARRINGTON000377

Exhibit 11

Robert Atkinson January 25, 2016
30(b)(6) Representative of United Legal Services

Page 1

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

R. VENTURES VIII, LLC, a Nevada)
series limited liability company)
of the container R VENTURES, LLC)
under NRS § 86.296,)

Plaintiff,)

vs.)

CASE NO. A-13-684151-C
DEPT NO. VI

TAYLOR, BEAN & WHITAKER MORTGAGE)
CORP., a Florida corporation;)
WELLS FARGO BANK, N.A., a)
national association; BANK OF)
AMERICA, N.A., a national)
association; SOUTHERN TERRACE)
HOMEOWNERS ASSOCIATION, a Nevada)
domestic non-profit coop)
corporation; JOYCE PIERCE, an)
individual; CARRINGTON MORTGAGE)
HOLDINGS, LLC; DOES I through X;)
and ROE CORPORATIONS I through X,)
inclusive,)

Defendants.)

**CONDENSED
TRANSCRIPT**

DEPOSITION OF ROBERT ATKINSON

30(b)(6) REPRESENTATIVE OF UNITED LEGAL SERVICES

Taken by Carrington Mortgage Holdings, LLC
Taken on Monday, January 25, 2016
At 3:16 p.m.

At Akerman, LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada

REPORTED BY: CINDY MAGNUSSEN, RDR, CCR NO. 650

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www.aacrlv.com

Robert Atkinson January 25, 2016
30(b)(6) Representative of United Legal Services

2 (Pages 2 to 5)

Page 2

CARRINGTON MORTGAGE HOLDINGS,)
LLC,)
Counter Claimant,)
vs.)
R VENTURES VIII, LLC,)
Counter Defendant.)
CARRINGTON MORTGAGE HOLDINGS,)
LLC,)
Cross-claimant,)
vs.)
SOUTHERN TERRACE HOMEOWNERS')
ASSOCIATION,)
Cross-Defendant.)

REPORTED BY: CINDY MAGNUSSEN, RDR, CCR NO. 650

Page 4

LAS VEGAS, NEVADA; JANUARY 25, 2016
3:16 P.M.

-oOo-

(NRCP Rule 30(b)(4) waived by the parties prior to the commencement of the deposition.)

Thereupon--

ROBERT ATKINSON,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. PARVAN:

Q. Good afternoon.

A. Hello.

Q. Can you say your name for the record, please.

A. Robert Atkinson. By the way, my voice is a little froggy. I had laryngitis on Saturday. So it's mostly better by now, but I apologize if it's a little rough still.

Q. No apology necessary. I myself have pneumonia, so you may hear me coughing. So I feel for you.

A. It's the season.

Q. Yes. Mr. Atkinson, what's your title with United Legal Services?

A. President. And I am here in my capacity as custodian of records. I also hold the positions of

Page 3

APPEARANCES:

For Plaintiff R. Ventures VIII, LLC:

THOMAS MISKEY, ESQ.
Cooper Counsel
10653 Park Run Drive
Suite 110
Las Vegas, Nevada 89144
(702) 998-1500

For Defendant Carrington Mortgage Holdings, LLC:

CHRISTINE M. PARVAN, ESQ.
(Present Via Videoconference)
Akertman, LLP
1160 North Town Center Drive
Suite 330
Las Vegas, Nevada 89144
(702) 634-3000

EXAMINATION

WITNESS:

Robert Atkinson

PAGE

Examination by Ms. Parvan

4

Examination by Mr. Miskey

42

EXHIBITS

NUMBER

DESCRIPTION

PAGE

A

Documents

48

Page 5

secretary, treasurer, and sole director.

However, the company is not operational, and it has not been operational since, effectively, October of 2013.

Q. So the last time United Legal Services did any substantive work would have been in, you said, October of 2013 or September? Sorry.

A. October of 2013. That is correct.

There was a small but aborted job for a different HOA that I started in second quarter of 2014. But I terminated that HOA client because they were being ridiculous.

So other than that small aborted effort, all work ceased in October of 2013.

Q. Got it. Are you also going to be representing yourself today? I understand that you're an attorney.

A. I am. I'm here in that capacity. I don't anticipate having to object to any question, but I reserve the right to do so. That typically might be just more to have you clarify a question, if it's ambiguous.

Q. Understood. And I appreciate that. I'll try not to make any objections on your part necessary, but, obviously, if you need clarification, let me know.

Can you tell me when United Legal Services was created?

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www.aacrly.com

Robert Atkinson January 25, 2016
30(b)(6) Representative of United Legal Services

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 A. It was formed with the Nevada Secretary of State 2 in June of 2012, to the best of my recollection. 3 Q. And you were involved in the creation of United 4 Legal Services. Correct? 5 A. Correct. I formed it, and I am the sole 6 shareholder and sole officer. 7 Q. Have there, at any other time, ever been any 8 other shareholders? 9 A. No. 10 Q. Have there ever been any other officers at any 11 other time? 12 A. No. 13 Q. Okay. And I think I probably addressed this in 14 the beginning, but I think it's fair to say that you've 15 probably been deposed a number of times in your capacity 16 for United Legal Services. Correct? 17 A. That is correct. I believe this is our first 18 opportunity to have a deposition together. 19 Hopefully there are not many of them, because 20 I view them as a necessary activity, but, of course, 21 it's a waste of my time in that I don't get to bill 22 anybody for these two hours. 23 But the answer is yes, I've been deposed 24 related to these HOA sales and the relevant litigation. 25 Q. So did you have an opportunity to review the</p>	<p>1 the record, let's just confirm that I'm talking about 2 6175 Novelty Street. 3 A. I agree. 4 Q. Okay. Who was the HOA for this particular 5 property; do you recall? And I apologize, I have 6 documents for you, but my assistant will be bringing them 7 by. 8 Does it -- my notes indicate and all of the 9 recorded documents indicate that it was Southern 10 Terrace HOA. 11 Does that sound right to you based on your 12 review of the documents? 13 A. Thank you. That sounds right to me. Southern 14 Terrace Homeowners Association. 15 Q. Okay. So when -- I'm just going to say HOA 16 because that's easier, but when I say that, I mean 17 Southern Terrace Homeowners Association. 18 A. Thank you. 19 Q. Okay. Now, this might be one of the points 20 where you need to ask me for clarification, because you 21 probably understand the relationship between First 100, 22 which isn't a party in this case, and the HOA better than 23 even I do, which is one of the reasons why you're here 24 today. 25 So to your knowledge, this particular account</p>
Page 7	Page 9
<p>1 deposition subpoena that we sent you in preparation for 2 today's deposition? 3 A. I did. I reviewed it when I received it. 4 Q. Okay. Can you tell me what you did to prepare 5 for today? 6 A. Yesterday I went through the documents that were 7 produced for Akerman in response to the subpoena. And, 8 in particular, I opened up the PDF files that were 9 organized on the CD-ROM that was delivered, and I just 10 refreshed my memory as to what particular property this 11 was and some of the relevant details. 12 Q. Great. 13 A. And that is all. I did not speak with anybody 14 about it, other than my secretary to let her know that I 15 was hearing out to the deposition. 16 Q. Okay. Great. So you answered my next question. 17 And just to confirm that the property that 18 we're talking about today is APN 163-31-713-027. And I 19 think the address is 617 Novelty Court, I think. Is 20 that correct? 21 A. I think it's 6175 Novelty Street. 22 Q. That's right. Okay. You know better than I do. 23 A. Okay. I can't confirm the APN for you, because 24 I do not have that information in front of me. 25 Q. Okay. So whenever I refer to the property on</p>	<p>1 for this property, was this part of an agreement or 2 part of a larger account where First 100 purchased, for 3 lack of a better term, the recoverables from the HOA? 4 A. I wouldn't characterize it quite the way you 5 did. 6 Q. Okay. 7 A. But as a sidebar, in each one of these 8 depositions, I've had to do an explanation in order to 9 educate the counsel for the banks as to what the business 10 model was of First 100. 11 For the specifics of the First 100 business 12 model, you will have to go ask First 100. I can 13 testify to those things to which I have personal 14 knowledge of, and so let me describe that. 15 Q. Great. 16 A. The First 100 business model that I know about 17 was to approach -- oh, by the way, when I say "I," I mean 18 I, in my capacity as person most knowledgeable of United 19 Legal Services. 20 So any time I use the word pronoun "I," I mean 21 that in my representative capacity. And whenever I say 22 the word "we," I mean United Legal Services. 23 Understood? 24 Q. Understand. Yes. 25 A. All right. So I understand it -- the overall</p>

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www.aacriv.com

Robert Atkinson January 25, 2016
30(b)(6) Representative of United Legal Services

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 model would be to have First 100 approach an HOA and 2 pitch them their business model. I don't know what they 3 said. I never attended any of those meetings. 4 But the business model itself is rather 5 complex. It is best described simply by pointing you 6 to what I commonly refer to as either the PSA, which 7 stands for the purchase and sale agreement, or 8 sometimes I refer to it as the tri-party agreement, and 9 that has been produced to you as a response to your 10 subpoena. 11 That tri-party agreement would have the HOA as 12 being the seller, First 100 would be the buyer, and 13 United Legal Services would be the agent authorized for 14 sale. 15 The overall relationship of United Legal 16 Services was the agent authorized for sale for the HOA 17 as a client. And that term is arising from NRS 116. 18 The obligations of the parties are as 19 expressed in the PSA. United Legal Services also was 20 counsel in a limited representation sense for the HOA. 21 And so the HOA was our client. 22 The thing that was bought is not the 23 receivables. You may choose to simplify it that way, 24 but the more accurate way of describing it is exactly 25 what is in that document.</p>	<p>1 Q. So you mentioned that First 100 approached you. 2 Do you recall who, in particular, at First 100 approached 3 you about this potential agreement? 4 A. I don't recall specific conversations at all. 5 It likely would have been Jay Bloom, who was at least the 6 head of the company at that time. I have not spoken with 7 those guys in a long, long, long time. 8 So -- but it probably would have been Jay 9 Bloom back in 2012. 10 Q. And when Mr. Bloom approached you, did he -- 11 assuming that it was Mr. Bloom who approached you or 12 better yet, when First 100 approached you, did they 13 approach you about entering into agreements with multiple 14 HOAs? 15 A. Oh, yes. The business model that you see 16 embodied in the PSA was fairly mature right at the 17 outset. In other words, each PSA would be an umbrella 18 agreement under which properties could be placed. 19 On this particular one, there was one umbrella 20 agreement with Southern Terrace. With any of the HOAs 21 there's only one umbrella agreement signed, but with 22 multiple placements of properties sometimes under each 23 one of them via an exhibit. 24 And it was my expectation that First 100 had 25 identified a significantly underserved part of the</p>
Page 11	Page 13
<p>1 Q. Understood. And I know it's a pretty 2 complicated agreement. And I'll bring -- I'll show you a 3 copy once we have it in the room. But yeah, we did get 4 it, and we did produce it to Mr. Miskey's office, as 5 well. So I appreciate you clarifying the terms that I'm 6 using. 7 Let's back up a little bit here. How did 8 United Legal Services come to be a party to this PSA or 9 tri-party agreement? 10 A. I was approached by First 100. They -- my 11 memory is a little fuzzy because this is back in 2012. 12 So this is now approaching four years ago. But the 13 structure of their business model was to bind the agent 14 authorized for sale to certain obligations, as expressed 15 in the PSA, and typically, I think that they were under 16 the impression, this is my memory of it, that they were 17 under the impression that the standard collections 18 agencies, such as Red Rock or NAS, sometimes were adverse 19 or not nimble enough to act in the capacities that is 20 described in the PSA. 21 I viewed it as an opportunity to make money. 22 I'm a businessman. And so I started up United Legal 23 Services as a dedicated company to basically act as 24 that last stage with HOAs as clients and take 25 properties to sale.</p>	<p>1 market. In other words, there were some HOAs that had 2 a lot of properties that they were timid in going to 3 sale to. And that they addressed this market segment. 4 I think, in my opinion, First 100's business 5 model at that time, I don't know what it is right now, 6 but at that time, as expressed in the PSA, was a very 7 sophisticated and really excellent business model. 8 They identified a market segment, and they figured out 9 how to monetize it. 10 And so the reason that -- it's just a 11 high-volume type of business model. From United Legal 12 Services' standpoint, we could only get paid what was 13 authorized to be paid under the NAC collections -- or 14 the dollar amounts for collections agencies, as 15 authorized under NAC. 16 And so to make any money on it, it would be a 17 high-volume business. I was expecting thousands and 18 thousands and thousands of properties to be run through 19 this at initiation. And it turned out not to be that 20 way. 2013 was much lower volume than I expected or had 21 hoped for. 22 That's a long answer to -- yes, there is 23 multiple HOAs I was expecting to be a signatory to this 24 type of purchase and sale agreement. 25 Q. So, in addition to Southern Terrace Homeowners</p>

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<p>1 Association, can you estimate for me about how many other 2 HOAs you had an agreement with, you know, this type of 3 tri-party agreement between First 100, United Legal, and 4 the HOA? 5 A. Yeah. There were about 20 to 30 HOAs. And 6 there was probably 200 or so properties that were run 7 through it, about 130 of which or so went to auction, and 8 approximately 70 or 80 of them paid off prior to auction 9 by somebody paying off the lien. 10 Q. Okay. So just to clarify, 200 total involved -- 11 went in out of all the 20 to 30 different agreements. 12 Correct? 13 A. Across all of them, United Legal Services 14 processed -- when I say "processed," I mean issued a 15 Notice of Foreclosure Sale and so forth, about 200 16 properties. Yes. 17 Q. Okay. But you were hoping, based on the 18 business model, that it would be much more high volume so 19 that you would get paid more, understandably, from your 20 perspective of your business model. Correct? 21 A. I had built scalable business processes so that 22 we could have run 5,000 of them through that within a 23 year, if the volume had been there. But it really 24 petered out quite quickly, within six or eight months. 25 Q. Okay. Now, the prior collection agent in this</p>	<p>1 Red Rock. 2 We were geared up to just start with Notice of 3 Foreclosure Sale and cut those out the door within just 4 a few days of having an umbrella agreement signed on a 5 next batch under a PSA, because some of the HOAs had 6 multiple batches. 7 Q. Okay. Now, you mentioned that -- maybe you 8 didn't mention it. 9 But just to clarify, was United Legal Services 10 involved in the negotiation of this agreement as to the 11 purchase between First 100 and the HOA, or did you just 12 have separate negotiations between yourself and First 13 100 to act as the -- I'm not sure the term you used; I 14 think you said the agent authorized for sale? 15 A. Yeah. That's -- let me unpack that question for 16 you because there's a couple of answers. 17 There were two types of contracts that United 18 Legal Services had with First 100. One type was these 19 PSAs, and these PSAs were virtually identical. The 20 first one and the last one were virtually identical. 21 Like, it started, essentially, fully formed and did not 22 evolve much over time. So there were about 30 of those 23 types of contracts out there. 24 The second contract, of which there was only 25 one of, is the payment arrangement agreement, a copy of</p>
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<p>1 case was one that you mentioned earlier in your 2 deposition, and it was Red Rock Financial Services. 3 Do you -- was there a particular stage in the 4 HOA foreclosure process, meaning after the reporting of 5 the Notice of Default or after the recording of the 6 Notice of Lien, was there a particular stage in the 7 process, generally, that you entered into this 8 agreement either for -- we will start with for this HOA 9 and then if it's easier for you to explain more 10 generally. 11 A. Yes. In -- over 99 percent of them, it was 12 exactly the same thing, over and over, cookie cutter. 13 It was after the Notice of Lien, after the 14 Notice of Default, after the 90 days had run on the 15 Notice of Default, and it was ready for the third 16 stage, which is the Notice of Foreclosure Sale. 17 So when the -- when a PSA was signed, in that 18 letter was instructions to the prior collections agency 19 to turn the file over to United Legal Services. As 20 part of that file turnover, we got a limited set of 21 documents, including the account detail showing the 22 payments that had been made on the property, a copy of 23 which has been provided to you, and also the prior 24 Notice of Default, Notice of Lien that had been filed 25 by the prior collections company. In this case, it was</p>	<p>1 which has been provided to you, and that contract is 2 solely between United Legal Services and First 100. 3 The reason that that contract exists is because the PSA 4 contemplates that First 100 would pay for the placement 5 fees for United Legal Services, because I wasn't going 6 to do any business without essentially getting paid up 7 front, as a quasi retainer from somebody to -- because 8 I was about to go incur a bunch of costs, publication 9 and so forth. 10 The payment arrangement agreement did not 11 change. There was only one. The -- there was one 12 change that had been made when the mailing -- there was 13 a statute that changed the mailing from first-class 14 mail to certified mail. That changed July 1st of 2013. 15 At that point in time, our up-front charge to 16 First 100 went up by \$50 to accommodate that cost. But 17 otherwise, the contract stayed the same the entire 18 duration. 19 So sorry for the aside. I wanted to be 20 technically accurate. 21 Q. And I appreciate that because it is a -- I 22 wanted to make sure that we understood the difference 23 between the two types of agreements. 24 A. Yes. And so to answer your particular question, 25 the payment arrangement agreement was negotiated fully</p>

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1 between me and First 100. It got -- it got totally
2 negotiated.

3 The PSA, though, United Legal Services, we got
4 handed a template. Okay? So -- and I -- once I got
5 that core template, I kept control of it because I
6 didn't want First 100 inserting clauses into it in the
7 middle of negotiating with an HOA, suddenly changing
8 ULS's responsibilities under it.

9 I mean, that was just not going to happen. In
10 order to make this thing cost effective, I had to
11 cookie cutter it as much as possible. Do you
12 understand?

13 Q. I do.

14 A. So at the beginning, I was like, Give me the
15 template. And then the typical process would be I would
16 get contacted by a lower-level employee at First 100
17 saying, Hey, here's some properties that are being
18 discussed with HOA so-and-so, please prepare a PSA
19 template because they are interested and would like to
20 sign or have their attorneys review it and sign.

21 Generally, the HOAs had their attorneys review
22 it and give it their approval, which, by the way, I
23 think speaks a lot.

24 And so I would prepare the PSA using the
25 information as to what the properties were and so

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1 through -- and I can ask you more specific questions.
2 But can you walk -- can just give me a general overview
3 of what your agreement with First 100 looked like in this
4 particular case?

5 I have a copy of it, and I apologize that you
6 guys don't; it's the documents that you produced that
7 are Bates stamped from Carrington 770 to 780.

8 A. Okay.

9 Q. It's the purchase and sale agreement between
10 First 100 and United Legal Services.

11 A. Okay. I'm going to stop you for clarification.

12 You said the contract between First 100 and
13 United. There's only one contract between First 100
14 and United, and that's the payment arrangement
15 agreement.

16 If you're talking about the PSA, that's the
17 tri-party agreement. And that's not just between First
18 100 and United; it's between First 100 and United and
19 Southern Terrace.

20 Are you talking about the PSA, the tri-party
21 agreement, or are you talking about the payment
22 arrangement agreement?

23 Q. No. I apologize. Yeah, I'm talking about the
24 agreement solely between First 100 and United Legal
25 Services.

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1 forth. This was information on the properties and the
2 numbers that you see back in Exhibit 1.

3 That information was provided to me by First
4 100. I had to reformat it, put it into Exhibit 1. And
5 then in the main PSA, I would change the HOA name at
6 the top in the preamble. I would change the HOA
7 signature block and in the notice address, and then I
8 would confirm with the Secretary of State that the --
9 the exact legal name of the HOA. And then I'd turn it
10 into a PDF and mail it back and go, There you go.

11 Because when I got it back, I didn't want to
12 then have to go through reading every single sentence,
13 seeing if somebody made a change to it. I -- I wasn't
14 going to play that game. It would have been
15 extraordinarily time consuming and costly. So that's
16 why I did it that way.

17 But in terms of negotiating with the HOA, I
18 personally never -- nor did ULS ever negotiate with the
19 HOA. Does that make sense?

20 Q. Yes. Absolutely. Yes.

21 A. I shot the template back to First 100, and then
22 they kept interacting with the HOA. And then sometimes
23 these PSAs would come back signed, and I would be the
24 last signature block on it.

25 Q. Okay. Understood. So can you, I guess, walk me

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1 A. Okay.

2 Q. Sorry. And thank you for catching that.

3 A. Okay. The payment arrangement agreement, there
4 was only one. So you had made a reference a few
5 sentences ago saying for this property.

6 There was only one payment arrangement
7 agreement signed December, I think, 5th, 2012. That's
8 my recollection of it, but I don't have the document in
9 front of me because your office hasn't produced the
10 documents for me to refer to. But let me go by memory.
11 Okay?

12 It is a relatively short document saying that
13 First 100 is to pay according to the following
14 schedule, see -- and then there's a schedule in the
15 back for payment placements. Okay?

16 And the -- and United Legal Services was going
17 to be performing the things in that contract.
18 That's -- I mean, it's a very short and simple
19 contract.

20 What it is was mostly me, as a lawyer, being
21 worried about the following things: What happens when
22 something goes wrong? Okay. Let me give you an
23 example. Somebody files a bankruptcy. Does United
24 Legal Services follow that into the bankruptcy? Do we
25 incur costs filing a notice of appearance? Do we incur

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<p>1 costs filing a motion for lift stay to continue the 2 auction? 3 What happens if it's a Chapter 13? What 4 happens if there's litigation involved? What happens 5 if somebody files a litigation to stop the sale? Am I 6 supposed to file an objection to a motion for 7 injunctive relief and so forth? And the reason is 8 because I was concerned. 9 Because at some point, you hop out of the 10 cookie-cutter steps contemplated under the pricing of 11 NAC 116 and into some real lawyer work. And so this 12 one basically anticipates that if things go off track, 13 then we get paid time cost. 14 Otherwise there is a fixed placement fee for 15 each one, and you can see towards the back, it's \$750, 16 if I recall correctly. And that number is derived from 17 NAC. 18 Are you aware of how it's derived from NAC? 19 Q. Yes, I am. But if you want to explain for the 20 record, please feel free to. 21 A. All right. I believe there's a document 22 entitled Clark County Collections Fees or Costs included 23 in that document. 24 Q. Yes. 25 A. So --</p>	<p>1 what we would have gotten paid in order to start on it. 2 In other words, I insisted on getting paid in full up 3 front. 4 Q. Okay. 5 A. Now, First 100 could have recovered that bank in 6 the back end, but in general, I'm talking about United 7 Legal Services. We got paid up front for that property 8 to get placed. Okay? 9 Q. Understood. 10 So I'm going to ask you, you mentioned earlier 11 that when United Legal Services entered into these 12 agreements, in 99 percent of cases, it was when a 13 Notice of Sale had been -- already been recorded. 14 And that -- 15 A. No. 16 Q. -- received documents -- I'm sorry. 17 A. Notice of default. 18 Q. A Notice of Default and the 90 days had 19 expired -- 20 A. And then we had picked it up ready to start the 21 Notice of Foreclosure Sale process. 22 Q. Got it. Thank you. Yeah. Okay. 23 So -- and you mentioned that you received 24 documents from the prior trustee, who, in this case, 25 was Red Rock Financial Services; is that --</p>
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<p>1 (Whereupon, documents were provided.) 2 MR. MISKEY: Thank you. 3 UNIDENTIFIED SPEAKER: Where should I put 4 this? 5 THE WITNESS: We're off. 6 (Brief Recuss.) 7 THE WITNESS: Are we back on the record? 8 MR. MISKEY: Yes. 9 THE WITNESS: So I don't know if -- the 10 Bates stamp set of files, which just arrived in the 11 room, I don't know if this document is in there. But I 12 had produced to you something called, like, 13 Clark County Collections Costs or something like that. 14 It's an Excel sheet. And then -- it looks like this. 15 Do you see this? 16 BY MS. PARVAN: 17 Q. I do. 18 A. So off to the right it says, Relating to NOS, 19 Notice of Sale. Okay? And there are certain steps, such 20 as publication, recordation costs, and so forth. If you 21 add all of that up, it adds up to \$750. 22 However, the copy that you see will add up to 23 \$800 because it adds another \$50 of a mailing cost. It 24 used to say \$5, but now it says \$55. So the placement 25 fee would have been \$750 for this property, and that's</p>	<p>1 A. No. I did not say that at all. 2 Q. Okay. 3 A. You used the word "trustee." If you're using 4 the word trustee, I'm going to be very blunt, you need to 5 reread NRS 116. 6 There is no such language as trustee in that 7 statute. That statute, that language is in NRS 107. 8 I strongly believe that a lot of the other 9 collections agencies which record Notice of Trustee's 10 Sale for these properties or issue a Trustee's Deed 11 when they foreclosed on things are just -- it's 12 ludicrous how incorrect that is legally. Okay? 13 We absolutely were not a trustee. There is no 14 trust relationship. There is no Deed of Trust. Do you 15 understand that? We are the agent authorized for sale. 16 So, you know, I -- I am sorry to get a little 17 excited here, but anybody tries to pin the word 18 "trustee" on me, I'm going to violently reject because 19 that implies an entire set of fiduciary 20 responsibilities that I refuse to have imputed upon. Do 21 you understand? 22 Q. I do. And I apologize. I think I was using 23 word from the prior trustee because Red Rock Financial 24 Services refers to itself as the trustee in several 25 documents.</p>

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1 So if I call you a trustee, I apologize. I'm
2 using the terminology that's in the recorded documents,
3 and I think that Red Rock Financial Services calls
4 itself a collection trustee.

5 A. Then they are retarded. Seriously. That's
6 retarded. That's legally incorrect. They are going to
7 get themselves in a tremendous amount of trouble, and I
8 refuse to think of them as being a trustee.

9 They were acting under NRS 116 in all
10 capacities, and if they were getting incorrect legal
11 advice as to how to write up their documents, well,
12 that's up to them.

13 I think that what they were doing was retarded
14 if they call themselves trustee. Okay?

15 Q. Fair enough. So I'm just going to call them
16 Red Rock.

17 A. Perfect. Much better.

18 Q. So in this case, did you -- and I shouldn't even
19 say "in this case," because the agreement applies.

20 But I'm going to say "in this case" because I
21 assume you received documents with respect to this
22 particular property?

23 A. Oh, yes.

24 Q. Or -- from Red Rock; is that correct?

25 A. That's correct. And the documents that we

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1 A. It wouldn't even cross my mind. No. I mean,
2 when -- as a matter of industry standard, I mean, when a
3 collections agency takes over a file from a prior agency,
4 you don't get the entire set of documents.

5 I mean, there's a lot of internal documents
6 that get -- I mean, you only get what you get, which is
7 the basics, which is what we got.

8 We didn't get customer service notes. We
9 didn't get the letters in the file. That's not how
10 things work. Do you understand?

11 So it didn't even cross my mind, nor should it
12 have been, to ask for any payments that were proffered
13 but previously rejected at any time by Red Rock. Let's
14 just -- it's of no consequence to United Legal
15 Services.

16 Q. Did United Legal Services ever receive proffered
17 payments that you rejected --

18 A. No. Interestingly enough, no. As a matter of
19 business policy, I thought it would be very, very
20 important that whenever a beneficiary or the servicer or
21 the lawyer for a beneficiary ever rendered any payment,
22 we always took it without question regardless of the
23 dollar amount.

24 And that happened eight or nine times across
25 the 200 properties. And on all instances, they were

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1 received are -- have been produced to you.

2 It's the Notice of Lien, the Notice of
3 Default, and the account detail, the transaction detail
4 printout showing what payments had been made against
5 the property. That's correct.

6 Q. Okay. When you received these documents, would
7 there ever -- would there be an indication in -- and I
8 assume it would be probably in that account detail, of
9 any payments made either by the homeowner or any other
10 party with respect to the alleged delinquency on the
11 account?

12 A. Let me parse that question out.

13 Q. Fair enough.

14 A. It would show payments that posted.

15 Q. Okay.

16 A. And it may show payments that were made but then
17 was an NSF check. It was my understanding -- sorry.

18 It is my understanding now after going through
19 various depositions, it's my understanding nowadays
20 that payments proffered but not taken by the prior
21 collections agency would not show up in the detail.

22 Q. So it's fair to say that at the time of this HOA
23 sale, did you ever -- you wouldn't have asked the
24 prior -- you wouldn't have asked Red Rock about a
25 proffered payment. Correct?

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1 just the nine months worth of assessments. And in all
2 instances, they were gearing up for a giant fight, and
3 they all seemed shocked and surprised when we said,
4 Sure, no problem.

5 And in all instances, we recorded in the land
6 records a notice of partial payment of lien indicating
7 that the payor intended that the payment be as applied
8 against the superpriority portion of the lien, but that
9 United Legal Services had no opinion, legal or
10 otherwise, as to the efficacy of such intent.

11 Q. And if one of those payments had been made to
12 you and you applied it and then you recorded this release
13 of partial lien, would that have affected how you would
14 have cried the sale in these cases?

15 A. Another excellent question. In all instances,
16 nobody else paid off any of the other portion of the
17 lien. In all instances, we sold that property at
18 auction.

19 Now, we recorded the -- the notice of partial
20 release of lien prior to the auction. And so at that
21 point, it was, in my opinion, constructive notice to
22 any prospective buyer that this thing was sitting out
23 there in the land records.

24 And as a matter of policy, I also announced it
25 at the auction, that that event occurred. Why? I

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<p>1 don't think I was under any legal obligation to. I</p> <p>2 just thought it was an important event that was an</p> <p>3 aspect of crying it out, that notice here was an</p> <p>4 important event that happened. Why we would do this,</p> <p>5 for example, things that filed bankruptcy, I would say,</p> <p>6 you know, We're -- we're continuing this. We're</p> <p>7 postponing this auction as a result of a bankruptcy was</p> <p>8 filed.</p> <p>9 It wasn't just this robotic auctioneering. It</p> <p>10 was like, Okay, well, I just want to let everybody know</p> <p>11 that a partial payment was made. We did record it.</p> <p>12 Let's start the auction.</p> <p>13 Q. And I know you said that you recorded a partial</p> <p>14 release prior to the sale. Was there any -- and that you</p> <p>15 gave -- that you cried this as part of the instructions.</p> <p>16 Was there any specific language in the</p> <p>17 Foreclosure Deeds related to these sales? The deeds to</p> <p>18 the purchasers at these sales that would have -- that</p> <p>19 would have stated that there was some sort of partial</p> <p>20 payment made?</p> <p>21 A. No. Not at all. Because the notice of partial</p> <p>22 payment was already in the land records, and there was no</p> <p>23 legal reason to at all.</p> <p>24 I mean, the language that's in all the</p> <p>25 foreclosure deeds are very standardized, and they</p>	<p>1 in those documents that anyone had proffered any sort</p> <p>2 of payment prior to you obtaining the file?</p> <p>3 A. None whatsoever in any instance.</p> <p>4 Q. In any instance on any Red Rock file --</p> <p>5 A. No. Let's --</p> <p>6 Q. -- is that --</p> <p>7 A. That is correct. But let's make sure we're</p> <p>8 talking about the same thing.</p> <p>9 Q. Let's.</p> <p>10 A. When we got the transaction account detail from</p> <p>11 Red Rock, none of them, to my recollection, had any</p> <p>12 notes -- this is, again, to my recollection -- had any</p> <p>13 notes saying that a proffer had been received and</p> <p>14 rejected by Red Rock.</p> <p>15 As a result, I have no knowledge of any such</p> <p>16 incident at any time. Whether it was made the week</p> <p>17 before or two years before, I have no knowledge. I had</p> <p>18 no knowledge until these depositions began in the last</p> <p>19 year that things such like that even occurred.</p> <p>20 Q. So that happened in this case. And it's not in</p> <p>21 your documents.</p> <p>22 A. I'm surprised. I did not know that until right</p> <p>23 now, until you told me. Interesting.</p> <p>24 Q. So in this case, and I have a copy of the</p> <p>25 documents, just if you want to take a look at them. But</p>
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<p>1 are -- there was no extra language. And just for the</p> <p>2 record, this was not -- the property that is the</p> <p>3 subject of this case was not one of those partial</p> <p>4 payment properties.</p> <p>5 Q. I know.</p> <p>6 A. What I'm also trying to do with you, Christine,</p> <p>7 is to provide a broader education for you as to what in</p> <p>8 the world the -- United Legal Services' sales were and</p> <p>9 hope that future depositions will go much quicker.</p> <p>10 I do know that that has been the case with</p> <p>11 several of your colleagues. I think I'm down to only</p> <p>12 15 minutes on future depositions with certain of your</p> <p>13 colleagues because they understand the background of</p> <p>14 each case.</p> <p>15 Q. Thanks. And I appreciate that. And I reviewed</p> <p>16 a lot of your depositions and talked to my colleagues.</p> <p>17 A. Okay. Good.</p> <p>18 Q. So perhaps in the future, we can incorporate</p> <p>19 some of your prior testimony, and so I appreciate you</p> <p>20 going through this with me.</p> <p>21 I know that in this case, this wasn't one of</p> <p>22 those sales where you accepted a partial payment. What</p> <p>23 I want to know is -- I think I know the answer to this,</p> <p>24 but I'm going to let you tell me -- when you received</p> <p>25 the documents from Red Rock, was there any indication</p>	<p>1 they are documents from Miles, Bauer, which is outside</p> <p>2 counsel, I'm sure you're familiar, for Bank of America.</p> <p>3 It's some correspondence, along with a copy of</p> <p>4 a check to Red Rock. And they are the documents --</p> <p>5 they are part of your documents just in case you wanted</p> <p>6 to refer to them, and they start at page --</p> <p>7 A. When you say part of the documents, you mean the</p> <p>8 pile? This 1,100-page pile?</p> <p>9 Q. That pile that's -- yeah.</p> <p>10 A. This pile? Okay. Because --</p> <p>11 Q. Sorry. Go ahead.</p> <p>12 A. Well, you said part of your documents, I think.</p> <p>13 Not part of my documents.</p> <p>14 Q. They are not part of your -- no. They are not</p> <p>15 part of your documents. They are part of the documents</p> <p>16 for this deposition, which they are all -- they are</p> <p>17 recorded documents, all of the documents that you</p> <p>18 produced in response to this subpoena, and then the only</p> <p>19 additional documents are these, what's called, for lack</p> <p>20 of a better term, tender-related documents. And those</p> <p>21 start at Bates stamp 287.</p> <p>22 A. May I open the pile and look at them? I'm</p> <p>23 curious. I'm just intellectually curious as to what date</p> <p>24 that was.</p> <p>25 Q. Sure.</p>

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10 (Pages 34 to 37)

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<p>1 A. What Bates stamp?</p> <p>2 Q. 287.</p> <p>3 A. This is an affidavit from Miles, Bauer?</p> <p>4 Q. It is. And the affidavit references two</p> <p>5 different -- some different letters and a copy of a check</p> <p>6 and confirmation of receipt of that check as four</p> <p>7 different exhibits.</p> <p>8 A. I have never seen these documents before from --</p> <p>9 Q. So they weren't -- it's fair to say that they</p> <p>10 were not included in the batch of documents that Red Rock</p> <p>11 would have sent United Legal Services with respect to</p> <p>12 this account?</p> <p>13 A. That is correct.</p> <p>14 And I'm talking about Bates 287 through 294.</p> <p>15 I have never seen these documents before. They have</p> <p>16 not been -- were never produced from Red Rock to United</p> <p>17 Legal Services.</p> <p>18 Q. So according to these documents, Miles, Bauer,</p> <p>19 on behalf of Bank of America, delivered a check to</p> <p>20 Red Rock on January -- or I should say sent a check,</p> <p>21 along with correspondence, to Red Rock, on January 10th,</p> <p>22 2013. And the check was in the amount of \$655.14.</p> <p>23 A. Are you sure about '13? What was that date?</p> <p>24 Q. I believe it was 2013.</p> <p>25 A. Wait. What page are you on?</p>	<p>1 in is at Bates Number 317.</p> <p>2 A. Oh, let me keep going.</p> <p>3 Q. The letter that you asked me about where you</p> <p>4 said, Was it 2013? So --</p> <p>5 A. Let me keep going.</p> <p>6 Q. Sure. Go ahead.</p> <p>7 A. Oh, and same thing. There's another account</p> <p>8 detail printout ending -- or like a -- these account</p> <p>9 details keep going with different printouts similarly.</p> <p>10 Some of them are writing on it, and so they are not</p> <p>11 documents that were produced.</p> <p>12 There's 317.</p> <p>13 Q. Yeah. Just to clarify, I'm not representing</p> <p>14 that you produced those documents as part of your</p> <p>15 response to the subpoena. Those are just part of --</p> <p>16 those are the documents that Red Rock provided to Miles,</p> <p>17 Bauer.</p> <p>18 A. Okay. I understand. I was confused because</p> <p>19 there is also a letter up in Bates 291. And Bates 291 --</p> <p>20 see, what -- what I can't tell from this -- okay. Yes.</p> <p>21 The second page of the affidavit explains it.</p> <p>22 So there's three affidavits that came back</p> <p>23 from Miles, Bauer. Exhibit 1 is the January -- is the</p> <p>24 December 14th letter.</p> <p>25 Q. Correct.</p>
Page 35	Page 37
<p>1 Q. I am on -- I think actually the documents are a</p> <p>2 little bit longer than the numbers that you referenced.</p> <p>3 Because they include some accounting.</p> <p>4 A. Well, that -- the accounting documents are</p> <p>5 between 295 --</p> <p>6 Q. Have you seen those, the accounting documents?</p> <p>7 A. This -- I have to look at them. Hold, please.</p> <p>8 It appears that 295 through 303, roughly. I</p> <p>9 would have to go back and compare them exactly to what</p> <p>10 I produced to you, because what I produced to you is</p> <p>11 what was produced to me.</p> <p>12 But I don't recall Bates 304 being produced to</p> <p>13 United Legal Services because that has some handwriting</p> <p>14 on it. And I don't recall getting documents with</p> <p>15 handwriting on them on the account detail.</p> <p>16 So whatever document 295 through 304 is was</p> <p>17 not the document that was produced to United Legal</p> <p>18 Services, because it appears to be a printout of</p> <p>19 something that somebody wrote something on. Okay?</p> <p>20 So the --</p> <p>21 Q. Okay.</p> <p>22 A. -- document that you have from United Legal</p> <p>23 Services is what was produced to United Legal Services.</p> <p>24 Okay?</p> <p>25 Q. Understood. So the letter that I was referring</p>	<p>1 A. Exhibit 2 was what Red Rock sent back to them.</p> <p>2 Q. Exactly.</p> <p>3 A. And Exhibit 3 is the January 10th letter from</p> <p>4 Rock Jung at Miles, Bauer to Red Rock, along with a</p> <p>5 check.</p> <p>6 Q. Exactly.</p> <p>7 A. I have caught up to where you are now.</p> <p>8 Thank you.</p> <p>9 Q. Sorry for jumping ahead.</p> <p>10 So I believe it's fair to say that with</p> <p>11 respect to either -- so you've never seen a copy of</p> <p>12 that December 2012 letter from Miles, Bauer to</p> <p>13 Red Rock, is that right?</p> <p>14 A. No. Never. That is correct.</p> <p>15 Q. And you have never seen the response letter from</p> <p>16 Red Rock to Miles, Bauer. Correct?</p> <p>17 A. That is correct.</p> <p>18 Q. With the caveat that perhaps the account detail</p> <p>19 is something similar to what may be contained in your</p> <p>20 records?</p> <p>21 A. None of this I have ever seen before. This</p> <p>22 entire -- through 323, I have never seen before.</p> <p>23 Q. Okay. So on -- and that includes a copy of the</p> <p>24 check, which is at 319, which is for \$655.14. Correct?</p> <p>25 A. That's correct. I have never seen this before.</p>

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11 (Pages 38 to 41)

<p>Page 38</p> <p>1 Q. Okay. And just going back to what you said 2 before, if -- if United Legal Services had received a 3 check of this nature, meaning a check for what Miles, 4 Bauer determined was nine months worth of common 5 assessments and reasonable collection costs, that United 6 Legal Services would have applied that check to the 7 account. Correct?</p> <p>8 A. Oh, absolutely.</p> <p>9 Q. Yes.</p> <p>10 A. You know, Red Rock can do what they say, but 11 United Legal Services was not going to get in the middle 12 of a dog fight as to how to interpret some rather gray 13 language in the statutes. What I particularly mean by 14 that is whether the superpriority portion of the lien did 15 or did not include collections costs.</p> <p>16 I understand the collections agencies took the 17 position that it did. United Legal Services was 18 agnostic to that. I understand that it was a matter of 19 some dispute, especially at the time. But I wasn't 20 going to get in the middle of a fight. If they wanted 21 to tender money towards it, it's fine with me.</p> <p>22 Q. Okay.</p> <p>23 A. And it may be. I understand that it's still a 24 matter that is unresolved. It may be that Miles, Bauer 25 should have tendered it with the collections costs. And</p>	<p>Page 40</p> <p>1 in the PSA, which is strict marching orders to take it 2 to sale.</p> <p>3 Q. And embodied in that agreement, was it also the 4 HOA's position that United Legal Services was not allowed 5 to negotiate a payment plan with a borrower, even?</p> <p>6 A. That --</p> <p>7 Q. Maybe I didn't ask you the right question, and 8 if you need me to clarify, I can.</p> <p>9 A. Well, I do understand. That particular subject 10 I don't think was relevant on this particular property. 11 But on occasion, there were payment plans that were 12 entered. Typically, it was a payment plan that had been 13 entered into by the prior collections company.</p> <p>14 Recently -- and yet it got included into the 15 PSA because it was a delinquent property. Because 16 sometimes it took two months for these PSAs to be 17 signed.</p> <p>18 And so we would file the Notice of Foreclosure 19 Sale, and then the phones would light up because the 20 borrower thought that they had entered in a payment 21 plan, which they had in these instances that I'm 22 thinking about.</p> <p>23 And in those instances, we would confirm, 24 generally through First 100, who would then confirm 25 with the HOA to honor the payment agreement. And in</p>
<p>Page 39</p> <p>1 perhaps Red Rock took an entirely correct legal position. 2 I don't know if that answer has even been 3 determined yet, but I understand it's before Nevada 4 Supreme Court.</p> <p>5 Q. Yes, I mean, I think we're -- all of us in this 6 room are probably familiar with different judges' stances 7 on that. And there is no clear answer, obviously. My 8 position is probably different from Mr. Miskey's, and we 9 will let us fight that out.</p> <p>10 But let me ask you this: If you had known 11 about this proffered payment to Red Rock, would that 12 have changed United Legal Services' course of action 13 with respect to the foreclosure of this particular 14 property?</p> <p>15 A. No. And let me explain why.</p> <p>16 Q. Great.</p> <p>17 A. You said United Legal Services' position.</p> <p>18 United Legal Services did not have a position. 19 United Legal Services' position was that of the HOA's. 20 We were the agent and only the agent of the HOA. We 21 were not the foreclosing. We were the agent authorized 22 for sale.</p> <p>23 As a result, our position is that of the 24 HOA's. Whatever the HOA wanted, that was what the 25 HOA's position was. And the HOA's position is embodied</p>	<p>Page 41</p> <p>1 all instances, payment agreements that were paid on 2 time by the homeowner, who took it through to 3 completion and were completely on it.</p> <p>4 The few that the payments became delinquent on 5 and once the terms of the payment plan became 6 delinquent, then the payment plan agreement was void. 7 And so we took it up for sale and sold it.</p> <p>8 Q. You said that you would honor the payment 9 plan --</p> <p>10 A. The HOA would honor the payment plan, would 11 instruct us. That's right.</p> <p>12 Q. So the HOA would honor -- would instruct you to 13 honor the payment plan that had been agreed upon between 14 prior collection agent and the -- on behalf of the HOA 15 and the borrower.</p> <p>16 Did the terms of the tri-party agreement 17 permit United Legal Services on behalf of the HOA to 18 ever enter into these types of payment plan, or was 19 there any sort of express --</p> <p>20 A. No. In general --</p> <p>21 Q. -- that -- sorry. Go ahead.</p> <p>22 A. In general, the instructions to United Legal 23 Services were very clear, which is, Take it to sale. 24 Now, there were a few escape clauses for unanticipated 25 events. These being umbrella agreements. You had to</p>

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12 (Pages 42 to 45)

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1 anticipate a variety of things going sideways.
2 And in such instances, First 100 had
3 irrevocable proxy to speak for the HOA. And in those
4 instances, sometimes a deal was worked out, but it was
5 very rare.
6 I'll give you an example. On one of them, a
7 Chapter 11 was filed. What do you want me to do?
8 Right? Do I go in, start spending tons of money?
9 And the answer from the HOA, which came back
10 via First 100, was, just get the nine months plus
11 collections costs paid through as part of the
12 Chapter 11 plan.
13 And that's what -- that's what occurred. It
14 was a very low-cost event, and the homeowner -- you
15 know, once that lien was paid off in full, then the HOA
16 had no further interest in collecting on it.
17 MS. PARVAN: Okay. I think those are all
18 my questions. I really appreciate your time. I'm
19 hopeful that in the future we can get through these
20 quicker.
21 I turn it over to Mr. Miskey for any questions
22 that he might have.
23 EXAMINATION
24 BY MR. MISKEY:
25 Q. I just had a couple of questions about the date

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3 because I was curious as to what the hubbub was. And
4 also I went because I wanted to ensure that I was
5 educated as a future auctioneer as to exactly what
6 somebody else's processes were.
7 And it was just crazy because these properties
8 would be credit bid by the HOA at 13 or \$15,000. And
9 then there would be no bidder, and then the HOA would
10 win them.
11 And what's an HOA going to do with a property
12 at that point? They have now become a landowner. They
13 are responsible for taxes, they are responsible for
14 paying HOA fees, they are responsible for cleaning up
15 the property. They are responsible for selling it,
16 renting it out with a potentially cloudy title. It was
17 a mess.
18 Now, if you were an HOA for condos, you were
19 in a particular bind. HOAs for condos had terrible
20 economics. Generally, these lion accounts for these
21 really lousy condos -- and when I say "lousy," I mean,
22 you know, the market value on these things is like 60
23 grand, in a really kind of, you know, not good area of
24 town. The lien is \$4,500 or \$8,000.
25 Nobody in their right mind, and I mean nobody,
would pay \$8,000 to buy a one-bedroom apartment at
Bella Vita HOA and then have to renovate the apartment

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1 of the sale. Do you recall how many bidders attended
2 this particular sale?
3 A. Was this the May 31st sale? I think it was.
4 Q. Yes.
5 A. There was a lot of people in the room. There
6 was -- there was probably 15 people in the room. And the
7 reason is because these were single-family residences
8 that were mostly on the list, which was a bit unusual.
9 And I think it may assist you, Christine, in
10 understanding a little bit more about why these HOAs
11 were an underserved market.
12 May I speak just briefly?
13 Q. Yes.
14 A. You have to look at the economics of the
15 situation. Again, this is my understanding as to the
16 First 100 business model; you will have to ask them in
17 particular. But it's just so creative. I -- I
18 appreciate why they had such high hopes for growth.
19 And, in particular, if you've ever gone to an
20 HOA auction, especially one in the 2011, 2012 time
21 zone, which I did just as a matter of interest, a great
22 deal of the properties were won by the HOA via a credit
23 bid.
24 And a credit bid was for the full amount of
25 the lien. And so I went to an Alessi & Koenig one just

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1 and then rent it out and then go spend 15 grand
2 litigating it. I mean, you would chew up any and all
3 of your potential profit. Or at least it would require
4 a tremendous amount of up front cash flow. Why?
5 Because these things would rent out at only \$400 a
6 month.
7 And so after a year, you get \$400 in rent,
8 that might have chewed up your entire cost of
9 renovating the property just to be able to have
10 somebody in there. So generally, the condo HOAs would
11 not take anything to auction because the industry
12 standard would be credit bid your lien amount.
13 Well, First 100's bright idea was there's no
14 statutory requirement to do that. And that's why you
15 see in the FSA that the opening credit bid is \$99. I
16 opened up every single auction at \$99, and we sold
17 every single property.
18 I -- I thought it was brilliant. So as a
19 result, there was active participation at these things.
20 Why? Because you could pick up a condo for 1,500
21 bucks, for 2,000 bucks, instead of \$8,000.
22 And at that point, the economics started to
23 make sense, because then you could pay back your costs
24 plus your cleanup costs, your auction costs plus your
25 cleanup costs and get that back within a 10- or

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13 (Pages 46 to 49)

<p>Page 46</p> <p>1 11-month period just through rent.</p> <p>2 And at that point, you're cash neutral, and</p> <p>3 then you decide whether you do or do not want to file a</p> <p>4 lawsuit. We really changed around the economics of it</p> <p>5 quite significantly.</p> <p>6 And so most of the 200 that got placed with</p> <p>7 United Legal Services were condos. Most of the ones</p> <p>8 that we auctioned off were condos. But occasionally we</p> <p>9 had houses. And this was the one that had houses.</p> <p>10 And houses had rather energetic auctions</p> <p>11 because a wider range of bidders were interested in</p> <p>12 houses, I mean, people who buy these things at HOA</p> <p>13 auction are kind of a small group. It's a small</p> <p>14 industry anyway.</p> <p>15 And so we would have the regulars there, you</p> <p>16 know. Maybe Chris Hardin would show up. It -- Guy</p> <p>17 Chagen (phonetic) would show up. These are for the</p> <p>18 condos. But when houses came up, people would come out</p> <p>19 of the woodwork, and this was one that I recall as</p> <p>20 being particularly well-populated.</p> <p>21 I would say there was at least 15 people.</p> <p>22 That's a long answer to your question, but I wanted to</p> <p>23 educate you a little bit as to how these things</p> <p>24 happened.</p> <p>25 Q. Okay. To the best of your recollection, the</p>	<p>Page 48</p> <p>1 Q. Okay. Then just one more area of inquiry. Had</p> <p>2 you ever had any prior contact with R. Ventures, VIII</p> <p>3 prior to the date of this auction?</p> <p>4 A. No. The guy's name was, like, Darrell or Darrun</p> <p>5 or something like that. And for people that I did not</p> <p>6 know from a prior auction -- in other words, any time I</p> <p>7 saw a new face, I prequalified them. So if they showed</p> <p>8 up at a subsequent auction, I didn't prequalify them</p> <p>9 because they were a known quantity.</p> <p>10 And I remember this Darrell or Darrun guy. He</p> <p>11 had cashier's checks ready to go. So that's how he</p> <p>12 prequalified. He never showed up at any other auction.</p> <p>13 And I've never seen him before, never seen him since.</p> <p>14 MR. MISKEY: All right. I have no</p> <p>15 further questions.</p> <p>16 MS. PARVAN: We're all set.</p> <p>17 THE WITNESS: Thanks for your time.</p> <p>18 (Discussion off the record.)</p> <p>19 THE COURT REPORTER: Do you want a copy</p> <p>20 of the transcript?</p> <p>21 MR. MISKEY: Yes. Copy only. No</p> <p>22 exhibits. E-copy.</p> <p>23 (Exhibit A marked)</p> <p>24 (The deposition concluded at 4:22 p.m.)</p> <p>25</p>
<p>Page 47</p> <p>1 opening bid amount at this property was \$99?</p> <p>2 A. The -- I have no specific recollection for this</p> <p>3 one, but I can assuredly say yes for two reasons.</p> <p>4 One is my opening bid sheet says \$99, and two,</p> <p>5 I have no recollection of anything on any of the</p> <p>6 properties I ever did open at other than \$99. And the</p> <p>7 reason is because I was contractually obligated to open</p> <p>8 it for \$99.</p> <p>9 Q. Do you know what the winning bid was for this</p> <p>10 property?</p> <p>11 A. If I recall, from my review of the notes</p> <p>12 yesterday, it was \$10,100.</p> <p>13 Q. I'll represent to you that that is correct.</p> <p>14 Was -- did it take multiple bids to go from</p> <p>15 \$99 up to \$10,100?</p> <p>16 A. I have no specific recollection of this</p> <p>17 particular property, but my memory is that each one of</p> <p>18 the properties that day had vigorous and active bidding</p> <p>19 from multiple parties.</p> <p>20 I don't recall any properties starting at \$99</p> <p>21 and then having one bid in excess of 10,000 and then no</p> <p>22 other bidders. That's just -- that would have been an</p> <p>23 oddball event. And so I would say yes, this was a</p> <p>24 public auction that had vigorous bidding from multiple</p> <p>25 parties.</p>	<p>Page 49</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Cindy Magnusen, Certified Court Reporter,</p> <p>4 State of Nevada, do hereby certify:</p> <p>5 That I reported the deposition of Robert Atkinson,</p> <p>6 30(b)(6) Representative of United Legal Services, commencing</p> <p>7 on Monday, January 25, 2016, at 3:16 p.m.</p> <p>8 That prior to being depused, the witness was duly</p> <p>9 sworn by me to testify to the truth. That I thereafter</p> <p>10 transcribed my said shorthand notes into typewriting and</p> <p>11 that the typewritten transcript is a complete, true and</p> <p>12 accurate transcription of my said shorthand notes. That</p> <p>13 prior to the conclusion of the proceedings, the reading and</p> <p>14 signing was waived by the witness or a party.</p> <p>15 I further certify that I am not a relative or</p> <p>16 employee of counsel of any of the parties, nor a relative or</p> <p>17 employee of the parties involved in said action, nor a</p> <p>18 person financially interested in the action.</p> <p>19 In witness whereof, I hereunto subscribe my name</p> <p>20 at Las Vegas, Nevada, this 10th day of February, 2016.</p> <p>21</p> <p>22 CINDY MAGNUSSEN, RDR, CCR No. 650</p> <p>23</p> <p>24</p> <p>25</p>

Exhibit 12

Speaker: Okay, good morning. It's May 31st, 2013. The time is 9 a.m. exactly. It's 8965 Southeastern Avenue, Suite 350, Las Vegas, Nevada is the sale location. Uh, my name is Robert Atkinson. We have 18 properties that were originally scheduled for sale today. Uh, there were, uh, several cancellations, and then, uh, the rest will be, um, auctioned off. I'm, there were no postponements. I'm gonna call the cancellations first. First is APN176-03-510-284. The address is 7255 West Sunset, Unit 2140, Las Vegas, Nevada. That was canceled. Next APN163-31-615-058. Address 9544 Knotweed Avenue, Las Vegas, Nevada. Sale is canceled. APN163-31-713-011. Address 6123 Yucca Fields Court, Las Vegas, Nevada. Sale is canceled. APN163-31-612-012. It's 9772 Gentle Spirit Drive, Las Vegas, Nevada. The sale is canceled. APN163-31-613-012. It's 9484 Moon Vista Avenue, Las Vegas, Nevada. That sale is canceled. APN163-31-614-007. 6055 Amazing Court, Las Vegas, Nevada. That sale is canceled. APN163-31-213-095. 9933 Wonderful Day Drive, Las Vegas, Nevada. That sale is canceled. APN163-31-513-010. Street address 9734 Mild Weather Court, Las Vegas, Nevada. The sale is canceled, and the last cancellation is 163-31-110-012. Street address is 9828 Maidenfair Court, Las Vegas, Nevada. That sale is canceled. Okay. We have nine properties for auction. Um, the cancellation call has been concluded. The first property that is up for auction is 124-17-510-019. Street address 2532 Willow Wren Drive, North Las Vegas, Nevada. As a note on this one, the, uh, mortgage company has tendered and we have accepted a payment of 9 months' worth of assessments. The intent of that payment is to be applied against the super priority. No collections costs were included in that payment, and a notice of receipt of said payment along with the intent that it be applied against the super priority has been recorded in the land records. The buyer today takes it subject to that payment. The, we make no legal representation as to the legal effect of said payment. The opening bid for this property is \$99.00.

Next Speaker: 100.

Next Speaker: \$100.00 going once. \$100.00 going twice.

Next Speaker: 200.

Next Speaker: 700.

Next Speaker: I'm sorry. 700. A thousand.

Next Speaker: Thousand.

Next Speaker: 1,500.

Next Speaker: 2,000.

Next Speaker: 2,000 once.

Next Speaker: 2,500.

Next Speaker: 2,650.

Next Speaker: 3,100.

Next Speaker: 5,000.

Next Speaker: 5,500.

Next Speaker: 6,000.

Next Speaker: 6,500.

Next Speaker: 7,000.

Next Speaker: 7,000 once. 7,000 twice. Sold for \$7,000.00. Uh, what, what is the legal name of the winner? 'Cause I didn't get your sign-in sheet back.

Next Speaker: Oh, uh, CFC.

Next Speaker: CFC. Thank you. The next for auction is 163-31-615-103. Street address 6071 Mild Wind Street, Las Vegas, Nevada. Opening bid \$99.00.

Next Speaker: Thousand.

Next Speaker: Thousand going once.

Next Speaker: 1,500.

Next Speaker: 2,000.

Next Speaker: 2,500.

Next Speaker: 3,000.

Next Speaker: 3,500.

Next Speaker: 4,000.

Next Speaker: 4,000 going once. 4,000 twice.

Next Speaker: 4,200.

Next Speaker: 4,200.

Next Speaker: 43.

Next Speaker: 46.

Next Speaker: 5,000.
Next Speaker: 5,000-1.
Next Speaker: 5,200.
Next Speaker: 53.
Next Speaker: 55.
Next Speaker: ***,
Next Speaker: 6,000.
Next Speaker: 6,000-1.
Next Speaker: 62.
Next Speaker: 63.
Next Speaker: 64.
Next Speaker: 65.
Next Speaker: 66.
Next Speaker: 7,000.
Next Speaker: 71.
Next Speaker: 72.
Next Speaker: 75.
Next Speaker: 76.
Next Speaker: 8,000.
Next Speaker: 8-1.
Next Speaker: 82.
Next Speaker: 8-5.
Next Speaker: 86.

Next Speaker: 8-7.

Next Speaker: 88.

Next Speaker: 89.

Next Speaker: 9,000.

Next Speaker: 9,000 once.

Next Speaker: 9,000-1.

Next Speaker: 92.

Next Speaker: 93.

Next Speaker: 94.

Next Speaker: 95.

Next Speaker: 96.

Next Speaker: 97.

Next Speaker: 98.

Next Speaker: 10,000.

Next Speaker: 10-1.

Next Speaker: 10-1 going once. 10-1 going twice. Sold for \$10,100.00.

Next Speaker: Was that the 9775 address?

Next Speaker: That was 6071 Mild Wind Street.

Next Speaker: Okay.

Next Speaker: ****.

Next Speaker: Yes. Next is APN163-31-713-014. Street address 6141 Yucca Fields Court.
Opening bid \$99.00.

Next Speaker: 500.

Next Speaker: 1,000.

Next Speaker: 1,500.
Next Speaker: 2,000.
Next Speaker: 25.
Next Speaker: 3,000.
Next Speaker: 35.
Next Speaker: 4,000.
Next Speaker: 45.
Next Speaker: 5,000.
Next Speaker: 55.
Next Speaker: 6,000.
Next Speaker: 65.
Next Speaker: 7,000.
Next Speaker: 75.
Next Speaker: 76.
Next Speaker: 77.
Next Speaker: 78.
Next Speaker: 8,000.
Next Speaker: 8,000-1.
Next Speaker: 82.
Next Speaker: 83.
Next Speaker: 84.
Next Speaker: 85.
Next Speaker: 86.

Next Speaker: 87.

Next Speaker: 88.

Next Speaker: 89.

Next Speaker: 9,000.

Next Speaker: 9-1.

Next Speaker: 92.

Next Speaker: 9-3.

Next Speaker: 94.

Next Speaker: 95.

Next Speaker: 96.

Next Speaker: 97.

Next Speaker: 98.

Next Speaker: 10,000.

Next Speaker: 10-1.

Next Speaker: 10-2.

Next Speaker: 10-3.

Next Speaker: 10-4.

Next Speaker: 10-5.

Next Speaker: 10,500 going once. 10,500 twice. Sold for 10,500. Next APN163-31-713-027.
Street address 6175 Novelty Street, Las Vegas, Nevada. Opening bid \$99.00.

Next Speaker: 500.

Next Speaker: 600.

Next Speaker: 1,000.

Next Speaker: 15.

Next Speaker: 2,000.

Next Speaker: 5,000.

Next Speaker: 25.

Next Speaker: He said 5 —

Next Speaker: 5,000.

Next Speaker: Oh, 5. 5,000-1.

Next Speaker: 7,000.

Next Speaker: 71.

Next Speaker: 8,000.

Next Speaker: 81.

Next Speaker: 9,000.

Next Speaker: 91.

Next Speaker: 10,000.

Next Speaker: 10-1.

Next Speaker: 10,100 going once. 10,100 going twice. Sold for 10,100. Next
APN163-31-612-011. Street address 9766 Gentle Spirit Drive, Las Vegas, Nevada. Opening bid
\$99,000.

Next Speaker: 500.

Next Speaker: 5,000.

Next Speaker: Sorry, Robert. Is it 9766?

Next Speaker: 9766 Gentle Spirit. That's right. The current bid is \$5,000.00.

Next Speaker: 5,100.

Next Speaker: 7 thou —

Next Speaker: 6,000.

Next Speaker: 7.

Next Speaker: 71.

Next Speaker: 8.

Next Speaker: 81.

Next Speaker: 9.

Next Speaker: 91.

Next Speaker: 10.

Next Speaker: 10-1.

Next Speaker: 11.

Next Speaker: 11,000 once. 11,000 twice.

Next Speaker: ****.

Next Speaker: Uh, are you bidding for CFC? Were you placing that bid for CFC?

Next Speaker: Yeah.

Next Speaker: \$11,000.00. Sold.

Next Speaker: You're bidding your own.

Next Speaker: He's bidding for his own.

Next Speaker: Uh, uh, I'm sorry. You arrived late at the --

Next Speaker: Oh, okay. ****.

Next Speaker: **** for CFC?

Next Speaker: For CFC.

Next Speaker: **** CFC.

Next Speaker: Are you two together?

Next Speaker: Yes.

Next Speaker: Can, can I have a confirming bid from CFC for 11,000?

Next Speaker: Yes.

Next Speaker: CFC. Sold for 11,000.

Next Speaker: Gentle Spirit?

Next Speaker: What?

Next Speaker: That was Gentle Spirit?

Next Speaker: That was 9766 Gentle Spirit. APN163-31-511-010. Address 9775 Colored Wind Avenue, Las Vegas, Nevada. Opening bid \$99.00.

Next Speaker: 1,000.

Next Speaker: 2,000.

Next Speaker: 3,000.

Next Speaker: 4,000.

Next Speaker: 4,005.

Next Speaker: 5,000.

Next Speaker: Uh, uh, I'm sorry. You've exceeded your bid limit.

Next Speaker: ****. I'm sorry. What?

Next Speaker: You've exceeded your bid limit. You, you, you –

Next Speaker: She, she's separate than me –

Next Speaker: She didn't qualify.

Next Speaker: I must ****.

Next Speaker: You didn't qualify?

Next Speaker: No.

Next Speaker: Oh, I'm so sorry. Okay.

Next Speaker: Don't worry. You're, you're, you're fine. The, the, but you're near your cap, so you can do your own calculation, but that bid is, does not qualify.

Next Speaker: Okay. I'm sorry.

Next Speaker: 'Kay.

Next Speaker: Mine was the last bid.

Next Speaker: That is correct. And yours was 45?

Next Speaker: I think.

Next Speaker: Okay. It's 4,500 is the, our current bid on the table.

Next Speaker: Okay. 5,000.

Next Speaker: 51.

Next Speaker: 55.

Next Speaker: 56.

Next Speaker: 6,000.

Next Speaker: 61.

Next Speaker: 6,100 going once.

Next Speaker: 62.

Next Speaker: 63.

Next Speaker: 64.

Next Speaker: 65.

Next Speaker: 68.

Next Speaker: 7,000.

Next Speaker: 7-1.

Next Speaker: 72.

Next Speaker: 7-3.

Next Speaker: 75.

Next Speaker: 78.

Next Speaker: 8,000.

Next Speaker: 81.

Next Speaker: 82.

Next Speaker: 83.

Next Speaker: 84.

Next Speaker: 85.

Next Speaker: 86.

Next Speaker: 87.

Next Speaker: 88.

Next Speaker: 9-1. 9,100.

Next Speaker: 9,200.

Next Speaker: 9,300.

Next Speaker: 10,500.

Next Speaker: 10,500 going once. 10,500 going twice. Sold for 10,500.

Next Speaker: **** you may wish to perform your own calculations as well.

Next Speaker: Yeah.

Next Speaker: That was Colored Wind?

Next Speaker: That was 9775 Colored Wind. That is correct.

Next Speaker: What was the final on that? I'm sorry.

Next Speaker: 10,500.

Next Speaker: Thank you.

Next Speaker: Next, APN163-31-511-011. Street address 9783 Colored Wind Ave. Opening bid \$99.00.

Next Speaker: Hundred.

Next Speaker: Thank you.

Next Speaker: 500.

Next Speaker: 600.

Next Speaker: Thousand.

Next Speaker: 1,100.

Next Speaker: 1,500.

Next Speaker: 1,600.

Next Speaker: 2,000.

Next Speaker: 21.

Next Speaker: 25.

Next Speaker: 26.

Next Speaker: 28.

Next Speaker: 3,000.

Next Speaker: 3-1.

Next Speaker: Thir, uh, 32.

Next Speaker: 3,200 going once.

Next Speaker: 33.

Next Speaker: 34.

Next Speaker: 37.

Next Speaker: 3,700 going once.

Next Speaker: 4,000.

Next Speaker: 41.

Next Speaker: 42.

Next Speaker: 43.

Next Speaker: 44.

Next Speaker: 45.

Next Speaker: 46.

Next Speaker: 47.

Next Speaker: 48.

Next Speaker: 49.

Next Speaker: 5,000.

Next Speaker: 51.

Next Speaker: 52.

Next Speaker: 53.

Next Speaker: 54.

Next Speaker: 55.

Next Speaker: 56.

Next Speaker: 57.

Next Speaker: 6,000.

Next Speaker: 6,100.

Next Speaker: 62.

Next Speaker: 63.

Next Speaker: 64.

Next Speaker: 65.

Next Speaker: 66.

Next Speaker: 67.

Next Speaker: 68.

Next Speaker: 69.

Next Speaker: 7,000.

Next Speaker: 7,100.

Next Speaker: 7,100 going once. 7000-1 –

Next Speaker: 7,200.

Next Speaker: 73.

Next Speaker: 75.

Next Speaker: 76.

Next Speaker: 78.

Next Speaker: 79.

Next Speaker: 7,900 once.

Next Speaker: 8,000.

Next Speaker: 81.

Next Speaker: 8,100 going once. 8,100 going twice. Sold for \$8,100.00. Two more to go. The next one is 163-31-713-010. Street address 6117 Yucca Fields Court, Las Vegas, Nevada. Opening bid \$99.00.

Next Speaker: 100.

Next Speaker: 500.

Next Speaker: 1,000.

Next Speaker: 1,100.

Next Speaker: 1,500.

Next Speaker: 1,600.

Next Speaker: 2,000.

Next Speaker: 2,100.

Next Speaker: 2,500.

Next Speaker: 2,600.

Next Speaker: 3,100.

Next Speaker: 3,200.

Next Speaker: 4,000.

Next Speaker: 4,100.

Next Speaker: 4,500.

Next Speaker: 4,600.

Next Speaker: 5,000.

Next Speaker: 5,100.

Next Speaker: 5,300.

Next Speaker: 5,400.

Next Speaker: 5,400 going once.

Next Speaker: 56.

Next Speaker: 57.

Next Speaker: 59.

Next Speaker: 6,000.

Next Speaker: 62.

Next Speaker: 63.

Next Speaker: 65.

Next Speaker: 66.

Next Speaker: 68.

Next Speaker: 7,000.

Next Speaker: 7,000 once.

Next Speaker: 7,200.

Next Speaker: 73.

Next Speaker: 7-5.

Next Speaker: 76.

Next Speaker: 7,600 once. 7,600 twice. Sold for \$7,600.00. The last one today is 163-31-612-036. Street address 5984 Lingering Breeze Street, Las Vegas, Nevada. Opening bid \$99.00.

Next Speaker: 100.

Next Speaker: 100 going once.

Next Speaker: What'd he say?

Next Speaker: \$100.00. 100 going once.

Next Speaker: \$200.00.

Next Speaker: C'mon. 300.

Next Speaker: \$310.00.

Next Speaker: 325.

Next Speaker: 1,000.

Next Speaker: 1000-1.

Next Speaker: 1,500.

Next Speaker: 16.

Next Speaker: 2,000.

Next Speaker: 2000-1.

Next Speaker: 2,500.

Next Speaker: 26.

Next Speaker: 3,000.

Next Speaker: 3,000 once.

Next Speaker: 3000-1.

Next Speaker: 3,000-2.

Next Speaker: 3,000-3.

Next Speaker: 3,300 once. 3,300 --

Next Speaker: 35.

Next Speaker: I'm sorry.

Next Speaker: 35.

Next Speaker: 3,500.

Next Speaker: 36.

Next Speaker: 38.

Next Speaker: 5,000. 5,000.

Next Speaker: 5,000. 5,000 once.

Next Speaker: 53.

Next Speaker: 6,000.

Next Speaker: 6,000 once. 6,000 twice. Sold for 6,000. That concludes today's auction. Thank you for attending. Bye.

Exhibit 13

**AFFIDAVIT OF DERROL W. WYNN IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, DERROL W. WYNN, being first duly sworn, deposes and says that affiant is over the age of eighteen (18) years and competent to be a witness as to the matters hereinafter stated, hereby declare as follows:

1. I have personal knowledge of the facts recited herein, I am over the age of 18 and I am mentally competent to testify if called as a witness in this matter.

2. I am an authorized purchasing agent of R-VENTURES VIII, LLC ("Plaintiff") in the above entitled action.

3. On May 31, 2013 Plaintiff purchased certain real property commonly known as 6175 Novelty Street, Las Vegas, Nevada 89148; Parcel No. 163-31-713-027 ("Property"), at a publicly-held foreclosure sale.

4. I attended the publicly-held foreclosure sale located at 8965 South Eastern Avenue, Suite 350, Las Vegas, Nevada 89123 scheduled for May 31, 2013 at 9:00 a.m. The bidding began at 9:30 a.m.

5. I could see approximately ten other bidders at the publicly held foreclosure sale.

6. Plaintiff purchased the Property without the knowledge or notice of any adverse legal or equitable claim to the Property that may have been held by Defendants.

7. Plaintiff paid good and valuable consideration in the amount of \$10,100.00 to purchase the Property at the Foreclosure Sale.

I declare under penalty and perjury under the laws of the state of Nevada that the foregoing is true and correct to the best my knowledge and belief.

Dated this 20 day of February, 2015.

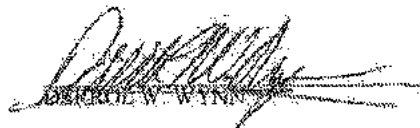
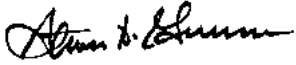

DERROL W. WYNN

EXHIBIT 18

EXHIBIT 18



CLERK OF THE COURT

MSJ

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

CHRISTINE M. PARVAN, ESQ.

Nevada Bar No. 10711

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DISTRICT COURT

CLARK COUNTY, NEVADA

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

R VENTURES VIII, LLC, a Nevada series
limited liability company of the container R
VENTURES, LLC under NRS § 86.296,

Plaintiff,

v.

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP., a Florida corporation; WELLS Fargo
BANK, N.A., a national association; BANK OF
AMERICA, N.A., a national association;
SOUTHERN TERRACE HOMEOWNERS'
ASSOCIATION, a Nevada domestic non-profit
coop corporation; JOYCE PIERCE, an
individual; CARRINGTON MORTGAGE
HOLDINGS, LLC; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

Defendants.

CARRINGTON MORTGAGE HOLDINGS,
LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

Case No.: A-13-684151-C

Dept.: VI

**CARRINGTON MORTGAGE
HOLDINGS, LLC'S MOTION FOR
SUMMARY JUDGMENT**

{37626715;1}

1 CARRINGTON MORTGAGE HOLDINGS,
2 LLC,

3 Crossclaimant,

4 v.

5 TERRACE HOMEOWNERS' ASSOCIATION,

6 Crossdefendant.

7 Defendant Carrington Mortgage Holdings, LLC (**Carrington**) moves for summary judgment
8 on all claims asserted against it by plaintiff, and all counterclaims asserted against plaintiff, based on
9 the Due Process and Supremacy Clauses of the United States Constitution, tender and the
10 commercial reasonableness (or lack thereof) of the HOA sale. This Motion for Summary Judgment
11 is made and based upon the Memorandum of Points and Authorities attached hereto, all exhibits
12 attached hereto, and such oral argument as may be entertained by the Court at the time and place of
13 the hearing of this matter.

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that Carrington Mortgage Holdings, LLC will bring the foregoing
16 **DEFENDANT CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR**
17 **SUMMARY JUDGMENT** for hearing before the Eighth Judicial District Court, located at the
18 Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 29 day of
19 March 2016, at the hour of 8 : 30 o'clock A.m.

20 DATE this 24th day of February, 2016.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Carrington is entitled to summary judgment for six reasons. **First**, the entire HOA lien, including any alleged super priority portion, was paid off in July 2010. An HOA's super priority lien is not evergreen. **Second**, there was no lien to foreclose. The structure of the homeowners' association's factoring agreement to only sell its accounts receivable to First 100, LLC split the statutory lien from the debt and also violated the CC&Rs and NRS 116.3102(p). **Third**, the sale was commercially unreasonable. The de minimus auction price is bad enough, but the HOA compounded its error by foreclosing on a lien that it lacked standing to foreclose on. **Fourth**, tender by the prior servicer of the loan, Bank of America, N.A. (BANA) extinguished any remaining super priority portion of the lien. **Fifth**, NRS Chapter 116's scheme of non-judicial HOA super priority foreclosure violates the federal procedural due process clause. Nevada's unique planning laws mandated the creation of HOAs, such as the one in this case, that have common open space in the development. Nevada's super priority foreclosure scheme mandated that secured lenders act as guarantor of unit owner's obligation to pay assessments. Nevada's legislature then designed an opt-in super priority foreclosure scheme when actual notice is Defendants' due. **Sixth**, the Supremacy Clause bars an HOA from foreclosing on property secured by an FHA-insured mortgage.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The Deed of Trust and Assignment.

On May 17, 2008 Joyce Pierce purchased the property. Pierce later re-financed ownership of the property by way of a loan with Taylor Bean & Whitaker Mortgage Corporation (TBW) in the amount of \$189,573.00 secured by a deed of trust (the **senior deed of trust**) dated June 17, 2009. A true and correct copy of the senior deed of trust is recorded with the Clark County Recorder as Instrument No. 200907010003903 and attached as **Exhibit A**. The Deed of Trust bears FHA Case Number 332-4640005-703. *Id.* American Mortgage assigned the deed of trust to Bank of America, N.A., s/b/m to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP.

1 **Exhibit B**, Assignment to BANA. BANA later assigned the deed of trust to Carrington. **Exhibit C**,
2 Assignment to Carrington.

3 **B. Southern Terrace's Factoring Agreement with First 100.**

4 Southern Terrace and Red Rock entered into an agreement with First 100, LLC (**First 100**) to
5 sell the delinquent payment obligation on the property. Southern Terrace, Red Rock and First 100
6 executed into the agreement (**Factoring Agreement**) in April 2013, selling the account. **Exhibit D**,
7 Documents received from United Legal Services at CARRINGTON001168-CARRINGTON001184.
8 The Factoring Agreement provides at Section 2.01 that the HOA will sell to First 100 its interest in
9 accounts receivables pertaining to delinquent assessments owed by various unit owners HOA at
10 Section 4.02(a) would promptly remit to First 100 all payments of delinquent assessments. HOA
11 would also cease any collection activity. HOA at Section 4.02(i) renounced its ability to credit bid
12 for the Property in the event of foreclosure. First 100 assumes all risk relating to the collectability of
13 the accounts receivable. *Id.* First 100's security was the right to file a UCC-1 Financing Statement to
14 protect First 100's rights in the accounts receivable subject to the Factoring Agreement. *Id.* First
15 100 paid \$966.00 to the HOA for the payment rights on their lien on the Property. *Id.* The payment
16 of \$966.00 exceeded 9 months of common assessments.

17 **C. The HOA Sale.**

18 On April 23, 2010, Southern Terrace, through its agent, Red Rock Financial Services (**Red**
19 **Rock**) recorded a notice of delinquent assessment lien. **Exhibit E**, April 23, 2010 Notice of Lien.
20 In the first notice, Southern Terrace stated the borrowers owed \$739.00, which includes assessments,
21 late fees, interest, fines/violations and collection fees and costs. According to Red Rock's own
22 records, in June 2010 Southern Terrace received payment for the entire amount referenced in the
23 April 23, 2010 notice of delinquent assessment lien, including, but not limited to, the super-priority
24 amount, equal to 9 months of assessments. **Exhibit F**, Red Rock Account Detail at
25 CARRINGTON001238-CARRINGTON001248.¹ On July 27, 2010, Southern Terrace, through its
26 agent Red Rock, recorded a release of notice of delinquent assessment lien with the Clark County

27 ¹ This document was produced by Red Rock pursuant to a subpoena duces tecum. The custodian of records declaration
28 accompanies the business record showing the account detail dated February 11, 2013.

Recorder as Instrument No. 201007270001199 and attached as **Exhibit G**. The release indicates the April 23, 2010 lien is "satisfied and released." *Id.*

On September 20, 2012, Southern Terrace, through its agent, Red Rock, recorded a second delinquent assessment lien. **Exhibit H**, September 20, 2012 Notice of Lien. Per the lien, Southern Terrace stated the borrowers owed \$2,581.69, which includes assessments, late fees, interest, fines/violations and collection fees and costs. *Id.*

On November 14, 2012, Southern Terrace, through its agent Red Rock, recorded a notice of default and election to sell to satisfy the delinquent assessment lien. **Exhibit I**, Notice of Default. The notice states the amount due to Southern Terrace was \$2,359.84, but does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. *Id.* On May 9, 2013, Southern Terrace, through its agent, Red Rock, recorded a notice of trustee's sale scheduling a sale for May 31. **Exhibit J**, Notice of Sale. The notice states the amount the borrowers owed to Southern Terrace was \$4,431.93, but does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. *Id.* Southern Terrace foreclosed on the property on or May 31, 2013. A foreclosure deed in favor of R. Ventures LLC was recorded on June 3, 2013. **Exhibit K**, Foreclosure Deed. Although the deed does not state the prices R. Ventures actually paid at the sale, R. Venture's admitted it only paid \$10,100. **Exhibit L**, R. Venture's Responses to Carrington's Interrogatories, Interrogatory 24.

D. BANA's Tender of 9 Months' Assessments Prior to HOA Foreclosure.

On on December 14, 2012, after Southern Terrace recorded its notice of default, Miles Bauer Bergstrom & Winters (**Miles Bauer**), a law firm retained by BANA, the loan servicer at the time,, contacted Southern Terrace, care of Red Rock, and requested a ledger from Southern Terrace identifying the super-priority amount allegedly owed to Southern Terrace. **Exhibit M**, Documents from Miles Bauer, CARRINGTON000291-CARRINGTON000292. In response, the HOA provided a ledger, dated December 27, 2012 identifying the total amount allegedly owed. *Id.* at CARRINGTON000293-315; *see also* Ex. F.

Despite the fact that Southern Terrace had already received payment for any alleged super-priority amount, equal to 9 months of assessments, when it received payment for the entire amount

1 referenced in the April 23, 2010 notice of delinquent assessment lien, BANA, in an abundance of
2 caution, offered to another 9 months of assessments, plus collection costs, in case the HOA claimed
3 its super priority lien was still in place (despite the full release of the April 23, 2010 lien). *See Ex. M*
4 at CARRINGTON00327-CARRINGTON00319. Based on the monthly assessment amount
5 identified in Southern Terrace's December 27, 2012 ledger, BANA accurately the sum of nine-
6 9months of common assessments, plus reasonable collection costs, as \$655.14 and tendered that
7 amount to Southern Terrace on January 10, 2013. *Id.* Southern Terrace refused BANA's tender.

8 Despite (1) receiving payment for the entire amount referenced in its April 23, 2010 notice of
9 delinquent assessment lien; and (2) BANA's January 10, 2013 tender of , on May 9, 2013, Southern
10 Terrace and Red Rock, moved forward with foreclosure.

11 **III. REQUEST FOR JUDICIAL NOTICE**

12 Pursuant to NRS § 47.130, the Court may take judicial notice of public records. This statute
13 provides as follows:

- 14 1. The facts subject to judicial notice are facts in issue or facts from
15 which they may be inferred.
- 16 2. A judicially noticed fact must be:
 - 17 (a) Generally known within the territorial jurisdiction of the trial court;
or
 - (b) Capable of accurate and ready determination by resort to sources
whose accuracy cannot reasonably be questioned, so that the fact is not
subject to reasonable dispute.

18 Pursuant to NRS § 47.150, a "court shall take judicial notice if requested by a party and
19 supplied with the necessary information." A district court in considering a dispositive motion can
20 consider matters of public record in its decision. In *Stockmeier v. Nevada Dept. of Corrections*
21 *Psychological Review Panel*, 124 Nev. 313, 315, 183 P.3d 133, 135 (2008), the court dismissed an
22 amended complaint after the court took judicial notice of facts in a related state district court
23 proceeding. BANA and Carrington request the Court take judicial notice of the publicly recorded
24 documents in this case.

25 **IV. LEGAL STANDARD**

26 Under Rule 56 of the Nevada Rules of Civil Procedure, a motion for summary judgment
27 should only be granted "when the pleadings and other evidence on file demonstrate that no 'genuine
28 issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter

1 of law.” *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *see also* Nev. R. Civ.
2 P. 56(c). Whether the facts in dispute are material depends on the underlying substantive law, and
3 includes only those factual disputes that could change the ultimate outcome of a case. *Wood*, 121
4 Nev. at 729, 121 P.3d at 1029. In evaluating a motion for summary judgment, the Court must view
5 all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v.*
6 *Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008).

7 **V. LEGAL ARGUMENT**

8 **A. HOA Super-Priority in Nevada Is Not Evergreen.**

9 Southern Terrace's April 23, 2010 Lien, which contained more than 9 months of assessments,
10 was paid in full and released. *See* Ex. G. An HOA's super priority lien is not evergreen. This
11 conclusion is patent from NRS 116.3116(2)(c)'s plain language, the legislative history of AB 204
12 explaining the 2009 amendment of the super priority lien, and a comparison of NRS 116.3116(2)(c)
13 with the 2008 amendments to UCIOA that Nevada has not adopted demonstrate Nevada's super
14 priority is not evergreen. For this reason, BANA had absolutely no obligation to tender 9 months-
15 worth of assessments – but it still did.

16 The first step in statutory construction is the language the legislature actually used. ("Where
17 the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is
18 no room for construction, and the courts are not permitted to search for its meaning beyond the
19 statute itself." *Madera v. SHS*, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998) (internal quotations
20 omitted). NRS 116.3116(2)(c) provides:

21 The lien is also prior to all security interests described in paragraph (b)
22 to the extent of any charges incurred by the association on a unit
23 pursuant to NRS 116.310312 and to the extent of the assessments for
24 common expenses based on the periodic budget adopted by the
25 association pursuant to NRS 116.3115 which would have become due
26 in the absence of acceleration during the 9 months immediately
preceding institution of an action to enforce the lien, unless federal
regulations adopted by the Federal Home Loan Mortgage Corporation
or the Federal National Mortgage Association require a shorter period
of priority for the lien.

27 Notably, the statutory super priority lien is limited in both duration, nine months of assessments, and
28 number of times it can achieve super priority. The legislature in NRS 116.3116(2)(c) did not state

1 an HOA could receive multiple super priority liens that could constantly threaten a senior mortgage
2 with extinction. The legislature did not state, for example, that the lien would arise each "calendar
3 year" of the associations' periodic budget or that the lien would proceed "each action" to enforce an
4 assessment lien.

5 Nevada has specifically not adopted the 2008 Amendments to UCIOA. The 2008 version of
6 UCIOA provides as follows:

7 (c) A lien under this section also has priority over a security interest
8 described in subsection (b)(2), but only to the extent of:

9 (1) the unpaid amount of assessments for common expenses, **not to**
10 **exceed six months for each budget year of the association**, as based
on the periodic budget adopted by the association under Section 3-
115(a) for the applicable year;

11 Uniform Common Interest Ownership Act §3-116 (2008). The authors of UCIOA explained that
12 they amended their version of UCIOA to address the increased length of time it was taking
13 mortgagees to foreclose after the 2007 financial crisis. *Id.* at cmt. 2.

14 In 2009, Nevada's legislature considered the exact same problem – how the increased time it
15 was taking mortgage foreclosures was affecting homeowner associations. Nevada went another
16 direction. Nevada specifically did not adopt an "evergreen" super priority. Nevada adopted AB 204.

17 Assembly Bill 204 proposed to increase the amount secured by the super priority lien from 6
18 months to 2 years. Assemblywoman Ellen Spiegel explained the Legislature's intent:

19 I am here to present A.B. 204, which can help stabilize Nevada's real
20 estate market, preserve our communities and help protect our largest
21 assets—our homes. Whether you live in a common-interest
community or not, whether you like common-interest communities or
22 hate them, and whether you live in an urban or rural area, the outcome
of this bill will have an impact on you and your constituents.

23 In a nutshell, this bill does two things. First, it requires common-
interest communities to implement and publicize their collection
24 policies. This will increase the likelihood that associations will be able
to collect their assessments or dues prior to foreclosures. Second, it
25 makes it possible for common-interest communities to collect dues in
arrears for up to two years at the time of foreclosure. This is necessary
26 because foreclosures are now taking up to two years.

27 April 29, 2009 Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Legislature, p. 14
(2009) (Statement of Assemblyperson Ellen Spiegel) She also stated that the purposed of

lengthening the super priority time was to "help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis." *Id.* Ultimately, Nevada's solution to the increased time it was taking for mortgage foreclosures to process was to only increase the HOA super priority from 6 to 9 months. 2009 Statutes of Nevada, Page 1207.

In sum, Nevada did not adopt an evergreen super priority. Nevada's legislature merely extended the time for super priority from 6 to 9 months. This Court should not rewrite NRS 116.3116(2)(c) to create an evergreen super priority lien where Nevada's legislature so plainly rejected one.

B. Southern Terrace Had No Lien to Foreclosure Because of Its Factoring Agreement with First 100.

1. Southern Terrace's Lien Was Unenforceable Under *Edelstein*.

Factoring is defined as the sale of accounts receivable at a discounted price. 35 C.J.S. Factors § 1 (2009). This particular Factoring Agreement was a true sale of the HOAs' accounts receivable because First 100 expressly assumed the risk of non-collection and First 100 had no recourse against HOA if the unit owner, Pierce, did not pay. Compare *Major's Furniture Mart, Inc. v. Castle Credit Corp.*, 602 F.2d 538, 544-45 (3rd Cir. 1979). First 100 may have entered into a valid factoring agreement, but its agreement violates Nevada's rules on lien splitting announced in *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 258 (Nev. 2012).

In *Edelstein*, Nevada's Supreme Court held that a lender's initial designation of MERS as a beneficiary in the deed of trust split the deed of trust from the payment right promised in the note. 286 P.3d at 259. The court went on to hold, even though the note and deed of trust were split at loan's inception, they could be reunited through negotiation or assignment. 286 P.3d at 260-261. The court in *Edelstein* then stated "both the promissory note and the deed must be held together to foreclose; [t]he [general] practical effect of [severance] is to make it impossible to foreclose the mortgage." 286 P.3d at 258. *Edelstein* is relevant here. A deed of trust is merely a lien on property just like the statutory HOA lien created by NRS 116.3116(1).

A lien has no separate existence from the debt it secures. 51 Am.Jur.2d, Liens § 1. First 100 and Southern Terrace under the Factoring Agreement intentionally split Pierce's assessment debt

1 from the lien securing that debt. The lien itself remained the property of the association, and was
2 never assigned. The foreclosure was completed by the HOA. But, Southern Terrace lacked standing
3 to foreclose because it no longer possessed the payment rights under the lien at the time of the sale.
4 The foreclosure sale was void as a matter of law under *Edelstein*.

5 **2. The HOA's Factoring Agreement Violated NRS 116.3102(p) and the CC&Rs.**

6 Chapter 116 of NRS delineates the powers of a homeowners association. See NRS 116.3102.
7 There is one provision dealing with the sale of the right to collect assessments. A homeowners
8 association may... "assign its right to future income, including the right to receive assessments for
9 common expenses, but only to the extent the declaration expressly so provides." NRS 116.3102(p).
10 This means that a homeowners association's power to enter into a factoring agreement is dependent
11 upon express authorization from the homeowners association's CC&Rs. This HOA's CC&Rs do not
12 grant the HOA that power. The CC&Rs' provide for the right to charge assessments, when they are
13 due, parties to receive notice of a delinquency, and the powers of the association to foreclose.
14 **Exhibit N, HOA CC&Rs.** There is no provision in that would permit the association to enter into a
15 factoring agreement and sell its accounts receivable pertaining to overdue assessments.

16 **C. The HOA Sale Was Commercially Unreasonable under *Shadow Wood*.**

17 NRS §116.1113 provides as follows:

18 Every contract or duty governed by this chapter imposes an obligation of good faith in its
19 performance or enforcement.

20 The drafters of this section defined good faith as follows in their comment:

21 This section sets forth a basic principle running throughout this Act: in transactions
22 involving common interest communities, good faith is required in the performance and
23 enforcement of all agreements and duties. Good faith, as used in this Act, means observance
24 of two standards: "honesty in fact," and **observance of reasonable standards of fair dealing**. While the term is not defined, the term is derived from and used in the same
25 manner as in section 1-201 of the Uniform Simplification of Land Transfers Act, and
26 Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

27 UCIOA §1-113 cmt. (1982) (Emphasis Added).

28 The *Shadow Wood* Court, 132 Nev. Adv. Op. 5 (2016), clarified a heavily-disputed issue in
HOA quiet-title actions: whether inadequacy of price alone is enough to invalidate a foreclosure sale
as commercially unreasonable. *Id.* The *Shadow Wood* Court indicated that a foreclosure sale could
be commercially unreasonable if the sales price was "grossly inadequate as a matter of law." *Id.*

1 "While gross inadequacy cannot be precisely defined in terms of a specific percentage of fair market
2 value, generally a court is warranted in invalidating a sale where the price is less than 20 percent of
3 fair market value[.]" *Id.* at 15 (quoting the Restatement (Third) of Property (Mortgages) § 8.3 cmt. b
4 (1997)).

5 In explaining when a foreclosure sale is defective, the Restatement (Third) of Property
6 (Mortgages) § 8.3 (1997) provides:

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

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

10 (emphasis added).

The Restatement authors defined what "grossly inadequate" means:

11 "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair
12 market value. Generally, however, a court is warranted in invalidating a sale where the price
13 is less than 20 percent of fair market value and, absent other foreclosure defects, is usually
14 not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5.
15 **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.**

16 *Id.* at cmt. b. (emphasis added).

17 Finally, the Restatement authors address the method of proving gross inadequacy:

18 This section articulates the traditional and widely held view that a foreclosure proceeding
19 that otherwise complies with state law may not be invalidated because of the sale price unless
20 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
21 "forced sale" value of the real estate, but the price which would result from negotiation and
22 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.

23 *Id.* (emphasis added).

24 Here, Plaintiff purchased the Property for 6% of its fair market value at the time of the
25 foreclosure sale, less than a fifth of the 20% of fair market value the *Shadow Wood Court* indicated
26 would be grossly inadequate as a matter of law. **Exhibit O**, Expert Report of Matthew Lubawy.
27 This Court should follow *Shadow Wood Court's* holding that a "Court is warranted in invalidating a
28

1 sale where the price is less than 20 percent of fair market value," *Shadow Wood*, 132 Nev. Adv. Op.
2 5, at 15, set aside the sale and grant Carrington summary judgment.

3 The HOA's commercially unreasonable conduct went further. The HOA, through its
4 foreclosure agent, failed to announce (1) that the sale was not a super priority sale, because any
5 super priority portion of its lien had been paid in June 2010; or (2) whether or not tender had been
6 made on the property. Southern Terrace should have chosen a judicial foreclosure method of
7 foreclosure to alleviate uncertainty regarding the quality of title at action. Regardless of the
8 uncertainty in Nevada law existing prior to the *SFR* decision, United caused further confusion and
9 uncertainty by keeping tender attempts a secret from bidders. United deprived bidders of material
10 information about the quality of title they were bidding on at the auction. The result was a sale for
11 6% of the property's fair market value. The sale should be set aside as commercially unreasonable.

12 **D. Even if the HOA's Super Priority Lien is Evergreen, BANA Tendered the Super**
13 **Priority Amount Prior to the Sale.**

14 Even if Southern Terrace's lien super priority lien is evergreen, which it is not, Carrington
15 would still be entitled to summary judgment because BANA's super-priority tender extinguished that
16 portion of the HOA's lien prior to the foreclosure sale. In *SFR Investments*, the Nevada Supreme
17 Court stated not once, but twice, that a lender could tender the super-priority amount to preserve its
18 interest in the property. See *SFR Investments Pool I LLC v. U.S. Bank, N.A.*, 334 P.3d at 414 ("[A]s
19 junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert
20 loss of its security[.]"). Here, BANA determined and paid the super-priority amount prior to the sale
21 – such actions preserved the first-priority position of Carrington's Deed of Trust.

22 Both the drafters of the HOA Lien Statute and the Nevada agency charged with its
23 enforcement agree that tender of the super-priority amount preserves a first deed of trust holder's
24 interest in the foreclosed property. The drafters of the Uniform Common Interest Ownership Act
25 (UCIOA), adopted by Nevada as the HOA Lien Statute, contemplated this result when drafting the
26 super-priority provision, stating that "[a]s a practical matter, secured lenders will most likely pay the
27 [nine] months assessments demanded by the association rather than having the association foreclose
28 on the unit." 1982 UCIOA § 3116 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at

414.).² Further, the Nevada Real Estate Division of the Department of Business and Industry (NRED), the agency charged with administering the HOA Lien Statute, has explained that it is "likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by [an HOA]." 13-01 Op. Dep't of Bus. & Indus., Real Estate Div. 18 (2012) (NRED Letter); see also *Folio v. Briggs*, 99 Nev. 30, 34, 656 P.2d 842, 844 (1983) (explaining that courts "are obliged to attach substantial weight to [an] agency's interpretation" of a statute it is charged with administering).

Here, BANA determined and tendered the super-priority amount (if it still existed after Southern Terrace's April 23, 2010 lien was paid in full and released) to Red Rock prior to the foreclosure sale. Shortly after Red Rock recorded the Notice of Default, BANA, through counsel at Miles Bauer, sent a letter to the HOA Trustee, requesting a payoff ledger detailing the super-priority amount of the HOA's lien. Ex. M. The letter stated BANA "hereby offers to pay [the super-priority] sum upon presentation of adequate proof of the same by the HOA." *Id.* Red Rock ignored this request, instead choosing to provide Miles Bauer with an account detail including all amounts allegedly due and owing. Even after BANA sent a check representing 9 months-worth of assessments plus reasonable collection costs, Southern Terrace foreclosed on the property despite BANA's payment of an amount that would obviate the need for foreclosure. By tendering what would have been the full super-priority amount (had that portion of the lien still existed) prior to the foreclosure, BANA extinguished the super-priority portion of the HOA's lien, thus redeeming the first-priority position of Carrington's senior deed of trust prior to the foreclosure sale.

Since the super-priority portion of the HOA's lien was extinguished prior to the foreclosure sale, plaintiff's interest in the property, if any, is subordinate to Carrington's senior deed of trust pursuant to NRS 116.31164(3)(a). This provision provides that the purchaser at an HOA foreclosure receives "a deed without warranty which conveys to the grantee *all title of the unit's owner to the*

² The Nevada Supreme Court cited to the official comments to UCIOA extensively when evaluating the HOA Lien Statute in *SFR Investments*, 334 P.3d at 412 ("An official comment written by the drafters of a statute and available to the legislature before the statute is enacted has considerable weight as an aid to statutory construction.")

1 unit." NRS 116.31164(3)(a) (emphasis added). Put differently, under Nevada law, the HOA lost the
2 ability to pass clear title when BANA's attempted tender extinguished the super-priority lien.

3 **E. The HOA Lien Statute is Facially Unconstitutional.**

4 Carrington is entitled to summary judgment because the HOA Lien Statute is facially
5 unconstitutional under the Due Process Clause. Under binding Nevada law, a non-judicial
6 foreclosure on an HOA lien that is dependent upon a statute and not any agreement between the
7 parties is a form of state action that must comply with the requirements of due process. The HOA
8 Lien Statute does not mandate that mortgagees receive actual notice of the pendency of the HOA
9 foreclosure sales, as required by the Due Process Clause. Because the HOA's foreclosure sale was
10 conducted pursuant to a facially unconstitutional statute, it is invalid, and Carrington's motion for
11 summary judgment is proper.

12
13 On its face, the HOA Lien Statute is unconstitutional. As a minimum, courts have
14 universally required that statutes that provide for extinguishment of junior liens in foreclosure also
15 provide for mandatory notice to the junior lienholders. The HOA Lien Statute does not provide for
16 mandatory notice. Rather, the Nevada Legislature has provided only a "request-notice" or "opt-in"
17 provision; which requires notice *only* if the junior lienholder—here the holder of a first deed of
18 trust—requests notice in advance. Such opt-in provisions have met with universal disapproval in
19 every federal and state court to have considered the question. The reason is clear: where the state
20 will extinguish such a significant interest in real property, it must also mandate that the holder of the
21 lien to be extinguished have notice and some opportunity to remediate. By not mandating such
22 notice, the HOA Lien Statute is unconstitutional on its face. In this case, that means the foreclosure
23 by the HOA is invalid and the extinguishment of Carrington's deed of trust is invalid.

24
25
26 The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the]
27 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
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1 hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339
2 U.S. 306, 314 (1950) (emphasis added). An "elementary and fundamental requirement of due
3 process ... is notice reasonably calculated, *under all circumstances*, to apprise interested parties of
4 the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l*
5 *Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314)
6 (emphasis added). Put more simply, state action may not extinguish an interest in real property
7 unless the holder of that interest is afforded notice of that action.
8

9 Foreclosures pursuant to the HOA Lien Statute constitute state action, as the Nevada
10 Supreme Court has held that a private party's deprivation of another private party's "significant
11 property interest" pursuant to a Nevada statute entitles the property owner to "federal and state due
12 process." *J.D. Construction v. IBEX Int'l Group*, 240 P. 3d 1033, 1040 (Nev. 2010). In *J.D.*
13 *Construction*, one private party recorded a mechanic's lien on the property of another private party.
14 *Id.* at 1035. No state actor was involved in placing the lien, yet the Nevada Supreme Court held that
15 "[a] mechanic's lien is a 'taking' in that the property owner is deprived of a significant property
16 interest, which entitles the property owner to federal and state due process." *Id.* at 1040 (citing
17 *Connolly Dev., Inc. v. Superior Court*, 553 P.2d 637, 645 (Cal. 1976).
18

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

4 Because foreclosures authorized solely by the HOA Lien Statute constitute state action, the
5 HOA Lien Statute must satisfy the Due Process Clause's notice requirements as set forth in *Mullane*.
6 The United States Supreme Court has applied *Mullane*'s principles to the deprivation of a
7 mortgagee's security interests in property that is subject to potential extinguishment in foreclosure,
8 such as the first deed of trust at issue in this case. *Mennonite Bd. of Missions v. Adams*, 462 U.S.
9 791, 800 (1983). In *Mennonite*, an Indiana county sold mortgaged real property as a result of the
10 borrower's delinquent taxes. *Id.* at 793. The statute in *Mennonite* required only constructive notice to
11 the mortgagee and actual notice to the borrower. *Id.* at 794. The Indiana courts upheld the tax sale
12 statute. *Id.* at 795. But the U.S. Supreme Court reversed the decision, holding that because the "sale
13 immediately and drastically diminishes the value of th[e] security interest" and "may result in the
14 complete nullification of the mortgagee's interest" the mortgagee must receive *actual* notice. *Id.* at
15 798, 800. The Court held that the Due Process Clause required that mortgagees receive either
16 personal service or mailed notice of the foreclosure sale that could extinguish their property interest.
17

18
19 Nevada's HOA Lien Statute does not require that mortgagees be provided with actual notice
20 of HOA foreclosure sales. In two key provisions, the statute explicitly disclaims that notice is
21 required to all mortgagees; rather, mortgagees only receive notice if they have previously requested
22 notice from the HOA. In Section 116.31163, the statute provides that a notice of default and election
23 to sell need only be provided to a mortgagee who "has requested notice" or "has notified the
24 association" more than thirty days before the recordation of the notice of default of the existence of a
25 security interest. NRS 116.31163(1)-(2). Section 116.31165 similarly limited mortgagee notice of
26 sale to those mortgagees who have requested notice under Section 116.31163, or those who have
27
28

1 "notified the association." NRS 116.31165(1)(b)(1)-(2). A third provision concerning notice of
2 delinquent assessments does not require notice to lenders at all. NRS 116.31162.

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

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

20 Perhaps more significantly, opt-in provisions have been universally condemned by a
21 consensus of state-court decisions. *See, e.g., Jefferson Tp. v. Block 447A*, 548 A.2d 521, 524 (N.J.
22 1988) ("We conclude that a person's entitlement to the notice required by due process cannot be
23 conditioned on the requirement that he request it."); *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986)
24 (holding opt-in scheme unconstitutional because the Constitution requires notice "both to
25 mortgagees of record who have requested such a notice and to mortgagees of record who have not
26 requested such a notice"); *Reeder & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989)

1 ("[A]fter *Mennonite* a mortgagee is required to receive actual notice of a tax sale unless the
2 mortgagee's address is not reasonably identifiable."); *City of Boston v. James*, 530 N.E.2d 1254
3 (Mass. App. Ct. 1988) (holding that a "shifting of responsibility" from the foreclosing party to the
4 mortgagee is unconstitutional "even when the persons deprived of notice are sophisticated and
5 knowledgeable").³

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

21 The fact that the HOA Lien Statute does not require notice to the mortgagee is sufficient,
22 standing on its own, to sustain a facial attack on the statute—requiring invalidation of both the
23 statute and the foreclosure at issue in this case. *See, e.g., Garcia-Rubiera v. Calderon*, 570 F.3d 443,
24

25 ³ *See also Seattle First National Bank v. Umatilla County*, 713 P.2d 33 (Or. App. 1986) (holding that statute permitting
26 notice only to mortgagee who makes request unconstitutional as violating affirmative duty to provide notice); *In re*
27 *Foreclosure of Tax Liens*, 103 A.D.2d 636, 640 (N.Y. App. Div. 1984) ("The Erie County statutes create a real danger
28 that a mortgagee will be forever divested of his property without ever learning of the impending foreclosure."); *United*
States v. Malinka, 685 P.2d 405, 409 (Okla. Civ. App. 1984) ("*Mennonite* clearly places the onus on the State to provide
notice notwithstanding that a mortgagee might take steps to protect its own interest.").

1 456 (1st Cir. 2009) (sustaining facial attack on notice provisions and holding that "actual notice
2 cannot defeat [facial] due process claim"). As to mortgagees, the HOA Lien Statute's notice
3 provisions are constitutionally flawed, rendering the statute invalid on its face. Accordingly,
4 summary judgment should be granted in favor of Carrington.

5 **F. The HOA Lien Statute is Unconstitutional as Applied to This Case Because BANA Was**
6 **Not Provided Actual Notice of the Super Priority Lien.**

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

14
15 The subject of the HOA Lien Statute is the super-priority lien it provides, the proper
16 foreclosure of which extinguishes a mortgagee's constitutionally-protected interest in the subject
17 property. While granting super-priority to an HOA lien is a "significant departure from existing
18 practice," the HOA Lien Statute's drafters predicted that the effect on secured lenders would be
19 minimal, as the "secured lenders [would] most likely pay the [nine] months' assessments demanded
20 by the association rather than having the association foreclose on the unit." 1982 UCIOA § 3116
21 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at 414). UCIOA's drafters presumed that
22 HOAs and their collection agents would willingly provide secured lenders with the amount of the
23 super-priority lien.
24

25 The Nevada Supreme Court made the same assumption when evaluating the mortgagee's due
26 process challenge in *SFR Investments*. 334 P.3d at 418. In that case, the mortgagee argued that due
27 process required specific notice "indicating the amount of the superpriority piece of the lien[.]" *Id.*
28

1 Importantly, that case was decided on a motion to dismiss, which did not allow the Nevada Supreme
2 Court to consider any facts "not apparent from the face of the complaint." *Id.* at 418 n.6. In this
3 posture, the Court rejected the mortgagee's due process challenge, stating that "nothing appears to
4 have stopped [the lender] from determining the precise superpriority amount" prior to the sale, and
5 explaining that "[i]t is well established that due process is not offended by requiring a person with
6 actual, timely knowledge of an event that may affect a right to exercise due diligence and take
7 necessary steps to preserve that right." *Id.* at 418 (quoting *In re Medaglia*, 52 F.3d 451, 455 (2d Cir.
8 1995). The Court did not decide whether due process is offended where, as here, a mortgagee
9 exercises due diligence by requesting "the precise superpriority amount in advance of the sale," and
10 the HOA refuses to provide that information. *See SFR Investments*, 334 P.3d at 418.

12 Here, none of the documents recorded by the HOA provide notice of the super-priority
13 portion of the HOA's lien. Nonetheless, BANA reached out to Red Rock and requested a payoff
14 ledger detailing the precise amount of the super-priority lien prior to the foreclosure sale. Ex. M.
15 Red Rock did not provide an accurate identification of the super-priority amount because simply
16 provided an account detail with no break down of the super priority and sub priority amounts. Ex. F.
17 Unlike in *SFR Investments*, where the procedural posture of that case required the Court to rely on
18 contentions in the complaint that "nothing appeared to have stopped" the lender from determining
19 the super-priority amount, here the record is clear: the only parties with the information necessary to
20 determine the super-priority amount—the HOA and the HOA Trustee—refused to provide BANA
21 with the actual super-priority amount. It is clear BANA was never put on actual notice of the
22 amount of the lien that could extinguish its own senior Deed of Trust.
23
24

25 Holding that due process requires HOAs to identify the super-priority amount is not only
26 fundamentally fair—it also implements a policy of the Nevada Legislature. The Nevada Legislature,
27 apparently cognizant of the manipulative and evasive conduct of HOAs like the one here, now
28

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

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

18
19 The Due Process Clause requires a party be provided *actual* notice and an *actual* opportunity
20 to be heard prior to the deprivation of that party's property interest. *See, e.g., J.D. Constr. v. IBEX*
21 *Int'l Group*, 240 P.3d 1033, 1040 (2010). Providing notice that a lien exists, without specific notice
22 that a super-priority lien exists and the amount of that lien is a "mere gesture" of process. *See*
23 *Mullane*, 339 U.S. at 315. The notice provided to a mortgagee whose security interest is at risk of
24 extinguishment must be calculated to afford the mortgagee an opportunity to present its objections
25 or, if necessary, cure the delinquency. *Id.* at 314. But here, BANA was provided with no notice,
26 much less actual notice, of the amount of the super-priority lien which would extinguish its
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1 constitutionally-protected property interest when foreclosed. Without notice of the super-priority
2 amount, BANA had no opportunity to protect its property interest prior to the foreclosure (even
3 though it did exactly what it was supposed to do – and more – by paying more than 9 months of
4 assessments). As a result, the HOA Lien Statute operated unconstitutionally as applied to the
5 circumstances of this case, invalidating the HOA foreclosure sale. Accordingly, this Court should
6 grant summary judgment in favor of Carrington.

7 **G. The HOA Lien Statute is Preempted to the Extent It Interferes With Federal Mortgage**
8 **Insurance Programs or Extinguishes Mortgage Interests Insured by the FHA.**

9 This Court should also grant summary judgment in favor of Carrington because the statutory
10 basis for plaintiff's quiet-title action is preempted under the Supremacy Clause of the U.S.
11 Constitution. To date, two federal district courts in Nevada have agreed that foreclosures of
12 mortgages insured by the Federal Housing Administration (FHA) conducted pursuant to the HOA
13 Lien Statute are void, as the statute is preempted to the extent its operation would extinguish FHA-
14 insured deeds of trust, like Carrington's first deed of trust in this case. By destroying the Department
15 of Housing and Urban Development's (HUD) ability to incentivize lenders to make mortgage loans
16 to at-risk borrowers and potentially eliminating HUD's ability to take title to the underlying real
17 property, Nevada's HOA foreclosure scheme has the "effect of limiting the effectiveness of the
18 remedies available to the United States." *Washington & Sandhill Homeowners Ass'n v. Bank of*
19 *America, N.A.*, 2014 WL 4798565, *7 (D. Nev. Sept. 25, 2014); *see also Saticoy Bay LLC v.*
20 *SRMOF II 2012-1 Trust*, 2015 WL 1990076, *4 (D. Nev. Apr. 30, 2015) ("Accordingly, the court
21 reads the foregoing precedent to indicate that a homeowners' association foreclosure sale under
22 Nevada Revised Statute 116.3116 may not extinguish a federally-insured loan.").

23
24
25 Furthermore, HOA foreclosures on FHA-insured mortgages circumvent and frustrate
26 HUD's comprehensive foreclosure-avoidance scheme for the at-risk borrowers that are the primary
27 beneficiaries of the FHA Programs. The purpose of the FHA Programs is to permit at-risk
28

1 borrowers to purchase homes by providing mortgage insurance to those who otherwise cannot secure
2 mortgage financing. To promote its homeownership goals, the FHA Programs also include
3 guidelines and directives that limit and control foreclosures on FHA-insured mortgages. The HOA
4 foreclosures ostensibly authorized by the HOA Lien Statute frustrate that goal by cutting short any
5 foreclosure-avoidance efforts in favor of early foreclosure by the HOAs.

6 Under the Supremacy Clause, state law that conflicts with federal law—including federal
7 regulations—is preempted. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Fid.*
8 *Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) (holding that federal
9 regulations have the same preemptive force as federal statutes). Federal conflict preemption applies
10 if the challenged [state] law “stands as an obstacle to the accomplishment and execution of the full
11 purposes and objectives of Congress.” *Crosby*, 530 U.S. at 372–73 (quoting *Hines v. Davidowitz*,
12 312 U.S. 52, 67 (1941)); see also *Munoz v. Branch Banking & Trust Co.*, 131 Nev. Adv. Rep. 23,
13 2015 Nev. LEXIS 27, *4 (Apr. 30, 2015) (preemption “occurs when the state law ‘frustrates the
14 purpose of the national legislation, or impairs the efficiencies of [the] agencies of the Federal
15 government to discharge the duties for the performance of which they were created,’” quoting
16 *McClellan v. Chipman*, 164 U.S. 347, 357 (1896)). A state law stands as an “obstacle” to federal
17 law, and is thus preempted under the Supremacy Clause, whenever it conflicts, interferes, or is
18 inconsistent with “the full purposes and objectives of Congress.” *Geier v. Am. Honda Motor Co.*,
19 529 U.S. 861, 873 (2000) (quoting *Hines*, 312 U.S. at 67).

20 Applying these principles immediately after the Nevada Supreme Court’s *SFR Investments*
21 decision, Chief Judge Navarro of the U.S. District Court in Nevada held that “[b]ecause a
22 homeowners association’s foreclosure under Nevada Revised Statute § 116.3116 on a Property with
23 a mortgage insured under the FHA insurance program would have the effect of limiting the
24 effectiveness of the remedies available to the United States, the Supremacy Clause bars such
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1 foreclosure sales." See *Washington & Sandhill*, 2014 WL 4798565, at *7. Similarly, Judge Mahan
2 of the U.S. District Court in Nevada held "[a]llowing an HOA foreclosure to wipe out a first deed of
3 trust on a federally-insured property . . . interferes with the purposes of the FHA insurance program,"
4 *Saticoy Bay LLC*, 2015 WL 1990076, at *4 (noting that "courts consistently apply federal law,
5 ignoring conflicting state law, in determining rights related to federally-insured loans"). Because the
6 deed of trust was federally insured, Judge Mahan held "the homeowners' association sale in the
7 instant case is void." *Id.* at *5. In this case, as in *Washington & Sandhill* and *Saticoy Bay*, the HOA
8 foreclosed on property secured by an FHA-insured deed of trust. As such, the HOA's foreclosure
9 sale is void because the Supremacy Clause bars such foreclosure sales.

11 **1. As applied to FHA-insured mortgages, the HOA Lien Statute is preempted**
12 **because it extinguishes a federal interest and interferes with the governance of a**
13 **federal program.**

14 The Supremacy Clause mandates preemption of state laws when the state "legislation as
15 applied interferes with the federal purpose or operates to impede or condition the implementation of
16 federal policies and programs." *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979). The federal
17 program at issue here, the FHA Insurance Program, is part of a comprehensive scheme designed to
18 induce lenders to provide loans to at-risk borrowers who could not otherwise obtain financing to
19 purchase a home.⁴ The FHA's purpose is as broad as it is essential, as the "[FHA] is the largest
20 insurer of mortgages in the world, insuring over 34 million properties since its inception in 1934."⁵
21 And the effects of the FHA Insurance Program are far-reaching: "FHA provides a huge economic
22 stimulation to the country in the form of home and community development, which trickles down to
23

24 ⁴*Mortgage Insurance for One to Four Family Homes Section 203(b)*, HUD.gov,
25 http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b-df (last visited Jan. 5, 2015) ("[T]he
26 Federal Government expands homeownership opportunities for first time homebuyers and other borrowers who would
not otherwise qualify for conventional mortgages on affordable terms, as well as for those who live in underserved areas
where mortgages may be harder to get.")

27 ⁵The Federal Housing Administration (FHA), HUD.gov,
28 http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory (last visited Jan. 5, 2015).

1 local communities in the form of jobs, building suppliers, tax bases, schools, and other forms of
2 revenue."⁶

3 Critical to the FHA Insurance Program's mission is a partnership between private lenders and
4 the federal government. Through the programs, the federal government insures certain residential
5 mortgage loans originated by private lenders for at-risk borrowers who qualify for assistance under
6 FHA criteria. *See, e.g.*, 12 U.S.C. § 1701t ("[T]here should be the fullest practicable utilization of
7 the resources and capabilities of private enterprise and of individual self-help techniques."). By
8 incentivizing private lenders to make loans to at-risk borrowers, the FHA Insurance Program
9 implements the "National Housing Act's strong policy in favor of *encouraging* private investment in
10 housing." *Angleton v. Pierce*, 574 F. Supp. 719, 736 n.22 (D.N.J. 1983). In managing the FIIA
11 Insurance Program, HUD, the federal agency charged with implementing the FHA, has issued
12 comprehensive regulations to determine what mortgages will be insured, when a foreclosing
13 mortgage servicer will be entitled to convey the home to HUD and in return receive the insurance
14 proceeds, when payment to the servicer and conveyance of the property to HUD will be a matter of
15 discretion rather than entitlement, and how HUD will dispose of the property once conveyed to it in
16 a manner to best support the national housing objective.

17 The Nevada Supreme Court's decision in *Munoz* is instructive on the preemptive effect that
18 should be applied to federal statutory schemes, like the National Housing Act, where the challenged
19 state statute's impact on private entities frustrates a federal statutory or regulatory scheme. In
20 *Munoz*, the Court considered the preemptive effect of the Financial Institutions Reform, Recovery
21 and Enforcement Act of 1989 (**FIRREA**) on a state statute, NRS 40.459(1)(c), which limits the
22 amount of a deficiency judgment that a successor creditor can recover to the amount it paid to
23 acquire the interest in the secured debt, less the amount of the secured property's actual value. 2015
24 Nev. LEXIS 27 at *1, 7. **FIRREA** governs the winding down of a failed bank, providing that the
25 Federal Deposit Insurance Corporation (**FDIC**) will act as receiver for the failed bank and convert
26 the bank's assets to cash to cover insured depositors and debtors to the maximum extent possible.

27
28 ⁶ *Id.*

1 *Id.* at *6. One category of a bank's assets are the loans it holds. Because the Nevada law limited the
2 amount a subsequent private purchaser could recover on the loan, it made it less likely that a private
3 party would purchase the loan, and hence would make it at least marginally more difficult for the
4 FDIC to dispose of the assets. *Id.* at *8. Since the Nevada law interfered with FIRREA's express
5 purpose of "facilitat[ing] the purchase and assumption of failed banks as opposed to their
6 liquidation[.]" it was preempted by the federal law.

7 Similar to the Nevada statute in *Munoz*, the HOA Lien Statute undermines the incentives
8 federal insurance provides to private parties, which "frustrates the purpose ... or impairs the
9 efficiencies" of a federal program—here the FHA Insurance Program. *See* 2015 Nev. LEXIS 27, at
10 *4 (quoting *McClellan*, 164 U.S. at 357). When Congress enacted the National Housing Act and
11 when HUD first implemented it by promulgating the FHA Insurance Program's regulations, those
12 two entities struck the balance between the public and the private partnership with loan originators
13 that the HOA Lien Statute frustrates and impedes. Congress, in striking that balance, made decisions
14 that "involve[d] a balancing of factors and a consideration of complex financial data," *Falzarano v.*
15 *United States*, 607 F.2d 506, 512 (1st Cir. 1979), and "economic and managerial decisions" about
16 which "courts are ill-equipped to superintend," *Hahn v. Gottlieb*, 430 F.2d 1243, 1249–51 (1st Cir.
17 1970). State interference with that careful and expert balancing could "discourage the increased
18 involvement of the private sector" that is the goal of the National Housing Act, which created the
19 FHA. *Id.* at 1250.

20 Recognizing the careful public-private balance Congress struck in enacting the FHA
21 Insurance Program, the Ninth Circuit has consistently held that federal law, rather than state law,
22 applies in cases involving FHA-insured mortgages, which "assure[s] the protection of the federal
23 program against loss, state law to the contrary notwithstanding." *United States v. Stadium*
24 *Apartments*, 425 F.2d at 358, 362 (9th Cir. 1970); *United States v. View Crest Gardens Apartments,*
25 *Inc.*, 268 F.2d 380, 383 (9th Cir. 1959) ("[T]he federal policy to protect the treasury and to promote
26 the security of federal investment which in turn promotes the prime purpose of the Act—to facilitate
27 the building of homes by the use of federal credit—becomes predominant. Local rules limiting the
28 effectiveness of the remedies available to the United States for breach of a federal duty cannot be

1 adopted."); see also *United States v. Victory Highway Vill., Inc.*, 662 F.2d 488, 497 (8th Cir. 1981)
2 ("federal law, not [state] law, governs the rights and liabilities of the parties in cases dealing with the
3 remedies available upon default of a federally held or insured loan.").

4 Consistent with the well-settled standard that federal law applies to federally-insured
5 mortgages, Chief Judge Navarro found the HOA Lien Statute preempted in *Washington & Sandhill*,
6 stating that "a homeowner[] association's foreclosure under Nevada Revised Statutes § 116.3116 on
7 a Property with a mortgage insured under the FHA insurance program would have the effect of
8 limiting the effectiveness of the remedies available to the United States," and, thus, "the Supremacy
9 Clause bars such foreclosure sales." 2014 WL 4798565, at *7. Indeed, "extinguish[ment] of a first
10 secured interest" of a mortgagee where the mortgage is insured by HUD "would 'operate[] to
11 impede or condition the implementation of federal policies and programs' and therefore 'must yield
12 under the supremacy clause of the Constitution to the interests of the federal government.'" *Id.* at *6
13 (quoting *Rust*, 597 F.2d at 179). Similarly, Judge Mahan found in *Saticoy Bay LLC* that "a
14 homeowners' association foreclosure sale under Nevada Revised Statute 116.3116 may not
15 extinguish a federally-insured loan." 2015 WL 1990076, at *4 ("Allowing an HOA foreclosure to
16 wipe out a first deed of trust on a federally-insured property thus interferes with the purposes of the
17 FHA insurance program.").

18 Foreclosure on and extinguishment of federally-insured mortgages "would run the risk of
19 substantially impairing the Government's participation in the home mortgage market and of
20 defeating the purpose of the National Housing Act." *Rust*, 597 F.2d at 179. The Supremacy Clause
21 "forbids application of a state law that impedes a federal interest," and the federal interest in the
22 mortgage is impeded where "the property was federally insured at the time of the HOA foreclosure
23 sale." *Saticoy Bay*, 2015 WL 1990076, at *5. Because the HOA Lien Statute impedes the operation
24 of the FHA Insurance Programs, the statute is preempted as applied to FHA-insured mortgages, like
25 the Deed of Trust in this case. Accordingly, BANA and Carrington entitled to summary judgment.

2. **As applied to FHA-insured mortgages, the HOA Lien Statute is preempted because it frustrates FHA's foreclosure-avoidance efforts.**

In addition to threatening the partnership between private and public entities, allowing HOAs to foreclose on FHA-insured mortgages also threatens HUD's comprehensive regulations that seek to avoid foreclosure and keep at-risk borrowers in their homes. FHA loans are issued to borrowers who might otherwise not qualify for conventional mortgages due, for example, to their inability to make more than a minimal down payment or their having significantly lower credit scores than banks would otherwise approve.

FHA is not analogous to a private insurer. As a federal agency, "FHA insures mortgages so that lenders will be encouraged to make more mortgages available for people."⁷ "HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all."⁸ This strong federal interest includes keeping borrowers in their homes for some period of time during default as the lender and borrower try to resolve the delinquency.⁹ The FHA Programs include a comprehensive set of servicing guidelines aimed at keeping at-risk borrowers in their homes to the extent possible, including in circumstances where the borrowers are in financial distress. For example, before claiming a default and initiating foreclosure proceedings, the FHA Programs' regulations require that mortgagees consider forbearance and pre-foreclosure counseling¹⁰—which

⁷ *Discontinuing Monthly Mortgage Insurance Premium Payments*, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/premiums/prem2001 (last visited Jan. 5, 2015).

⁸ See HUD's Mission Statement, available at <http://portal.hud.gov/hudportal/HUD?src=/about/mission> (last visited, Jan. 5, 2015).

⁹ See HUD Mortgagee Letter 2010-04, at 1 (Jan. 22, 2010), <http://portal.hud.gov/hudportal/documents/huddoc?id=10-04ml.pdf> (last visited Jan. 5, 2015) ("Loss Mitigation is critical to both borrowers and FHA because it works to fulfill the goal of helping borrowers retain homeownership while protecting the FHA Insurance Fund from unnecessary losses.").

¹⁰ See 24 C.F.R. § 203.501 (requiring that mortgagees "must consider" actions such as "special forbearance," meaning in cases where the mortgagor does not own other FHA-insured property and the default was caused by circumstances beyond the mortgagor's control, the forbearance agreement will not require increased payments before the original maturity date of the mortgage); HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, §§ 7-3, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited Jan. 5, 2015) (requiring that servicers "make a concerted effort to help the mortgagor resolve his/her financial problems," specifically {37626715;1})

1 can take six months or more¹¹—and provide that noncompliance may result in a civil monetary
2 penalty and withdrawal of HUD's approval of the mortgagee as a program participant, 24 C.F.R. §
3 203.500. In addition to forbearance,¹² FHA regulations require that mortgagees consider or attempt
4 other forms of relief short of foreclosure. *Id.* at §§ 203.357, 203.370, 203.608, 203.616. Moreover,
5 even where foreclosure is inevitable, FHA regulations identify a lengthy and exhaustive process that
6 details the level and form of borrower communications required before foreclosure may begin.¹³
7 Federal regulators have marshalled many decades of expertise to enact a comprehensive approach to
8 foreclosure and foreclosure forbearance on FHA-insured mortgages.
9

10 By allowing HOAs to foreclose on distressed borrowers, Nevada law conflicts with FHA
11 regulations specifying foreclosure as a "last resort" for this potentially vulnerable category of
12 borrowers.¹⁴ Nevada itself has recognized that HOA foreclosures interfere with mortgagees' efforts
13 to keep borrowers in their homes and has made some—albeit insufficient—effort to mitigate the
14 controversial rush to foreclose by HOAs and their collection agents. In 2013, Nevada changed its
15 law to bar HOAs from initiating non-judicial foreclosure proceedings after the mortgagee has
16 recorded a notice of default and before it complies with Nevada's own foreclosure avoidance
17 procedures (which generally require pre-foreclosure mediation). *See* NRS 116.31162(6)(b).
18

19
20 addressing that a mortgage servicer should endeavor to be aware of marital difficulties, substance abuse, excessive
21 gambling, loss of income, loss of employment, illness, and other factors, and then refer borrowers to counseling before
22 initiating foreclosure).

23 ¹¹ HUD Administration of Insured Home Mortgages Handbook 4330.1 app. 18, at 2, *available at*
24 <http://portal.hud.gov/hudportal/documents/huddoc?id=43301x18HSGH.pdf> (last visited Jan. 5, 2015).

25 ¹² *See* 24 C.F.R. §§ 203.471, 203.614.

26 ¹³ *See generally* HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, § 7-7, *available at*
27 <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited Jan. 5, 2015). ("Foreclosure
28 should be considered only as a last resort and shall not be initiated until all other relief options have been exhausted.")

¹⁴ HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 9, § 9-3, *available at*
<http://portal.hud.gov/hudportal/documents/huddoc?id=43301c9HSGH.pdf> (last visited Jan. 5, 2015) ("Foreclosure
should be considered only as a last resort and shall not be initiated until all other relief options have been exhausted.")

1 Although this amendment reflects the Legislature's own recognition of the harm caused by
2 HOA foreclosures, the amendment is not sweeping enough to avoid federal preemption as applied to
3 FHA-insured loans because Nevada law still frustrates federal foreclosure forbearance objectives.
4 As the Supreme Court has recognized, a "[c]onflict in technique can be fully as disruptive to the
5 system Congress enacted as conflict in overt policy." *Amalgamated Ass'n of Street, Electric Ry., &*
6 *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287 (1971). For example, under the 2013
7 amendment, nothing impedes HOAs from pursuing foreclosure and removing the borrower from the
8 home where the mortgagee has not issued a notice of default. Indeed, if anything, Nevada law
9 directly undermines federal law by encouraging mortgagees to issue a notice of default and initiate
10 foreclosure at the earliest possible time in order to at least temporarily prevent the HOA from
11 proceeding with its own foreclosure. In contrast, the FHA Programs direct mortgagees on insured
12 loans to work with the borrower and to evaluate modification and other alternatives *before* taking
13 steps toward foreclosure.¹⁵

14
15 The U.S. Supreme Court and other federal courts have found preemption of state law under
16 the Supremacy Clause in much less compelling circumstances than those presented here. For
17 instance, in *De la Cuesta*, the Supreme Court held that a Federal Home Loan Bank Board regulation
18 permitting—but not requiring—federal savings and loan associations to include "due-on-sale"
19 clauses in their mortgage contracts preempted state law that restricted the use of such clauses. "By
20 further limiting the availability of an option the Board considers essential to the economic soundness
21 of the thrift industry, the State has created 'an obstacle to the accomplishment and execution of the
22 full purposes and objectives' of the due-on-sale regulation." 458 U.S. at 156 (citations omitted).

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25 ¹⁵ Decisions HUD has made about how much time and effort banks are required to expend before foreclosing are careful
26 and important ones. "HUD has very broad discretion in order to achieve national housing objectives," *United States v.*
27 *Antioch Found.*, 822 F.2d 693, 695 (7th Cir. 1987), including in the context foreclosure avoidance. As noted, such
28 decisions "involve[] a balancing of factors and a consideration of complex financial data." *Falzarano*, 607 F.2d at 512.

1 Here, HUD explicitly directs mortgage servicers to exercise restraint in proceeding with foreclosures
2 to help keep borrowers in their homes. *See supra* note 10. Because the HOA Lien Statute
3 impermissibly restricts the discretion of both the servicer and HUD in addressing borrower default, it
4 is preempted under the Supremacy Clause as applied to FHA-insured mortgages.

5 Finally, the preemptive effect here is modest. Nothing about HUD regulations or federal
6 preemption requires HOAs to give up their partial priority of payment, N.R.S. § 116.3116(2); they
7 simply require that HOAs yield to the FHA-insured mortgagee with respect to the timing of their
8 recovery out of foreclosure proceeds. *See* NRS 116.31162. The HOAs will still receive the fees that
9 are entitled to super-priority status following a sale conducted by the mortgagee. But allowing an
10 HOA to foreclose on an FHA-insured loan plainly frustrates the objectives of HUD regulations in
11 restricting foreclosures on at-risk FHA borrowers where specified foreclosure avoidance measures
12 offer some promise of keeping the borrowers in their homes. Because the HOA Lien Statute
13 "interferes with the federal purpose or operates to impede or condition the implementation" of the
14 FHA Programs, it is preempted as applied to FHA-insured mortgages, like BANA's Deed of Trust is
15 this case. *See Rust*, 597 F.2d at 179. Since plaintiff's quiet-title action is entirely dependent on the
16 validity of the preempted state law, its complaint fails.
17
18

19 DATED this 25th day of February, 2016.

20
21 AKERMAN LLP

22 /s/ Christine M. Parvan
23 ARIEL E. STERN, ESQ.
24 Nevada Bar No. 8276
25 CHRISTINE M. PARVAN, ESQ.
26 Nevada Bar No. 10711
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28 Las Vegas, Nevada 89144

*Attorneys for Carrington Mortgage
Holdings, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR SUMMARY JUDGMENT**, addressed to:

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Thomas Miskey, Esq.
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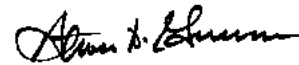
Attorneys for Plaintiff R Ventures VIII, LLC

/s/ Christine M. Parvan

An employee of AKERMAN LLP

EXHIBIT 19

EXHIBIT 19



CLERK OF THE COURT

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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 R VENTURES VIII, LLC, a Nevada series
limited liability company of the container R
11 VENUTERS, LLC under NRS § 86.296,

12 Plaintiff,

13 v.

14 TAYLOR, BEAN & WHITAKER
MORTGAGE CORP., a Florida corporation;
15 WELLS FARGO BANK, N.A., a national
association; BANK OF AMERICA, N.A., a
16 national association; SOUTHERN TERRACE
HOMEOWNERS' ASSOCIATION, a Nevada
17 domestic non-profit coop corporation; JOYCE
PIERCE, an individual; CARRINGTON
18 MORTGAGE HOLDINGS, LLC; DOES I
through X; and ROE CORPORATIONS II
19 through X, inclusive,

20 Defendants.

21 **AND ALL RELATED CLAIMS.**

Case No.: A-13-684151-C

Dept. No.: VI

**PLAINTIFF'S OPPOSITION TO
CARRINGTON MORTGAGE
HOLDINGS, LLC'S MOTION FOR
SUMMARY JUDGMENT**

22 R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd.
23 ("Cooper Coons"), hereby files this opposition to Defendant CARRINGTON MORTGAGE
24 SERVICES, LLC ("Carrington Mortgage Services")'s motion for summary judgment. This
25 Opposition is made and based upon the following Memorandum of Points and Authorities, all
26 pleadings on file herein, and any and all oral arguments at the time of the hearing.

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1 at 19. The lenders inaction provides an equitable basis to deny relief through unclean hands and
2 laches.

3 As set forth in the data below, Defendant Carrington Mortgage Services is not entitled to
4 judgment as a matter of law.

5 **II. DISPUTED FACTS**

6 For purposes of this opposition, Plaintiff incorporates its statement of undisputed facts for
7 Plaintiff's Renewed Motion for Summary Judgment ("Pl's MSJ") as fully set forth herein.

8 Defendant Carrington Mortgage Services' predecessor in interest offered to pay \$655.14
9 in 2012; however, it contained restrictive language that negated its effect as a tender.

10 The HOA lien recorded on April 23, 2010 contained at most 7 months of delinquent
11 assessments. Def's MSJ, Exhibit F.

12 **III. LEGAL ARGUMENT**

13 **A. Shadow Wood Protects Plaintiff As a Bona Fide Purchaser.**

14 **1. Statutory and Common Law Protection.**

15 NRS 111.180(1) codifies protection for the bona fide purchaser for value. It states "[a]ny
16 purchaser who purchases an estate or interest in any real property in good faith and for valuable
17 consideration and who does not have actual knowledge, constructive notice of, or reasonable
18 cause to know that there exists a defect in, or adverse rights, title or interest to, the real property
19 is a bona fide purchaser." A defect detectable in an examination of recorded documents places a
20 subsequent purchaser on inquiry notice. *Hewitt v. Glaser Land & Livestock Co.*, 626 P.2d 268,
21 269, 97 Nev. 207, 209 (Nev. 1981). "A subsequent purchaser with notice, actual or constructive,
22 of an interest in the land superior to that which he is purchasing is not a purchaser in good faith,
23 and not entitled to the protection of the recording act." *Allison Steel Mfg. Co. v. Bentonite, Inc.*,
24 86 Nev. 494, 471 P.2d 666, 669 (1970).

25 Even constitutional defects of notice are not open to challenge against a bona fide
26 purchaser. *Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977) (rights of bona fide purchasers not
27 voided by constitutional defects in execution sale). In *Swartz*, a judgment creditor sold two
28 parcels of real property to himself without mailing the owners notice of the sales. *Id.* The parcels

1 were purchased by the judgment creditor for \$2,000 and \$4,201.54 with their worth \$10,000 and
2 \$53,000 respectively. Ultimately, the sales were found to violate the 14th Amendment for lack of
3 adequate notice; however, rescinding the sale “may no longer be done without injury to innocent
4 third parties who are bona fide purchasers of the property.” Id at 77.

5 Further, the Nevada Supreme Court recently remanded an order granting summary
6 judgment in favor of a lender in a NRS 116 HOA foreclosure sale where the lender failed to
7 produce any evidence of fraud, unfairness, or oppression. *Shadow Wood Homeowners Ass'n vs*
8 *New York Community Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance
9 Opinion 5. The Court goes on to discuss bona fide purchaser protection under the common law.
10 A bona fide purchaser is a purchaser of the property “for a valuable consideration and without
11 notice of the prior equity, and without notice of facts which upon diligent inquiry would be
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry.” Id.
13 at 22.

14 Here, Plaintiff qualifies as a bona fide purchaser for value. Plaintiff had no actual,
15 constructive, or inquiry knowledge with respect to any equitable argument. Defendant
16 Carrington Mortgage Services failed to notify bidders of the purported tender due to their
17 inaction. Finally, Plaintiff paid valuable consideration. Because Plaintiff is an innocent third
18 party purchaser, the equities weigh heavily in Plaintiff's favor that proscribe any claim by
19 Defendant Carrington Mortgage Services to set aside the sale.

20 2. Notice of Purported Tender.

21 Here, Plaintiff purchased the property at an auction without notice of any purported
22 defense of Defendant Carrington Mortgage Services. While Plaintiff had record notice of the
23 deed of trust, a properly conducted HOA sale would extinguish this interest, permitting Plaintiff
24 to take the Property without notice of any claim of superior title. It is undisputed Plaintiff had no
25 knowledge of any purported defect in the sale of the Property. Thus, no actual defect in the
26 foreclosure sale would defeat Plaintiff's claim because it did not have any notice. This protection
27 extends even to when a sale did not comply with constitutionally required notice under *Mullane*.
28 See *Swartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977).

1 The lender can provide no evidence that the purchaser knew or should have known about
2 the disputed lien amount or attempts to pay the lien; and, consequently, the potential harm to the
3 purchaser must be taken into account. Shadow Wood, at 24. Plaintiff's affidavit definitively
4 affirms Plaintiff had no knowledge of any tender. Pl.'s MSJ, Exhibit 13. Further, the audio
5 recording of the auction has Mr. Atkinson list the properties where a partial payment has been at
6 issue. Pl.'s MSJ, Exhibit 12. Notably, the Property was not among that list. Consequently,
7 Plaintiff would never had been required to inquire about the status of a purported tender,
8 especially with the disclosure at the auction.

9 **3. Plaintiff Provided Valuable Consideration.**

10 To be considered a bona fide purchaser, the Plaintiff must have purchased the Property
11 with valuable consideration. Merely paying less than one party's valuation does not negate
12 valuable consideration. Shadow Wood at 22. Valuable consideration is satisfied if it was
13 valuable, regardless of adequacy. Id.

14 Because Plaintiff has provided uncontested evidence regarding the sufficiency of
15 consideration and Plaintiff's lack of notice of any adverse claim, Plaintiff qualifies as a bona fide
16 purchaser for value, entitled to the protection of an innocent third party purchaser.

17 **B. Foreclosure Sale Purchase Price Is Insufficient to Set Aside the Sale.**

18 **1. Commercial Reasonableness Standard Does Not Apply.**

19 Defendant Carrington Mortgage Services also argues that the foreclosure sale was not
20 "commercially reasonable." Defendant Carrington Mortgage Services seems to base this assertion
21 on the discrepancy between the property's market value and the purchase price. However, NRS
22 Chapter 116 does not contain a "commercial reasonableness" standard. See generally, NRS
23 Chapter 116. Although, the Uniform Act requires that a foreclosure sale be "commercially
24 reasonable," that provision was specifically not adopted by the Nevada Legislature. The only
25 conclusion that can be drawn from the Legislature's omission of this standard is that it is not
26 required in Nevada.

27 Defendant disingenuously attempts to have this Court believe that the SFR Decision,
28 specifically footnote 6 on page 22, stands for the proposition that an HOA sale can be deemed void

1 as commercially unreasonable pursuant to NRS Chapter 104 and secured transactions. Rather, as
2 the paragraph leading to footnote 6 in the SFR Decision clearly explains, the Nevada Supreme
3 Court reasoned an HOA sale could be ostensibly voided as commercially unreasonable based on
4 "a lack of adequate notice." NRS Chapter 116 incorporates a "good faith" standard and not a
5 "commercially reasonableness" standard.

6 Notwithstanding, the issue of "commercial reasonableness" can only be raised and has only
7 been raised in the context of a debtor and a creditor involving a secured transaction pursuant to
8 NRS Chapter 104. That is, there is not a single case law in the State of Nevada nor any other
9 jurisdiction that addresses this issue of "commercial reasonableness" beyond the context of a
10 debtor and creditor involving a secured transaction. Every case cited by Defendant involved a
11 debtor and a creditor.

12 It is undisputed the Defendant was not the debtor in the context of the HOA foreclosure
13 sale. It is undisputed the Defendant was not the secured party in the context of the HOA foreclosure
14 sale. It is undisputed the debtor in the context of the HOA foreclosure sale was the previous owner
15 of the Property. It is undisputed the Defendant was nothing more than a junior creditor.
16 Consequently, as a junior creditor, the Defendant has no standing as a matter of law, to attempt to
17 raise the issue of the HOA foreclosure sale allegedly having been commercially unreasonable. The
18 only party that may raise that issue is the debtor, in this case, the previous owner.

19 **2. Sales Meets Commercial Reasonableness Standard.**

20 Even if this standard applies, Shadow Wood cemented Plaintiff's interpretation that price
21 alone will not justify setting aside a foreclosure Sale. *Id.* at 9-10 (Citing *Long v. Towne and Golden*
22 *v. Tomiyasu*). The Nevada Supreme Court has held that mere "inadequacy of price is not sufficient
23 to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression."
24 *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). See also *Golden v. Tomiyasu*, 79 Nev.
25 503, 504, 387 P.2d 989 (1963) (remanded the setting aside of a foreclosure sale holding that
26 "inadequacy of price, without proof of some element of fraud, unfairness or oppression as accounts
27 for and brings about the inadequacy of price is not sufficient" to set aside the sale). See also
28 *Shadow Wood Homeowners Ass'n vs New York Community Bancorp, Inc.*, No. 63180 (Nev.,

1 January 28, 2016), 132 Nev., Advance Opinion 5. The foreclosure sale at which Plaintiff purchased
2 the Property was properly conducted in all respects. "Mere inadequacy of price... is not sufficient
3 to support a judgment setting aside the sale." *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989
4 (1963). Even in cases where a discrepancy in price and value necessitated scrutiny into the
5 commercial reasonableness of the disposition of collateral, courts focus on the manner of the sale
6 that might have caused such a discrepancy. In *Levers v. Rio King Land & Inv. Co.*, the Nevada
7 Supreme Court found that the secured party failed to provide reasonable notice to the debtor and
8 took no steps to publicize the sale in any manner, and therefore the debtor was entitled to a credit
9 equal to the fair market value rather than the sale price. *Levers v. Rio King Land & Inv. Co.*, 560
10 P.2d 917, 920 (Nev. 1977).

11 Here, Defendant Carrington Mortgage Services can produce no evidence that points to
12 commercial unreasonableness. Defendant Carrington Mortgage Services or its predecessor in
13 interest received adequate notice of the sale. Despite extensive discovery, Defendant Carrington
14 Mortgage Services can produce no evidence of fraud. Quite the opposite, Plaintiff has presented
15 uncontroverted evidence of a commercially reasonable sale, public and attended by multiple
16 bidders that resulted in competitive bidding.

17 **i. Lender Received Notice**

18 Here, Plaintiff acquired title to the Property through a Foreclosure Deed Upon Sale
19 pursuant to a foreclosure of a super priority HOA lien which constituted legal sufficiency to
20 conduct the sale. PI's MSJ, Exhibit 1. Because the HOA Foreclosure Deed is conclusive proof of
21 the matters recited, Defendants have no genuine material factual dispute that will invalidate the
22 HOA Foreclosure Sale based on statutes.

23 Examining these facts under equity, the proof of mailings of the foreclosure documents
24 are indisputable actual notice to Bank of America, predecessor in interest to Defendant
25 Carrington Mortgage Services. PI's MSJ, Exhibits 6, 10.

26 **ii. No Indicia of Fraud**

27 Here, Defendant Carrington Mortgage Services cannot claim the HOA foreclosure sale is
28 commercially unreasonable. The 30(b)(6) deposition of United Legal Services, Inc. confirms the

1 foreclosure sale was properly conducted. It was a publicly advertised auction with multiple
2 bidders. Pl.'s MSJ, Exhibit 11. Further, the verbatim audio recording transcription supports this
3 deposition testimony. Pl.'s MSJ, Exhibit 12. Despite extensive discovery, Defendant Carrington
4 Mortgage Services cannot produce one scintilla of evidence of any impropriety in the HOA
5 foreclosure sale.

6 This Court may look to the price attained at the auction and inquire as to why the
7 purchase price was low in comparison to a traditional foreclosure of a first deed of trust. Here,
8 the price was low for two reasons. First, bidders did not have upward pressure to raise the price.
9 The lender could not make a credit bid for the Property and the bidding began at the balance of
10 the lien. Second, the purchase price was artificially low due to the market's uncertainty of the
11 title conveyed at the time of the sale combined with the necessary costs of quieting title after any
12 purchase of the property. These factors drove down the purchase price. Defendant Carrington
13 Mortgage Services cannot provide any evidence that fraud or unfairness even contributed to the
14 purchase price much less rise to the level of causation required to set aside a sale under Levers.

15 **C. Lender Failed to Act**

16 Defendant Carrington Mortgage Services claims are barred by the equitable defenses of
17 unclean hands and laches. Unclean hands generally bars a party from receiving equitable relief
18 because of that party's own inequitable conduct. *Las Vegas Fetish & Fantasy v. Ahern Rentals*,
19 182 P.3d 764, 766 (Nev. 2008). The inquiry for unclean hands is two-fold. The Court must
20 weigh the egregiousness of the misconduct and the seriousness of the harm caused by the
21 misconduct. *Id.* at 767. Laches applies where delay by one party prejudices another party.
22 *Besnilian v. Wilkinson*, 117 Nev. 519, 520 (2001).

23 In *Shadow Wood*, the Nevada Supreme Court held the district court should have
24 conducted a full hearing on the equities, noting the lender's inaction, "NYCB knew the sale had
25 been scheduled and that it disputed the lien amount, yet it did not attend the sale, request
26 arbitration to determine the amount owed, or seek to enjoin the sale pending judicial
27 determination of the amount owed," weighed heavily against the lender. *Id.* at 19. "Where the
28 complaining party has access to all the facts surrounding the questioned transaction and merely

1 makes a mistake as to the legal consequences of his act, equity should normally not interfere,
2 especially where the rights of third parties might be prejudiced thereby.” Shadow Wood
3 Homeowners Ass’n vs New York Community Bancorp, Inc., No. 63180 (Nev., January 28, 2016),
4 132 Nev., Advance Opinion 5 at 24.

5 SFR requires a lender to exercise due diligence and take necessary steps to preserve its
6 rights including “paying the entire amount and requesting a refund of the balance.” Id. at 418.
7 According to the payment scheme under NRS 116.31164(3)(c), the lender would be able to
8 recover a substantial majority of the bid price in excess of the super-priority amount as their
9 junior lien would be next in line. After deducting the super-priority lien, they would receive a
10 substantial majority of their bid amount and may dispute the rest in a small claims action.
11 Additionally, Defendant Carrington Mortgage Services must deposit the alleged tender upon
12 rejection amount into court to forestall a foreclosure. Bisno v. Sax, 346 P.2d 814, 820 (Cal. Ct.
13 App. 1959); See also 59 C.J.S. Mortgages § 506, p. 826, stating: ‘A tender of payment or
14 performance sufficient to discharge the mortgage may preclude foreclosure and a proceeding
15 already commenced may be stopped by paying what is due into court.’

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

23 Laches Defendant Carrington Mortgage Services from coming before this Court after
24 the sale had been completed. If Defendant Carrington Mortgage Services had exercised
25 reasonable judgment by taking any one of several options to protect their interest, they would
26 not be here today.

27 Unclean hands prevents Defendant Carrington Mortgage Services from achieving
28 equitable relief. First, Defendant Carrington Mortgage Services failed to act or give notice to

1 any third party. While not necessarily egregious in isolation, applying the attempted tender to
2 undermine a sale would result in a great inequity to Plaintiff. The harm, the loss of the Property,
3 is substantial and irreplaceable.

4 Because Defendant Carrington Mortgage Services failed to take reasonable steps to
5 protect their interest, they cannot now avail themselves of the equitable relief of the legal
6 process.

7 **D. PSA Did Not Affect HOA's Ability to Foreclose.**

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

15 **i. HOA Retained Right to Foreclose.**

16 According to Robert Atkinson, the 30(b)(6) designation for United Legal Services, Inc.,
17 First 100 acquired rights to the proceeds of a monetization event triggered by notice of
18 foreclosure sale. Plt.'s MSJ, Exhibit 8, Deposition of United Legal Services, Inc. at 12. More
19 specifically, "none of the HOA's rights relating to their legal ability to foreclose were sold." Id.
20 at 14. To read this PSA to eliminate the ability of the HOA's ability to pursue foreclosures would
21 negate the intent of the PSA and the understanding of the contracting parties. The carefully
22 crafted PSA ensured the HOA retained the HOA lien and the ability to foreclose through its
23 newly designated collection agent, United Legal Services, Inc. After the foreclosure sale was
24 completed, the disbursements of funds was made to United Legal Services, Inc. as the authorized
25 agent of the HOA. Once the HOA had satisfied its HOA lien, those satisfied funds were
26 contractually obligated to be transferred to First 100.

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1 **ii. CC&Rs Authorized the HOA To Enter Into the PSA.**

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

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

12 **iii. Edelstein is Only Applicable to the Foreclosure Mediation Program.**

13 Defendants' assertion that splitting a lien prevents foreclosure of an HOA lien is wholly
14 inapplicable. *Edelstein v. Bank of New York Mellon*, deals with specific additional requirements
15 under the Foreclosure Mediation Program instated for foreclosures of deeds of trust, wholly
16 inapplicable to the present case. *Id.* at 286 P.3d 249, 258 (Nev. 2012). Before a lender can
17 proceed with foreclosure under NRS 107, it is mandated to mediate with the obligor, including a
18 requirement that the lender have the authority to modify the loan. The only reason the
19 foreclosure was found inappropriate when the promissory note and the deed of trust have been
20 separated is because the party foreclosing does not have authority to modify the promissory note
21 as required under the Foreclosure Mediation Program.

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

25 **F. As Applied Analysis Proscribes Statutory Facial Challenge.**

26 A facial challenge is a claim that a statute is unconstitutional on its face – that is, that is
27 always operates unconstitutionally. In other words, any possible application of the statute must be
28 unconstitutional. However, the Nevada Supreme Court recently upheld an as-applied challenge to

1 the constitutionality of NRS 116. *SFR Investments Pool 1, LLC v U.S. Bank*, 130 Nev. Advance
2 Opinion 75 (Sept 18, 2014). Further, the Nevada Supreme Court has issued multiple unpublished
3 and published decisions indicating the due process challenge is meritless.

4 The Nevada Supreme Court has held at least one application of the statute is constitutional.
5 Id. First, the Court credited the allegations in the Plaintiff's Complaint as true, most pertinently
6 that the plaintiff had complied with all notice requirements. Id. Second, the Court concluded "U.S.
7 Bank's due process challenge to the lack of adequate notice fails, at least at this early stage in the
8 proceeding." Id. at 22. The Court required notice to junior lienholders under NRS 107.090. Id. at
9 6. Consequently, the Court left open the factual challenge of notice; however, clearly indicated
10 that if the notice requirements were followed, the due process challenge will fail. Thus, one
11 application of the statute is valid. Logically, if one application of the statute is constitutional, all
12 applications of the statute cannot be unconstitutional. Thus, the facial challenge must fail.

13 In an unpublished order filed on December 23, 2015, Las Vegas Motorcoach Resort
14 Owners Ass'n v. Booher, Case No. 66036, the Nevada Supreme Court recently remanded a case
15 where the lender argued adequacy of the due process provided because "it does not appear the
16 alternative issues tendered to us as potential bases to reverse or affirm the summary judgment order
17 were fully and adequately vetted in the district court." This amounts to a request by the Nevada
18 Supreme Court to factually develop the issues. However, a facial challenge requires no factual
19 analysis because "'individual application of facts do not matter' in a facial challenge and 'the
20 plaintiff's personal situation become irrelevant.'" If the Nevada Supreme Court was inclined to
21 rule NRS 116 unconstitutional, it would not need the factfinding it requested.

22 Merely one case does not indicate a pattern, but several may. Southern Highlands
23 Community Ass'n v. San Florentine Avenue Trust, 132 Nev. Adv. Op. 3 (2016) further developed
24 the case law with respect to HOA foreclosure sales by clarifying the effect of an HOA foreclosure
25 in a circumstance where a different HOA had a separate super-priority lien on the property. In
26 another unpublished order filed on December 23, 2015, Saticoy Bay, LLC Series 2301 Haren v.
27 LV Corp., Case No. 65151, the Nevada Supreme Court further clarified SFR by interpreting the
28 inclusion of NRS 116 language in a Common Interest Community's CC&R's as applying SFR.

1 The litany of cases continues as the Nevada Supreme Court has continued to act
2 consistently with Plaintiff's interpretation, rejecting facial challenges. In an unpublished order
3 filed on January 22, 2016, Mackensie Family, LLC v. Wells Fargo Bank, Case No. 65696, the
4 Nevada Supreme Court recently remanded a case where the lender was granted summary judgment
5 prior to the SFR decision. Importantly, the Court noted, "this case cannot be resolved on appeal
6 because a genuine issue of material fact remains regarding whether the foreclosure was proper."
7 The court was briefed regarding a facial challenge of NRS 116. See Answering Brief. As
8 previously noted, a facial challenge requires no fact finding. Here, when the Nevada Supreme
9 Court has remanded a case for further fact finding is tantamount to a rejection of the facial
10 challenge where the issue has been fully briefed.

11 In another unpublished order filed on January 22, 2016, Park v. Wells Fargo Bank, Case
12 No. 65735, the Nevada Supreme Court reversed and remanded a district court's granting a motion
13 to dismiss for failure to state a claim granted prior to SFR. Again, the Nevada Supreme Court,
14 despite being fully briefed on the facial challenge to NRS 116, declined to uphold the motion to
15 dismiss on these grounds. See Answering Brief.

16 In yet another an unpublished order filed on February 17, 2016, Whitehouse v. Wells
17 Fargo Bank, N.A., Case No. 65169, the Nevada Supreme Court remanded a case where a
18 purchaser's quiet title complaint was dismissed prior to the SFR decision. The court was briefed
19 regarding a facial challenge of NRS 116. See Answering Brief. As previously noted, a facial
20 challenge requires no fact finding. Here, yet again, the Nevada Supreme Court has remanded a
21 case for further fact finding and is tantamount to a rejection of the facial challenge where the
22 issue has been fully briefed.

23 All of these instances, combined with the multitude of oral arguments regarding HOA cases
24 in the preceding months, indicate the Nevada Supreme Court is unlikely to find the HOA
25 foreclosure statute unconstitutional and negate the substantial case law they have developed. The
26 expenditure of judicial resources reaching these resolutions would be wasted should the statutory
27 scheme be held unconstitutional. The more likely interpretation is the position Plaintiff's have
28 taken in this case, that the Nevada Supreme Court has already considered the due process concerns

1 in SFR and found the argument meritless.

2 Taken as a whole, these decisions strongly indicate Defendant Carrington Mortgage
3 Services' facial challenge to NRS 116 lacks merit.

4 **F. NRS 116 DOES NOT VIOLATE DUE PROCESS**

5 **i. The Actor is a Private Party and No State Action was Taken.**

6 Nevada applies a very narrow reading of the "state action" requirement, so as to not restrain
7 private conduct. *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 410-411. "Due process
8 restrictions apply only to activities which can be characterized as state action." *Tarkanian v. Nat'l*
9 *Collegiate Athletic Ass'n*, 103 Nev. 331, 335, 741 P.2d 1345, 1347 (1987), rev'd on other grounds,
10 488 U.S. 179. The Ninth Circuit Court of Appeals held "[t]he statutory source of the Nevada power
11 of sale... does not necessarily transform a private, non[-]judicial foreclosure into state action."
12 *Charmicor v. Deaner*, 572 F.2d 694, 695 (9th Cir. 1978). In holding that there is insufficient state
13 action, this Court should reach the same conclusion as the overwhelming majority of other
14 jurisdictions faced with due process challenges to non-judicial foreclosure sales. See *Levine v.*
15 *Stein*, 560 F.2d 1175, 1176 (4th Cir. 1977); *Barrera v. Security Building & Investment Corp.*, 519
16 F.2d 1166, 1174 (5th Cir. 1975); *Kenly v. Miracle Properties*, 412 F. Supp. 1072, 1075-76 (D.
17 Ariz. 1976); *Lawson v. Smith*, 402 F. Supp. 851, 855 (N.D. Cal. 1975); *Y Aleman Corp. v. Chase*
18 *Manhattan Bank*, 414 F. Supp. 93, 95-96 (D. Guam 1975); *Garfinkle v. Superior Court of Contra*
19 *Costa Cty.*, 578 P.2d 925, 932-33 (Cal. 1978); *Putensen v. Hawkeye Bank of Clay County*, 564
20 N.W.2d 404, 410 (Iowa 1997); *Northup v. Poling*, 761 A.2d 872, 875-76 (Me. 2000); *Leininger v.*
21 *Merchants & Farmers Bank, Macon*, 481 So. 2d 1086, 1088-90 (Miss. 1986); *Dennison v. Jack*,
22 304 S.E.2d 300, 308-09 (W. Va. 1983).

23 As in *Garfinkle*, NRS 116.31162-116.31168 simply regulates the manner in which
24 association non-judicial foreclosures of their super-priority liens proceed. Nothing compels the
25 association to exercise the right. To the contrary, the executive board has the power to decide
26 whether or not to take enforcement action by exercising the association's power to impose
27 sanctions or commence an action for violation of the declaration, bylaws or rules. . . ." NRS
28 116.3102(3). Because the non-judicial foreclosure by an association is a right conveyed by the

1 CC&Rs, as between the association and the unit owner, it is analogous to the private remedy
2 provided pursuant to the deed of trust for purpose of determining if there is state action. The
3 Association is not a state actor, there is no state action, and due process is not implicated in an
4 association non-judicial foreclosure.

5 Here, the Court cannot reach the question of whether the notice procedures satisfied due
6 process because the Bank has failed to establish how an HOA's non-judicial foreclosure satisfies
7 the state action requirement.

8 In each citation provided by Defendant Carrington Mortgage Services, the government
9 directly took or extinguished a property interest. In the present case, the government was not an
10 actor and took no action to extinguish a property interest.

11 In *J.D. Construction v. IBEX Int'l Group*, 240 P. 3d 1033 (Nev. 2010), the due process
12 question at issue dealt with the sufficiency of a court's consideration of evidence without an
13 evidentiary hearing to expunge a mechanic's lien under NRS 108.2275. The state action of the
14 procedure for expunging a lien is sufficiently distinguishable from a non-judicial foreclosure sale.

15 In *Mennonite Bd. Of Missions v. Adams*, the government sold a property at an auction
16 conducted by the county treasurer based upon a tax lien. 462 U.S. 791 (1983). In that case, the
17 government owned the tax lien and conducted the sale of the property. In the present case, the
18 government did not participate in the sale or have an interest in the HOA lien.

19 In *Armstrong v. United States*, the government took actual possession of the property. 364
20 U.S. 40, 48 (1960). Here, United Legal Services, Inc., a private company acting as agent for
21 another private organization Southern Terrace HOA, a domestic non-profit cooperative
22 corporation, foreclosed upon its private lien.

23 In *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935), a federal bankruptcy
24 act attempted to divest a bank of its property interest in conflict with Kentucky's mortgage law. In
25 this case, Nevada is merely modifying its underlying mortgage law as opposed to federal
26 bankruptcy law extinguishing a state granted property interest. The state is a sovereign entity
27 entitled to create rules and regulations regarding its property.

28 ///

1 **ii. Federal Preemption Is a Not a Material Fact.**

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

9 Defendant Carrington Mortgage Services has not provided statutory information
10 regarding FHA priority. Thus, no federal law delineates the lien priority. Pursuant to *United*
11 *States v. Kimbell Foods, Inc.*, loan priority should be determined by state law.

12 Even if federal law applies, HUD's internal procedure via multiple mortgage letters
13 indicates lien priority is determined by state law. Pl's Opp. (February 23, 2015), See Generally
14 Exhibits 1-4. A mortgagee letter dated June 20, 2012 clearly requires a mortgagee to "adhere to
15 state and local laws while they hold title to a property that was financed with an FHA-insured
16 mortgage." Pl's Opp., Exhibit 2. A super priority lien for assessments is analogous to a tax lien.
17 Because either may implicate serious title defects, similar to escrow accounts set aside for taxes,
18 "mortgagees must take any action necessary to protect HUD's interest when foreclosure actions
19 are brought by a condo/HOA on a property securing an FHA-insured mortgage." Pl's Opp.,
20 Exhibit 1, page 2. A lender is required to pay off both before conveying title to HUD. Pl's Opp.,
21 Exhibit 3, page 3.

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

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

1 This information renders any federal preemption argument inapplicable. Notably, neither
2 the moving paper nor decision did not consider the aforementioned Mortgagee Letters, Pl's Opp.,
3 Exhibits 1-4. The letter dated June 20, 2012 specifically requires mortgagees to follow state law.
4 Pl's Opp., Exhibit 2.

5 A contrasting supremacy clause case is illustrative. In *Rust v. Johnson*, a federal
6 instrumentality, FNMA, held actual title to the property. *Id.* at 597 F.2d 174 (9th Cir. 1979). In
7 that case, a foreclosure would directly divest the federal instrumentality of title to a property at
8 the time of foreclosure. Ultimately, federal supremacy applied because a federal
9 instrumentality's interest would be extinguished.

10 In stark contrast, Defendant Carrington Mortgage Services and their predecessors in
11 interest are not federal instrumentalities. They does not owe its existence to a state entity. They
12 operates solely for profit. In contrast, FNMA, was classified as a federal instrumentality because
13 it was created by Congress and enacted to achieve a government purpose. *Id.* at 177-178.

14 Yet another substantial difference lies in the interest held by the federal instrumentality.
15 In *Rust*, FNMA held a purchase money mortgage lien. *Id.* at 180. As opposed to insuring a
16 mortgage, FNMA acquired the mortgage in whole and had a present vested interest in the subject
17 property. *Id.* Here, a private entity, Bank of America, held the mortgage. Bank of America must
18 elect to convey a property to FHA to receive insurance proceeds. In *Rust*, FNMA did not
19 negotiate the mortgage contract. *Id.* Here, Bank of America negotiated the mortgage contract.
20 The combination of these substantial factual differences combined with HUD's internal
21 guidelines distinguish *Rust v. Johnson* because no federal interest is implicated. Without a
22 federal interest, federal preemption does not apply.

23 Additionally and most importantly, HUD will not suffer a financial loss in this case. 24
24 CFR 203.359(a) requires the bank to acquire "good and marketable title" and possession of the
25 property before transferring to FHA. Upon the successful transfer of marketable title to FHA, a
26 lender will receive the value of the insurance policy in exchange for the property. Here, FHA
27 will not be required to pay because the lender failed to deliver "good and marketable title."
28

1 Even if Defendant Carrington Mortgage Services conveyed title to HUD, 24 CFR
2 203.366(b) enumerates the procedure if a lender transfers title without good and marketable title
3 and the lender refuses or cannot remedy the title defect. Title will be reconveyed to the lender,
4 and the lender must reimburse the funds to the FHA program. Id. Thus, a federal property
5 interest, if any, is not affected by NRS 116.

6 Application of HUD guidelines will not undermine the FHA insurance's goals. First, the
7 courts are ill equipped to oversee the minutia of HUD activity. "HUD has very broad discretion
8 in order to achieve national housing objectives," United States v. Antioch Found., 822 F.2d 693,
9 695 (7th Cir. 1987), because "courts are ill equipped to superintend" especially about "economic
10 and managerial decisions" involving a balancing of factors and consideration of complex
11 financial data with respect to the administration of FHA insurance. Hahn v. Gottlieb, 430 F.2d
12 1243, 1249-51 (1st Cir. 1970). Day to day decision concerning, for instance, whether and when to
13 foreclose or forbear from foreclosing "involve[] a balancing of factors and consideration of
14 complex financial data." Falzarano v. United States, 607 F.2d 506, 512 (1st Cir. 1979).

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

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Dated this 8th day of March, 2016.

By: Thomas Miskey
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There are no social security numbers contained in this document.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on March 8, 2016, a true and correct copy of the above and foregoing was serve to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

_____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Las Vegas, Nevada;

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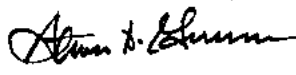
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/s/ Kim Hexamer

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EXHIBIT 20

EXHIBIT 20


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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

1 R VENTURES VIII, LLC, a Nevada series
2 limited liability company of the container R
3 VENTURES, LLC under NRS § 86.296,

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Plaintiff,

v.

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP., a Florida corporation; WELLS Fargo
BANK, N.A., a national association; BANK OF
AMERICA, N.A., a national association;
SOUTHERN TERRACE HOMEOWNERS'
ASSOCIATION, a Nevada domestic non-profit
coop corporation; JOYCE PIERCE, an
individual; CARRINGTON MORTGAGE
HOLDINGS, LLC; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

Defendants.

CARRINGTON MORTGAGE HOLDINGS,
LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

Case No.: A-13-684151-C
Dept.: VI

**CARRINGTON MORTGAGE
HOLDINGS, LLC'S OPPOSITION TO R.
VENTURES VIII, LLC'S MOTION FOR
SUMMARY JUDGMENT**

{37835802;1}

1 CARRINGTON MORTGAGE HOLDINGS,
2 LLC,

3 Crossclaimant,

4 v.

5 TERRACE HOMEOWNERS' ASSOCIATION,

6 Crossdefendant.

7 This Court should deny Plaintiff's motion for summary judgment, and enter judgment in
8 favor of Carrington, for nine reasons. **First**, the HOA Lien Statute is preempted as applied to FHA-
9 insured deeds of trust under the Supremacy Clause. Carrington has standing to make this argument
10 because it is empowered to demonstrate that state law is an obstacle to HUD's objectives under the
11 Single Family Mortgage Insurance Program that are expressed in the FHA Deed of Trust, federal
12 regulations, federal statutes, and agency guidelines. **Second**, the present constitutional protected
13 interest, as delineated in the FHA Deed of Trust, HUD's regulations, and Mortgagee Letter, is HUD's
14 present, choate right to say what may or may not be done regarding mortgagee issued pursuant
15 Single Family Mortgage Insurance Program rather than state law. **Third**, the HOA Lien Statute is
16 facially unconstitutional under the Due Process Clause. **Fourth**, the HOA Lien Statute is
17 unconstitutional as applied under the Due Process Clause. **Fifth**, the entire HOA lien, including any
18 alleged super priority portion, was paid off in July 2010. An HOA's super priority lien is not
19 evergreen. **Sixth**, there was no lien to foreclose. The structure of the homeowners association's
20 factoring agreement to only sell its accounts receivable to First 100, LLC split the statutory lien from
21 the debt and also violated the CC&Rs and NRS 116.3102(p). **Seventh**, Bank of America's super-
22 priority tender extinguished the super-priority portion of the lien, if any, prior to the foreclosure sale.
23 **Eighth**, contrary to plaintiff's contentions, the Nevada Supreme Court's recent decision *Shadow*
24 *Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (Nev. Jan. 28,
25 2016) provides sufficient grounds to set aside the sale. **Ninth**, plaintiff is not, as it claims, a *bona*
26 *fide* purchaser for value.

1 **A. The Constitutionally Protected Interest is HUD's Federal Prerogative under the Single**
2 **Family Mortgage Insurance Program, which was Present at the Time the FHA Deed of**
3 **Trust was Executed and Remains Present Throughout the Duration of the Loan.**

4 Plaintiff fails to recognize the loan is federally insured. Mortgage insurance is supplied to
5 participating lenders as a component of federal law to achieve the National Housing Act's objectives.
6 12 USC §1709; see also *Secretary of Housing & Urban Development v. Sky Meadow Association*,
7 117 F. Supp. 2d 970, 973-74 (C.D. Cal. 2000). "Under the NHA, mortgagees are induced to make
8 essentially risk-free mortgages by being guaranteed against loss in the event of default by the
9 mortgagor, *Pfeifer v. Countrywide Home Loans, Inc.*, 211 Cal.App.4th 1250, 1265 (Cal. App., 2013)
10 (citing *Anderson v. U.S. Dept. of Housing & Urban Dev.*, 701 F.2d 112, 113-114. (10 Cir. 1983)).
11 The program is so risk free in fact that a participating lender's "[f]ailure to comply with this
12 [mortgage servicing responsibilities] shall not be a basis for denial of insurance benefits." 24 C.F.R.
13 203.500.

14 Because participating in the Single Family Mortgage Program is risk free to the lender, HUD
15 regulates what a lender may do or not do under the FHA deed of trust during the duration of the
16 loan. For example, at the loan's inception, HUD's choate power over the home loan is expressed in
17 the FHA Deed of Trust's language. See Deed of Trust, **Exhibit A** to Carrington's Motion for
18 Summary Judgment. HUD controls how payments are applied under the FHA deed of trust, (*Id.* at
19 cl. 3), what "fees and charges" the lender may charge the borrower, (*Id.* at cl. 8), how a lender may
20 respond to payment defaults by the borrower, and (*Id.* at cl. 9(d)), and how HUD will invoke the
21 power of sale if the private lender conveys its interest to HUD prior to foreclosure.¹ (*Id.* at cl. 18).

22 HUD's regulation of the lender continues for the life of the FHA loan. For example, FHA
23 has enacted a series of regulations that strictly govern Carrington's obligations in the event of a
24 borrower default under an FHA insured deed of trust. See 24 CFR Part 203, Subpart B. HUD
25 regulations further specify the loss mitigation options that a lender must consider and HUD controls
26 the timeline of when these loss mitigation options should be completed. 24 CFR 203.355(a)(1)-(8).
27 For example, a lender may not foreclose unless at least three full monthly installments due under the
28 mortgage are unpaid after application of any partial payments that may have been accepted. 24 CFR

¹ *Id.* at Sections 3, 8, 9(d), and 18.

1 203.606(a). A lender should only foreclose if the servicer determines the borrower is ineligible for
2 any loss mitigation option. *See* HUD Mortgagee Letter 13-40, **Exhibit B** to Defendants' Motion for
3 Summary Judgment, at pg. 4).

4 HUD's regulation of participating lenders includes how a lender should respond to an HOA
5 where the borrower has defaulted on the HOA. **First**, HUD requires a lender to negotiate with the
6 HOA over the borrower's unpaid assessments. *See* HUD Mortgagee Letter 2013-19, **Exhibit C** to
7 Defendants' Motion for Summary Judgment, at p.4). **Second**, HUD limits reimbursements for
8 lenders to the amount of assessments that the borrower owed from default until the deed of trust
9 foreclosure date. (*Id.*). **Third**, the deadline for the lender to pay the HOA assessments is not until
10 30 days after the deed of trust foreclosure date. (*Id.*) **Fourth**, and most importantly, HUD does not
11 require a lender to convey clear title to HUD. HUD retains discretion not to require clear title, as is
12 explained by HUD's variance procedure to account for lender trouble with HOA's are not responsive
13 or uncooperative. (*Id.* at pg. 5). A lender can seek a variance through HUD's Mortgage Compliance
14 Monitor. (*Id.*) There is no rule that mandates that HUD's Mortgage Compliance Monitor resolve the
15 variance within a specific time. (*Id.*)

16 In *SFR Inv. Pool 1, LLC v. U.S. Bank, et al.*, 130 Nev. Adv. Opn. 75 (Nev. 2014), the court
17 stated nothing prevents a lender from simply paying off the entire HOA lien. The Nevada Supreme
18 Court's statement is incompatible with HUD's federal prerogative to control when a lender pays
19 HOA assessments in the case of a borrower's default, how much a lender should pay, and whether
20 HUD will exercise its discretion to still take title to a property where an HOA is uncooperative. As
21 Chief Judge Navarro recognized, "[b]ecause a homeowners association's foreclosure under Nevada
22 Revised Statutes § 116.3116 on a Property with a mortgage insured under the FHA insurance
23 program would have the effect of limiting the effectiveness of the remedies available to the United
24 States, the Supremacy Clause bars such foreclosures sales." *Washington & Sandhill Homeowners*
25 *Association*, 2014 WL 4798565, at 7.

26 ...

27 ...

28 ...

1 **B. The HOA Lien Statute is facially unconstitutional, as it does not guarantee mortgagees**
2 **receive notice and an opportunity to be heard.**

3 As Carrington outlined in its own motion for summary judgment, the HOA Lien Statute is
4 facially unconstitutional under the Due Process Clause. The non-judicial foreclosure on an HOA
5 lien that is dependent upon a statute and not any agreement between the parties is a form of state
6 action that must comply with the requirements of due process. The HOA Lien Statute fails to meet
7 these constitutional requirements. It does not mandate that mortgagees receive actual notice of the
8 pendency of the HOA foreclosure sales that purportedly extinguish their property interests, as
9 required by the Due Process Clause. Plaintiff's strained interpretation of NRS 116.31168 violates
10 axiomatic rules of statutory construction, as it would render at least four entire subsections of the
11 HOA Lien Statute completely without meaning. Because the HOA's foreclosure sale was conducted
12 pursuant to a facially unconstitutional statute, it is invalid, and the court should deny Plaintiff's
13 motion for summary judgment for this reason alone.

14 An "elementary and fundamental requirement of due process ... is notice reasonably
15 calculated, *under all circumstances*, to apprise interested parties of the pendency of an action and
16 afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust*
17 *Co.*, 339 U.S. 306, 314 (1950) (emphasis added). The United States Supreme Court has applied this
18 standard in the same context as the present case—where a mortgagee's property interest was
19 purportedly extinguished by a non-judicial foreclosure. *Mennonite Bd. of Missions v. Adams*, 462
20 U.S. 791, 800 (1983). The *Mennonite* Court held the Due Process Clause required that "[n]otice by
21 mail or other means *as certain to ensure actual notice* [to the mortgagee] is a minimum
22 constitutional precondition" to a non-judicial foreclosure sale that can extinguish the mortgagee's
23 interest. *Id.* Put simply, the U.S. Constitution requires that non-judicial foreclosure statutes mandate
24 actual notice of a pending foreclosure sale to any mortgagee whose security interest may be
25 extinguished by that foreclosure sale.

26 **C. The HOA Lien Statute is unconstitutional as applied to this case because Bank of**
27 **America was not provided actual notice of the super-priority lien.**

28 Even if the HOA Lien Statute required that mortgagees receive actual notice of HOA
foreclosure sales under all circumstances, the statute is still unconstitutional as applied here because

1 Bank of America was not provided any notice of the super-priority amount of the HOA's lien. To
2 pass muster under the Due Process Clause, the required "notice must be of such nature as
3 reasonabl[e] to convey the required information," with "reference to the subject of which the statute
4 deals." *Id.* at 314.

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

14 The Nevada Supreme Court made the same assumption when evaluating the mortgagee's due
15 process challenge in *SFR Investments*. 334 P.3d at 418. In that case, the mortgagee argued that due
16 process required specific notice "indicating the amount of the superpriority piece of the lien[.]" *Id.*
17 Importantly, this case was decided on a motion to dismiss, which did not allow the Nevada Supreme
18 Court to consider any facts "not apparent from the face of the complaint." *Id.* at 418 n.6. In this
19 posture, the Court rejected the mortgagee's due process challenge, stating that "nothing appears to
20 have stopped [the lender] from determining the precise superpriority amount" prior to the sale, and
21 explaining that "[i]t is well established that due process is not offended by requiring a person with
22 actual, timely knowledge of an event that may affect a right to exercise due diligence and take
23 necessary steps to preserve that right." *Id.* at 418 (quoting *In re Medaglia*, 52 F.3d 451, 455 (2d Cir.
24 1995). The Court did not decide whether due process is offended where, as here, a mortgagee
25 exercises due diligence by requesting "the precise superpriority amount in advance of the sale," and
26 the HOA refuses to provide that information. *See SFR Investments*, 334 P.3d at 418.

1 Here, none of the documents recorded by the HOA provided notice of the super-priority
2 portion of the HOA's lien. Nonetheless, Bank of America reached out to the HOA Trustee and
3 requested a breakdown of the HOA arrears in order to determine and pay the super-priority portion
4 of the HOA lien. BANA attempted to determine and tender the super-priority amount to the HOA
5 Trustee prior to the foreclosure sale and "offered to pay [the super-priority] sum upon presentation of
6 adequate proof of the same by the HOA." The HOA Trustee ignored this request, instead choosing to
7 provide Miles Bauer with an inaccurate payoff demand, with an alleged super-priority amount
8 including thousands of dollars in additional fees and costs.

9 Unlike in *SFR Investments*, where the procedural posture of that case required the Court to
10 rely on contentions in the complaint that "nothing appeared to have stopped" the lender from
11 determining the super-priority amount, here the record is clear: the only parties with the information
12 necessary to determine the super-priority amount—the HOA and the HOA Trustee—refused to
13 provide Bank of America with the super-priority amount. It is clear Bank of America, and its
14 successor-in-interest, Carrington, was never put on actual notice of the amount of the lien that could
15 extinguish its own senior Deed of Trust.²

16 Holding that due process requires HOAs to identify the super-priority amount is not only
17 fundamentally fair—it also implements a policy of the Nevada Legislature. The Nevada Legislature,
18 apparently cognizant of the manipulative and evasive conduct of HOAs like the one here, now
19 requires a foreclosing HOA to identify the "amount of the association's lien that is prior to the first
20 security interest," see NRS 116.31162(1)(b)(2(I)), as amended by Senate Bill 306. The amended
21 statute also requires the HOA to specifically explain how the holder of a first deed of trust may
22 extinguish a super-priority lien—by tendering the identified super-priority amount no later than five
23 days before the sale. See NRS 116.31162(1)(b)(3(II)), as amended by Senate Bill 306. If the
24 holder of the first deed of trust records with the county recorder that it has satisfied the super-priority
25 amount, "the sale may not extinguish the first security interest as to the unit." *Id.*

26
27 ² As discussed in more detail below, BANA, in an abundance of caution, tendered the possible super priority amount
28 even though the HOA's lien, including any alleged super-priority amount, had been previously paid in full and released.

1 These amendments demonstrate two key points. First, the Nevada Legislature agrees it is
2 fundamentally unfair to permit a foreclosure of a first deed of trust without ever providing notice or
3 recording with the county recorder (1) the *existence* of a super-priority lien; (2) the *amount* of the
4 super-priority lien; or (3) *how to cure* the super-priority lien before the first deed of trust is
5 extinguished. Second, the amendments demonstrate the modesty of Carrington's position. If the
6 Court rules this particular foreclosure did not comport with due process requirements because of the
7 HOA's failure to identify the existence or amount of a super-priority lien, that holding would apply
8 to only those cases in which HOAs have been so evasive as to avoid identifying the super-priority
9 amount. It will also do no more than implement a requirement already endorsed by the Legislature.

11 The Due Process Clause requires that a party be provided *actual* notice and an *actual*
12 opportunity to be heard prior to the deprivation of that party's property interest. *See, e.g., J.D.*
13 *Constr. v. IBEX Int'l Group*, 240 P.3d 1033, 1040 (Nev. 2010). Providing notice that a lien exists,
14 without specific notice that a super-priority lien exists and the amount of that lien is a "mere gesture"
15 of process. *See Mullane*, 339 U.S. at 315 ("[W]hen notice is a person's due, process which is mere
16 gesture is not due process."). The notice provided to a mortgagee whose security interest is at risk of
17 extinguishment must be calculated to afford the mortgagee an opportunity to present its objections
18 or, if necessary, cure the delinquency. *Id.* at 314. But here, Bank of America was provided with no
19 notice, much less actual notice, of the amount of the super-priority lien which would extinguish its
20 constitutionally-protected property interest when foreclosed. Without notice of the super-priority
21 amount, Carrington's predecessor, Bank of America, had no opportunity to protect its property
22 interest prior to the foreclosure – but still did exactly what the *SFR Investments* Court said it should
23 do. As applied to the circumstances of this case, the HOA Lien Statute operated unconstitutionally,
24 invalidating the HOA foreclosure sale on which Plaintiff's claims rely.
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1 **D. HOA Super-Priority in Nevada Is Not Evergreen.**

2 As more fully briefed in Carrington's motion for summary judgment, an HOA's super priority
3 lien is not evergreen. This conclusion is patent from NRS 116.3116(2)(c)'s plain language, the
4 legislative history of AB 204 explaining the 2009 amendment of the super priority lien, and a
5 comparison of NRS 116.3116(2)(c) with the 2008 amendments to UCIOA that Nevada has not
6 adopted demonstrate Nevada's super priority is not evergreen. Southern Terrace's April 23, 2010
7 Lien, which contained more than 9 months of assessments, was paid in full and released. *See* Ex. G.
8 For this reason, BANA had absolutely no obligation to tender 9 months-worth of assessments – but
9 it still did.
10

11 **E. Southern Terrace's Factoring Agreement with First 100 Eliminated the HOA's Lien.**

12 As Carrington explained in its motion for summary judgment, Southern Terrace and Red
13 Rock entered into an agreement with First 100 to sell the delinquent payment obligation on the
14 property. Southern Terrace, Red Rock and First 100 executed into Factoring Agreement in April
15 2013, whereby the HOA sold to First 100 its interest in accounts receivables pertaining to delinquent
16 assessments owed by various unit owners. This factoring agreement violated Nevada's rules on lien
17 splitting announced in *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 258 (Nev. 2012).
18 Therefore, Southern Terrace lacked standing to foreclose because it no longer possessed the payment
19 rights under the lien at the time of the sale. The foreclosure sale was void as a matter of law under
20 *Edelstein*.
21

22 **F. Even if the HOA's Super Priority Lien is Evergreen, Bank of America's tender**
23 **extinguished the super-priority portion of the HOA's lien.**

24 Even if the HOA Lien Statute were constitutional, Carrington would still be entitled to
25 summary judgment because Bank of America's super-priority tender extinguished that portion of the
26 HOA's lien prior to the foreclosure sale. As the *SFR Investments* Court stated, a secured lender can
27 "pay[] off the superpriority piece of the lien to stave off foreclosure." 334 P.3d at 413. While the
28

1 Nevada Supreme Court has not had an opportunity to expound on tender in the HOA super-priority
2 lien context, it has consistently held that an offer to pay is sufficient tender. *See, e.g., Ebert v.*
3 *Western States Refining Co.*, 75 Nev. 217, 221-222, 337 P.2d 1075, 1077 (1959). Tender is
4 complete when “the money is offered to a creditor who is entitled to receive it[.]” *Cladianos v.*
5 *Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952). After the money owed is offered to the
6 creditor, “nothing further remains to be done, and the transaction is completed and ended.” *Id.*
7

8 Other jurisdictions agree tender is defined as “an offer of payment that is coupled either with
9 no conditions or only with conditions upon which the tendering party has a right to insist.” *Fresh v.*
10 *Kramer*, 99 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am.Jur.2d *Tender* §22
11 (2014). Put differently, it is irrelevant whether any money actually changes hands—tender is
12 complete upon the offer to pay. *See Guthrie v. Curnutt*, 417 F.2d 764, 765-66 (10th Cir. 1969)
13 (“[t]he failure of the agent to count out the cash or to present a cashier’s check in the actual amount
14 does not destroy the tender. We have held that when a party, able and willing to do so, offers to pay
15 another a sum of money and is told that it will not be accepted, the offer is a tender without the
16 money being produced.”).

17
18 Bank of America sent a letter to the HOA Trustee expressing an unconditional offer to pay
19 the super-priority amount. Specifically, Bank of America stated it “hereby offers to pay [the super-
20 priority] sum upon presentation of adequate proof of the same by the HOA.” Further, Bank of
21 America sent a check representing 9 months-worth of assessments. The fact that the HOA Trustee
22 rejected this offer is irrelevant, since Bank of America’s tender was complete when it offered money
23 “to the creditor entitled to receive it,” here, the HOA. *See Cladianos*, 69 Nev. at 45. Once Bank of
24 America offered to pay the super-priority amount, “nothing further remain[ed] to be done, and the
25 transaction [was] completed and ended.” *See id.*
26
27
28

Carrington has produced unrefuted evidence that its predecessor-in-interest, Bank of America, not only offered to pay, but *actually paid*, the super-priority amount prior to the foreclosure sale, thereby "avert[ing] loss of its security" in the Property. *See SFR Investments*, 334 P.3d at 414. Because the super-priority lien was extinguished prior to the foreclosure sale, plaintiff's interest in the Property, if any, is subordinate to Carrington's Deed of Trust.

G. The Nevada Supreme Court recently clarified that a grossly inadequate price alone can be sufficient bases to set aside a sale.

The *Shadow Wood* Court clarified a heavily-disputed issue in HOA quiet-title actions: whether inadequacy of price alone is enough to invalidate a foreclosure sale as commercially unreasonable. *Id.* The *Shadow Wood* Court indicated that a foreclosure sale could be commercially unreasonable if the sales price was "grossly inadequate as a matter of law." *Id.* "While gross inadequacy cannot be precisely defined in terms of a specific percentage of fair market value, generally a court is **warranted in invalidating a sale where the price is less than 20 percent of fair market value[.]**" *Id.* at 15 (quoting the Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (1997)).

In explaining when a foreclosure sale is defective, the Restatement (Third) of Property (Mortgages) § 8.3 (1997) 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 defined what "grossly inadequate" means:

"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.**

1 *Id.* at cmt. b. (emphasis added).

2 Finally, the Restatement authors address the method of proving gross inadequacy:

3 This section articulates the traditional and widely held view that a
4 foreclosure proceeding that otherwise complies with state law may not
5 be invalidated because of the sale price unless that price is grossly
6 inadequate. **The standard by which "gross inadequacy" is**
7 **measured is the fair market value of the real estate.** For this
8 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.

8 *Id.* (emphasis added).

9 Here, Plaintiff purchased the Property for 6% of its fair market value at the time of the
10 foreclosure sale, less than a quarter of the 20% of fair market value the *Shadow Wood Court*
11 indicated would be grossly inadequate as a matter of law. This Court should follow *Shadow Wood*
12 Court's holding that a "Court is warranted in invalidating a sale where the price is less than 20
13 percent of fair market value," *Shadow Wood*, 132 Nev. Adv. Op. 5, at 15, set aside the sale and grant
14 Carrington summary judgment.³

15 **H. Plaintiff is Not a Bona Fide Purchaser for Value**

16 The Court should further deny Plaintiff's motion for summary judgment and grant
17 Carrington's motion for summary judgment because Plaintiff cannot demonstrate it is a bona fide
18 purchaser for value. To qualify as a bona fide purchaser, Plaintiff must show it purchased the
19 property: (1) for value; and (2) *without notice of a competing or superior interest in the same*
20 *property*. *Berge v. Fredericks*, 591 P.2d 246, 247 (Nev. 1979). Plaintiff cannot satisfy the second
21 element, as Carrington's deed of trust constitutes a competing or superior interest in the property of
22 which Plaintiff was on notice prior to its purchase of the property.

23 In *Bayview*, for example, the District of Nevada held that because the mortgagee's deed of
24 trust was recorded prior to the foreclosure sale, SFR Investments Pool 1 "is clearly not a bona fide
25

26 ³ Even worse, the HOA's commercially unreasonable conduct went further. The HOA, through its foreclosure agent,
27 failed to announce (1) the sale was not a super priority sale, because any super priority portion of its lien was
28 extinguished when the full amount of the lien was paid in June 2010; or (2) BANA had tendered any alleged super
priority portion (assuming the super priority portion of the lien is evergreen, which Carrington denies).

1 purchaser.” *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222, 1229 n.5
2 (D. Nev. 2013). The Eighth Judicial District has arrived at identical holdings in HOA super-priority
3 cases. For instance, in *SFR Investments Pool 1, LLC v. Nationstar Mortgage, LLC*, the court
4 determined that because the plaintiff had knowledge of the lender’s deed of trust and the competing
5 claims against the property, the plaintiff was not a bona fide purchaser at the HOA foreclosure sale.
6 See *SFR Investments Pool 1, LLC v. Nationstar Mortg., LLC, et al.*, Case No. A-13-684596-C, Order
7 denying Application for Temporary Restraining Order pp. 12-13 (Aug. 5, 2013). Similarly, in
8 *Design 3.2 LLC v. Bank of N.Y. Mellon*, the court granted summary judgment in favor of the lender,
9 holding that the plaintiff was not a bona fide purchaser because it acquired the property “with actual
10 or constructive knowledge of [the lender’s] interest” because the deed of trust was recorded
11 approximately three years prior to the plaintiff’s purchase. *Design 3.2 LLC v. Bank of N.Y. Mellon*,
12 Case No. A-10-621628 (June 15, 2011).

13 Similar to the plaintiffs in the aforementioned cases, Plaintiff here cannot dispute
14 Carrington’s deed of trust was recorded well before the HOA Lien. This establishes Plaintiff is not a
15 bona fide purchaser.

16 DATED this 14th day of March, 2016.

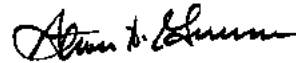
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28

EXHIBIT 21

EXHIBIT 21



CLERK OF THE COURT

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7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 R VENTURES VIII, LLC, a Nevada series
limited liability company of the container R
11 VENUTERS, LLC under NRS § 86.296,

12 Plaintiff,

13 v.

14 TAYLOR, BEAN & WHITAKER
MORTGAGE CORP., a Florida corporation;
15 WELLS FARGO BANK, N.A., a national
association; BANK OF AMERICA, N.A., a
16 national association; SOUTHERN TERRACE
HOMEOWNERS' ASSOCIATION, a Nevada
17 domestic non-profit coop corporation; JOYCE
PIERCE, an individual; CARRINGTON
18 MORTGAGE HOLDINGS, LLC; DOES I
through X; and ROE CORPORATIONS II
19 through X, inclusive,

20 Defendants.

21 AND ALL RELATED CLAIMS.
22

Case No.: A-13-684151-C

Dept. No.: VI

REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

23 R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd.
24 ("Cooper Coons"), hereby files this reply in support of its motion for summary judgment. This
25 Reply is made and based upon the following Memorandum of Points and Authorities, all pleadings
26 on file herein, and any and all oral arguments at the time of the hearing.

27 ///

28 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff has consistently argued their status as a bona fide purchaser for value protected
4 their duly recorded interest as the record title owner of the real property commonly known as **6175**
5 **Novelty Street, Las Vegas, Nevada 89148; Parcel No. 163-31-713-027** ("Property"). Notably,
6 in an HOA foreclosure case, the Nevada Supreme Court remanded an order granting summary
7 judgment in favor of a lender, based in part, on the lower court's failure to consider the purchaser's
8 status as a bona fide purchaser. *Shadow Wood Homeowners Ass'n vs New York Community*
9 *Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance Opinion 5, confirming
10 Plaintiff's status as particularly relevant.

11 In *Shadow Wood*, the Nevada Supreme Court clarified a court can grant equitable relief
12 from a defective HOA lien foreclosure sale. *Id.* This equitable action must examine all the
13 circumstances to evaluate the propriety of unwinding the sale. The court identified two areas of
14 relevant inquiry: 1) Plaintiff's status as a bona fide purchaser; and, 2) the lender's inaction.

15 A court sitting in equity must consider the status of all parties involved and not grant
16 equitable relief where it would work a gross injustice upon innocent third parties. *Id.* at 21. In
17 footnote 7 at 21, the Nevada Supreme Court goes on to state the status of the innocent third party
18 is particularly relevant when the lender failed to use legal remedies to protect its position. *Id.* In
19 *Shadow Wood*, the lower court failed to make factual determinations regarding the third party's
20 status as a bona fide purchaser. *Id.* Because of the importance of the purchaser's status, the case
21 was remanded for further fact finding with respect to this argument.

22 In *Shadow Wood*, the lender's offered payment was rejected by the HOA and its collection
23 company. However, instead of providing an unequivocal basis for unwinding the sale, the court
24 remanded for a balancing of equities based on the lender's inaction. Instead of diligently protecting
25 their interest, the lender did nothing. The lender did not tender the amount provided in the notice
26 of sale *Id.* at 24. The lender failed to record a notice. The lender failed to initiate court relief for a
27 temporary restraining order or injunction. The lender failed to initiate arbitration. The lender even
28 failed to attend the sale to notify potential bidders of the dispute. *Id.* at 19. The lenders inaction

1 provides an equitable basis to deny relief through unclean hands and laches.

2 Further, Defendant Carrington Mortgage Services did not file an opposition until March
3 14, 2016, six days after the time to respond had run under EDCR 2.20(e). Consequently, this
4 omission may be construed as an admission Plaintiff's motion is meritorious and a consent to
5 granting the same.

6 As set forth in the data below, Plaintiff is entitled to a declaration Plaintiff the rightful
7 owner of the title to the Property, and that the Defendants be declared to have no right, title, or
8 interest in the Property.

9 **II. LEGAL ARGUMENT**

10 **A. Shadow Wood Protects Plaintiff As a Bona Fide Purchaser.**

11 The argument asserted by Defendant that merely recording an inferior interest constitutes
12 notice sufficient to extinguish bona fide purchaser protection was squarely rejected by the Nevada
13 Supreme Court.

14
15 As to notice, NYCB submits that "the simple fact that the
16 HOA trustee is attempting to sell the property, and divest
17 the title owner of its interest, is enough to impart
18 constructive notice onto the purchaser that there may be an
19 adverse claim to title." Essentially then, NYCB would have
20 this court hold that a purchaser at a foreclosure sale can
21 never be bona fide because there is always the possibility
22 that the former owner will challenge the sale post hoc. The
23 law does not support this contention. Shadow Wood at 23.

24 The court further criticizes this argument.

25
26 And if the association forecloses on its super-priority lien
27 portion, the sale also would extinguish other subordinate
28 interest in the property. SFR Invs., 334 P.3d at 412-13. So,
when an association's foreclosure complies with the
statutory foreclosure rules, as evidenced by the recorded
notices, such as is the case here, and without any facts to
indicate the contrary, the purchaser would have only
"notice" that the former owner had the ability to raise an
equitably based post-sale challenge, the basis of which is
unknown to that purchaser. Id.

The court notes the lender failed to provide sufficient evidence that the purchaser

1 had notice of a pre-sale dispute.

2 That NYCB retained the ability to bring an equitable claim
3 to challenge Shadow Wood's foreclosure sale is not enough
4 in itself to demonstrate that Gogo Way took the property
5 with notice of any potential future dispute as to title. And
6 NYCB points to no other evidence indicating that Gogo
7 Way had notice before it purchased the property, either
8 actual, constructive, or inquiry, as to NYCB's attempts to
9 pay the lien and prevent the sale, or that Gogo Way knew
10 or should have known that Shadow Wood claimed more in
its lien than it actually was owed, especially where the
record prevents us from determining whether that is true.
Lennartz v. Quilty, 60 N.E. 913, 914 (Ill. 1901) (finding a
purchaser for value protected under the common law who
took the property without record or other notice of an
infirmity with the discharge of a previous lien on the
property).

11 Here, the exact same situation has arisen. Defendant Carrington Mortgage
12 Services rests its opposition solely on the fact that a recorded interest puts a
13 potential purchaser on notice of a dispute as to the amount of an HOA lien.
14 However, they can produce no evidence that Plaintiff had knowledge of this private
15 dispute. In contrast, Plaintiff has set forth undisputed facts that Plaintiff had no
16 knowledge of any dispute. Without an offer of proof, Plaintiff clearly qualifies as a
17 bona fide purchaser. Simply put, it would be unfair to punish Plaintiff for the
18 lender's inaction.

19 **B. Foreclosure Sale Purchase Price Is Insufficient to Set Aside the Sale.**

20 Shadow Wood cemented Plaintiff's interpretation that price alone will not justify setting
21 aside a foreclosure sale. *Id.* at 9-10 (Citing *Long v. Towne* and *Golden v. Tomiyasu*). The Nevada
22 Supreme Court has held that mere "inadequacy of price is not sufficient to justify setting aside a
23 foreclosure sale, absent a showing of fraud, unfairness or oppression." *Long v. Towne*, 98 Nev. 11,
24 13, 639 P.2d 528, 530 (1982). See also *Golden v. Tomiyasu*, 79 Nev. 503, 504, 387 P.2d 989 (1963)
25 (remanded the setting aside of a foreclosure sale holding that "inadequacy of price, without proof
26 of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy
27 of price is not sufficient" to set aside the sale). See also *Shadow Wood Homeowners Ass'n vs New*
28 *York Community Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance Opinion

1 5. The foreclosure sale at which Plaintiff purchased the Property was properly conducted in all
2 respects. "Mere inadequacy of price... is not sufficient to support a judgment setting aside the
3 sale." *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963). Even in cases where a discrepancy
4 in price and value necessitated scrutiny into the commercial reasonableness of the disposition of
5 collateral, courts focus on the manner of the sale that might have caused such a discrepancy. In
6 *Levers v. Rio King Land & Inv. Co.*, the Nevada Supreme Court found that the secured party failed
7 to provide reasonable notice to the debtor and took no steps to publicize the sale in any manner,
8 and therefore the debtor was entitled to a credit equal to the fair market value rather than the sale
9 price. *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 920 (Nev. 1977).

10 Here, Defendant Carrington Mortgage Services can produce no evidence that points to
11 commercial unreasonableness. Defendant Carrington Mortgage Services or its predecessor in
12 interest received adequate notice of the sale. Despite extensive discovery, Defendant Carrington
13 Mortgage Services can produce no evidence of fraud. Quite the opposite, Plaintiff has presented
14 uncontroverted evidence of a commercially reasonable sale, public and attended by multiple
15 bidders that resulted in competitive bidding.

16 **C. Lender Failed to Act**

17 Defendant Carrington Mortgage Services claims are barred by the equitable defenses of
18 unclean hands and laches. Unclean hands generally bars a party from receiving equitable relief
19 because of that party's own inequitable conduct. *Las Vegas Fetish & Fantasy v. Ahern Rentals*,
20 182 P.3d 764, 766 (Nev. 2008). The inquiry for unclean hands is two-fold. The Court must weigh
21 the egregiousness of the misconduct and the seriousness of the harm caused by the misconduct. *Id.*
22 at 767. Laches applies where delay by one party prejudices another party. *Besnilian v. Wilkinson*,
23 117 Nev. 519, 520 (2001).

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

1 all the facts surrounding the questioned transaction and merely makes a mistake as to the legal
2 consequences of his act, equity should normally not interfere, especially where the rights of third
3 parties might be prejudiced thereby.” *Shadow Wood Homeowners Ass’n vs New York Community*
4 *Bancorp, Inc.*, No. 63180 (Nev., January 28, 2016), 132 Nev., Advance Opinion 5 at 24.

5 SFR requires a lender to exercise due diligence and take necessary steps to preserve its
6 rights including “paying the entire amount and requesting a refund of the balance.” *Id.* at 418.
7 According to the payment scheme under NRS 116.31164(3)(c), the lender would be able to recover
8 a substantial majority of the bid price in excess of the super-priority amount as their junior lien
9 would be next in line. After deducting the super-priority lien, they would receive a substantial
10 majority of their bid amount and may dispute the rest in a small claims action. Additionally,
11 Defendant Carrington Mortgage Services must deposit the alleged tender upon rejection amount
12 into court to forestall a foreclosure. *Bisno v. Sax*, 346 P.2d 814, 820 (Cal. Ct. App. 1959); See also
13 59 C.J.S. Mortgages § 506, p. 826, stating: ‘A tender of payment or performance sufficient to
14 discharge the mortgage may preclude foreclosure and a proceeding already commenced may be
15 stopped by paying what is due into court.’

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

23 Laches Defendant Carrington Mortgage Services from coming before this Court after the
24 sale had been completed. If Defendant Carrington Mortgage Services had exercised reasonable
25 judgment by taking any one of several options to protect their interest, they would not be here
26 today.

27 Unclean hands prevents Defendant Carrington Mortgage Services from achieving
28 equitable relief. First, Defendant Carrington Mortgage Services failed to act or give notice to any

1 third party. While not necessarily egregious in isolation, applying the attempted tender to
2 undermine a sale would result in a great inequity to Plaintiff. The harm, the loss of the Property,
3 is substantial and irreplaceable.

4 Because Defendant Carrington Mortgage Services failed to take reasonable steps to
5 protect their interest, they cannot now avail themselves of the equitable relief of the legal process.

6 **D. PSA Did Not Affect HOA's Ability to Foreclose.**

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

14 **i. HOA Retained Right to Foreclose.**

15 According to Robert Atkinson, the 30(b)(6) designation for United Legal Services, Inc.,
16 First 100 acquired rights to the proceeds of a monetization event triggered by notice of foreclosure
17 sale. Pl.'s MSJ, Exhibit 8, Deposition of United Legal Services, Inc. at 12. More specifically, "none
18 of the HOA's rights relating to their legal ability to foreclose were sold." Id. at 14. To read this
19 PSA to eliminate the ability of the HOA's ability to pursue foreclosures would negate the intent
20 of the PSA and the understanding of the contracting parties. The carefully crafted PSA ensured the
21 HOA retained the HOA lien and the ability to foreclose through its newly designated collection
22 agent, United Legal Services, Inc. After the foreclosure sale was completed, the disbursements of
23 funds was made to United Legal Services, Inc. as the authorized agent of the HOA. Once the HOA
24 had satisfied its HOA lien, those satisfied funds were contractually obligated to be transferred to
25 First 100.

26 **ii. CC&Rs Authorized the HOA To Enter Into the PSA.**

27 As specifically enumerated in the CC&Rs Section 5.1, the HOA had the ability to enter
28 into any contract not specifically prohibited by the governing documents. Defendants have not

1 provided any citation to these governing documents that would prohibit the type of arrangement
2 agreed upon in the PSA. NRS 116.3102(p) specifically permits express powers to assign future
3 income, even general expressions of powers like those contained in Section 5.1. Consequently, the
4 HOA had the power to enter into the PSA.

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

9 **iii. Edelstein is Only Applicable to the Foreclosure Mediation Program.**

10 Defendants' assertion that splitting a lien prevents foreclosure of an HOA lien is wholly
11 inapplicable. *Edelstein v. Bank of New York Mellon*, deals with specific additional requirements
12 under the Foreclosure Mediation Program instated for foreclosures of deeds of trust, wholly
13 inapplicable to the present case. *Id.* at 286 P.3d 249, 258 (Nev. 2012). Before a lender can proceed
14 with foreclosure under NRS 107, it is mandated to mediate with the obligor, including a
15 requirement that the lender have the authority to modify the loan. The only reason the foreclosure
16 was found inappropriate when the promissory note and the deed of trust have been separated is
17 because the party foreclosing does not have authority to modify the promissory note as required
18 under the Foreclosure Mediation Program.

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

22 **E. As Applied Analysis Proscribes Statutory Facial Challenge.**

23 A facial challenge is a claim that a statute is unconstitutional on its face – that is, that is
24 always operates unconstitutionally. In other words, any possible application of the statute must be
25 unconstitutional. However, the Nevada Supreme Court recently upheld an as-applied challenge to
26 the constitutionality of NRS 116. *SFR Investments Pool 1, LLC v U.S. Bank*, 130 Nev. Advance
27 Opinion 75 (Sept 18, 2014). Further, the Nevada Supreme Court has issued multiple unpublished
28 and published decisions indicating the due process challenge is meritless.

1 The Nevada Supreme Court has held at least one application of the statute is constitutional.
2 Id. First, the Court credited the allegations in the Plaintiff's Complaint as true, most pertinently
3 that the plaintiff had complied with all notice requirements. Id. Second, the Court concluded "U.S.
4 Bank's due process challenge to the lack of adequate notice fails, at least at this early stage in the
5 proceeding." Id. at 22. The Court required notice to junior lienholders under NRS 107.090. Id. at
6 6. Consequently, the Court left open the factual challenge of notice; however, clearly indicated
7 that if the notice requirements were followed, the due process challenge will fail. Thus, one
8 application of the statute is valid. Logically, if one application of the statute is constitutional, all
9 applications of the statute cannot be unconstitutional. Thus, the facial challenge must fail.

10 In an unpublished order filed on December 23, 2015, Las Vegas Motorcoach Resort
11 Owners Ass'n v. Boohcr, Case No. 66036, the Nevada Supreme Court recently remanded a case
12 where the lender argued adequacy of the due process provided because "it does not appear the
13 alternative issues tendered to us as potential bases to reverse or affirm the summary judgment order
14 were fully and adequately vetted in the district court." This amounts to a request by the Nevada
15 Supreme Court to factually develop the issues. However, a facial challenge requires no factual
16 analysis because "'individual application of facts do not matter' in a facial challenge and 'the
17 plaintiff's personal situation become irrelevant.'" If the Nevada Supreme Court was inclined to
18 rule NRS 116 unconstitutional, it would not need the factfinding it requested.

19 Merely one case does not indicate a pattern, but several may. Southern Highlands
20 Community Ass'n v. San Florentine Avenue Trust, 132 Nev. Adv. Op. 3 (2016) further developed
21 the case law with respect to HOA foreclosure sales by clarifying the effect of an HOA foreclosure
22 in a circumstance where a different HOA had a separate super-priority lien on the property. In
23 another unpublished order filed on December 23, 2015, Saticoy Bay, LLC Series 2301 Haren v.
24 LNV Corp., Case No. 65151, the Nevada Supreme Court further clarified SFR by interpreting the
25 inclusion of NRS 116 language in a Common Interest Community's CC&R's as applying SFR.

26 The litany of cases continues as the Nevada Supreme Court has continued to act
27 consistently with Plaintiff's interpretation, rejecting facial challenges. In an unpublished order
28 filed on January 22, 2016, Mackensie Family, LLC v. Wells Fargo Bank, Case No. 65696, the

1 Nevada Supreme Court recently remanded a case where the lender was granted summary judgment
2 prior to the SFR decision. Importantly, the Court noted, "this case cannot be resolved on appeal
3 because a genuine issue of material fact remains regarding whether the foreclosure was proper."
4 The court was briefed regarding a facial challenge of NRS 116. See Answering Brief. As
5 previously noted, a facial challenge requires no fact finding. Here, when the Nevada Supreme
6 Court has remanded a case for further fact finding is tantamount to a rejection of the facial
7 challenge where the issue has been fully briefed.

8 In another unpublished order filed on January 22, 2016, Park v. Wells Fargo Bank, Case
9 No. 65735, the Nevada Supreme Court reversed and remanded a district court's granting a motion
10 to dismiss for failure to state a claim granted prior to SFR. Again, the Nevada Supreme Court,
11 despite being fully briefed on the facial challenge to NRS 116, declined to uphold the motion to
12 dismiss on these grounds. See Answering Brief.

13 In yet another an unpublished order filed on February 17, 2016, Whitehouse v. Wells Fargo
14 Bank, N.A., Case No. 65169, the Nevada Supreme Court remanded a case where a purchaser's
15 quiet title complaint was dismissed prior to the SFR decision. The court was briefed regarding a
16 facial challenge of NRS 116. See Answering Brief. As previously noted, a facial challenge requires
17 no fact finding. Here, yet again, the Nevada Supreme Court has remanded a case for further fact
18 finding and is tantamount to a rejection of the facial challenge where the issue has been fully
19 briefed.

20 All of these instances, combined with the multitude of oral arguments regarding HOA cases
21 in the preceding months, indicate the Nevada Supreme Court is unlikely to find the HOA
22 foreclosure statute unconstitutional and negate the substantial case law they have developed. The
23 expenditure of judicial resources reaching these resolutions would be wasted should the statutory
24 scheme be held unconstitutional. The more likely interpretation is the position Plaintiff's have
25 taken in this case, that the Nevada Supreme Court has already considered the due process concerns
26 in SFR and found the argument meritless.

27 Additionally, Defendant Carrington Mortgage Services disingenuously states Bank of
28 America could not obtain the super-priority amount from the HOA. See Def.'s Opp. at 5-6.

1 However, Miles Bower, obtained a complete breakdown from Red Rock Financial Services in a
2 letter dated December 27, 2014. Pl.'s MSJ, Exhibit 7. Bank of America then declined to comply
3 with the payoff demand stating it was an inaccurate amount; however, this purported dispute could
4 only arise if Bank of America examined the ledger and calculated what it thought was owed under
5 the super-priority lien. While Bank of America and the HOA may have disagreed about the
6 amount, Bank of America and its successor in interest cannot complain they had no notice of the
7 amount claimed.

8 Taken as a whole, these decisions strongly indicate Defendant Carrington Mortgage
9 Services' facial challenge to NRS 116 lacks merit.

10 **F. HUD REQUIRES LENDER TO PAY ASSESSMENTS**

11 Defendant Carrington Mortgage Services goes through great lengths to impute a federal
12 interest by invoking the substantial control HUD has over a lender's action. However, they fail to
13 recognize HUD specifically required the lender to continue to pay HOA assessments as they
14 became due and are expressly subordinate to state law as set forth below.

15 HUD's internal procedure via multiple mortgagee letters indicates lien priority is
16 determined by state law. Pl's Opp. (February 23, 2015), See Generally Exhibits 1-4. A mortgagee
17 letter dated June 20, 2012 clearly requires a mortgagee to "adhere to state and local laws while
18 they hold title to a property that was financed with an FHA-insured mortgage." Pl's Opp., Exhibit
19 2. A super priority lien for assessments is analogous to a tax lien. Because either may implicate
20 serious title defects, similar to escrow accounts set aside for taxes, "mortgagees must take any
21 action necessary to protect HUD's interest when foreclosure actions are brought by a condo/HOA
22 on a property securing an FHA-insured mortgage." Pl's Opp., Exhibit 1, page 2. A lender is
23 required to pay off both before conveying title to HUD, Pl's Opp., Exhibit 3, page 3.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Further, rule citations to 24 CFR 203.355, cited by Washington & Sandhill Homeowners
2 *Ass'n v. Bank of Am., N.A.*, No. 2:13-cv-01845-GMN-GWF, 2012 WL 4798565 (D. Nev. Sept.
3 25, 2014) a Nevada District Court Case the lender relies on, specifically mentions state law
4 limitations on foreclosures. 24 CFR 203.355(c) states:

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

10 This information renders any federal preemption argument inapplicable. Notably, neither
11 the moving paper nor decision did not consider the aforementioned Mortgagee Letters. Pl's Opp.,
12 Exhibits 1-4. The letter dated June 20, 2012 specifically requires mortgagees to follow state law.
13 Pl's Opp., Exhibit 2.

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

19 Even if Defendant Carrington Mortgage Services conveyed title to HUD, 24 CFR
20 203.366(b) enumerates the procedure if a lender transfers title without good and marketable title
21 and the lender refuses or cannot remedy the title defect. Title will be reconveyed to the lender, and
22 the lender must reimburse the funds to the FHA program. *Id.* Thus, a federal property interest, if
23 any, is not affected by NRS 116.

24 Application of HUD guidelines will not undermine the FHA insurance's goals. First, the
25 courts are ill equipped to oversee the minutia of HUD activity. "HUD has very broad discretion in
26 order to achieve national housing objectives," *United States v. Antioch Found.*, 822 F.2d 693, 695
27 (7th Cir. 1987), because "courts are ill equipped to superintend" especially about "economic and
28 managerial decisions" involving a balancing of factors and consideration of complex financial data
with respect to the administration of FHA insurance. *Hahn v. Gottlieb*, 430 F.2d 1243, 1249-51
(1st Cir. 1970). Day to day decision concerning, for instance, whether and when to foreclose or

1 forbear from foreclosing "involve[] a balancing of factors and consideration of complex financial
2 data." Falzarano v. United States, 607 F.2d 506, 512 (1st Cir. 1979).

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

8 **G. Offer of Payment Did Not Constitute a Tender.**

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

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

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

22 Defendant Carrington Mortgage Services cites to two contract cases to support its
23 contention a tender is completed upon a mere offer. Def.'s Opp. at 10. However, a closer
24 examination of both cases shows this interpretation is wholly incorrect.

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

28 The nature of this 'tender' is set forth in 12 Am.Jur. 891, Contracts,

1 § 334, as follows: 'The word 'tender' as used in such a connection
2 does not mean the same kind of offer as when it is used in
3 reference to the payment or offer to pay an ordinary debt due in
4 money, where the money is offered to a creditor who is entitled to
5 receive it, nothing further remains to be done, and the transaction
6 is completed and ended; but it means only a readiness and
7 willingness accompanied with an ability on the part of one of the
8 parties to do the acts which the agreement requires him to perform,
9 provided the other will concurrently do the things which he is
10 required by it to do, and a notice by the former to the latter of such
11 readiness. Such readiness, ability, and notice are sufficient
12 evidence of, and indeed imply, an offer or tender in the sense in
13 which those terms are used in reference to mutual and concurrent
14 agreements. It is not an absolute, unconditional offer to do or
15 transfer anything at all events, but it is, in its nature, conditional
16 only, and dependent on, and to be performed only in case of, the
17 readiness of the other party to perform his part of the agreement.'
18 Id., 69 Nev. 41, 210 (1952).

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


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

25 CONCLUSION

26 For the reasons set forth herein, Plaintiff requests the Court grant Plaintiff's Motion for
27 Summary Judgment and declare Plaintiff the rightful owner of the title to the Property, and that
28 the Defendants be declared to have no right, title, or interest in the Property.

Dated this 22nd day of March, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on March 22, 2016, a true and correct copy of the above and foregoing was serve to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

_____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Las Vegas, Nevada;

_____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions;

_____ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Las Vegas, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a);

___X___ **BY E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addressee (s) having consented to electronic service, I via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

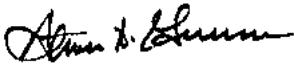
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/s/ Kim Hexamer

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EXHIBIT 22

EXHIBIT 22



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EIGHTH JUDICIAL DISTRICT COURT

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R VENTURES VIII, LLC, a Nevada series
limited liability company of the container R
VENTURES, LLC under NRS § 86.296,

Plaintiff,

v.

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP., a Florida corporation; WELLS Fargo
BANK, N.A., a national association; BANK OF
AMERICA, N.A., a national association;
SOUTHERN TERRACE HOMEOWNERS'
ASSOCIATION, a Nevada domestic non-profit
coop corporation; JOYCE PIERCE, an
individual; CARRINGTON MORTGAGE
HOLDINGS, LLC; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

Defendants.

CARRINGTON MORTGAGE HOLDINGS,
LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

Case No.: A-13-684151-C
Dept.: VI

**CARRINGTON MORTGAGE
HOLDINGS, LLC'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

{37890475;1}

1 CARRINGTON MORTGAGE HOLDINGS,
2 LLC,

3 Crossclaimant,

4 v.

5 TERRACE HOMEOWNERS' ASSOCIATION,

6 Crossdefendant.

7 **I.**

8 **INTRODUCTION**

9 The Court should grant Carrington Mortgage Holdings, LLC (**Carrington**)'s motion for
10 summary judgment and deny plaintiff's motion for summary judgment for 8 reasons. **First**, plaintiff
11 fails to explain to the court how there could have been a super priority lien for the HOA to
12 foreclosure when the entire lien, including any alleged super priority portion, was paid off in July
13 2010. The super priority portion (if any) of an HOA lien does not renew every 9 months. **Second**,
14 even if any super priority portion of the lien is evergreen – which it is not – Carrington's predecessor
15 in interest, Bank of America, N.A., delivered the super priority amount to the HOA prior to the
16 auction. Nothing more is required to redeem the senior deed of trust's priority. Carrington's deed of
17 trust survived the HOA sale. **Third**, First 100's factoring agreement split the debt from the statutory
18 lien. **Fourth**, contrary to plaintiff's contentions, the Court should look to the Nevada Supreme
19 Court's recent decision *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,
20 132 Nev. Adv. Op. 5 (Nev. Jan. 28, 2016) to find the sale commercially unreasonable, and void, as a
21 matter of law. **Fifth**, the HOA Lien Statute is preempted as applied to FHA-insured deeds of trust
22 under the Supremacy Clause. Carrington has standing to make this argument because it is
23 empowered to demonstrate that state law is an obstacle to HUD's objectives under the Single Family
24 Mortgage Insurance Program that are expressed in the FHA Deed of Trust, federal regulations,
25 federal statutes, and agency guidelines. **Sixth**, the present constitutional protected interest, as
26 delineated in the FHA Deed of Trust, HUD's regulations, and Mortgagee Letter, is HUD's present,
27 choate right to say what may or may not be done regarding mortgagee issued pursuant Single Family
28 Mortgage Insurance Program rather than state law. **Seventh**, the HOA Lien Statute is facially

1 unconstitutional under the Due Process Clause. **Eighth**, plaintiff is not, as it claims, a *bona fide*
2 purchaser for value.

3 **II.**

4 **LEGAL ARGUMENT**

5 **A. The HOA's Super Priority is Not Evergreen.**

6 BANA and Carrington are not required to continue paying the super priority amount time and
7 again. NRS 116.3116(2) is unambiguous. Nevada's legislature in NRS 116.3116(2)(c) described the
8 9 months of super priority as a singular occurrence. The legislature's use of the phrase "an action" is
9 unambiguous. The phrase "an action" means the mailing of the notice of delinquent assessment. *See*
10 NRED Advisory Opinion No. 13-01. Since there was only one assessment lien in this case, then
11 there can only be one limited priority super lien.

12 The June 1, 2013 NRED Opinion cites approvingly to the holding in *Lake Ridge Condo*
13 *Assoc. v. Vega*, 2012 WL 6634905 (Conn. Super.). (*See* The Six Month "Limited Priority Lien" for
14 Association Fees Under the Uniform Common Interest Ownership Act at pg. 13). The *Lake Ridge*
15 court wrote that the super priority lien can only be asserted "once during the pendency of either an
16 action to enforce either the association's lien or a security interest..." (*Lake Ridge Condo. Assoc.*,
17 2012 WL 6634905 at *2). The ULC agreed with the result and the holding in *Lake Ridge*:

18 The result reached by the court in *Lake Ridge* is consistent with the
19 appropriate understanding of § 3-116(c) as drafted. Section 3-116(c)
20 provides an association with first lien priority only to the extent of the
21 six months of unpaid common expense assessments that accrued
immediately preceding a lien foreclosure action by either the
association or the first mortgagee.

22 (*See* The Six Month "Limited Priority Lien" for Association Fees Under the Uniform Common
23 Interest Ownership Act at pg. 14).

24 Here, the HOA instituted its foreclosure action by mailing the April 23, 2010 notice of
25 delinquent assessment. There was one super priority lien based on this action by the HOA. And,
26 according to Red Rock's own records, in June 2010 Southern Terrace received payment for the entire
27 amount referenced in the April 23, 2010 notice of delinquent assessment lien, including, but not
28 limited to, the super-priority amount, equal to 9 months of assessments. *See* Carrington's Motion at

1 Ex. F. The HOA was paid the super priority lien (and more) that arose from the HOA's institution of
2 the action.

3 **B. Carrington Satisfied Its Burden to Prove Its Predecessor's Tender Redeemed the Deed**
4 **of Trust's Priority.**

5 Even if the HOA's super priority lien was evergreen, which it is not, BANA, in an abundance
6 of caution, still redeemed the senior deed of trust by tendering a check for 9 months-worth of
7 assessments.

8 **i. Delivering a Check for 9 Months' of Assessments is Tender.**

9 Plaintiff appears to concede that tender of the super priority amount redeems the deed of
10 trust's priority. Plaintiff's Opposition, 3:8-9.. Plaintiff merely argues a tender did not take place
11 here because it was conditional. Plaintiff does not demonstrate how plaintiff's concept is an element
12 of the tender doctrine. Plaintiff appears to equate "tender" with the offeree's acceptance of a
13 payment it believes to be the full amount it is owed. Plaintiff's definition finds no support in the
14 comments to the UCIOA adopted by Nevada's legislature, the concept of tender found in Nevada's
15 common law, or the definition of tender used by other courts and commentators.

16 **First**, BANA's delivery of a check for 9 months' of assessments satisfies the definition of
17 tender based on the comments to UCIOA 3-116. Chapter 116 of the Nevada Revised Statutes does
18 not provide a definition of "tender." The drafters of the Uniform Common Interest Ownership Act
19 (UCIOA), wrote that "[a]s a practical matter, secured lenders will most likely pay the [nine] months
20 assessments demanded by the association rather than having the association foreclose on the unit."
21 1982 UCIOA § 3116 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at 414).¹ Thus,
22 included in the Uniform Law Commission's definition of tender is a demand by the association of
23 the super priority amount and delivery of payment by the beneficiary of senior position deed of trust.

24 Here, Carrington's predecessor in interest, BANA, delivered a check for 9 months'
25 assessments to Red Rock. Plaintiff does not argue the amount of \$655.14 does not equal the sum of
26 9 months' of assessments immediately preceding Southern Terrace's institution of an action to

27 ¹ The Nevada Supreme Court cited to the official comments to UCIOA extensively when evaluating the HOA Lien
28 Statute in *SFR Investments*, 334 P.3d at 412 ("An official comment written by the drafters of a statute and available to
the legislature before the statute is enacted has considerable weight as an aid to statutory construction.").

1 enforce the lien. *See* NRS 116.3116(2)(c) (defining the sum of super priority and how to count the
2 months that make up that sum). Plaintiff concedes Red Rock received BANA's check, but refused to
3 accept it. Nowhere in the comments to the UCIOA is "acceptance" of the sum of 9 months' of
4 assessments required. In fact, to require acceptance to complete the act of tender would turn Nevada
5 law on its head.

6 An analogous situation often arises in contract law where a condition precedent to
7 performance is left unsatisfied by a party's conduct: "[A]n individual who voluntarily prevents the
8 occurrence of a condition established for his or her benefit is estopped from seeking relief from a
9 contract on the grounds that the condition precedent to his obligation failed to occur." *NGA v. Rains*,
10 113 Nev. 1151, 946 P.2d 163, 169 (1992) (quoting *Broussard v. Hill*, 100 Nev. 325, 330, 682 P.2d
11 1376, 1379 (1984)). Here, the super priority was created for the HOA's benefit. The HOA's agent,
12 Red Rock, refused to accept BANA's payment. By analogy, the HOA cannot prevent BANA's
13 redemption of its priority by using Red Rock to prevent payment of the super priority amount.

14 **Second**, Nevada law, though sparse on the meaning of tender, has defined tender of money
15 as follows: "where the money is offered to a creditor who is entitled to receive it, nothing further
16 remains to be done, and the transaction is completed and ended." *Cladianos v. Friedhoff*, 69 Nev.
17 41, 45, 240 P.2d 208, 210 (Nev. 1952). In fact, Nevada law does not even require a physical
18 delivery of a check to satisfy the tender doctrine. *see generally Ebert v. Western States Refining Co.*,
19 75 Nev. 217, 221-222, 337 P.2d 1075, 1077 (1959) (tender of 2 months' rent to exercise option to
20 purchase property was deemed satisfied, despite the failure to deliver the checks, where the seller
21 indicated it would not accept them and the purchaser was at all times ready, willing, and able to
22 physically deliver the checks).

23 **Third**, BANA's delivery of the check for 9 months' of assessments meets the definition of
24 "tender" in the Ninth Circuit and tender's definition in the common law, which is:

- 25 (1) An unconditional offer to perform, coupled with a manifested
26 ability to carry out the offer;
27 (2) A production of the subject matter of the contract;
28 (3) The property tendered must not be less than what is due; and

(4) If greater, there must be no demand for a return of the excess.

Guy F. Atkinson Co. of California and Subsidiaries v. C.I.R., 814 F.2d 1388, 1393 (9th Cir. 1987). BANA's letter is an offer to perform. BANA states in the letter it is paying 9 months' of assessments to "satisfy its obligations to the HOA." (Ex. A at BANA000575). Plaintiff concedes that BANA delivered the check, which is production of the subject matter of the offer of payment. The check for 9 months' of assessments was not less than what was due. "NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual homeowner's property for **up to nine months** of unpaid HOA dues." *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 409 (Nev. 2014). (Emphasis added). Finally, BANA did not make a demand for any excess funds.

ii. BANA and Carrington are Not Required to Take Further Action Other Than Tender.

Plaintiff appears to find fault with BANA and Carrington for not paying off the entire HOA lien, rather than paying the 9 months' of assessments that plaintiff admits occurred here. Plaintiff's Opposition, 9:5-15. But the definition of tender is contrary to plaintiff's argument.

Once tender is complete, nothing more is required. BANA's tender by operation of law redeemed the priority of the senior deed of trust. In 2013, the Uniform Law Commission published The Six Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act. In example three, the Uniform Law Commission provided an example to show how a mortgagee can "redeem" the priority of the first mortgage lien:

Once Bank has paid this amount to [the HOA], [the HOA's] foreclosure sale to enforce the balance of unpaid assessments would transfer title to the unit/parcel subject to the remaining balance of the Bank's first mortgage.

(*Id.* at pg. 12). After BANA's delivery of 9 months' of assessments, the act of tender, the HOA as a matter of law sold the property subject to the senior deed of trust.

C. First 100's Factoring Agreement Split the Debt from the Statutory Lien.

The lien splitting issue is a matter of contract interpretation, a pure issue of law that is ripe for summary judgment interpretation. *Ellison v. Cal. State Auto. Ass'n*, 106 Nev. 601, 797 P.2d 975, 977 (1990). Plaintiff's argument to the contrary, the HOA's statutory lien and the debt were and

1 remain split. **First**, plaintiff does not dispute whether the HOA's statutory lien and debt were split is
2 a matter of interpreting the First 100 Factoring Agreement. **Second**, plaintiff does not dispute that
3 the intent of First 100 and the HOA, the parties to the First 100 Factoring Agreement, was to sell the
4 HOA's receivable, the assessment debt owed by the unit owner in this case, to First 100. **Third**,
5 plaintiff does not argue the First 100 Factoring Agreement is ambiguous. **Fourth**, plaintiff's
6 misunderstanding of *Edelstein* does not support his position that the statutory lien and the debt
7 cannot be split.

8 Plaintiff argues that, despite the First 100 Factoring Agreement, the HOA at all times held
9 the assessment debt owed and the statutory lien. This argument cannot be sustained. **First**,
10 plaintiff's argument strips the First 100 Factoring Agreement of its consideration. If First 100
11 maintained both the lien and the assessment debt, then the HOA sold nothing to First 100. **Second**,
12 First 100, not the HOA, bore the risks associated with non-collection – the Factoring Agreement
13 provides First 100 assumes all risk relating to the collectability of the accounts receivable. *See*
14 Carrington's Motion at Ex. D. **Third**, the description of the assets sold contradicts plaintiff's
15 argument. The assets sold was "[a]ll of Seller's interest in any and all PPI arising from or relating to
16 the Select Delinquent Assessments." *Id.*, Section 2.01. **Fourth**, the HOA had no right itself to
17 collect assessments. The HOA was required to appoint First 100's collection agent. *Id.*, Section
18 3.02(a). **Fifth**, all costs of collection were born by First 100 and not the HOA. *Id.*, Section 3.03(c).
19 The one thing the First 100 Factoring Agreement expressly did not do was transfer the statutory lien.

20 Because of the First 100 Factoring Agreement, the HOA was no longer a creditor of the unit
21 owner. A lien has no separate existence from the debt it secures. 51 Am.Jur.2d, Liens § 1. The
22 HOA could not therefore foreclose on a statutory lien that had been intentionally severed from the
23 unit owner's debt that is the basis for the lien.

24 **D. The HOA Sale is Void Under *Shadow Wood*.**

25 **i. The sale of the Property for 6% of its fair market value is commercially**
26 **unreasonable as a matter of law.**

27 This Court should grant Carrington summary judgment because the sale of the Property for
28 6% of its fair market value was grossly inadequate and commercially unreasonable as a matter of

1 law. The Nevada Supreme Court in *Shadow Wood* stated a court is warranted in setting aside a
2 foreclosure sale where, like here, the purchase price at the sale was less than 20% of the Property's
3 fair market value. *Shadow Wood*, 132 Nev. Ad. Op. 5 at 15. Here, it is undisputed the property was
4 worth \$163,000 at the time of the foreclosure sale (Carrington's Motion, Ex. O), but sold at the
5 HOA's foreclosure sale for \$10,100, just 6% of the subject property's fair market value. Just based
6 on this difference alone, this Court should set aside the sale.

7 The Nevada Supreme Court has also explained the conditions of a commercially reasonable
8 sale should reflect a calculated effort to promote a sales price that is equitable to both the debtor and
9 to the secured creditor. See *Dennison v. Allen Group Leasing Corp.*, 110 Nev. 181, 186, 871 P.2d
10 288, 291 (1994). The "quality of the publicity, the price obtained at the auction, [and] the number
11 of bidders in attendance" are also factors to consider when analyzing the commercial reasonableness
12 of a public sale. *Id.* (emphasis added). "To say that a mortgagee with a power to sell, who has an
13 encumbrance on the estate of *less than one-third of its value*—an encumbrance which five or six
14 months' rent will discharge—has the right to sell the estate absolutely to the first man he meets who
15 will pay the amount of the encumbrance, without any attempt to get a larger price for it, would in our
16 opinion be equivalent to saying fraud and oppression shall be protected and encouraged." *Runkle v.*
17 *Gaylord*, 1 Nev. 123, 129 (1865) (emphasis added) (quoted in *Golden*, 387 P.2d at 989. Importantly,
18 it is well-settled under Nevada law that "a wide discrepancy between the sale price and the *value of*
19 *the collateral* compels close scrutiny into the commercial reasonableness of the sale." *Levers v. Rio*
20 *King Land & Inv. Co.*, 93 Nev. 95, 98, 560 P.2d 917, 920 (1977) (emphasis added); see also *Iama*
21 *Corp. v. Wham*, 99 Nev. 730, 736, 669 P.2d 1076, 1079 (1983); *Jones*, 91 Nev. at 368.

22 Such close scrutiny is surely required here, where property securing a \$189,573.00 loan was
23 sold for \$10,100. Comparing the fair market value of the Property to the foreclosure sale price
24 establishes the property was sold for at least a 94% discount. Courts analyzing the commercial
25 reasonableness of foreclosure sales have either voided such sales or refused to grant summary
26 judgment in favor of the foreclosing party where the discrepancy between the sales price and the
27 value of the secured property was much less egregious than the present case. For example, in *Iama*
28 *Corp.*, the Nevada Supreme Court reversed a trial court's finding that a sale of collateral was

1 conducted in a commercially reasonable manner. 99 Nev. at 737. Central to the court's decision
2 was the wide discrepancy—25.1% —between the fair market value and the sale price of the
3 collateral. *Id.* at 736. The court then scrutinized whether proper notice was given, whether the
4 bidding was competitive, and whether the sale was conducted pursuant to the sheriff's office's
5 normal procedures. *Id.* The court ultimately set aside the sale because the pre-foreclosure conduct
6 of the seller had detrimentally affected the price the collateral would bring at auction. *Id.* at 736-37.

7 Additionally, courts applying UCIOA have voided commercially unreasonable foreclosure
8 sales. *Will*, 848 A.2d at 340. In *Will*, the property was sold pursuant to a homeowners association
9 lien of \$3,510.10. *Id.* at 338. The fair market value of the property was \$70,000. *Id.* The court
10 noted that the comment to UCIOA § 1-113, discussed in Section D(1) *supra*, "expresse[d] in
11 unequivocal terms the Legislature's intent to import the [UCC's] commercial reasonableness
12 standard into the UCIOA." *Id.* at 341. The court explained that the homeowners association bears
13 the burden to prove the foreclosure was commercially reasonable. *Id.* at 342. The court also stated
14 the party conducting the sale "must make a good faith effort to maximize the value of collateral,"
15 and "have a reasonable regard for the debtor's interest." *Id.* After espousing these standards, the
16 court voided the trustee's sale because the sale was not made in a commercially reasonable manner.
17 *Id.* at 342. Central to the court's finding was the sale of the condominium for an amount 85% lower
18 than the value of the collateral, and the fact there was only one bid on the property. *See id.* Because
19 the sale was commercially unreasonable, the court vacated the lower court's grant of summary
20 judgment in favor of the HOA, and voided the sale to the third-party purchaser. *Id.* at 343.

21 **ii. Carrington Demonstrated Fraud, Unfairness, and Oppression, in Addition to the**
22 **Grossly Inadequate Price.**

23 The purchase price of the HOA foreclosure sale here is far less than what the Nevada
24 Supreme Court has defined as grossly inadequate. In response, plaintiff states inadequacy of price is
25 not sufficient under the law to set aside a sale of property; fraud, unfairness or oppression accounting
26 for the inadequacy of price must also be present. Plaintiff's Opposition, 6:20-7:1. As discussed
27 above and in Carrington's motion, BANA tendered the super-priority amount—even though the
28 super priority portion of the HOA's lien had already been paid in full and extinguished. This

1 evidences just such unfairness and oppression. Specifically, and as plaintiff admits, First 100 did not
2 inform bidders at the auction that the super-priority amount had been tendered—and that the
3 purchaser would be taking the property subject to the deed of trust.

4 **E. The Constitutionally Protected Interest is HUD's Federal Prerogative under the Single**
5 **Family Mortgage Insurance Program, which was Present at the Time the FHA Deed of**
6 **Trust was Executed and Remains Present Throughout the Duration of the Loan.**

7 As plaintiff acknowledges, the loan is federally insured. Mortgage insurance is supplied to
8 participating lenders as a component of federal law to achieve the National Housing Act's objectives.
9 12 USC §1709; see also *Secretary of Housing & Urban Development v. Sky Meadow Association*,
10 117 F. Supp. 2d 970, 973–74 (C.D. Cal. 2000). "Under the NHA, mortgagees are induced to make
11 essentially risk-free mortgages by being guaranteed against loss in the event of default by the
12 mortgagor. *Pfeifer v. Countrywide Home Loans, Inc.*, 211 Cal.App.4th 1250, 1265 (Cal. App., 2013)
13 (citing *Anderson v. U.S. Dept. of Housing & Urban Dev.*, 701 F.2d 112, 113–114. (10 Cir. 1983)).
14 The program is so risk free in fact that a participating lender's "[f]ailure to comply with this
15 [mortgage servicing responsibilities] shall not be a basis for denial of insurance benefits." 24 C.F.R.
16 203.500.

17 Because participating in the Single Family Mortgage Program is risk free to the lender, HUD
18 regulates what a lender may do or not do under the FHA deed of trust during the duration of the
19 loan. For example, at the loan's inception, HUD's choate power over the home loan is expressed in
20 the FHA Deed of Trust's language. See Deed of Trust, Ex. A to Carrington's Motion for Summary
21 Judgment. HUD controls how payments are applied under the FHA deed of trust, (*Id.* at cl. 3), what
22 "fees and charges" the lender may charge the borrower, (*Id.* at cl. 8), how a lender may respond to
23 payment defaults by the borrower, and (*Id.* at cl. 9(d)), and how HUD will invoke the power of sale
24 if the private lender conveys its interest to HUD prior to foreclosure.² (*Id.* at cl. 18).

25 HUD's regulation of the lender continues for the life of the FHA loan. For example, FHA
26 has enacted a series of regulations that strictly govern Carrington's obligations in the event of a
27 borrower default under an FHA insured deed of trust. See 24 CFR Part 203, Subpart B. HUD

28 ² *Id.* at Sections 3, 8, 9(d), and 18.

1 regulations further specify the loss mitigation options that a lender must consider and HUD controls
2 the timeline of when these loss mitigation options should be completed. 24 CFR 203.355(a)(1)-(8).
3 For example, a lender may not foreclose unless at least three full monthly installments due under the
4 mortgage are unpaid after application of any partial payments that may have been accepted. 24 CFR
5 203.606(a). A lender should only foreclose if the servicer determines the borrower is ineligible for
6 any loss mitigation option. See HUD Mortgagee Letter 2013-40.

7 HUD's regulation of participating lenders includes how a lender should respond to an HOA
8 where the borrower has defaulted on the HOA. **First**, HUD requires a lender to negotiate with the
9 HOA over the borrower's unpaid assessments. **Second**, HUD limits reimbursements for lenders to
10 the amount of assessments that the borrower owed from default until the deed of trust foreclosure
11 date. **Third**, the deadline for the lender to pay the HOA assessments is not until 30 days after the
12 deed of trust foreclosure date. **Fourth**, and most importantly, HUD does not require a lender to
13 convey clear title to HUD. HUD retains discretion not to require clear title, as is explained by
14 HUD's variance procedure to account for lender trouble with HOA's are not responsive or
15 uncooperative. A lender can seek a variance through HUD's Mortgage Compliance Monitor. There
16 is no rule that mandates that HUD's Mortgage Compliance Monitor resolve the variance within a
17 specific time.

18 Plaintiff relies heavily on *SFR Inv. Pool 1, LLC v. U.S. Bank, et al.*, 130 Nev. Adv. Opn. 75
19 (Nev. 2014), where the court stated nothing prevents a lender from simply paying off the entire HOA
20 lien. See, e.g. Plaintiff's Opposition, 9:5-15. The Nevada Supreme Court's statement is incompatible
21 with HUD's federal prerogative to control when a lender pays HOA assessments in the case of a
22 borrower's default, how much a lender should pay, and whether HUD will exercise its discretion to
23 still take title to a property where an HOA is uncooperative. As Chief Judge Navarro recognized,
24 "[b]ecause a homeowners association's foreclosure under Nevada Revised Statutes § 116.3116 on a
25 Property with a mortgage insured under the FHA insurance program would have the effect of
26 limiting the effectiveness of the remedies available to the United States, the Supremacy Clause bars
27 such foreclosures sales." *Washington & Sandhill Homeowners Association*, 2014 WL 4798565, at 7.

28 . . .

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1 **F. The HOA Lien Statute is Facially Unconstitutional.**

2 As Carrington outlined in its motion for summary judgment, the HOA Lien Statute is facially
3 unconstitutional under the Due Process Clause. The non-judicial foreclosure on an HOA lien that is
4 dependent upon a statute and not any agreement between the parties is a form of state action that
5 must comply with the requirements of due process. The HOA Lien Statute fails to meet these
6 constitutional requirements. It does not mandate that mortgagees receive actual notice of the
7 pendency of the HOA foreclosure sales that purportedly extinguish their property interests, as
8 required by the Due Process Clause. Even if Carrington's predecessors-in-interest received the
9 recorded notices of default of sale in this case, this interpretation of NRS 116.31168 violates
10 axiomatic rules of statutory construction, as it would render at least four entire subsections of the
11 HOA Lien Statute completely without meaning. Because the HOA's foreclosure sale was conducted
12 pursuant to a facially unconstitutional statute, it is invalid, and the court should grant Carrington's
13 motion summary judgment for this reason alone.

14 An "elementary and fundamental requirement of due process ... is notice reasonably
15 calculated, *under all circumstances*, to apprise interested parties of the pendency of an action and
16 afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust*
17 *Co.*, 339 U.S. 306, 314 (1950) (emphasis added). The United States Supreme Court has applied this
18 standard in the same context as the present case—where a mortgagee's property interest was
19 purportedly extinguished by a non-judicial foreclosure. *Mennonite Bd. of Missions v. Adams*, 462
20 U.S. 791, 800 (1983). The *Mennonite* Court held the Due Process Clause required that "[n]otice by
21 mail or other means *as certain to ensure actual notice* [to the mortgagee] is a minimum
22 constitutional precondition" to a non-judicial foreclosure sale that can extinguish the mortgagee's
23 interest. *Id.* Put simply, the U.S. Constitution requires that non-judicial foreclosure statutes mandate
24 actual notice of a pending foreclosure sale to any mortgagee whose security interest may be
25 extinguished by that foreclosure sale.

26 **G. Plaintiff is Not a *Bona Fide* Purchaser for Value.**

27 The Court should also grant Carrington's motion for summary judgment and deny plaintiff's
28 motion because plaintiff cannot demonstrate it is a *bona fide* purchaser for value. To qualify as a

1 bona fide purchaser, one cannot have actual or constructive notice of another party's unrecorded
2 interest in the subject property. *Huntington v. Mila, Inc.*, 119 Nev. 355, 75 P.3d 354 (2003). "A
3 duty of inquiry arises 'when the circumstances are such that a purchaser is in possession of facts
4 which would lead a reasonable man in his position to make an investigation that would advise him of
5 the existence of prior unrecorded rights. He is said to have constructive notice of their existence
6 whether he does or does not make the investigation. The authorities are unanimous in holding that
7 he has notice of whatever the search would disclose.'" *Id.* (quoting *Allison Steel Mfg. Co. v.*
8 *Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970)).

9 Here, plaintiff was certainly on inquiry notice of BANA's interest in the Property. Plaintiff
10 mistakenly claims it is a *bona fide* purchaser because it did not know Carrington's deed of trust was
11 recorded at the time of the HOA sale. See Plaintiff's Opposition, 4:14-19. However, plaintiff
12 ignores the meaning of the duty of inquiry. The duty of inquiry is plaintiff's to bear. *Allison Steel*
13 *Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970). The duty of inquiry means
14 plaintiff cannot be passive. The duty of inquiry charges plaintiff with all of the facts it could have
15 learned through an investigation -- even if plaintiff did not undertake such an investigation. *Id.*
16 Plaintiff was on record notice of Carrington's deed of trust. The Deed of Trust was recorded prior to
17 HOA foreclosure. Further, plaintiff could have called the foreclosure trustee. Whether or not
18 plaintiff did either (it did not), plaintiff cannot disclaim knowledge of what a reasonable
19 investigation would have revealed.

20 Similarly, BANA was not required to record its payment of the super-priority amount.
21 Plaintiff's argument is nonsensical. The Deed of Trust was recorded in the land records.
22 Carrington's interest in the property stems from these documents. Nevada law does not further
23 require that a party record every action it takes to maintain its interest in the Property. Nowhere in
24 NRS 116 *et seq.* does it state tender attempts must be recorded in the land records.

25 II.

26 CONCLUSION

27 This Court should grant Carrington's Motion for Summary Judgment because the HOA Lien
28 Statute is preempted by federal law under the Supremacy Clause and is unconstitutional under the

1 Due Process Clause. Even if the statute were constitutional, Carrington would still be entitled to
2 summary judgment because the HOA lien had no lien to foreclosure due to First 100's factoring
3 agreement and, to the extent the lien existed, it was not a super priority lien. The Court should also
4 grant Carrington's summary judgment because plaintiff is a not a *bona fide* purchaser for value and
5 because the HOA's sale of the property for a 94% discount was commercially unreasonable and void
6 as a matter of law.

7 DATED this 22nd day of March, 2016.

8 **AKERMAN LLP**

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3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on this 22nd day of March, 2016 and pursuant to NRCP 5(b), I
5 served through this Court's electronic service notification system ("Wiznet") a true and correct copy
6 of the foregoing **CARRINGTON MORTGAGE HOLDINGS, LLC'S REPLY IN SUPPORT**
7 **OF MOTION FOR SUMMARY JUDGMENT**, addressed to:

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14 /s/ Christine M. Parvan
15 An employee of AKERMAN LLP
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IN THE SUPREME COURT OF THE STATE OF NEVADA

CARRINGTON MORTGAGE
HOLDINGS, LLC,

Appellant,

v.

R VENTURES VIII, LLC, A NEVADA
SERIES LIMITED LIABILITY
COMPANY OF THE CONTAINER R
VENTURES, LLC UNDER NRS
86.296,

Respondent.

Electronically Filed
Supreme Court Case No. 71437
Apr 25 2017 05:06 p.m.
Elizabeth A. Brown
District Court Case No. A-13-684151
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court
The Honorable ELISSA CADISH, District Judge
District Court Case No. A-13-684151-C

JOINT APPENDIX, VOLUME II

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II	20.	03/14/2016	Carrington Mortgage Holdings, LLC's Opposition to R Ventures VIII, LLC's Motion for Summary Judgment	JA000291
II	21.	03/22/2016	Reply in Support of Plaintiff's Motion for Summary Judgment	JA000305
II	22.	03/22/2016	Carrington Mortgage Holdings, LLC's Reply in Support of Motion for Summary Judgment	JA000320

DATED this 25th day of April, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 25th day of April, 2017, and pursuant to NRCP 5, I served a true and correct copy of the foregoing **Joint Appendix Volume II**, via this Court's Electronic Filing System to the following:

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