EXHIBIT 27

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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,

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 RECONSIDERATION OF ORDERS ON SUMMARY JUDGMENT

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CARRINGTON MORTGAGE HOLDINGS, LLC,

Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

Carrington Mortgage Holdings, LLC submits the following Motion for Reconsideration of the Order and Final Judgment in Favor of Plaintiff. This Motion is made and based upon the papers and pleadings previously filed and submitted to the Court, the points and authorities submitted in support herein, and the oral argument at the hearing of this matter.

DATED this ____ day of May 2016.

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NOTICE OF HEARING

Please take notice that the undersigned will bring the foregoing Motion for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 21 day of June, 2016, at the hour of In Chambers:_____o'clock _____.m.

DATED this ____ day of May 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should reconsider its Order granting summary judgment in plaintiff's favor and denying Carrington's motion for summary judgment (collectively referred to as "Orders"). Recent Nevada Supreme Court opinions—*Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (Nev. Jan. 28, 2016) and *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13 (Nev. Apr. 28, 2016)—necessitate reconsideration of these Orders.

First, the servicer of the loan at the time, Bank of America, N.A. (**BANA**), tendered the superpriority amount of the HOA's lien (and more) to the HOA, extinguishing the superpriority portion of the HOA's lien. The Nevada Supreme Court recently issued its opinion in *Horizons at Seven Hills Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016). Under *Ikon*, it is clear BANA's tender redeemed the first deed of trust. Consequently, even if plaintiff is a *bona fide* purchaser—which it is not—it could not acquire more than the homeowner

had because the sale did not involve a super-priority lien. The *bona fide* purchaser doctrine cannot expand plaintiff's title.

Second, the Court erroneously found plaintiff to be a *bona fide* purchaser. Plaintiff's members are seasoned real estate investors on admitted notice of Carrington's pre-existing deed of trust and the possibility of this quiet title litigation. In fact, plaintiff admits that prior to purchasing the property it budgeted for out-of-pocket expenses, including litigation costs, to remove clouds on title—including Carrington's deed of trust.

Third, the HOA's foreclosure sale was commercially unreasonable. The property sold for just 6% of its fair market value. As recently confirmed by the Nevada Supreme Court in *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Ad. Op. at 15-16, 2016 WL 347979, at *6 (Nev. January 28, 2016), a sale for less than twenty percent of a property's fair market value is *per se* commercially unreasonable. Even though this court concluded price alone is insufficient to warrant setting aside the sale, contrary to the Restatement adopted in *Shadow Wood*, any additional requirement of unfairness or oppression is satisfied here because (1) BANA tendered the superpriority amount by sending the HOA a check for 9 months-worth of assessments *plus* additional amounts for the HOA's and Red Rock's claimed collection costs) (even more than the 9 months-worth of assessments the *Ikon* Court held constitutes the superpriority portion of an HOA's lien); (2) in an effort to attract lenders, the HOA represented, in its recorded CC&Rs, that its lien would not dispose of the deed of trust, but then proceeded to sell the property to plaintiff in an unfair and oppressive manner for just a fraction of the fair market value. The undisputed evidence, including plaintiff's purchase of the property at a 94% discount, confirms the sale is void as commercially unreasonable regardless of whether the court strictly applies the Restatement approach.

Fourth, the Court erred in denying Carrington's motion for summary judgment—requesting it declare Carrington's deed of trust remains in first position because plaintiff produced no admissible evidence of, or even alleged, harm should the court unwind the sale and restore the parties to the *status quo ante*. To the contrary, the evidence establishes plaintiff and its members are real estate speculators who gambled when purchasing the property.

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. . .

II. ARGUMENT

A. BANA's super-priority tender extinguished that portion of the HOA's lien prior to the foreclosure sale.

Since this Court issued its Orders, the Nevada Supreme Court confirmed what Carrington and its predecessor, Bank of America, already knew—"[a] super-priority lien pursuant to NRS 116.3116(2) does not include an additional amount for the collection fees and foreclosure costs that an HOA incurs preceding a foreclosure sale; rather, it is limited to an amount equal to *nine months of common expense assessments*." *Horizon at Seven Hills Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, __ P.3d___(April 28, 2016) (emphasis). Consequently, to the extent the HOA's foreclosure sale was valid, the HOA could only convey its interest in the subject property that was subordinate to Carrington's deed of trust.

1. BANA tendered 9 months-worth of assessments.

In the context of real estate liens, a lienholder may redeem, having the property's title restored free and clear of an encumbrance, if it satisfies the obligation prior to foreclosure. *McCall v. Carlson*, 63 Nev. 390, 411-12, 172 P.2d 171, 181-82 (1946). *See also* 59A C.J.S. *Mortgages* § 1362 (2010) ("Redemption is the realization of the right to have the property's title restored free and clear of an encumbrance by satisfaction of the mortgage obligation. Redemption signifies the process of cancelling and annulling a defeasible title, such as that created by a mortgage, by paying the debt or by fulfilling other conditions."); 55 AM. JUR. 2D *Mortgages* § 787 (2010). Article 3 of the Uniform Commercial Code further confirms that in *both* the common law and statutory contexts, tender discharges the lien for which payment is tendered.

Here, on December 14, 2012, Bank of America, through counsel at Miles Bauer, contacted Southern Terrace HOA, through Red Rock, and requested the super-priority amount, and offered to pay that amount—whatever it was. Red Rock provided a ledger, dated December 27, 2012 identifying the total amount allegedly owed. In response to this information, BANA calculated 9 months-worth of assessments ($8/month x 9 months = $72.00). And, even though it was not required to under the statute, as confirmed by the *Ikon* court, BANA also calculated an additional $90.00 in late fees, $11.95

in interest and $481.19 in collection costs, and then tendered $655.14—over 9 time more than the full super-priority amount of the lien prior to the sale.

The Nevada Supreme Court clearly stated a senior mortgagee could "pay[] off the superpriority piece of the lien to stave of foreclosure" in *SFR Investments*. *SFR Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 412 (Nev. 2014). Once the super-priority assessment was extinguished by the tender, the HOA's action to foreclose on the lien could only be on its sub-priority piece. As the Supreme Court noted in *SFR Investments*:

> As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. *The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust.*

SFR Investments Pool 1, LLC v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014) (emphasis added). BANA's tender--regardless of whether the HOA rejected it—left the sub-priority portion as the sole lien. The sale therefore had no impact on the first deed of trust. "A foreclosure sale by a junior mortgagee has no effect on the rights of senior lienholders because the purchaser of a junior mortgage takes subject to the rights of all senior liens and encumbrances." *In re Del Gizzo*, 5 B.R. 446, 448 (Bankr. D.R.I. 1980) (citing *Brunette v. Myette*, 40 R.I. 546, 102 A. 520 (1918)). Under Nevada law, a purchaser of real property with notice of a prior interest takes subject to that interest. *In re Crystal Cascades Civil*, LLC, 398 B.R. 23, 29 (Bankr. D. Nev. 2008) *aff'd*, 415 B.R. 403 (B.A.P. 9th Cir. 2009) (citing NRS 111.320; *Buhecker v. R.B. Petersen & Sons Const. Co., Inc.*, 112 Nev. 1498, 1500, 929 P.2d 937, 939 (1996); *In re Grant*, 303 B.R. 205, 211 (Bankr. D.Nev. 2003)). Once BANA satisfied the super-priority portion of the HOA's lien, and per plaintiff's deed without warranties, plaintiff purchased the property subject to the first deed of trust. *See* NRS 116.31164(3)(a) (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 unit*." NRS 116.31164(3)(a)) (emphasis added).

Under binding Nevada law, the Court should reconsider its Orders because BANA tendered the super-priority amount by providing the HOA with a check for the superpriority amount, as

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outlined in *Ikon*, thereby discharging the lien. As a result, the HOA would have needed to institute a new action to enforce any assessments that became delinquent once tender extinguished the delinquent assessment lien, but it failed to do so. Accordingly, when the property was sold, plaintiff took the property subject to the first deed of trust.

B. While quiet title sounds in equity, equity cannot overcome BANA's satisfaction of the superipriority lien.

This Court found BANA's tender and the HOA's rejection did not preserve Carrington's deed of trust because plaintiff is a *bona fide* purchaser. *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, __ P.3d __ (2016), appropriately determined a district court has power to invalidate a sale despite recitals of legal compliance in the trustee's deed. *Id.* at p. 11. While the *Shadow Wood* Court explained the parties' competing equities need to be balanced, it did not expand buyers' rights beyond the limitations imposed by Chapter 116 and this Court's other precedents. Chapter 116 expressly prohibits a trustee from delivering a deed with warranties, and provides that a buyer acquires no greater title than what the unit owner had. *See* NRS 116.31164(3)(a). Chapter 116's prohibition of warranty deeds is consistent with this Court's jurisprudence on the rights of foreclosure purchasers. This Court long ago applied caveat emptor to foreclosure purchasers. *See Allison Steel Manufacturing Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471 P.2d 666, 669 (1970) (in the absence of a statute,[1] a purchaser acquires no better title than the debtor could have conveyed at the time the lien attached). Plaintiff could not acquire more than the homeowner had because the sale did not involve a superpriority lien—the *bona fide* purchaser doctrine cannot expand plaintiff's title.

Shadow Wood did not consider the effect of pre-sale tender because there was no pre-sale tender in that case—that case did not involve a superpriority lien at all because the bank foreclosed

[1] NRS 116.3116 does not change the caveat emptor rule; it merely changes the order of lien priority—and does not give the buyer any additional rights if the superpriority amount is tendered before the foreclosure sale.

its deed of trust before the association foreclosed, making the bank a homeowner in a wholly-inferior position. *Shadow Wood*, 132 Nev. Adv. Op. 5 at pp. 16-17. In contrast, this case *does* involve a superpriority lien, which Carrington's predecessor, BANA, satisfied prior to the association's sale. Consistent with Chapter 116 and *SFR Investments*, BANA satisfied the lien. This ends the analysis: the deed of trust survived.

1. To allow the deed of trust to be discharged despite a tender leads to an absurd and unfair result.

To allow the judgment in plaintiff's favor to stand would render an absurd and unfair result: the deed of trust may be extinguished even though BANA did exactly what it was supposed to do. The bank was supposed to tender the superpriority portion. That is what it did—in fact, it paid 9 times more than it was required to pay under Nevada law. Finding the HOA sale extinguished the deed of trust is the wrong result, and *Shadow Wood* does not support it. *Shadow Wood* noted the steps a lender can take to protect itself. *Shadow Wood*, 132 Nev. Adv. Op. 5 at p. 19. Failing to follow these steps can be weighed against the bank if it does not satisfy the superpriority lien prior to the sale. But, if the bank satisfies the superpriority amount—as it did in this case—there is no need to balance the equities because the sale could not discharge the deed of trust as a matter of law. Equitable balancing despite a proper tender would jeopardize the deed of trust even though no superpriority lien sale occurred. The *bona fide* purchaser doctrine does not extend that far.

2. Plaintiff cannot assert the equitable arguments pronounced in *Shadow Wood* because it is not a *bona fide* purchaser.

i. Plaintiff had record notice of Carrington's lien and actual notice of the risk of litigation.

The *Shadow Wood* court held a purchaser's status as a *bona fide* purchaser has a "bearing on the equitable relief requested," namely, whether the foreclosure sale should be set aside as invalid. *Shadow Wood*, 2016 WL 347979, at *9. When sitting in equity, "courts must consider the entirety of the circumstances that bear upon the equities." *Id.* To qualify as a *bona fide* purchaser, plaintiff

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must show it obtained its interests in the property "(i) for value; and (ii) without notice of a competing or superior interest in the same property." *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979)).

The *bona fide* purchaser analysis is not limited to what plaintiff actually knew or could have known from reviewing the public records. Plaintiff may be charged with whatever facts a reasonable inquiry would have revealed. The existence and extent of a buyer's duty of inquiry depends on who the buyer is. By elevating the *bona fide* purchaser issue, and instructing trial courts to weigh the totality of circumstances, *Shadow Wood* makes the buyer's identity, status, and motivation highly relevant. The Nevada Supreme Court remanded *Shadow Wood* with instruction to the trial court to further develop the facts. The court explained the factual inquiry must be expansive:

> "When sitting in equity, however, courts must consider ***the entirety of the circumstances*** that bear upon the equities. [Citations omitted.] ***This includes considering the status and actions of all parties involved***, including whether an innocent party may be harmed by granting the desired relief."

Shadow Wood, 2016 WL, 347979, at *5 (emphasis added).

The term "*bona fide* purchaser" has both objective and subjective components. Plaintiff is a *bona fide* purchaser "under common-law principles if it takes the property 'for a valuable consideration and without notice of the prior equity, and without notice of facts which ***upon diligent inquiry would be indicated and from which notice would be imputed to [it], if [it] failed to make such inquiry.***" *Id.* at *10 (quoting *Bailey v. Butner*, 64 Nev. 1, 19 (1947) (emphasis added)). *Shadow Wood* confirms the duty-of-inquiry analysis requires full development of the facts:

> And NYCB points to no other evidence indicating that Gogo Way ***had notice before it purchased*** the property, either actual, constructive, ***or inquiry***, as to NYCB's attempts to pay the lien and prevent the sale, or that Gogo Way knew 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.***

Id. at *11 (emphasis added).

ii. *Adjudicating the Duty of Inquiry is Subjective and Fact-Intensive.*

Plaintiff is a *bona fide* purchaser only if it purchased its interest in the property in good faith and without notice of Carrington's prior claim to the property. *Huntington v. Mila, Inc.*, 119 Nev.

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355, 356, 75 P.3d 354, 354 (2003). Plaintiff admits it (1) knew there was a risk of litigation regarding title to the property; and (2) budgeted for possible costs related to litigation to obtain clean title. *See* **Exhibit A**, Plaintiff's Responses to Carrington's Interrogatories, Interrogatory 13.

Further, plaintiff's actual lack of notice regarding Carrington's deed of trust is not relevant because it had *record* notice of the deed of trust, and its lack of notice regarding Bank of America's tender is irrelevant because plaintiff's knowledge is not limited to actual or record notice—it is charged with inquiry notice of whatever information it would have learned from a reasonable investigation:

> A duty of inquiry is said to arise 'when the circumstances are such that a purchaser is in possession of facts which would lead ***a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights***. He is said to have constructive notice of their existence whether he does or does not make the investigation. The authorities are unanimous in holding that he has notice of whatever the search would disclose.

Allison Steel Mfg. Co. v. Bentonite, Inc., 86 Nev. 494, 498 (1970) (internal quotations omitted). A "subsequent purchaser is not a good faith purchaser without notice if he or she was under a duty to inquire," and is deemed to have notice of whatever the inquiry would disclose. *Tai-Si Kim v. Kearney*, 838 F.Supp.2d 1077, 1088 (D. Nev. 2012) (citing *Berge v. Fredericks*, 95 Nev. 183, 190 (1979)); *see also Huntington*, 119 Nev. at 357. Plaintiff had the burden to rebut presumed notice by showing it conducted a reasonable investigation. *Berge*, 95 Nev. at 189-90 (citation omitted). Plaintiff failed to meet that burden, and the Court erroneously determined it was a *bona fide* purchaser.

iii. *The Extent of the Duty Depends on the Buyer's Identity.*

The identity of the buyer bears on the duty of inquiry. While the Nevada Supreme Court has not directly addressed this issue, other courts have. For example, in Washington, a person has constructive notice when the purchaser "has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question." *Poole v. Watts*, No. 60681-6-I, 2008 WL 5377858, at *3 (Wash. Ct. App. 2008) (unpublished).

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The Washington Supreme Court expressly stated, "we consider the purchaser's ***knowledge and experience*** with real estate" in determining whether a person is a *bona fide* purchaser, whether there are surrounding events that create a duty of inquiry, and whether the purchaser satisfied that duty. *Albice v. Premier Mortgage Servs., Inc.*, 174 Wash. 2d 560, 573 (2012) (emphasis added). The court in *Albice* gave "substantial weight" to the purchaser's real estate experience, finding he had "extensive experience with nonjudicial foreclosure sales, purchasing 9 of 13 properties at such sales," had familiarized himself with foreclosure law, and "knew enough about the process to obtain the notice of trustee's sale from a title company." *Id.* at 573-74. The court noted the purchaser had sufficient facts "within his knowledge" to put an "***experienced real estate purchaser***" on inquiry notice, which the purchaser failed to satisfy. *Id.* at 574 (emphasis added). The court determined if the purchaser had inquired, he would have discovered the borrowers were in the middle of a repayment plan, the lender rejected the borrowers' last repayment plan payment, and the repayment plan was the cause of the delays in the foreclosure sale and the low amount of the lien. *Id.* at 575. The court also noted the purchaser contacted the borrower once, and he could have contacted the borrower again to determine whether the borrower's default had been cured, knowing the borrower wanted to keep the property. *Id.* at 574.

A Washington appellate court similarly held a limited liability company who purchases about twenty properties a year, specializing in acquiring properties from judicial foreclosure sales of super-priority liens, was not a *bona fide* purchaser. *Linden Park Homeowners Assoc. v. Mears*, 190 Wash. App. 1035, at *1 (2015). In *Mears*, a homeowner's association filed suit to foreclose its lien and joined the lender, who did not appear. *Id.* The court entered a judgment for $11,419.14. The purchaser was aware of the amount of the judgment, and aware the super-priority portion of the lien was approximately $1,800. *Id.* Before deciding to purchase the property, the purchaser drove by the property, reviewed the court records, checked the grantor index and tax assessments, checked to see whether the lender appeared, and estimated the opening bid would be about $13,000. *Id.* The purchaser thought this property would be a good investment based on this research. *Id.* The lender then tendered the super-priority amount the day before the sale, but the deputy failed to provide notice of the tender and announced an opening bid of $1,000. *Id.* The sheriff accepted the

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purchaser's $2,000 bid. *Id.* The court held the purchaser was not a *bona fide* purchaser because it had a duty to inquire—given its "knowledge of the judgment amount and its experience with foreclosure sales under super priority liens"—and the discrepancy between the opening bid and the judgment amount. *Id.* at 3. The court rejected the purchaser's argument "opening bids may be low for many reasons and sales are customarily postponed when payment has been made." *Id.* The court also rejected the purchaser's argument it could not "determine why the opening bid was low in the context of an auction in progress," stating "there is no dispute that the discrepancy between the opening bid and the judgment amount was known to [the purchaser] before it purchased the property." *Id.* at 4.

California courts also consider the buyer's identity, background and experience. For example, in *Yates v. West End Fin. Corp.*, the California Court of Appeal found a buyer was not a *bona fide* purchaser when he (**1**) testified he had been in the business of purchasing properties at foreclosure for years, (**2**) frequently attended foreclosure sales, (**3**) had purchased between 300 and 500 properties in foreclosure, (**4**) attended the sale, discussed the property with the trustee, and the purchaser at the foreclosure sale told him there was a lot of equity in the property, (**5**) found out there were other liens on the property, and (**6**) his offer to purchase the property—valued at approximately $120,000—for $12,000 was accepted. 25 Cal. App. 4th 511, 523 (1994). The buyer's background and experience was a significant factor in leading the court to conclude he was not a *bona fide* purchaser. *Id.*

The United States District Court for the Eastern District of California also took the buyer's background and experience into account in *Countrywide Home Loans, Inc. v. United States*, No. CV F 02 6405 AWI SMS, 2007 WL 87827 (E.D. Cal. Jan. 9, 2007). The court noted the foreclosure purchaser was a general partnership consisting of two individuals, both of whom "were extremely experienced purchasers of foreclosure properties[.]" *Id.* at *5. The partners' extensive real estate experience was a factor against the buyer's claims to *bona fide* purchaser status. *Id.* at *12. This case is also instructive because the individual partners' experience was relevant—the court did not limit its inquiry to the partnership but rather considered the individual partners' background. *See id.*

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The Ninth Circuit has similarly applied the duty of inquiry. *See United States v. Countrywide Home Loans, Inc.*, 408 F. App'x 3, 5 (9th Cir. Oct. 5, 2010) (unpublished). The court held the inconsistencies in the real property records put "defendants on notice because they had knowledge of circumstances, which upon reasonable inquiry, would lead to the discovery of Countrywide's unrecorded lien." *Id.* at 5. The court held the district court "erroneously held defendants had no duty to investigate beyond the record of title" and held the purchasers did not discharge their duty to investigate beyond record title after seeing the discrepancy. *Id.* at 5. The court noted the purchasers could have contacted the trustee for the first lien and discovered the first lien holder retained an interest in the property. *Id.*

Plaintiff's experience in purchasing properties at Nevada foreclosure sales prevents it from being a *bona fide* purchaser. Plaintiff admitted it owns 10 homes acquired at HOA foreclosure sales, and has attended about 30 HOA foreclosure sales. *See* **Exhibit B**, Deposition of Derrol Wynn, 10:8-19. Plaintiff's attempt to claim *bona fide* purchaser status flies in the face of its testimony and conduct in purchasing numerous properties at Nevada HOA foreclosure sales.

Plaintiff is also not a *bona fide* purchaser because it had record knowledge of the mortgage savings clause in the HOA's CC&Rs. Even though this clause may not be specifically enforceable, plaintiff did not know that at the time it purchased the property. Instead, it rolled the dice and tried to beat the house—it gambled and purchased a property (which it believed to be worth about 10 times the price it paid) hoping it would be free and clear of Carrington's senior deed of trust.

C. *Shadow Wood* makes clear the Court should have entered summary judgment in Carrington's favor because the foreclosure sale was commercially unreasonable.

1. The sale price was grossly inadequate.

This Court should additionally vacate its Orders on commercial reasonableness grounds. Specifically, the Court rejected Bank of America's "commercial reasonableness argument" by finding that inadequate price is insufficient, on its own, to void a sale. *Shadow Wood* completely undermines this Court's Order by holding HOA foreclosure sales for under 20% of the property's fair market value are grossly inadequate as a matter of law. The *Shadow Wood* decision not only demonstrates commercial reasonableness is a requirement of an HOA foreclosure sale but further

Shadow Wood dictates the Court should have granted summary judgment in Carrington's favor because the sale of the Property for 9% of its fair market value was grossly inadequate as a matter of law.

The *Shadow Wood* Court explained inadequate price alone can be sufficient to set aside an HOA foreclosure sale if the price is "grossly inadequate." *Shadow Wood*, 132 Nev. Adv. Op. 5, at 15. Adopting the restatement approach, the Nevada Supreme Court held: "[w]hile 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 (emphasis added) (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.**

Id., at cmt. b. (emphasis added). Finally, the Restatement authors address the method of proving gross inadequacy:

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

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Id. (emphasis added).

Under the Restatement approach—adopted in *Shadow Wood*—a **grossly inadequate price** itself is the proof of unfairness required to set aside a foreclosure sale. *In re Krohn*, 52 P.3d 774, 781 (Ariz. 2002). In *Krohn*, the Court explained that a contrary rule that allowed grossly inadequate sales prices to stand would only benefit speculators at the expense of homeowners and the mortgage-lenders that make owning a home possible. *Id.*, at 779 ("Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators."). The *Krohn* Court thus adopted the same Restatement test adopted by the Nevada Supreme Court in *Shadow Wood*, which is meant to protect individual homeowners' equity from grossly inadequate and unfair foreclosure sale prices. *Id.*, at 780 (noting that foreclosure-sale "bidders can reasonably expect to get bargains because of the nature of foreclosure sales, but public policy and the courts should not endorse extraordinary bargains at the expense of already troubled debtors.").

Here, the HOA sold the Property for 9% of its ostensible fair market value at the foreclosure sale, less than half of the 20% of fair market value the *Shadow Wood* Court explained would be "grossly inadequate as a matter of law." Accordingly, under *Shadow Wood*, the HOA's foreclosure sale was commercially unreasonable as a matter of law, and thus invalid. The Court's granting of summary judgment in plaintiff's favor is contrary to the Supreme Court's ruling in *Shadow Wood*, and Carrington's motion for reconsideration should be granted.

2. Even if insufficient price is not enough to invalidate the sale, the sale is still void because of the HOA's, Red Rock's and United Legal Services' unfair and oppressive conduct.

Even if price-alone is insufficient to invalidate the HOA Foreclosure Sale, the HOA's conduct was unfair and oppressive.[2] **First,** the HOA wrongfully rejected BANA's check for more than 9 months of assessment and then sold the property to plaintiff. **Second,** the HOA violated the mortgage savings preservation and subordination clauses of its CC&Rs. *See* **Exhibit N** to

[2] Oppression has been defined as "a conscious disregard for the rights of others which constitute[s] an act of subjecting [a party] to cruel and unjust hardship." *Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587, 590, 763 P.2d 673, 675 (1988).

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Carrington's Motion for Summary Judgment. While the *SFR* Court held the subordination clause is not specifically enforceable, the preservation clause is a restrictive covenant running with the land. This clause prohibits the HOA from enforcing its lien in a way that disposes of the deed of trust. *Id.*

D. Plaintiff will not be harmed if the Court unwinds the sale and restores the parties to the *status quo ante*.

The evidence presented not only demonstrates plaintiff is not a *bona fide* purchaser for value, but also that plaintiff will suffer no harm *at all* if the Court unwinds the sale. Like any remedy in an equitable or quasi equitable case, the remedy in this case to be proportional to the harm plaintiff alleges. Plaintiff's 30(b)(6) witness, Derrol Wynn, did not even allege how plaintiff could possibly be harmed. Mr. Wynn testified plaintiff did minimal research before attending the sale, and purchasing a property it hoped would be free and clear of a mortgage. Plaintiff's "harm" cannot be the loss of a windfall—the only context in which a party may receive expectation damages is where it does not get what it bargained for in a contract. Here, the deed by which plaintiff claims title disclaims all warranties. *See* **Exhibit K** to Carrington's Motion.

III. CONCLUSION

The *Shadow Wood* and *Ikon* decisions make clear plaintiff's motion for summary judgment fails as a matter of law, and the Court erroneously entered judgment in its favor. Accordingly, the Court should grant Carrington's Motion for Reconsideration.

DATED this 19th day of May 2016.

AKERMAN LLP

s/ Christine M. Parvan
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Nevada Bar No. 8276
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 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 RECONSIDERATION**, addressed to:

J. Charles Coons, Esq.
Thomas Miskey, Esq.
COOPER COONS, LTD.
charles@coopercoons.com
kim@coopercoons.com
liz@coopercoons.com
thomas@coopercoons.com

Attorneys for Plaintiff R Ventures VIII, LLC

/s/ ***Christine M. Parvan***
An employee of AKERMAN LLP

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Exhibit A

ELECTRONICALLY SERVED
01/26/2016 03:58:58 PM

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

And all related claims.

Case No.: A-13-684151-C

Dept. No.: VI

PLAINTIFF'S RESPONSES TO CARRINGTON MORTGAGE HOLDINGS, LLC'S INTERROGATORIES TO R. VENTURES VIII, LLC

Pursuant to NRCP 33, Plaintiff R Ventures VIII, LLC ("R Ventures VIII"), by and through its attorneys of record, Cooper Coons, Ltd., herein responds to Carrington Mortgage Hodlings, LLC's, ("Carrington Mortgage") Interrogatories as follows:

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ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify any person who provided substantive information to respond to Carringtons's First Set of Requests for Production, First Set of Requests for Admission, and these Interrogatories, including name, address, phone number, and identification of the requests with which the person assisted.

ANSWER:

Trevor Hall, manager of R Ventures VIII and Derrol Wynn, member of R Ventures VIII, provided substantive information for all discovery requests made on R Ventures VIII. MaryAnn Metz, employee of Derrol Wynn, compiled the documentation for R Ventures VIII.

INTERROGATORY NO. 2:

Describe Your business purpose.

ANSWER:

Objection, irrelevant and not reasonably calculated to lead to discoverable evidence.

Without waiving objection, R Ventures VIII's business purpose is to conduct any and all lawful business with an emphasis on real estate investment.

INTERROGATORY NO. 3:

Identify Your managers, officers, directors, owners, members, trustees, beneficiaries, and/or employees, including name, address, phone number, and title.

ANSWER:

Trevor Hall, manager of R Ventures VIII.

Derrol Wynn, member of R Ventures VIII.

R Ventures, LLC – owner and beneficiary of R Ventures VIII.

INTERROGATORY NO. 4:

State whether You created articles of organization and filed the same with the Nevada Secretary of State.

ANSWER:

Objection, irrelevant and not reasonably calculated to lead to discoverable evidence to the

extent "You" extends beyond R Ventures VIII.

Without waiving objection, no, none are required for a sub-series limited liability corporation.

INTERROGATORY NO. 5:

State whether You are licensed to do business in the state of Nevada.

ANSWER:

Objection, irrelevant and not reasonably calculated to lead to discoverable evidence to the extent "You" extends beyond R Ventures VIII.

Without waiving objection, yes.

INTERROGATORY NO. 6:

If you allege that the lien for delinquent assessments recorded against the Property on September 10, 2012 complies with NRS 116.31162, state the principal and material facts that support your allegation.

ANSWER:

Please see the recorded lien for delinquent assessments, Clark County Instrument No. 201209100001428.

INTERROGATORY NO. 7:

If you allege that the notice of default and election to sell recorded against the Property on November 14, 2012 complies with NRS 116.31162, state the principal and material facts that support your allegation.

ANSWER:

Please see the recorded notice of default, Clark County Instrument No. 201211140000905.

INTERROGATORY 8:

If you allege that the notice of foreclosure sale recorded against the Property on May 9, 2013 complies with NRS 116.31162, state the principal and material facts that support your allegation.

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ANSWER:

Please see the recorded notice of foreclosure sale, Clark County Instrument No. 201305090001356.

INTERROGATORY NO. 9:

State whether the Property is currently inhabited, and if so, identify the following information:

(a) By whom the Property is inhabited,

(b) The terms of any rental agreement or lease by any current inhabitant, including

(i) the date the agreement or lease began

(ii) when it expires,

(iii) the amount of rent paid, and

(iv) how often rent is paid.

ANSWER:

Objection: Irrelevant and not reasonably calculated to lead to discoverable information.

INTERROGATORY NO. 10:

State whether you visited the Property prior to the HOA Foreclosure Sale.

ANSWER:

No.

INTERROGATORY NO. 11:

State whether you reviewed a "Trustees Sale Guarantee" from a title insurance company regarding the Property prior to the HOA Foreclosure Sale.

ANSWER:

No.

INTERROGATORY NO. 12:

State whether you reviewed, whether in person or online, the recorded documents on file with the Clark County Recorder's Office concerning the Property prior to the HOA Foreclosure

Sale.

ANSWER:

No.

INTERROGATORY NO. 13:

As part of your bidding strategy for the Property prior to, or on May 31, 2013, please explain the following:

(a) Did you budget for out of pocket expenses for eviction litigation costs to remove the then-occupant of the Property, and what was that sum?

(b) Did you budget for out of pocket expenses for exterior maintenance and refurbishment for the Property, and what was that sum?

(c) Did you budget for out of pocket expenses for interior maintenance and refurbishment for the Property, and what was that sum?

(d) Did you budget for out of pocket expenses, including litigation costs, to remove alleged clouds on the Property's title such as, but not limited to, a first position deed of trust, and what was that sum?

ANSWER:

Objection, Irrelevant and not reasonably calculated to lead to discoverable information.

Without waiving objection, (a) none; (b) yes, unknown amount; (c) yes, unknown amount; (d) yes, unknown amount.

INTERROGATORY NO. 14:

Identify all communications between You and the HOA concerning the Property, whether verbal or in writing, including the date of the communications, the parties to the communication, and the substance of the communication.

ANSWER:

Objection, Irrelevant and not reasonably calculated to lead to discoverable information to the extent such information took place after the sale. Additionally, this requests attorney work product that is not discoverable.

Without waiving objection, no additional communications have been identified.

INTERROGATORY NO. 15:

Identify all communications between You and United Legal Services concerning the Property, whether verbal or in writing, including the date of the communications, the parties to the communication, and the substance of the communication.

ANSWER:

Objection, Irrelevant and not reasonably calculated to lead to discoverable information to the extent such information took place after the sale. Additionally, this requests attorney work product that is not discoverable.

Without waiving objection, no additional communications have been identified.

INTERROGATORY NO. 16:

Describe your definition of "fair market value."

ANSWER:

Fair market value is the amount someone is able and willing to pay taking into consideration all circumstances and conditions that may increase or decrease a property's usefulness such as marketable title, market uncertainty, needed repairs, anticipated and unanticipated future costs, and innumerable other factors. For example, Zillow displays an estimated fair market value assuming, among other factors, title will be clean.

INTERROGATORY NO. 17:

If you performed research regarding the Property prior to the HOA foreclosure sale, then please describe your research as to the following topics:

(a) The exterior condition of the Property.

(b) The interior condition of the Property

(c) Whether the Property's title history showed recorded liens, including but not limited to deeds of trust.

(d) The "fair market value" of the Property based on your definition of that term in your response to Interrogatory No. 16.

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ANSWER:

R Ventures VIII used Zillow to obtain one valuation of the Property. See Plaintiff's Supplemental Disclosures RVVIII000154-157.

INTERROGATORY NO. 18:

If you performed research regarding the Property after the HOA foreclosure sale, then please describe your research as to the following topics:

(a) The exterior condition of the Property.

(b) The interior condition of the Property

(c) Whether the Property's title history showed recorded liens, including but not limited to deeds of trust.

(d) The "fair market value" of the Property based on your definition of that term in your response to Interrogatory No. 16.

ANSWER:

Objection, irrelevant and not reasonably calculated to obtain discoverable information. Without waiving objection, please see response to Interrogatory 17.

INTERROGATORY NO. 19:

With regard to the HOA Foreclosure Sale, please state the following:

(a) Describe how You learned of the HOA Foreclosure Sale;

(b) State whether the HOA or anyone at United Legal Services told You of the opening bid price prior to the HOA Foreclosure Sale;

(c) Identify the opening bid price at the HOA Foreclosure Sale;

(d) Identify the bidders at the HOA Foreclosure Sale;

(e) Identify the amounts bid at the HOA Foreclosure Sale;

(f) Identify the amounts that You bid on the Property at the HOA Foreclosure Sale;

(g) Describe Your method of calculating Your bid price at the HOA Foreclosure Sale.

ANSWER:

Answering paragraph (a), R Ventures VIII learned of the sale from Foreclosure Radar.

Answering paragraph (b), no.

Answering paragraph (c), $99.00.

Answering paragraph (d), R Ventures VIII saw approximately ten other bidders whose identities are unknown.

Answering paragraph (e), R Ventures VIII does not remember.

Answering paragraph (f), R Ventures cannot remember each bid, but made a bid of $10,100.

Answering paragraph (g), R Ventures VIII had no method of calculating its bid price.

INTERROGATORY NO. 20:

State the gross revenue you have received as a result of your acquisition and use of the Property during the calendar years of 2013, 2014 and 2015.

ANSWER:

Objection, irrelevant and not reasonably calculated to lead to discoverable information.

INTERROGATORY NO. 21:

State the net revenue you have received as a result of your acquisition and use of the Property during the calendar years of 2013, 2014 and 2015.

ANSWER:

Objection, irrelevant and not reasonably calculated to lead to discoverable information.

INTERROGATORY NO. 22:

Identify all communications between You and Joyce Pierce concerning the Property, whether verbal or in writing, including the date of the communication, the parties to the communications, and the substance of the communication.

ANSWER:

None.

INTERROGATORY NO. 23:

Please produce all agreements between you and Southern Terrace HOA, including any purchase or factoring agreements, within the past five (5) years.

ANSWER:

Objection, this calls for the production of a document and is beyond the scope of an

interrogatory.

Without waiving objection, no documents have been located.

INTERROGATORY NO. 24:

Please identify the amount you paid for the property at the HOA sale.

ANSWER:

$10,100.

DATED this 25th day of January, 2015.

COOPER COONS, LTD.
Attorneys at Law

By: _____
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Attorneys for Plaintiff

AFFIDAVIT OF DERROL WYNN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, DERROL WYNN, manager of R VENTURES VIII, LLC being first duly sworn, deposes and says that afffiant is over the age of eighteen (18) years and competent to be a witness as to the matters hereinafter stated, is authorized to make this Verification on its behalf. I have read the foregoing **PLAINTIFF'S RESPONSES TO CARRINGTON MORTGAGE HOLDINGS, LLC'S INTERROGATORIES TO R. VENTURES VIII, LLC** and know the contents. The same is true of my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true. 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.

DERROL WYNN

On this 26 day of January, 2016 before me the undersigned, a Notary Public in and for the said County of Clark, State of Nevada, personally appeared DERROL WYNN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
KIM HEXAMER
Appt. No. 10-2710-1
My Appt. Expires Aug. 1, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies on January 25, 2015, 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	
Contact	**Email**
Akerman Las Vegas Office	akermanlas@akerman.com

/s/ Kim Hexamer

An employee of COOPER COONS, LTD.

Exhibit B

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. 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.	Case No.: A-13-684151-C Dept. VI

CERTIFIED COPY

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DEPOSITION OF DERROL W. WYNN

30(b)(6) REPRESENTATIVE OF R VENTURES VIII, LLC

Taken on Tuesday, January 26, 2016

At 1:10 p.m.

At All-American Court Reporters
1160 North Town Center Drive, Suite 300
Las Vegas, Nevada

Reported by: Sarah Safier, CCR No. 808

////
CARRINGTON MORTGAGE HOLDINGS, LLC,

Counterclaimant,

vs.

R VENTURES VIII, LLC,

Counterdefendant.

CARRINGTON MORTGAGE HOLDINGS, LLC,

Cross-Claimant,

vs.

TERRACE HOMEOWNERS' ASSOCIATION,

Cross-Defendant.

---

attended these HOA foreclosure auctions on behalf of these various R Ventures, including R Ventures VIII?

A Yes.

Q Did you attend the sale in this case?

A Yes.

Q Did Mr. Hall also attend?

A No.

Q About how many auctions would you say you have attended over the last five years?

A Probably about 30.

Q And did you purchase -- when I say "you," I mean in your professional capacity for R Ventures or some entity of that R Ventures, some R Ventures entity, did R Ventures purchase properties at all of those 30 auctions?

A No.

Q At about how many of the auctions would you say that R Ventures had purchased properties?

A Ten.

Q And how many properties does R Ventures -- between R Ventures I and R Ventures X, how many properties does it own?

A Nine.

Q And I'm sorry if you already answered that, I apologize.

EXHIBIT 28

EXHIBIT 28

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

OPPOSITION TO CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR RECONSIDERATION OF ORDERS ON SUMMARY JUDGMENT

R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd. ("Cooper Coons"), hereby files this opposition. This Opposition is made and based upon the following Memorandum of Points and Authorities, all pleadings on file herein, and any and all oral arguments at the time of the hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff prevailed on its Motion for Summary Judgment because Defendant Carrington Mortgage Services, LLC did not raise a genuine issue of material fact, despite extensive briefing and discovery and Plaintiff was entitled to judgment as a matter of law. Defendant Carrington Mortgage Services, LLC now seeks, after the time for filing a motion for reconsideration has passed, to re-litigate identical issues without the introduction of previously undiscovered evidence, material changes in law, or identifying a manifest error in law or fact.

Based on the lack of a timely motion, compounded by the lack of justification for reconsideration of the judgment, Plaintiff requests this court deny Defendant Carrington Mortgage Services, LLC's motion for reconsideration.

II. LEGAL ARGUMENT

A. Legal Standard.

This Court "may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry and tile Contractors Ass'n of Sothern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev 737, 741, 941 P.2d 486, 489 (1997) (citations omitted). A court has discretion to depart from a prior order when (1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law. *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1254 n. 1 (9th Cir. 1999 (en banc)). "There may also be other, highly unusual, circumstances warranting reconsideration." *School Dist. No. 1J, Multnomah Cnty., Or. V. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

Here, Carrington Mortgage cannot satisfy any of the four criteria and thus their motion must be denied.

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B. Defendant's Motion for Reconsideration is Untimely.

EDCR 2.24(b) mandates a motion for reconsideration must be filed "within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." Further, NRCP 59(e) requires a motion to alter or amend a judgment to be filed no later than 10 days after service of written notice of entry of the judgment. An untimely motion fails to give the district court jurisdiction making any resulting alteration of the judgment void. *Stapp v. Hilton Hotels Corp.*, 108 Nev. 209, 826 P.2d 954 (1992).

Here, Carrington Mortgage Holdings, LLC filed its Motion for Reconsideration on May 19, 2016. However, the Notice of Entry granting Plaintiff's Motion for Summary Judgment was filed and electronically served on May 2, 2016. Carrington Mortgage Holdings, LLC waited seventeen (17) days after the notice of entry to file its motion. Thus, because Carrington Mortgage Holdings, LLC did not file the motion within the mandatory time period, its arguments cannot be considered.

Even if the Court wishes to entertain arguments regarding this decision, Carrington Mortgage Holdings, LLC cannot present previously undiscovered evidence in support of its position nor point to a clearly erroneous legal decision.

C. Defendant's Motion for Reconsideration Presents Only Previously Discovered Evidence.

An order granting summary judgment may not be overcome by finally bringing evidence showing a genuine issue of material fact in a motion for reconsideration when that evidence was available at the time of the original motion. *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 917 P.2d 447 (1996).

Here, Defendant Carrington Mortgage Holdings, LLC attempts to use its Motion for Reconsideration to introduce new but previously available evidence not cited in its original opposition. For each argument in its Motion for Reconsideration, Carrington present previously discovered evidence or merely reiterates its previous briefing arguments. *See* Carrington's Reply In Support of Motion for Summary Judgment at 12-13 (March 22, 2016); *See also* Carrington Mortgage Holdings, LLC's Opposition to Plaintiff R Ventures VIII, LLC's Motion

for Summary Judgment at 12-13 (March 14, 2016). Carrington's failure to present such evidence proscribes its application in the present proceeding because the information and arguments presented were available to be included in its briefing. At that time, Carrington elected to omit those argument and cannot now use that purposefully omitted evidence to overturn the Court's decision.

Without any newly discovered evidence, this Court's decision granting Plaintiff quiet title must stand.

D. Court's Decision is not Clearly Erroneous.

Defendant Carrington Mortgage Holdings, LLC requests relief based on the purported change in controlling law set forth in *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016). However, the *Ikon* case merely clarified the exact amount permitted to be included in the super-priority portion of the HOA lien. Defendant Carrington Mortgage Holdings, LLC fails to show how this calculation affects the underlying judgment.

Defendant's arguments regarding their offer of payment were fully briefed and heard before this Court. The Order clearly lays out the purported tender was not a tender at all because it was a conditional offer to pay. *See* Order at ¶¶ 13-14. The amount included in the super-priority portion of the HOA lien is immaterial to the judgment because the offer to pay was not a tender. The judgment did not declare that the purported tender was of an insufficient value to satisfy the super-priority portion. Thus, *Ikon* has little relevance in this factual context.

Consequently, the Court should affirm its order granting Plaintiff quiet title.

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CONCLUSION

For the reasons set forth herein, Plaintiff requests the Court grant Plaintiff's Motion for Summary Judgment and declare Plaintiff the rightful owner of the title to the Property, and that the Defendants be declared to have no right, title, or interest in the Property.

Dated this 1st day of June, 2016.

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
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Attorneys for Plaintiff

There are no social security numbers contained in this document.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on June 1, 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 29

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Attorneys for Carrington Mortgage Holdings, LLC

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,

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.

Case No.: A-13-684151-C

Dept.: VI

CARRINGTON MORTGAGE HOLDINGS, LLC'S CASE APPEAL STATEMENT

AKERMAN LLP
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CARRINGTON MORTGAGE HOLDINGS, LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

CARRINGTON MORTGAGE HOLDINGS, LLC,

Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

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Carrington Mortgage Holdings, LLC by and through its attorneys of record at Akerman LLP, submits its Case Appeal Statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is Carrington Mortgage Holdings, LLC (**Appellant**).
2. The order appealed is the Final Judgment for Plaintiff entered April 27, 2016. A Notice of Entry of Final Judgment was entered on May 2, 2016 by the Honorable Judge Elissa Cadish.
3. Counsel for Appellants are Ariel E. Stern, Esq. and Christine M. Parvan, Esq. of Akerman LLP, 1160 N. Town Center Drive, Suite 330, Las Vegas, Nevada 89144.
4. Trial counsel for Respondent R Ventures VIII, LLC is J. Charles Coons, Esq. and Thomas Miskey, Esq., of Cooper Coons, Ltd., 10655 Park run Drive, Suite 130, Las Vegas, NV 89144. Appellant is unaware of whether trial counsel will also act as appellate counsel for Respondent.
5. Counsel for appellant are licensed to practice law in Nevada. Trial counsel for Respondent is licensed to practice law in Nevada.
6. Appellant is represented by retained counsel in the district court.
7. Appellant is represented by retained counsel on appeal.

8. Appellant was not granted leave to proceed in forma pauperis by the district court.

9. The date proceedings commenced in the district court was June 26, 2013.

10. In this action, Respondent alleges that it owns the property located at 6175 Novelty Street, Las Vegas, Nevada 89148, Assessor Parcel No. 163-31-713-027 (**Property**) free and clear of all liens as a result of an HOA foreclosure sale. Respondent filed an Answer, Counterclaim and Cross-Claim for Quiet Title/Declaratory Judgment to have the court declare that Respondent bought the Property free and clear of Appellant's interests, including the deed of trust held by Carrington Mortgage Holdings, LLC (**Deed of Trust**). Appellants alleged that the Deed of Trust was not extinguished by the foreclosure sale because its attempted tender satisfied the tender rule, the foreclosure sale was not commercially reasonable, and NRS 116.1113 is unconstitutional. The district court granted Respondent's motion for summary judgment over Appellants' opposition to motion for summary judgment. Appellants now appeal the order granting Respondent summary judgment.

11. This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

12. This appeal does not involve child custody or visitation.

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

DATED this 1st day of June 2016.

AKERMAN LLP

/s/ Christine M. Parvan, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 1st day of June, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **CARRINGTON MORTGAGE HOLDINGS, LLC'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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Attorneys for Carrington Mortgage Holdings, LLC

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, 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.	Case No.: A-13-684151-C Dept.: VI **CARRINGTON MORTGAGE HOLDINGS, LLC'S NOTICE OF APPEAL**

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CARRINGTON MORTGAGE HOLDINGS, LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

CARRINGTON MORTGAGE HOLDINGS, LLC,

Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

Carrington Mortgage Holdings, LLC by and through its attorneys of record at Akerman LLP, submits its notice of appeal to the Nevada Supreme Court of the order granting plaintiff R Ventures VIII, LLC's motion for summary judgment that was entered in this matter on April 27, 2016.

DATED this 1st day of June 2016.

AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 1st day of June, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **CARRINGTON MORTGAGE HOLDINGS, LLC'S NOTICE OF APPEAL**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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EXHIBIT 31

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Attorneys for Carrington Mortgage Holdings, LLC

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,

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

CARRINGTON MORTGAGE HOLDINGS, LLC,

Case No.: A-13-684151-C
Dept.: VI

CARRINGTON MORTGAGE HOLDINGS, LLC'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDERS ON SUMMARY JUDGMENT

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Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

This Court should reconsider its Order granting summary judgment in favor of R. Ventures and denying Carrington's motion for summary judgment for 3 reasons. **First**, Carrington's motion is timely. **Second**, Bank of America's presale tender of 9 months of assessments—the exact amount the *Ikon* Court confirmed constitutes the super-priority portion of an HOA's lien—was sufficient to preserve the senior deed of trust. **Third**, R. Ventures is not a *bona fide* purchaser. Even if it was, the *bona fide* purchaser analysis is irrelevant, as the *Shadow Wood* court found the *bona fide* purchaser doctrine only applies if there is a *valid* HOA foreclosure sale, which this sale was not.

I. Carrington's Motion Was Timely

Pursuant to EDCR 2.24, Carrington had 10 days from service of written notice of this Court's orders to file its motion. *See* EDCR 2.24 ("[a]party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order."). Pursuant to EDCR 1.14(a), the 10 day period is calculated by excluding "intermediate Saturdays, Sundays, and non-judicial days" since the period prescribed for Carrington to file its motion was less than 11 days. *Id.* As R. Ventures notes in its opposition, Carrington was served with notice of entry of this Court's orders on May 2, 2016. *See* Opp., 3:9-10. Carrington's motion for reconsideration was due May 19, 2016 (10 judicial days, plus 3 additional days pursuant to EDCR 1.14(c) ("whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, *or by electronic means*, three (3) days must be added to the

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prescribed period.") (emphasis added).

II. A Motion for Reconsideration Does Not Need to Include New Evidence

R. Ventures first argues a motion for reconsideration requires the introduction of "substantially different evidence" that is "newly discovered or previously unavailable." Opp., 2:14-19. R. Ventures then argues the Court should deny Carrington's motion because it "presents only previously discovered evidence." *Id.*, 3:17-22. R. Ventures claims—without citing to any portion of the motion or evidence on which Carrington allegedly relies—Carrington attempts to "introduce new but previously available evidence not cited in its original opposition." *Id.*, 3:23-4:1 (citing to both Carrington's reply in support of its own motion for summary judgment and Carrington's opposition to R. Ventures' motion for summary judgment).

It is true that the Supreme Court has held that "[o]nly in very rare instances in which new issues of fact or law are raised supporting a rule contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 404, 551 P.2d 244 (1976). But the Supreme Court further clarified the basis in which motions for reconsideration may be filed in the *Masonry* case. *Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). In *Masonry*, the Supreme Court held "a district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced *or the decision is clearly erroneous*." *Id* (emphasis added). The Supreme Court has reaffirmed this standard numerous times. *See, e.g., North Main, LLC v. Eighth Judicial Dist. Court of State ex. rel.*, No. 58452, 2012 WL 912173 (Nev. 2012) (unpublished).[1] Despite R. Ventures' argument to the contrary, the "clearly erroneous" standard is an appropriate basis in which to file a motion for reconsideration.

III. It Was Clear Error To Deny Carrington's Motion for Summary Judgment, and Grant R. Ventures' Motion for Summary Judgment

A. BANA Tendered 9 Months of Assessments.

[1] SCR 123 was appealed in November of 2015, and applies to orders issued on or after January 1, 2016. *See* ADKT 0504. Defendants are mindful of the application of SCR 123 to this opinion, and cites it solely for the purpose of demonstrating how the Supreme Court has approved the "clearly erroneous" standard in the past.

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Nevada Revised Statute 116.3116(1) creates a statutory lien for unpaid assessments that a unit owner owes to an HOA. The statute also creates a "super-priority" portion of this statutory lien in which nine months of HOA assessments have priority over a senior deed of trust. Based on the plain language of the statute that creates the HOA lien, the Nevada Supreme Court confirmed in *SFR Investments* that nine months of unpaid HOA assessments constitute the statutory super-priority portion of this statutory lien. Since this Court entered its Orders on the Motions for Summary Judgment, the Nevada Supreme Court held in *Ikon Holdings* that the super-priority amount is limited to nine-months of assessments prior to an HOA foreclosure and does not include an amount for collection fees or foreclosures costs.

In this case, pursuant to NRS 116.3116(3)(b), BANA tendered the amount of the super-priority portion of the statutory HOA lien prior to the HOA foreclosure sale. Shortly after receiving the Notice of Default and Election to Sell, BANA, through counsel, contacted the HOA Trustee and requested a payoff ledger detailing the super-priority amount of the HOA's lien. Red Rock provided a ledger, dated December 27, 2012 identifying the total amount allegedly owed. In response to this information, BANA calculated 9 months-worth of assessments ($8/month x 9 months = $72.00). Even though it was not required to under the statute, as confirmed by the *Ikon* court, BANA sent a check to the HOA Trustee for *more than* 9 months of assessments ($655.14, including 9 months of assessments, plus an additional $90.00 in late fees, $11.95 in interest and $481.19 in collection costs). BANA explained that the check was sent to "satisfy [Bank of America's] obligation . . . as a holder of the first deed of trust against the property." *See* Ex. M to Carrington's Motion for Summary Judgment. Even though the HOA Trustee rejected this payment, BANA tendered, and thus satisfied the super-priority portion of the statutory HOA lien.

This Court erroneously found BANA's tender was a "conditional offer" and did not discharge the super-priority portion of the HOA's lien. This Court improperly relied on contract law principles of accord and satisfaction as a basis for arguing BANA's tender of the nine-month super-priority amount could not satisfy a statutory lien.

Contrary to this Court's Order, and as set forth in the letter accompanying BANA's check to the HOA Trustee, BANA's tender was made pursuant to NRS 116.3116(2)(b) and was remitted to

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satisfy the nine-months of delinquent assessments (based on the HOA's assessment ledger) that the HOA was entitled to collect from the beneficiary of the Deed of Trust. The Court's finding based on the faulty premise the amount BANA tendered was an attempt to resolve a disputed contractual debt. As set forth below, contract principles such as accord and satisfaction are inapplicable in this context where the HOA and BANA are not in privity of contract and where the obligations of the parties are determined not by contract, but by statute.

Under Nevada law, accord and satisfaction is an affirmative defense to a breach of contract claim. *See Nev. R of Civ. P. 8(c)*; *Pierce Lathing Co. v. ISEC, Inc.*, 114 Nev. 291, 956 P.2d 93, 95 (Nev. 1998); *Casarotto v. Mortensen*, 99 Nev. 392, 663 P.2d 352, 353 (Nev. 1983). The Nevada Suprema Court has explained that "principles of accord and satisfaction, subtending those of compromise and settlement dealing only with the disputed or unliquidated amounts, are contractual in nature." *Pederson v. First Nat'l Bank*, 93 Nev. 388, 392, 566 P.2d 89, 91-92, 1977 Nev. LEXIS 573, *7 (Nev. 1977) (quotation and citation omitted). As noted above, the HOA lien for assessments is a statutory lien, and the obligations, if any, BANA may have to the HOA, are determined by statute, not by contract. Because BANA and the HOA are not in privity of contract, principles such as accord and satisfaction are not applicable and cannot render BANA's tender a nullity.

Moreover, even if principles of accord and satisfaction were applicable to the instant case, BANA's check sent to the HOA still constitutes tender *more than* sufficient to satisfy the super-priority portion of the HOA lien. The Nevada Supreme Court has rejected this Court's finding that the "conditional" language in the letter accompanying BANA's tender of the super-priority portion of the statutory HOA lien negates the effect of that tender.

In *Pederson v. First Nat'l Bank*, 93 Nev. 388(Nev. 1977), the Court acknowledged that even if a check contains "conditional" language, acceptance of that check does not necessarily resolve a dispute, and remittance of that check still constitutes tender. The alleged breaching party in *Pederson* asserted that "the trial court was compelled to sustain his affirmative defense since he tendered a check . . . in 'full settlement' of the Bank's claim against him, which check was accepted by the Bank." *Id.* at 392-393. The *Pederson* Court rejected this argument and explained that while "tender of that check and acceptance by the Bank is evidence supporting his defense of compromise

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and settlement, other evidence presented shows that the Bank accepted the check to be credited against the full sum due it." *Id.* at 393. Although BANA was not attempting to resolve a debt,[2] the rationale in *Pederson* applies—BANA's remittance of the check, even with conditional language, does not defeat the legal effect of the tender.

By tendering the super-priority amount—plus additional amounts not included in the HOA's super-priority lien—prior to the foreclosure sale, BANA preserved the first-priority position of the Deed of Trust. Since the super-priority portion of the HOA's lien was extinguished prior to the foreclosure sale, R. Ventures' interest in the Property, if any, is subject to the Deed of Trust pursuant to NRS 116.31164(3)(a), which provides 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 unit*." NRS 116.31164(3)(a) (emphasis added). Under Nevada law, the HOA lost the ability to pass title free of the Deed of Trust when BANA's tender extinguished the super-priority lien.

B. R. Ventures Is Not a *Bona Fide* Purchaser.

While the Nevada Supreme Court recently stated the potential harm to a *bona fide* purchaser must be taken into account by a court determining whether to set aside an HOA foreclosure sale, those arguments have no application where, as here, the party is not a *bona fide* purchaser. *See Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, at 21 (Nev. Jan. 28, 2016) ("It is an age-old principle that in formulating equitable relief a court must consider the **effects of the relief on innocent third parties.**"); *id.* ("Equitable relief should not be granted where it would work **a gross injustice on innocent third parties.**") (emphasis added). To qualify as a bona fide purchaser, R. Ventures must show it purchased the Property (1) for value and (2) without notice of a competing or superior interest in the same property. *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). This Court should also grant Carrington's motion for reconsideration because R. Ventures is not *bona fide* purchaser for value.

[2] The fact BANA'S counsel included "conditional" and "non-negotiable" language in its cover letter to the HOA Trustee does not transform the tender of the super-priority portion of a statutory HOA lien into an offer to enter into a contract or an accord and satisfaction. The balance of the cover letter makes clear BANA is remitting payment of nine-months of delinquent assessments pursuant to NRS 116.3116(2)(b), plus additional collection costs and foreclosure fees—amounts BANA did not need to pay to preserve the senior Deed of Trust.

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Under Nevada law, for a buyer to qualify as a *bona fide* purchaser, that buyer cannot have notice, actual or constructive, of another party's unrecorded interest in the property. *Huntington v. Mila, Inc.*, 119 Nev. 355, 356, 75 P.3d 354, 357 (2003). A duty of inquiry arises where circumstances put a reasonable person on notice of another's rights in the property. *Id.* The duty of inquiry is Noonan's to bear. *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970). The duty of inquiry means plaintiffs cannot be passive. The duty of inquiry charges plaintiffs with all of the facts that it could have learned through an investigation—even if R. Ventures did not undertake such an investigation. *Id.*

Here, R. Ventures cannot satisfy the second element, as the deed of trust constitutes a competing or superior interest in the property of which plaintiffs had actual or constructive notice prior to their purchase of the property. Further, the recorded deed of trust put R. Ventures on inquiry notice that the beneficiary could tender—as BANA did here—the super-priority amount to protect the first-priority position of its deed of trust. R. Ventures is not a *bona fide* purchaser because it has not put forth undisputed evidence it had no notice of the deed of trust prior to its purchase at the HOA's foreclosure sale. Here, the deed of trust constitutes a superior interest in the property for several reasons. The deed of trust was not extinguished by the HOA's foreclosure sale because BANA's tender of 9 months of assessments (plus additional amounts not even included in the HOA's super-priority lien) preserved the senior Deed of Trust; the low purchase price of just 9% of fair market value was grossly inadequate as a matter of law; and because the sale was unfairly conducted. Additionally, the HOA's foreclosure sale was void because the State Foreclosure Statute is facially unconstitutional under the Due Process Clause. For those reasons, the Deed of Trust constitutes a "superior interest in the [Property]," precluding R. Ventures from claiming it is a bona *fide* purchaser for value.

IV. CONCLUSION

As a matter of law, BANA's tender extinguished the super-priority portion of the HOA statutory lien. The Court should reconsider its Order granting summary judgment in favor of R. Ventures and instead grant summary judgment in favor of Carrington.

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DATED this 14th day of June 2016.

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s/ Christine M. Parvan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 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 REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION**, addressed to:

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EXHIBIT 32

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EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

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.	Case No.: A-13-684151-C Dept.: VI **NOTICE OF POSTING APPEAL COST BOND**

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

CARRINGTON MORTGAGE HOLDINGS, LLC,

Counterclaimant,

v.

R VENTURES VIII, LLC,

Counterdefendant

CARRINGTON MORTGAGE HOLDINGS, LLC,

Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

PLEASE TAKE NOTICE that Defendant Carrington Mortgage Holdings, LLC posts an Appeal Cost Bond in the amount of $500.00 pursuant to N.R.A.P. 7. *See also* Receipt of Cash Bond, attached as **Exhibit 1**.

DATED this 22nd day of June, 2016.

AKERMAN LLP

/s/ Christine M. Parvan, Esq.
DARREN BRENNER, ESQ.
Nevada Bar No. 8386
CHRISTINE M. PARVAN, ESQ.
NEVADA BAR NO. 10711
1160 Town Center Drive, Suite 330
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Attorneys for Bank of New York Mellon.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 22nd day of June, 2016 I caused to be served a true and correct copy of foregoing **NOTICE OF POSTING APPEAL COST BOND**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Cooper Coons, Ltd.	
Contact	**Email**
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/s/ Renee Livingston
An employee of AKERMAN LLP

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
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EXHIBIT 1

EXHIBIT 1

REPRINTED RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Akerman LLP

Receipt No.
2016-55276-CCCLK

Transaction Date
06/8/2016

Description	Amount Paid
On Behalf Of Carrington Mortgage Holdings LLC A-13-684151-C R Ventures VIII, LLC., Plaintiff(s) vs. Taylor, Bean & Whitaker Mortgage Corp., Defendant(s) Appeal Bond	
Appeal Bond	500.00
SUBTOTAL	**500.00**
PAYMENT TOTAL	**500.00**
Check (Ref #26000070) Tendered	500.00
Total Tendered	500.00
Change	0.00

06/08/2016 04:05 PM | Cashier Station AIKO | Audit 35510793

REPRINTED RECEIPT

EXHIBIT 33

EXHIBIT 33

Electronically Filed
07/06/2016 01:36:08 PM

CLERK OF THE COURT

J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
Charles@coopercoons.com
Nevada Bar No. 13540
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COOPER COONS, LTD.
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

MOTION FOR ATTORNEY'S FEES AND COSTS

R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd. ("Cooper Coons"), hereby moves this Court for attorney's fees and costs, against Defendant CARRINGTON MORTGAGE HOLDINGS, LLC ("Carrington Mortgage") and is based upon the Memorandum of Points and Authorities set forth below, the pleadings on record with the Court, and any oral argument of counsel to be entertained by the Court.

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NOTICE OF HEARING

THE COURT HEREBY sets the hearing for Plaintiff's Motion for Attorney's Fees and Costs on the 09 day of August, 2016, in Department 6 of the above-entitled Court, at the hour of 8:30 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court granted summary judgement, quieting title of the property commonly known as **6175 Novelty Street, Las Vegas, Nevada 89148; Parcel No. 163-31-713-027** ("Property") in favor of Plaintiff. Because Plaintiff's quiet title claim was brought under NRS 116.3116, Plaintiff is entitled to an award of attorney's fees and costs, in the amount of $25,465.50. Alternatively, Plaintiff should be awarded reasonable attorney's fees and costs under NRCP 68 and NRS 17.115 because Defendant Carrington Mortgage rejected an offer of judgment and failed to obtain a more favorable judgment.

II. SUMMARY OF FACTS

Plaintiff acquired the Property on May 31, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et.seq.*

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

Plaintiff served Defendant Carrington Mortgage with an offer of judgment on October 14, 2015 which was rejected. Exhibit 1.

Plaintiff and Defendant Carrington Mortgage filed competing Motions for Summary Judgment on February 24, 2016 which was heard on April 5, 2016. Plaintiff then filed an Order granting Plaintiff's summary judgment on April 27, 2016 and its Notice of Entry on May 2, 2016.

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III. LEGAL ARGUMENT

Attorney's fees and costs are not recoverable absent a statute, rule, or contractual provision authorizing such an award. Here, Plaintiff is entitled to attorney's fees and costs under an explicit statutory authorization. NRS 116.3116(8) specifically mandates any judgment must include attorney's fees and costs. Additionally, Plaintiff served Defendant Carrington Mortgage with an offer of judgment on October 14, 2015 which was rejected. Exhibit 1. Consequently, Plaintiff is entitled to attorney's fees and costs in this matter.

A. NRS 116.3116(8) Mandates Plaintiff R Ventures VIII Recover Attorney's Fees and Costs.

When an action is brought under NRS 116.3116, the statute demands the judgment include attorney's fees and costs. NRS 116.3116(8) states "[a] judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." A prevailing party for attorney fee purposes if they succeed on any significant issue in litigation which achieves some of the benefits sought in bringing suit. *Sack. v. Tomlin*, 110 Nev. 204, 214-15, 871 P.2d 298 (1994). Consequently, costs and fees must be award to Plaintiff, the prevailing party who achieved clearing title under NRS 116.

This section of NRS 116 provides the foundation for Plaintiff's quiet title action, without which, Plaintiff would not have a tenable claim. NRS 116.3116 creates the HOA super priority lien. The remainder of NRS 116.3116 *et seq.* lays out the procedure for foreclosing a super priority lien.

Turning to statutory construction, the specific language of the statute is broad. The use of the phrase "in any action" evidences an intent to encompass all actions relating to this section. Consequently, the court should take an expansive meaning to give full effect to the intent of the legislature and protect the incentive structure of the statute.

Here, Plaintiff initiated this quiet title action. When this court granted summary judgment in favor of Plaintiff, it became the prevailing party. The plain language of the statute mandates Plaintiff's recovery reasonable attorney's fees.

Pursuant to NRS 116.3116(8), Plaintiff requests attorney's fees and costs in the amount of $25,465.50.

B. Plaintiff is Entitled to Reasonable Attorney's Fees Based on Offer of Judgment.

An offer of judgment may be served on the adverse party at any time "more than 10 days" before trial begins. NRCP 68(a); NRS 17.115(1). An offer that is not accepted within 10 days after service is deemed rejected by the offeree and automatically withdrawn by the offeror. NRCP 68(e); NRS 17.115(3). "To determine whether a party who rejected an offer of judgment failed to obtain a more favorable judgment... [i]f the offer provided a separate award of costs, the court must compare the amount of the offer with the sum of... [t]he amount of taxable costs that the claimant who obtained the judgment incurred before the date of service of the offer." NRS 17.115(5).

Here, Plaintiff offered Defendant Carrington Mortgage to accept judgment that the deed of trust recorded against the property at issue was extinguished, with each party to bear its own attorney's fees and costs. Defendant Carrington Mortgage did not accept this offer. Because Defendant Carrington Mortgage chose to continue litigation despite the overwhelming evidence available in favor of Plaintiff, both parties expended significant resources in terms of attorney's fees and costs. At that time, Plaintiff would have been entitled to, at a minimum, the costs of filing the complaint and service of process upon Defendant Carrington Mortgage. Instead of electing to save these costs, Defendant Carrington Mortgage continued to pursue the litigation. Because Plaintiff prevailed on its claim and obtained a more favorable judgment, Defendant Carrington Mortgage should pay the attorney's fees incurred.

C. The Amount of Attorney's Fees and Costs are Reasonable.

It is an abuse of discretion to award attorney's fees under NRS 116.3116(8) without consideration of the factors established in *Brunzell*. *Danielson v. Falconcrest Homeowner's Ass'n*, , Case No. 67068 (Nev. Ct. App. Feb. 18, 2016). In *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31, the Nevada Supreme Court laid out guidelines for a reasonable award of attorney's fees and costs:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. See, 7 C.J.S. Attorney and Client, S 191 a. (2), p. 1080 et seq.; 5 Am.Jur., Attorneys at Law, section 198. Cf. Ives v. Lessing, 19 Ariz. 208, 168 P. 506. Furthermore, good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight.

Here, Cooper Coons took on this novel and unsettled area of law. The work required intensive legislative history research combined with a close title examination as well as substantial briefing of constitutional issues. Further complicating the matter, Cooper Coons was required to attempt to secure timely injunctive relief to prevent Defendant from foreclosing on the Property. Plaintiff was required to get an expedited restraining order to prevent foreclosure which increased costs due to the extreme time constraints. Finally, Cooper Coons successfully cleared record title for Plaintiff, enabling the Plaintiff to take full possession and interest in the Property. Pursuant to these ends, Cooper Coons incurred fees appropriate with the complexity of this matter.

Please find a breakdown of attorney's fees and costs attached. Exhibit 2.

AFFIDAVIT OF THOMAS MISKEY, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, THOMAS MISKEY, ESQ., being first duly sworn, deposes and says that affiat is over the age of eighteen (18) years and competent to testify as to the matters herein stated and hereby declare as follows:

1. I have personal knowledge of the facts set forth below, except for those factual statements expressly made upon information and belief or based on a review of internal documents, and as to those facts, I believe them to be true, and I am competent to testify.

2. I make this declaration in support of Plaintiff's Motion for Attorney's Fees and Costs.

3. I am counsel for Plaintiff in this action.

4. I have reviewed the fees and costs incurred in this action and declare such fees and costs were actually and necessarily incurred and constitute a reasonable expenditure of time and resources.

I make this declaration under penalty of perjury under the laws of the State of Nevada this 6th day of July, 2016.

THOMAS MISKEY, ESQ.

CONCLUSION

For the reasons set forth herein, Plaintiff requests the Court grant Plaintiff's Motion for Attorney's Fees.

Dated this 6th day of July, 2016.

COOPER COONS, LTD.
Attorneys at Law

By:
J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
THOMAS MISKEY
Nevada Bar No. 13540
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
V: (702) 998-1500
F: (702) 998-1503
Attorneys for Plaintiff

There are no social security numbers contained in this document.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 6, 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	☑
Ariel E. Stern, Esq.	ariel.stern@akerman.com	☑
Christine M. Parvan, Esq.	christine.parvan@akerman.com	☑
Elizabeth Strelble	elizabeth.strelble@akerman.com	☑

/s/ Kim Hexamer

An Employee of COOPER COONS, LTD.

Exhibit 1

ELECTRONICALLY SERVED
10/14/2015 09:05:11 AM

J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
Charles@coopercoons.com
Nevada Bar No. 13540
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(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, a Delaware limited liability corporation; DOES I through X; and ROE CORPORATIONS II through X, inclusive,

Defendants.

Case No.: A-13-684151-C

Dept. No.: VI

PLAINTIFF'S OFFER OF JUDGMENT TO DEFENDANT CARRINGTON MORTGAGE SERVICES, LLC.

TO: Carrington Mortgage Services, LLC.

Pursuant to NRCP 68 and NRS 17.115, Plaintiff R-Ventures VIII, LLC offers to accept judgment that Carrington Mortgage Services, LLC's interest, under a Deed of Trust recorded as instrument number 200907010003903 and Assignment of Deed of Trust recorded as instrument number 201502120003086, in the property commonly known as 6175 Novelty Street, Las Vegas, Nevada 89148, Parcel No. 163-31-713-027, was extinguished by the homeowners'

association sale that occurred on or about May 31, 2013 as reflected in the trustee's deed upon sale recorded against the property as instrument number 201306030002860.

If Carrington Mortgage Services, LLC does not accept this offer and fails to obtain a more favorable judgment, Carrington Mortgage Services, LLC will pay post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of judgment, and reasonable attorneys' fees as allowed, which are incurred by R-Ventures VIII, LLC from the date of service of this offer.

This offer shall not be construed as an admission of any kind.

DATED this 14th day of October, 2015.

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
Nevada Bar No. 13540
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
V: (702) 998-1500
F: (702) 998-1503
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies on October 14, 2015, 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	☑

/s/ Kim Hexamer

An employee of COOPER COONS, LTD.

Exhibit 2

7/6/2016	draft order denying motion for reconsideration and draft motion for attorney's fees	1.5	$	150.00	$ 225.00
6/28/2016	NVSC settlement conference; no reasonable chance of settlement	0.5	$	150.00	$ 75.00
6/22/2016	FUP with in chambers decision on reconsideration	0.3	$	150.00	$ 45.00
6/16/2016	review their reply in support of lender's motion for reconsideration	0.7	$	150.00	$ 105.00
5/25/2016	revisions to opposition to motion to reconsideration; begin drafting motion for attorney's fees and costs	1.9	$	150.00	$ 285.00
5/24/2016	review, amend and finalize our opposition	1.5	$	150.00	$ 225.00
5/23/2016	begin drafting our opposition to their motion for reconsideration; case research regarding timing of reconsideration	2.1	$	150.00	$ 315.00
5/20/2016	review their motion for reconsideration; research EDCR 2.24	1	$	150.00	$ 150.00
4/13/2016	FUP with OPC regarding order; minor revisions; sign and assignments to staff	0.9	$	150.00	$ 135.00
4/6/2016	review and revise order; send to OPC for review	0.7	$	150.00	$ 105.00
4/5/2016	extensive oral arguments; draft order granting MSJ; review and revise; check supplemental authority	3.5	$	150.00	$ 525.00
4/4/2016	review oral argument outline and refresh memory on particulars of facts for oral argument	1	$	150.00	$ 150.00
3/29/2016	travel; appear to confirm continuance	1.2	$	150.00	$ 180.00
3/28/2016	review briefing and documents; prepare oral argument and exhibits to present to judge	1.7	$	150.00	$ 255.00
3/22/2016	review and finalize our reply in support of MSJ	1	$	150.00	$ 150.00
3/21/2016	begin drafting our reply in support of our MSJ; case research regarding new tender cases cited	2.1	$	150.00	$ 315.00
3/15/2016	initial review of lender's opposition to our MSJ	1.4	$	150.00	$ 210.00
3/8/2016	travel; attend status check; final revisions to our opposition; assignments to staff	2.3	$	150.00	$ 345.00
3/7/2016	review pleadings for status check; revisions to our Opposition	1.4	$	150.00	$ 210.00
3/2/2016	begin drafting opposition to lender's MSJ; supplemental research regarding HUD provisions and effect of previous lien; calculate amount due under HOA lien	3.2	$	150.00	$ 480.00
2/24/2016	compile exhibits; review and supplement MSJ; finalize and file	1.9	$	150.00	$ 285.00
2/23/2016	begin drafting MSJ	2.4	$	150.00	$ 360.00
2/16/2016	travel; attend hearing re:BoA motion to dismiss; secured ability to come after BoA for attorney's fees if we are prevailing party	1.3	$	150.00	$ 195.00
2/5/2016	review audio recording; email OPC regarding recording of auction	0.5	$	150.00	$ 75.00
1/26/2016	prepare for client deposition; travel; attend deposition	2	$	150.00	$ 300.00
1/25/2016	review documents provided; outline questions for trustee; travel; attend deposition; draft and finalize opposition to BANA's MTD	3.7	$	150.00	$ 555.00

	review lenders disclosures 1000+ pages from both trustees; create matter timeline with				
1/22/2016	document numbers; revise discovery responses based on client productions	4.6	$ 150.00	$	690.00
1/20/2016	preliminary review of documents provided by client	0.5	$ 150.00	$	75.00
	review BANA's motion to dismiss re:assignment and disclaimer; statutory and case research				
1/11/2016	into opposition	1.5	$ 150.00	$	225.00
	review discovery requests; evaluate need to respond in light of procedural posture; draft				
12/28/2015	initial responses and email client regarding documentation	2.3	$ 150.00	$	345.00
12/23/2015	email OPC to set up teleconference regarding discovery responses and listing issues	0.7	$ 150.00	$	105.00
	outline agenda for required meet on confer regarding discovery responses; email OPC to				
12/9/2015	schedule teleconference	1.2	$ 150.00	$	180.00
	initial review of discovery responses; identify potentially evasive responses and evaluate				
12/2/2015	need to compel answer	1.1	$ 150.00	$	165.00
11/25/2015	preliminary review of Carrington's responses; correspondence with OPC	1.3	$ 150.00	$	195.00
10/27/2015	initial review of Carrington's disclosures	1.1	$ 150.00	$	165.00
10/13/2015	revisions to BoA discovery; drafting carrington discovery requests; assignments to staff	2.2	$ 150.00	$	330.00
10/12/2015	revisions and correspondence with OPC re: JCCR	0.4	$ 150.00	$	60.00
10/9/2015	prepare JCCR, initial disclosures, prepare disclosures	1.5	$ 150.00	$	225.00
10/8/2015	review file; begin drafting JCCR and initial disclosures	0.7	$ 150.00	$	105.00
10/8/2015	draft offer of judgment to lender; assignment to staff	0.4	$ 150.00	$	60.00
8/27/2015	FUP status of JCCR; review file and plan of action going forward	0.5	$ 150.00	$	75.00
8/6/2015	review and finalize reply to counterclaims; draft bond documentation; assignments to staff	1.8	$ 150.00	$	270.00
8/4/2015	draft reply to counterclaim; contact OPC regarding ECC/discovery	1.6	$ 150.00	$	240.00
	review their answer and counterclaim; identify areas of factual dispute; evaluate factual				
8/3/2015	evidence attached to complaint of alleged tender	2.1	$ 150.00	$	315.00
7/22/2015	3 day notice of intent to default	0.3	$ 150.00	$	45.00
7/8/2015	FUP on overdue answer with OPC	0.4	$ 150.00	$	60.00
6/19/2015	Serve discovery on Defendant Bank of America.	0.3	$ 85.00	$	25.50
6/15/2015	review file and assignments to staff for discovery and entry of order	0.4	$ 150.00	$	60.00
	review file; create discovery plan and target areas of factual dispute; draft first set of				
4/29/2015	discovery documents; offers of judgment research for attorney's fees	3.1	$ 150.00	$	465.00

4/20/2015	correspondence with OPC re new party and time to answer; OPC teleconference regarding affect on previous order	0.7	$	150.00	$ 105.00
4/14/2015	prepare for early case conference by reviewing title and notice documents; outline for ECC; conduct ECC with counsel; new assignment to a new lender; conversation re-court order and stipulation going forward	1	$	150.00	$ 150.00
4/9/2015	draft order and send to OPC	1	$	150.00	$ 150.00
4/3/2015	Receipt of ans saving of Notice of 16.1 Early Case Conference to client file.	0.2	$	85.00	$ 17.00
4/3/2015	draft notice of early case conference; file and serve	0.3	$	150.00	$ 45.00
3/3/2015	Hearing in Dept. 6 with Judge Cadish; Follow-up discussion with OPC and staff; Preparation for hearing; Update to project; Travel.	2	$	265.00	$ 530.00
3/3/2015	additional preparations; travel; attend MSJ; FUP meeting re strategy	4	$	150.00	$ 600.00
3/2/2015	Prepare for hearing and review file; Outline for oral argument; Update to project.	1	$	265.00	$ 265.00
3/2/2015	review OPC reply and prepare for argument	2.5	$	150.00	$ 375.00
2/24/2015	Reply in support of MSJ, Prepare courtesy copy and run slip for delivery to Dept. VI.	0.3	$	85.00	$ 25.50
2/19/2015	call OPC re stipulation error; changes to Reply to MSJ; affidavit drafting and revisions	1	$	150.00	$ 150.00
2/18/2015	draft and incorporate federal research into Reply	3.8	$	150.00	$ 570.00
2/12/2015	research FHA and FHA procedures	2	$	150.00	$ 300.00
2/4/2015	contact OPC re status/extension	0.3	$	150.00	$ 45.00
1/27/2015	Calendar MSJ hearing and reply deadline dates.	0.4	$	85.00	$ 34.00
1/27/2015	Hearing in Dept. 28 w/ Judge Israel for status check; Discussion w/ OPC Winslow; Update to project plan and assignments to staff; Travel	2	$	265.00	$ 530.00
1/27/2015	travel, status check with court; draft Mtn for Attorney's fees	2.2	$	150.00	$ 330.00
1/26/2015	Review of pleading in physical file; Cross reference file with Register of Actions; Print pleading and update file in preparation for Status Check Hearing.	1.3	$	85.00	$ 110.50
1/26/2015	Prepare for hearing; Outline of oral argument and assignments to staff.	1.5	$	265.00	$ 397.50
1/23/2015	Print filed MSJD for mailing to Defendant; Prepare work order for courtesy copy to department.	0.3	$	85.00	$ 25.50
1/23/2015	finalize MSJ, prepare exhibits and file	1.5	$	150.00	$ 225.00
1/21/2015	research final dispotion/trial of similar HOA case	1	$	150.00	$ 150.00
1/7/2015	draft MSJ settlement letter; draft MSJ	1	$	150.00	$ 150.00
1/2/2015	review notice documents sent by trustee	0.5	$	150.00	$ 75.00
12/17/2014	MSJ research	1	$	150.00	$ 150.00

12/12/2014	review Opposition to MSJ	1.5	$	150.00	$ 225.00
12/11/2014	MSJ court watching for HOA cases and document review	3	$	150.00	$ 450.00
11/30/2014		1	$	265.00	$ 265.00
	Telco with OPC Elhers regarding deadlines for answer; OPC request for extension and further drafting of motions to dismiss; Draft court filing for Extension granted until 1/15;				
11/24/2014	Update to project outline; Assignment to staff.	1.5	$	265.00	$ 397.50
	Review file and outline next steps to advance case; Telcon w/ OPC to advance ECC date or				
11/17/2014	settle on Discover options; Communication with Court Clerk re status check options.	1	$	265.00	$ 265.00
	Hearing in Dept. 6; Discussion of status and oral argument against deposit of rents;				
7/29/2014	Presentation of order by OPC; Travel	2.5	$	265.00	$ 662.50
	Prepare for Hearing in Dept. 6 to review NRS 116 status and early case conference; Oral				
7/28/2014	argument outline and file prepare.	0.8	$	265.00	$ 212.00
	Email communication with OPC Jorgenson re 120 delay for status check; Stipulation offered;				
7/23/2014	Needs to be drafted.	0.5	$	265.00	$ 132.50
	Email SAO for review; Revised to add Judges signature block, email for review; Revised to				
7/23/2014	correct defendant counsel, email for review.	0.8	$	85.00	$ 68.00
7/14/2014	draft SAO to continue, contact OPC re stipulation; pull docket	0.5	$	115.00	$ 57.50
	Review of Hearing request from court for 7/29; Assign to staff for stipulation proposal to				
7/10/2014	OPC; Response to Clerk.	0.5	$	265.00	$ 132.50
	Review of calendar and docket; File and reg of action review to prepare for July 1st hearing;				
6/17/2014	Assignments to staff for prep.	0.8	$	265.00	$ 212.00
5/5/2014	Order review from Judge; Substitution of OPC to Akerman LLP; file update	0.3	$	265.00	$ 79.50
	Review of Notice of BK and automatic stay for Taylor Bean Mortgage Company; Response to				
4/7/2014	BK notice.	1	$	265.00	$ 265.00
1/16/2014	Communication w/ OPC Jorgenson re order and notice for stay.	0.8	$	265.00	$ 212.00
1/13/2014	prep and draft notice of entry of dismissal; sent to adriane for filing	0.3	$	150.00	$ 45.00
12/17/2013	review their order and fwd to Mr. Coons; reply LTR	0.6	$	115.00	$ 69.00
	draft order; confirm and email order;				
12/16/2013	review changed order	0.8	$	265.00	$ 212.00
12/12/2013	Outline of proposed order; Communication w/ OPC Jorgenson to confirm order.	0.7	$	265.00	$ 185.50
12/9/2013	pull docket, need dismiss ST, review minutes on 12.3 hearing; status to Mr. Coons.	0.5	$	115.00	$ 57.50
	Hearing in Dept. VI for Bank of America MTD; Motion put on stay with no option for PL to				
12/3/2013	foreclose during stay; Status check 6 months; Travel.	1.5	$	265.00	$ 397.50

12/2/2013	Prepare for hearing; Oral argument outline; review case file.	1	$ 265.00	$	265.00
11/17/2013	Response to OPC Jorgenson regarding investment in property by our client; Email request to client.	0.3	$ 265.00	$	79.50
11/15/2013	review judge's order; proposed draft changes to Mr. Coons.	1.1	$ 115.00	$	126.50
11/15/2013	Chambers meeting in Department 6 with OPC; Travel.	1.4	$ 265.00	$	371.00
11/14/2013	Revisions to order w/OPC Jorgenson regarding stipulation; Teleconference with Court Clerk reg stip.	0.5	$ 265.00	$	132.50
11/13/2013	Draft Order w/ OPC Jorgenson; Confirmation with Court Clerk.	0.7	$ 265.00	$	185.50
11/8/2013	file opposition; send CCS; email lewis and roca; draft stipulation to move hearing; check on filing of VD of WF; pull opp to MTD and prep run; status email to Mr. Coons.	1.8	$ 115.00	$	207.00
11/7/2013	draft email re opp to MTD; call lewis and roca to reschedule MTD hearing.	0.7	$ 115.00	$	80.50
11/6/2013	Review of proposed order from OPC Lewis; Draft alternative version; Respond with alternative draft.	0.5	$ 265.00	$	132.50
11/6/2013	Status email to client re Judges orders and status of case.	0.3	$ 265.00	$	79.50
11/5/2013	draft opposition to MTD and review; status email for approval.	2	$ 265.00	$	530.00
11/5/2013	Court hearing in Dept. 6 for MPI; Motion denied by Judge due to no imminent need to protect property from a foreclosure. No sale date set. Option to re-file MPI if Lender proceeds with foreclosure; Travel.	1.5	$ 265.00	$	397.50
11/1/2013	draft voluntary dismissal for WF	0.6	$ 115.00	$	69.00
10/31/2013	Draft SAO dismiss HOA.	0.4	$ 115.00	$	46.00
10/25/2013	update status for cal and Mr. Coons; review MTD (32 pages) and review opposition; Outline for response.	1.7	$ 115.00	$	195.50
10/18/2013	pull mpi/aos and calendar; prep cc for judge/run; calendar opp and reply	0.9	$ 115.00	$	103.50
9/19/2013	Pulled summons; Prepared summons and complaint; Draft run slips; Additional research into proper BofA address and legal rep.	0.8	$ 115.00	$	92.00
9/17/2013	Pulled corrupted summons from wiznet, case being updated; Teleconference with clerk.	0.3	$ 115.00	$	34.50
9/6/2013	Status check on docket; Email update to Mr. Coons; Default recommendations.	0.3	$ 115.00	$	34.50
				$	24,005.00

	Filing fees for filing the Opposition to Motion to Carrington Mortgage Holdings, LLC's Motion for Reconsideration of Orders on Summary Judgment.	
6/1/2016		$ 3.50
5/2/2016	Filing fees for filing Notice of Entry of Order.	$ 3.50
4/27/2016	Filing fee for Order Granting Plantiffs Motion for Summary Judgment.	$ 3.50
3/22/2016	Filing fee for Reply in Support of Plaintiff's Motion for Summary Judgment	$ 3.50
3/8/2016	Filing fee for Plaintiff's Opposition to Carrington Mortgage Holdings, LLC's Motion For Summary Judgment	$ 3.50
2/24/2016	Filing fee, court fee, card fee Plaintiff's Renewed Motion for Summary Judgment	$ 209.50
2/24/2016	Filing fee for Motion for Summary Judgment	$ 200.00
2/10/2016	Fees paid to All American Court Reporters for the transcript of the deposition of Derrol Wynn taken on 1/26/2016.	$ 183.75
2/10/2016	Fees paid to All American Court Reporters for the transcript of the deposition of Robert Atkinson, Rep of United Legal Services, Inc. taken on 1/25/2016.	$ 258.75
1/25/2016	Filing fee-Plaintiff's Opposition to Bank of America's Motion to Dismiss.	$ 3.50
10/12/2015	Filing fee for Joint Case Conference Report	$ 3.50
9/2/2015	Filing fee	$ 3.50
8/11/2015	Filing Fee	$ 3.50
8/10/2015	Bond payment. Receipt No. 2015-83703-CCLK.	$ 100.00
7/22/2015	Filing fees for filing Notice of Intent to take Default.	$ 3.50
6/18/2015	Filing fees.	$ 3.50
5/19/2015	Filing fees for filing Notice of Entry of Order.	$ 3.50
5/14/2015	Filing fees for filing Order.	$ 3.50
2/23/2015	Filing fee.	$ 3.50
1/23/2015	MSJ filing fee	$ 209.50
12/11/2013	Rush service fee Junes Legals service to Court for order granting motion - Per Judges request.	$ 25.00
11/1/2013	Carson City, NV service of all docs to: (1) Talyor, Bean & Whitaker Mortgage, and (2) CT Corp.	$ 70.00
10/3/2013	Service fee for summons and complaint on (1) Southern Terrace HOA, (2) Wells Fargo, and (3) Bank of America.	$ 155.00
		$ 1,460.50

EXHIBIT 34

EXHIBIT 34

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CLERK OF THE COURT

OPPN

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Attorneys for Carrington Mortgage Holdings, LLC

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,

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

CARRINGTON MORTGAGE HOLDINGS, LLC,

Case No.: A-13-684151-C
Dept.: VI

CARRINGTON MORTGAGE HOLDINGS, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

AKERMAN LLP
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TEL.: (702) 634-5000 FAX: (702) 380-8572

Crossclaimant,

v.

TERRACE HOMEOWNERS' ASSOCIATION,

Crossdefendant.

Carrington Mortgage Holdings, LLC opposes R. Ventures VIII, LLC's Motion for Attorney's Fees and Costs. This Opposition is based on the Memorandum of Points and Authorities below, the papers and pleadings on file with the Court, and any oral argument the Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should deny R. Ventures' motion for two reasons. **First**, R. Ventures' October 14, 2015 offer of judgment is void because NRS 17—the statute under which R. Ventures purportedly made the offer—was repealed effective October 1, 2015—nearly 2 weeks before R. Ventures made its offer. **Second**, even if R. Ventures' offer was valid, the attorney's fees provision of NRS 116.3116(8) is inapplicable to this action. R. Ventures brought its claims under NRS 30.010 and NRS 116.3116[1], but NRS 116.3116 provides only two causes of action, both of which can only be brought by an HOA to enforce its lien against a homeowner.

II. FACTUAL AND PROCEDURAL HISTORY

R. Ventures filed its Complaint on June 26, 2013. **Exhibit A**. In its Complaint, R. Ventures asserted two causes of action—quiet title/declaratory relief and preliminary and permanent injunction. R. Ventures' first cause of action sought a declaration that it was the rightful owner of the Property and that its interest in the Property was superior to any adverse interest claimed by defendants, including Carrington. *Id.*, at ¶¶35 – 50. R. Ventures' second cause of action sought an injunction prohibiting defendants from initiating or continuing foreclosure proceedings affecting title

[1] R. Ventures plead a claim for "quiet title pursuant to...NRS 30.010," the statute governing declaratory judgments.

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to the property. *Id.* at ¶58. While styled as such, neither cause of action was actually brought under NRS 116.3116.

NRS 17 was repealed by Assembly Bill 69 effective October 1, 2015. On October 14, 2015, R. Ventures served Carrington with its offer of judgment. *See* Exhibit B to R. Ventures' Motion.

II. LEGAL ARGUMENT

R. Ventures Motion for Attorney's Fees should be denied because its purported offer of judgment is void. NRS 17.115, the statute under which R. Ventures made the offer, was no longer in effect when R. Ventures made its offer.

Even if this Court considers the offer of judgment valid pursuant to NRCP 68, there is no statutory or contractual basis for an award of attorney's fees here. It is an abuse of discretion for a court to award attorney's fees absent authorization from a rule, statute, or contract. *State Dep't of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). R. Ventures mistakenly contends NRS 116.3116(8) "mandates" its recovery of attorney's fees and costs. R. Ventures' Mot., at 3:8-16. That provision, however, only provides attorney's fees to prevailing parties in "**action[s] brought under [NRS 116.3116]**." Because R. Ventures' claims were not properly brought under NRS 116.3116, it is not entitled to attorney's fees. *See Clark County v. Alper*, 100 Nev. 382, 396, 685 P.2d 943, 952 (1984) (reversing award of attorney's fees because the action was not "initiated under 42 U.S.C. § 1983," and the attorney's fees statute required the action be "brought under" the Civil Rights Act).

NRS 116.3116(8) provides attorney's fees to the prevailing party only "in any action brought under this section." NRS 116.3116, entitled "Liens Against Units for Assessments," provides the categories of assessments, fees, charges, fines, and penalties encompassed in an HOA's lien on a unit within the respective HOA. NRS 116.3116 also sets forth the requirements for the HOA to attach its lien on a property, thus making it effective against the property's owner, and the order in which the proceeds from the lien's foreclosure must be disbursed.

NRS 116.3116 provides only two causes of action, both of which can only be brought by an HOA to enforce its lien against a homeowner. **First**, an HOA can bring an action to recover sums owed to it by homeowners within the HOA. NRS 116.3116(7). **Second**, an HOA can bring an

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action to "foreclose on a lien." NRS 116.3116(11). These actions "to enforce the lien [must be] instituted within 3 years after the full amount of the assessments becomes due." NRS 116.3116(6). Another section makes clear that an HOA may accept a "deed in lieu of foreclosure," rather than bringing an action to enforce a lien under NRS 116.3116.

Reading NRS 116.3116 as a whole, it is clear that section sets forth enforcement mechanisms to assist HOAs in recovering delinquent assessments. When an HOA utilizes these enforcement mechanisms, NRS 116.3116(8) provides the enforcing HOA with attorneys' fees to prevent the HOA's litigation costs incurred collecting delinquent assessments from being passed on to other timely-paying homeowners within the HOA. Conversely, if an HOA wrongfully attempts to enforce a lien, and the respective homeowner challenges the propriety of the HOA's assessment or lien and prevails, that homeowner may recover its attorneys' fees as the "prevailing party" in the enforcement "action brought under" NRS 116.3116.

Here, R. Ventures is not an HOA attempting to enforce a lien, or a homeowner challenging an HOA's ability to enforce a lien. Rather, R. Ventures purchased property at an HOA lien foreclosure sale and is seeking to quiet title to the purchased property. R. Ventures' quiet title action was brought under Nevada's declaratory relief statute, NRS 30.010. **Ex. A**, at ¶36 ("*Pursuant to NRS 30.010*, this Court has the power and authority to declare the Plaintiff's rights and interest in the Property..."). NRS 116.3116 contains no references to foreclosure-sale purchasers like R. Ventures here. Because R. Ventures' claims are based on NRS 40.010, not NRS 116.3116, R. Ventures is not entitled to an award of attorney's fees under NRS 116.3116(8), which authorizes attorney's fees only for actions properly "brought under [NRS 116.3116.]"

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III. CONCLUSION

This Court should deny R. Ventures's request for attorney's fees under NRS 116.3116(8). That provision provides the prevailing party with attorney's fees only for actions brought under NRS 116.3116. R. Ventures styled its claims as brought under both NRS 40.010 and NRS 116.3116, but the latter statute is inapplicable to a quiet title action like the one R. Ventures brought here.

DATED this 25th day of July 2016.

AKERMAN LLP

/s/ Christine M. Parvan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 25th day of July, 2016 I caused to be served a true and correct copy of foregoing **CARRINGTON MORTGAGE HOLDINGS, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Cooper Coons, Ltd.		
	Contact	**Email**
	J. Charles Coons	charles@coopercoons.com
	Kim Hexamer	kim@coopercoons.com
	Thomas Miskey	thomas@coopercoons.com

/s/ Michael Hannon
AN EMPLOYEE OF AKERMAN LLP

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EXHIBIT 35

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CLERK OF THE COURT

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS

R VENTURES VIII, LLC ("Plaintiff"), by and through its attorneys Cooper Coons, Ltd. ("Cooper Coons"), hereby files its reply in support of its motion attorney's fees and costs, against Defendant CARRINGTON MORTGAGE HOLDINGS, LLC ("Carrington Mortgage") and is based upon the Memorandum of Points and Authorities set forth below, the pleadings on record with the Court, and any oral argument of counsel to be entertained by the Court.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

Attorney's fees and costs are not recoverable absent a statute, rule, or contractual provision authorizing such an award. Here, Plaintiff is entitled to attorney's fees and costs under an explicit statutory authorization. NRS 116.3116(8) specifically mandates any judgment must include attorney's fees and costs. Consequently, Plaintiff is entitled to attorney's fees and costs in this matter.

A. NRS 116.3116(8) Implies a Private Right of Action to Third Party Purchasers.

A plaintiff can bring suit under a section if a private right of action can be implied. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 958 (2008). This requires a court to ascertain the legislature's intent, involving an examination of three factors: "(1) whether the plaintiffs are 'of the lcass for whose special benefit the statute was enacted'; (2) whether the legislative history indicates any intention to create or to deny a private rememdy; and (3) whether implying such a rememdy is consistent with the underlying purposes of the legislative scheme." *Sports From v. Leroy's Horse & Sports*, 108 Nev. 37, 39 (1992) (quoting *Cort v. Ash*, 422 U.S. 66, 78 (1975)). These factors support R Ventures VIII's position that a third party purchaser may bring an action under NRS 116 and can seek attorney's fees under it.

i. NRS 116 Protects Purchasers.

A third party purchaser is a member of the class of persons for whose benefit the statue was enacted. Despite this assertion, NRS 116.31166 provides multiple protections for purchasers of a property at an HOA foreclosure sale. A purchaser is entitled to certain conclusive presumptions against all other persons. NRS 116.31166(2). A purchaser is not liable for disbursement of purchase proceeds. *Id.* A purchaser takes the property without equity or right of redemption. NRS 116.31166(3).

Given these clear statutory provisions, it is clear the legislature intended to grant protection to purchasers and not merely limit remedies to an HOA.

ii. Use Of "Prevailing Party" Evidences Implicit Cause of Action For Third Parties.

NRS 116.3116 explicitly identifies the association multiple times. However, in NRS 116.3116(8), the legislature used "prevailing party" instead of association. If we adopt Wells Fargo's interpretation, the only possible "prevailing party" would be the association, rendering the legislature's choice of words meaningless and inconsistent with the language of the surrounding statutes. Because "prevailing party" evidences an intent to include a greater range of parties beyond the association, the only logical conclusion is that a purchaser of an HOA foreclosure sale property is one of these intended parties.

iii. An Award of Attorney's Fees Is Consistent With Statute's Underlying Purpose.

This statute was enacted to ensure HOA's could enforce and collect on delinquent assessments. Wells Fargo even admits the statute was intended to benefit HOAs in their efforts to enforce their liens. It accomplishes this objective in two ways. First, it creates a super-priority portion of an HOA lien that permits recovery when a first deed of trust holder forecloses. NRS 116.3116. Second, it permits the HOA to proceed with foreclosure to collect on this super-priority amount when the first deed of trust holder fails to foreclose. NRS 116.31164. This second remedy also ensures the property will be sold to a new owner who will pay the HOA's assessments as they become due, protecting the HOA from incurring more unrecoverable assessments as a part of their sub-priority lien.

In order to make this remedy useful, a purchaser must purchase the property at an HOA foreclosure sale. However, if a purchaser will be subject to a lengthy and expensive lawsuit with no possibility of recovery of these litigation costs, it makes little business sense to purchase a property at an HOA foreclosure sale. The end result of a lack of purchasers would be to eviscerate the only remedy an HOA has when a first deed of trust holder fails to foreclose.

Recognizing this need to protect purchasers, the legislature enacted NRS 116.3116(8) to recover legal fees and costs to incentivize potential purchasers. Thus this mandatory provision for attorney's fees is consistent with the statute's underlying purpose of protecting purchasers.

B. NRS 116.3116(8) Mandates an Award to Plaintiff.

"This court has established that when it is presented with an issue of statutory interpretation, it should give effect to the statute's plain meaning." *MGM Mirage v. Nevada Ins. Guar. Ass'n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). "Thus, when a statute is facially clear, [this Court] will generally not go beyond its language in determining the Legislature's intent." *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008).

When an action is brought under NRS 116.3116, the statute demands the judgment include attorney's fees and costs. Here, the statutory language is clear and unambiguous. NRS 116.3116(8) states "[a] judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party."

The word "must" has a plain meaning requiring some action or prerequisite. *Mutual v. Thomasson*, 317 P.3d 831, 130 Nev. Adv. Op. 4 (Nev., 2014). In that case, the Court interpreted the statutory language for NRS 233B.130(2) which stated in pertinent part, "[p]etitions for judicial review must:..." *Id.* at 834. The Court found this word choice mandatory. *Id.* In contrast, words such as "may" are permissive. *Nevada Com'n on Ethics v. JMA/Lucchesi*, 866 P.2d 297, 302 110 Nev. 1 (1994).

Here, the statute at issue uses well settled mandatory language. Assuming the other statutory prerequisites are met, NRS 116.3116 (8) requires an award of attorney's fees.

A prevailing party, for attorney fee purposes, is a party that succeeds on any significant issue in litigation which achieves some of the benefits sought in bringing suit. *Sack. v. Tomlin*, 110 Nev. 204, 214-15, 871 P.2d 298, 305 (1994). In that case, one party sought 99% of the proceeds of a sale of real property and the other party sought 50%. The lower court had awarded a division of the proceeds, 82% for the first party and 12% for the second party. Id. The Nevada Supreme Court found the party originally seeking 99% of the value and ultimately obtaining 82% is a prevailing party. *Id.*

Here, R Ventures VIII, LLC brought a quiet title suit to declare a subordinate interest, the deed of trust, eliminated by the HOA foreclosure sale. Similar to *Sack v. Tomlin*, R Ventures

VIII, LLC was seeking the total value of the property. However, instead of merely recouping a portion of the relief requested, R Ventures VIII, LLC obtained the complete value of the property. By achieving this goal, R Ventures VIII, LLC achieved the ultimate result desired and should be considered prevailing party.

This section of NRS 116 provides the foundation for Plaintiff's quiet title action, without which, Plaintiff would not have a tenable claim. NRS 116.3116 creates the HOA super priority lien. The remainder of NRS 116.3116 *et seq*. lays out the procedure for foreclosing a super priority lien.

Turning to statutory construction, the specific language of the statute is broad. The use of the phrase "in any action" evidences an intent to encompass all actions relating to this section. Consequently, the court should take an expansive meaning to give full effect to the intent of the legislature and protect the incentive structure of the statute.

Here, Plaintiff initiated this quiet title action. When this court granted summary judgment in favor of Plaintiff, it became the prevailing party. The plain language of the statute mandates Plaintiff's recovery reasonable attorney's fees.

CONCLUSION

For the reasons set forth herein, Plaintiff requests the Court grant Plaintiff's Motion for Attorney's Fees.

Dated this 29th day of July, 2016.

COOPER COONS, LTD.
Attorneys at Law

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There are no social security numbers contained in this document.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 29, 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

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/s/ Kim Hexamer

An Employee of COOPER COONS, LTD.

EXHIBIT 36

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CLERK OF THE COURT

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

ORDER DENYING CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR RECONSIDERATION

THIS MATTER having come on for hearing in chambers, and the Court having heard the representations of counsel and after having examined the records and documents on file in the above-entitled matter and being fully advised;

THE COURT HEREBY FINDS:

1. The Motion for Reconsideration was timely filed.

2. The *Shadow Wood* case was fully briefed and considered before the underlying decision.

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

3. The *Ikon* case does not affect the findings and conclusions of the Court in the underlying decision.

4. The Court's decision was not clearly erroneous nor does any other legal basis exist on which to grant reconsideration.

5. Carrington previously filed a notice of appeal of this Court's decision on summary judgment. EFC

IT IS HEREBY ORDERED that Carrington Mortgage Holdings, LLC's Motion for Reconsideration of Orders on Summary Judgment is DENIED. even if this Court had not been divested of jurisdiction, EFC would be EFC

DATED this 11 day of July, 2016. August

JUDGE ELISSA F. CADISH

Submitted by:

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
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THOMAS MISKEY, ESQ.
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Attorneys for Carrington Mortgage Holdings, LLC

EXHIBIT 37

EXHIBIT 37

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CLERK OF THE COURT

J. CHARLES COONS, ESQ.
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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; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-684151-C

Dept. No.: VI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE an Order Denying Carrington Mortgage Holdings, LLC's Motion for Reconsideration was entered in the above captioned matter on August 17, 2016, a copy

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of which is attached hereto. There are no social security numbers contained in this document.

DATED this 18th day of August, 2016.

COOPER COONS, LTD.
Attorneys at Law

By: _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies on August 18, 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	
Contact	**Email**
Akerman Las Vegas Office	akermanlas@akerman.com

/s/ *Kim Hexamer*

An employee of COOPER COONS, LTD.

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CLERK OF THE COURT

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

ORDER DENYING CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR RECONSIDERATION

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☐ Voluntary Dismissal	☐ Summary Judgment
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☐ Stipulated Dismissal	☐ Default
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4. The Court's decision was not clearly erroneous nor does any other legal basis exist on which to grant reconsideration.

S. Carrington previously filed a notice of appeal of this Court's decision on summary judgment. EFC

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even if this Court had not been divested of jurisdiction, EFC would be EFC

DATED this 11 day of July, 2016.

August

Elissa F. Cadish

JUDGE ELISSA F. CADISH

Submitted by:

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Attorneys at Law

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EXHIBIT 38

EXHIBIT 38

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

R. VENTURES VIII, LLC, Plaintiff, vs. TAYLOR, BEAN & WHITAKER MORTGAGE CORP., Defendant.	CASE#: A684151 DEPT. VI

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

TUESDAY, APRIL 5, 2016

RECORDER'S TRANSCRIPT OF HEARING
PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT AND CARRINGTON MORTGAGE HOLDINGS, LLC'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiff: THOMAS MISKEY, ESQ.

For the Defendants: DONNA WITTIG, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

Las Vegas, Nevada, Tuesday, April 5, 2016

[Case called at 9:03 a.m.]

MR. MISKEY: Good morning, Your Honor, Thomas Miskey on behalf of plaintiff R Venture VIII.

MS. WITTIG: And Donna Wittig for defendant Carrington.

THE COURT: Sorry, your last name one more time?

MS. WITTIG: Sure. Donna Wittig, W-I-T-T-I-G.

THE COURT: Got it. Okay, so we have both the plaintiff's renewed motion for summary judgment, excuse me, and the defendant Carrington's motion for summary judgment. They're filed separately but it's effectively cross motions about the same issues. So I guess I'm going to hear from the plaintiff first as they -- it was kind of a renewed summary judgment, but I'll hear from both of you obviously about your respective arguments which can all be argued together.

MR. MISKEY: And as Your Honor knows this is one of a multitude of HOA foreclosure cases.

THE COURT: Yes.

MR. MISKEY: And we kind of have, you know, several versions of our oral argument, the short and the long version and somewhere in between so.

THE COURT: Short please.

MR. MISKEY: Short, okay.

THE COURT: I can't imagine any judge saying give me the long version, but --

MR. MISKEY: Okay. So --

THE COURT: But it's okay, I mean, hit on the issues. And I say the short

version, but obviously anything you think is important to tell me, tell me.

MR. MISKEY: Yes, Your Honor. I think that probably the most important issue for the Court to consider is plaintiff's status as a bona fide purchaser for value.

THE COURT: Uh-huh.

MR. MISKEY: In the recent *Shadow Wood* decision the Supreme Court essentially remanded for further fact finding about a whole host of issues and specifically pointed out that the Court failed to consider plaintiff's status as a bona fide purchaser. And here from the facts it is undisputed and perfectly clear that plaintiffs were the bona fide purchaser. There was no notice of a potential tender or dispute between the lender and the HOA. At the actual sale there was public and competitive bidding. There wasn't any backdoor dealings of any kind. There was no presale communication from the HOA or its trustee to the plaintiff. And there were no recorded documents that gave rise to any inquiry or constructive notice of any potential defect in the same. That combined with the fact that we provided, you know, the proof of payment of actual money, which the amount is irrelevant for bona fide purchaser status. But the fact that actual consideration was given qualifies the plaintiff as a bona fide purchaser.

Then we kind of move on to the Bank's defenses.

THE COURT: Right.

MR. MISKEY: The first one that they raise that again deserves the Court's attention is tender. Apparently the Bank offered to pay, you know, 9 months of assessments combined with restrictive language essentially. Wiping out the remainder of the HOA lien, which is essentially something they could not demand because a tender would not wipe out the remaining portion of the HOA lien. It --

THE COURT: You mean the sub-priority portion?

MR. MISKEY: The sub-priority portion. That part would still remain to be potentially satisfied at an excess proceeds of a particular sale. So the -- the offer to pay does not qualify as a tender sufficient to set aside the sale. That and the fact that plaintiff had no knowledge of the particular tender again speaks to that plaintiff is an innocent purchaser and if they have a dispute with respect to that tender it should be between them and the HOA not with respect to the plaintiff.

Moving on to commercial reasonableness, the Bank challenges the commercial reasonableness basically on two grounds. First they claim that *Shadow Wood* stands for the proposition that anything under 20 percent is grossly inadequate as a matter of law and can be set aside simply on that basis. However I believe that is a gross misstatement of *Shadow Wood* wherein they cite, you know, the Black Letter Law in Nevada that price alone cannot be the basis to set aside a sale no matter how low. And they have not provided any evidence whatsoever of any fraud or oppression in the sale.

So and plaintiff has produced a recording of the auction. The trustee provided in their documents they provided an audio recording, which we produced in transcript form to attached as an exhibit, showing that it was a competitively bid auction, that there were multiple bidders. They even announced at the beginning of the particular sale which properties had a potential tender on it. They disclaimed that at the very beginning of the particular auction. And this -- the property at issue was not among them. So that even negates any further possible inquiry notice because plaintiff had assurances from the trustee that there was no tender. There was no dispute. This was essentially a run of the mill foreclosure sale.

And then returning to the, I guess, valuation of the property where they claim that it's I believe 6 percent. The sale price was approximately 6 percent of the

fair market value based on the valuation contained in their expert report. If you look at their expert report as in the vast majority of, and in fact everyone that I've looked at in these particular cases, they specifically disclaim in their assumptions any consideration of the legal title that is passing through this particular sale. Which I think that all parties can agree that that is a very important facet of evaluation of the property in this particular case. So I'm not aware of any reliable valuation method for incorporating something like that.

THE COURT: This particular sale was pre-SFR, correct?

MR. MISKEY: Yes, Your Honor. So the plaintiff -- the purchase price was the result of the market risk, the market uncertainty that they know that they were going to have a fight on their hands with the Bank to get quiet title. And that obviously affects the purchase price of a property. But that is the factor that is specifically disclaimed by their expert report rendering the report I guess relevant but not very probative.

They briefly raise that the CC&Rs do not grant the HOA the ability to enter into this contract, this three-party agreement.

THE COURT: No. I understood their argument to be that because you sold the debt you can't --

MR. MISKEY: Yes.

THE COURT: -- foreclose on it.

MR. MISKEY: I believe there was a small portion in their first where they claimed that they --

THE COURT: Oh about the authority.

MR. MISKEY: That they didn't have the authority, but I think that we've sufficiently pointed out to essentially the very broad language in the CC&Rs that --

THE COURT: Uh-huh.

MR. MISKEY: -- grants the HOA the ability to make, you know, any contract essentially necessary and proper.

THE COURT: Right.

MR. MISKEY: And then finally for the tri-party agreement between the HOA, United Legal Services and I forget the third party, is it First 100 I believe.

THE COURT: Right.

MR. MISKEY: Again I think that the terms of the contract speak for themselves. We had deposition testimony from United Legal Services about the very technical and particular language that they used where the interest in the lien was specifically not transferred. And the HOA specifically retained the right to foreclose. It was again it is a very legal and technical document. But it seems to me that the HOA would, once the proceeds came to them, then the proceeds would transfer to SFR if any. That seemed to be the general scheme or object of the particular contract.

And under this tri-party agreement they raise some concerns under *Edlestein* where *Edlestein* essentially held that the promissory note and deed of trust had to be together for the foreclosure mediation program, because of the foreclosure mediation programs requirement that the person appearing to negotiate have authority to, you know, reduce the principal or it has authority to negotiate the particular note. And I believe that goes to the real underlying rational of *Edlestein*.

However if the Court adopts their particular interpretation that it requires both interest be unified, the court case *In re Monteirth* at 131 Nevada Advanced Opinion 55, 2015, further interpreting the decision in *Edlestein*. In that particular case there was a promissory note held by a party and then the beneficiary under the

deed of trust was an agent for that party. The Court held that because it was an agency relationship that reunification was not required to foreclose.

And in this particular instance the purchase -- the tri-party agreement falls under the same idea. Even if there was some sort of technical transfer of some kind they were acting as an agent in some sense for First 100 by conducting the foreclosure sale, which doesn't provide substantial basis for setting aside the sale. And again all -- that entire agreement was completely unknown to my client and it would seem essentially inequitable to set aside the sale for something that happened between parties to which he had no knowledge and had no way of having any knowledge. So with that --

THE COURT: Right, that's not something that gets recorded or something.

MR. MISKEY: It was -- there was no record and no notification of any kind, Your Honor.

THE COURT: Right, and all the record notice the default notices etcetera leading up to the sale were all recorded by the HOA.

MR. MISKEY: Correct. And we've provide ample sufficient proof of mailings attached with each of the documents. There wasn't anything improper about the sale. Even though the recitals would be legally sufficient to conduct the sale, but that wouldn't affect the Court's position in equity to fashion a remedy. But it would be our position -- but I think that is a side issue, because we've already shown that all of the mailings have been provided as required by the statute.

THE COURT: Okay, their argument, which is one that I truly I don't believe I have seen before, that because of a 2010 satisfaction of the HOA lien that there isn't another superpriority lien available in 2012, 2013.

MR. MISKEY: Yes, Your Honor. For that particular satisfaction we can go

back and look at the timeline. If you look at the HOA's accounting at that particular point the maximum number of monthly assessments that could have been satisfied at that particular time was 7 months. So in any event there would be 2 months I suppose of superpriority amount that would remain against the property if you were to go back, and you know, parse it out very specifically.

However it also seems a bit unfair that, you know, you can pay your 9 months and then sit on the property for another 3-4 years without foreclosing, which seems to run against the intent of the statute. We would also argue that the -- essentially when the HOA initiated its second foreclosure proceeding going through that, that it renewed the superpriority amount, because it constituted a new action.

And the last particular issue is this one has the HUD issue and I know that we have argued it on a past a summary judgment motion. They essentially claim the federal preemption prohibits this because HUD had some kind of interest in the property. First we would dispute that there was actually an interest in the property. It seems more of -- HUD is essentially an insurance scheme and they didn't have any present possessory interest in the property. And second even if the Court finds that there is some sort of interest, the mortgagee letters specifically subordinate the federal law very explicitly. And I did not attach the exhibits to this one, mentioned it for the last one. But if the Court would like a copy I have the copies here of the particular mortgage letters.

THE COURT: Like the HUD instruction about --

MR. MISKEY: Yes.

THE COURT: -- how to deal with the superpriority in a given state?

MR. MISKEY: Yes, Your Honor.

THE COURT: I'm familiar with it.

MR. MISKEY: Yes. So with that I think that we've touched on all of the issues. I'll turn it over to defense counsel.

THE COURT: Thank you, counsel.

MS. WITTIG: Thank you, Your Honor. I think the first question that needs to be decided by this Court is whether there was a foreclosure sale that even happened. A person selling an interest in anything cannot sell more than what they have. And here we have a situation where the HOA was separating from its lien the actual debt. And opposing counsel attempts to distinguish the *Edlestein* matter by creating some type of agency between United, the HOA, and First 100. But there's no agency relationship. First 100 purchased the accounts receivable from the HOA, hence splitting that lien. There's nothing to foreclose upon. To the extent that that is the case, which is our position, the purchaser has a cause of action against the HOA for any funds that it expended for basically nothing.

So that's the very first question. Beyond that question there's nothing even to decide. And so we don't get to the bona fide purchaser. We don't get to any issue until we decide what it is that was actually sold. And here there was nothing sold, because of the improper lien splitting that is prohibited by the *Edlestein* matter.

THE COURT: So -- let's assume for a moment they're a bona fide purchaser. They go to the -- a foreclosure sale, it appears to be properly noticed. They buy property at the foreclosure sale, go on their way. And now they're title gets divested out of them because of an agreement the HOA had with a collection agency effectively which they had no way of knowing about.

MS. WITTIG: Sure.

THE COURT: Doesn't that -- isn't that contrary to public policy that we want

people to be able to go to the sale and rely on record title?

MS. WITTIG: Well I don't think so, Your Honor, and there's two sources of authority that I would have to dispute that. Number one is a restatement of contracts. I don't believe we cited it in our briefs, but it talks specifically about foreclosure sales. And what it says is an auctioneer cannot sell more than the interest that it has. And the opposing counsel talks about risk when he talks about fair market value. Well the warranty deed that it received makes no warranties whatsoever.

THE COURT: Right.

MS. WITTIG: So it could have nothing. So whatever interest the HOA had is what passed along to the purchaser. And so again if that's zero interest, if the purchaser R Ventures went in thinking that it was buying this property at a foreclosure sale when in fact there was nothing to purchase, then that's a dispute between the HOA and the purchaser. It's a different situation than if a property was to be foreclosed on. There's no foreclosure. There's nothing to foreclose on here because of the improper lien splitting. And that's the real issue and is the first question I think that needs to be addressed before we move onto any -- before anything else is relevant whatsoever.

Secondly, assuming that there was an HOA sale and the property was able to be transferred despite the lien splitting, tender overrides that. SFR expressly instructs that a lender such as Carrington can pay the lien off or can pay the superpriority portion of the lien. And so lenders in this -- so for example in this case did exactly what they were instructed to do by SFR.

THE COURT: Okay.

MS. WITTIG: They attempted to pay the superpriority and were rejected by

the HOA.

THE COURT: Right.

MS. WITTIG: And so at the point of tender is when the property -- when the deed of -- the first deed of trust survives the HOA foreclosure sale. The fact that it was not announced, there were other properties where a tender was announced and this one it was not goes to the unfairness issue to the extent we get to that unfairness. Tender alone would redeem the property. Again, you know, this puts us in again everything -- *Shadow Wood* makes Courts evaluate equities. And one of those is the lender follows the exact procedure set out by the Supreme Court and it's still denied its remaining interest in the property. That's inequitable to a lender.

Regarding the argument that the CC&Rs are sufficiently broad to allow this type of lien splitting, before we get to that issue we have to look at NRS 116.3102, which allows only an HOA to assign its future income an interest in the assessments. And here the Association assigned its past due interest. It's contrary to what's expressly allowed by statute.

So if we get past all of those issues then we get to the commercial reasonableness and we can evaluate finally the sale and is it commercially unreasonable. And I know there's still a lot of dispute over whether price alone can void a sale. And if you read the *Shadow Wood* case very closely what it states is that Court's are justified in set asiding [sic] a foreclosure sale when the sale price was grossly inadequate. And what the Court found in *Shadow Wood* was that the price was more than the 20 percent threshold value. And then it went on to evaluate the other factors such as unfairness, oppression, and fraud. Here we can stop at that 20 percent bench mark, because we're below that 20 percent benchmark unlike the situation in *Shadow Wood* where the Court expressly found that that sale price

was not below that 20 percent threshold. So if we get past the 20 percent threshold is when we can evaluate the other factors of unfairness, oppression, and fraud. So then we contend that price alone is sufficient to set aside the foreclosure sale.

But even if that is not alone sufficient to set aside the foreclosure sale, we do have issues of unfairness in this case. Number one, tender was not announced. Number two, tender was sufficient in and of itself to redeem the deed of trust interest in the sale. And the superpriority portion was paid twice. What the Nevada statute allows on a superpriority lien is it gives an HOA 9 months of assessments, that's it. Nevada specifically rejected adoption of the uniform common interest ownership act which allowed a superpriority portion of the lien to accrue yearly. And in the legislative history it shows that Nevada considered along a two year lien for HOAs. And when it adopted the statute it limited that 9 months.

And so here we have a situation where the HOA had a superpriority lien, it was satisfied. The homeowner went delinquent again and another 9 months. So in that case if this idea of the superpriority continually renewing, it renders superfluous the statutory 9 month language. There's no limit on the superpriority portion. The 9 month limitation is meaningless under that interpretation of the statute.

THE COURT: Well the prior lien was satisfied, right? There was some recording in 2010, the lien is satisfied.

MS. WITTIG: Yeah.

THE COURT: So then if they go delinquent, excuse me, in 2012 and build up to, you know, a year of not paying the dues there's not a 9 month superpriority on that lien because a different lien was paid off in 2010?

MS. WITTIG: Again I think just looking at the statute if you just look at the

very language of the statute that is correct.

THE COURT: Okay.

MS. WITTIG: And then we have our constitutional challenges.

THE COURT: Uh-huh.

MS. WITTIG: The biggest one -- I haven't been before you on these issues.

THE COURT: Uh-huh. Your colleagues have.

MS. WITTIG: I know they have and I'm going to be very short on this section.

THE COURT: Okay, go ahead.

MS. WITTIG: The shortest one I'll argue.

THE COURT: Go ahead. Say what you feel like you need to present to me. I'll listen.

MS. WITTIG: Yes. So the deed of trust that was recorded against this property made clear that this was an FHA insured loan. And the purpose of FHA insurance is to encourage lenders to borrow to at risk homeowners. And so here we have an FHA insured loan and under the supremacy clause as federal courts here have found federal law and intent trumps any state court law, here NRS chapter 116 and that survives.

As to the constitutionality issues of due process NRS Chapter 116 does not provide adequate notice. It requires lenders such Carrington to opt in when all federal courts too have decided that issue of opt in notice have found it unconstitutional. And facially the statute is unconstitutional because the recorded notices did not put Carrington on notice that it's deed of trust could be wiped out by the sale.

THE COURT: Hasn't the Supreme Court rejected that one already?

MS. WITTIG: I think that was in a different procedural posture in SFR on a

motion to dismiss where it did not evaluate where we are here at the actual facts of the case.

THE COURT: Thank you. Rebuttal.

MR. MISKEY: Just a couple of quick points. As you know a large portion of their argument is revolving around the purported tender. But SFR essentially held that the Bank has to take reasonable and diligent matters to preserve its interests. They obtained the payoff demand and then they sent this offer of payment and then they left it at that. They didn't do anything after that. They didn't initiate a lawsuit. They didn't go before the NRED. They didn't -- they didn't even send someone to the sale to say: Hey look this is what we did. They didn't even request that the HOA record a partial satisfaction of lien. They didn't even bother to contact the subsequent trustee. There were two trustees in this case, Red Rock Financial Services was the first and then United Legal Services came in afterwards.

In the deposition of Robert Atkinson, the person most knowledgeable for United Legal Services, he said that it was his policy and practice that every payment that was offered to him he would accept and record. And --

THE COURT: It was unconditional.

MR. MISKEY: Even if it -- I believe even if it wasn't unconditional that his particular practice was to just accept the payment and record essentially notice that it had happened and left everyone else to decide essentially the legal effect of that. But again I don't have the paperwork in front of me, but for those other properties I believe they were essentially the substantial -- substantially the same letters that, you know, all of the lenders had been sending to the various trustees. And he accepted them and recorded it and noted that at the beginning of the auction. The Bank didn't even try again. The Bank didn't contact anyone. Essentially the Bank

sat on its hands and said I sent my check and that's all I have to do and that's the end of it.

And then returning again to the commercial reasonableness, when you read *Shadow Wood* carefully it says generally Courts are warranted in setting aside if it's under 20 percent generally. And I think that most people would agree that in the context of foreclosure sales by a lender on a first deed of trust the expectation would be that it would be a substantial value. First of all there's the credit bid which, you know, would usually substantially increase the value of the bidding. And here a credit bid essentially was not allowed. And again returning to the fact that it says generally and we're dealing with very specific circumstances that are unique and essentially new developed law to which I'm not sure the drafters of the restatement have taken into consideration.

So and then as far as the unconstitutionality, I don't think that I need to address anything beyond what we've stated in our moving papers.

THE COURT: Just looking at the purchase and sale agreement with First 100 -- and excuse me, I can't seem to clear my throat today. Okay, let me find -- so your opposition to the defense motion for summary judgment referenced testimony from United Legal Services, that the rights on their legal ability to foreclose were not sold. Let me see if I can find that.

MR. MISKEY: And I think that it's important to understand that the entire point of this contract and agreement was to enable essentially foreclosure sales and collection activity. So to kind of backtrack and say hey no you paid for this you can't foreclose would eviscerate the intent of the contract. If you look under section 3.01 --

THE COURT: Of the agreement?

MR. MISKEY: Of the agreement, Bates Stamp Number Carrington 1169 to 70.

THE COURT: Sorry, hold on. What paragraph again?

MR. MISKEY: Section 3.01.

THE COURT: 3.01.

MR. MISKEY: It begins on the bottom of the second page.

THE COURT: Yes.

MR. MISKEY: Where it lays out the seller's duties and obligations.

THE COURT: Yes.

MR. MISKEY: If you continue on to the next page.

THE COURT: Yeah.

MR. MISKEY: Paragraph B says to authorize the agent to execute, you know, and record the notice of lien, notice of default, notice of foreclosure sale. C) Authorize agent to interact with the collections agency to obtain. So, I mean, it's authorizing them to act as the foreclosure sale trustee specifically. But that's the point of the agreement.

THE COURT: Alright, give me just a second. Do you know where in the PSA it reserved the right to foreclosure, because I'm not --

MR. MISKEY: Reserved the right to foreclose. I know that the agent was specifically directed to promptly and diligently move forward with foreclosures sales, which would tend to indicate that they thought that they had the ability to foreclose.

THE COURT: Right, so the --

MR. MISKEY: I believe --

THE COURT: The agreement is between HOA and -- which is the seller. First 100 is defined as the buyer and United Legal Services is defined as the agent.

MR. MISKEY: Yes.

THE COURT: So, right, so there's an authority given to the agent United Legal to proceed with the foreclosure. Right, it -- so it authorizes the agent to do certain things. Let's see, seller's statement. So in your opposition to defense motion for summary judgment it references testimony of Robert Atkinson on behalf of United Legal Services and deposition that none of the HOAs rights relating to their legal ability to foreclose were sold. And it cites page 14 of that deposition for that. I'm, not -- let's see --

MR. MISKEY: It may have been a page numbering issue, because I believe I attached the condensed transcript. So are you looking at --

THE COURT: Oh.

MR. MISKEY: -- page 14 of --

THE COURT: Yes, that could be the issue.

MR. MISKEY: But in -- I might have accidentally referenced page 14 of the condensed which would be, you know, 40 something.

THE COURT: No, there is no page 14 --

MR. MISKEY: Okay.

THE COURT: -- of the full page. So let me see here -- I'm not finding the discussion about what the right to foreclose. So maybe I'm just missing it but --

MR. MISKEY: Uh-huh.

MS. WITTIG: Can I bring your attention to --

THE COURT: Uh-huh.

MS. WITTIG: Section 3.02.

THE COURT: Yeah.

MS. WITTIG: Paragraph N, as in Nancy.

THE COURT: Yeah.

MS. WITTIG: This is a paragraph, 3.02, a seller's duties and obligations.

THE COURT: Okay.

MS. WITTIG: And it describes that any deficiency between the totaling amount due at the sale and the final winning bid at auction shall survive as an unsecured debt. And number one, that any right, title, and interest in the deficiency shall be transferred to a buyer or its assigns. So here we have the seller conducting the foreclosure sale.

THE COURT: Uh-huh.

MS. WITTIG: And then after the foreclosure sale the remaining interest transferring to the buyer and I think that evidence is the splitting of the lien from the debt.

MR. MISKEY: And I would just direct the Court's attention that when she was reading that she omitted shall upon sale at auction, which indicates that the timing of the particular debt transfer does not happen until the sale is complete.

THE COURT: Right.

MS. WITTIG: And I think that indicates that the HOA is remaining as the first in charge of the auction and that the buyer then gets an interest after the auction takes place. And so here we have the HOA's maintaining the lien yet the buyer, First 100, is maintaining the debt. Then if I can direct also your attention to section 3.04.

THE COURT: Yep.

MS. WITTIG: And this is the agent's responsibilities and duties.

THE COURT: Yep.

MS. WITTIG: And paragraph G --

THE COURT: Yes.

MS. WITTIG: -- is the agent is agrees to appropriately and responsibly act on behalf of the seller --

THE COURT: Right.

MS. WITTIG: -- in carrying out and conducting its duties including conducting foreclosure sales.

THE COURT: Right, okay so when it's conducting the foreclosure sale it's doing that on behalf of the HOA.

MS. WITTIG: Correct.

THE COURT: HOA is seller. They must have defined PPI right at the beginning.

MR. MISKEY: PPI I believe is defined in -- on the first page --

THE COURT: Uh-huh.

MR. MISKEY: -- about the fourth recital where they --

THE COURT: Proceeds on past income. Okay, that the issue of that agreement is the only issue I haven't seen before.

MR. MISKEY: I apologize for the citation. I don't have the deposition transcript in front of me right now.

THE COURT: Right, I've got the deposition of Robert Atkinson as 30(b)(6) of United Legal Services as Exhibit 11 to the plaintiffs renewed motion for summary judgment.

MR. MISKEY: Hmmm. I think that regardless of the deposition testimony, I mean, the best evidence of the contract is the contract itself. And it seems --

THE COURT: Okay, --

MR. MISKEY: It seems relatively clear that the intent of all the parties was

that the HOA authorized the foreclosure sale to proceed. And then, you know, after the proceeds came in on that particular sale then there would be some distribution of money pursuant to the terms of this agreement. So I think that to say that this somehow extinguished the HOA lien again is it's simply not a particularly good reading of the contract. It wasn't the intent of the parties. And beyond that the purchaser had no knowledge and had no way of getting this knowledge before it. So it doesn't affect it as a bona fide purchaser for value.

MS. WITTIG: I think I agree that the contract is the best evidence of the agreement. And the contract is assigning the delinquent assessments prior to any foreclosure sale that happens, which under NRS is expressly prohibited. So as an invalid contract --

THE COURT: Wait, say that again.

MS. WITTIG: That the agreement assigns delinquent -- payments received by a delinquent homeowner even prior to a foreclosure sale to First 100. And so the buyer's right, First 100's right to the proceeds does not arise only after the foreclosure sale. What the agreement spells out is that First 100 is entitled to -- it made a payment to buy the past due delinquent assessments. And so prior to foreclosure First 100 receives any payment made by a homeowner or any third party on that past due assessment.

And so what we do not have is a situation as the purchaser is advocating where a right to payment arises only after the sale of the foreclosure. We have payments being received by First 100 prior to the foreclosure sale as well as after the foreclosure sale. And 3.02 allow -- keeps a right to foreclosure with the HOA. So here we have a situation where the HOA's duties is to foreclose. It retains the lien, but all debts prior to and after foreclosure are with First 100, so that's where

the improper splitting.

And what NRS provides is NRS allows only an HOA to assign its future income to a third party. And so number one, we have a difference of interpretation of this purchase seller agreement. And number two, we have even if it's arguably that -- it's arguable that there wasn't lien splitting under the contract itself, we have an argument under NRS 116.3102 that prohibits any past due assignment of delinquent assessment liens.

THE COURT: So the PPI that was being sold is defined as payments and proceeds relating to delinquent assessments which would be received by or payable to the seller in the future.

MR. MISKEY: Yes, Your Honor, and --

THE COURT: That's on the fourth whereas clause of the recitals is where PPI is defined.

MR. MISKEY: And if you look at NRS 116.3102 subsection P --

THE COURT: Uh-huh.

MR. MISKEY: -- it specifically permits the assignment of future income.

THE COURT: Payments which will be received by or otherwise payable to the seller in the future.

MR. MISKEY: And that to me speaks that it would be future income.

THE COURT: Uh-huh.

MR. MISKEY: Regardless of, you know, their particular naming of whatever it is. It seems that the income obviously had not come in as of yet. So anything related to that particular transactions would be future income. Why they particularly drafted the agreement that way I don't know. Why they're called past, but it seems pretty --

THE COURT: Proceeds on past --

MR. MISKEY: Yeah, proceeds.

THE COURT: -- right, why they used that term I don't know. But it's basically if there's delinquent assessments and payments come in the future on something that's delinquent then that's what's being sold I guess as the proceeds on past income.

MS. WITTIG: Even if arguably not invalidated by the statute 16.3102 --

THE COURT: Uh-huh.

MS. WITTIG: -- we still have to deal with the issue of the improper splitting of the lien.

THE COURT: Right. Okay, so let me try to go through the various arguments to make a ruling here on the plaintiff's motion and the Carrington's motion. So first with respect to there had been a challenge to notice the foreclosure deed contains the recitals which con -- or now conclusively create a conclusive presumption of the proper notices having been given. Additionally evidence is presented that notice was given to Carrington's predecessor in interest Bank of America. And so it appears that those notices were given.

To the extent that Carrington is arguing that the notices are inadequate because it didn't specifically break out the amount of the superpriority lien that breaking out is not required by the statutes or by due process. And as far as I'm concerned that issue was addressed by SFR and it doesn't make it an inadequate notice. And requiring the lienholder in this case it had been Bank of America to make the inquiries does not violate due process.

With respect to the tender issue while there may have been an attempted tender of the calculated 9 month of assessments in an attempt to satisfy

the superpriority lien, there was no subsequent efforts undertaken by the Bank to either, you know, seek an injunction, record a lis pendens, show up at the sale or otherwise notify a potential purchaser at the sale such as plaintiff that this had happened. While there may potentially be some sort of a claim against the HOA and/or it's agent who rejected the tender that in my mind is not an invalidation of the purchase by the plaintiff at the HOA sale. I do believe and find that plaintiff is a bona fide purchaser for value. They showed up. There's no indication that there was anything but an arm's length sale transaction that day. There's no evidence of any prior communication or improper activity. And in fact the evidence I have indicates that that did not happen, that the sale was conduct -- it was properly noticed, that anyone who showed up and bid was allowed to bid. There was nothing to preclude it from bidding up to as high as anyone was willing to bid. There is no evidence of fraud, unfairness or oppression. The fact that there had been a rejection of the tender does not constitute an unfairness at the time of the sale.

The sale price arguably was a small percentage of the fair market value of the property. And less than 20 percent of that fair market value. However, the Supreme Court in *Shadow Wood* it did say -- demonstrating that an association sold the property at its foreclosure sale for an inadequate price is not enough to set aside that sale. There must also be a showing of fraud unfairness or oppression. And I've already found there was not that showing.

And there is then a discussion about whether something is grossly inadequate as a matter of law and the reference to the restatement of mortgages or restatement of property regarding mortgages, which talks about generally a Court may be warranted in invalidating a sale where the price is less than 20 percent of fair market value. However, under the circumstances here and given the uncertainty

in the legal status at that time and the fact that clearly plaintiff who's getting the property without a warranty of title and effectively buying litigation against the first trust deed holder pre-SFR with some uncertainty about what the outcome of that litigation would be, I cannot -- it does not appear to me that this was grossly inadequate as a matter of law. And in fact there is -- under the set of circumstances there is not evidence creating a genuine issue of material fact that this should be invalidated as a matter of law with all -- you know, given all the evidence before me.

Let's see, although this loan was insured -- that is the Bank's loan was insured by HUD it was not ever owned by HUD or another federal agency. And under the circumstances I do not find that the state laws under Chapter 116 are preempted by the National Housing Act in this circumstance where HUD is merely the insurer and not the holder of the loan. And in fact HUD has provisions and instructions about how lenders who are insured by it are to deal with superpriority issues. So the superpriority provisions of the statute in the state of Nevada are not preempted by the National Housing Act.

I reject the arguments that Chapter 116 and its provisions regarding this foreclosure are unconstitutional either on its face or as applied. I do think that due process is satisfied by the notice provisions. Bank of America received actual notice in this case. And so there is no basis to find that there is a due process violation in this circumstance.

To the extent that defense is also arguing that there cannot be another superpriority lien for up to 9 months of delinquent assessment fees if ever there was a prior satisfied lien, I do reject that argument. It seems to me that there's up to 9 months of a given lien that can be the superpriority, the 9 months prior to initiation of the action in accordance with the statute. And the fact that years earlier a different

lien was satisfied does not preclude a superpriority lien from coming into effect on a subsequent deficiency leading to a subsequent lien.

I also find that there was not a violation of Chapter 116 by the purchase and sale agreement with First 100, the HOA, and United Legal Services. They were assigning future receipts, which is permissible under the law.

With regard to the argument that there's an improper splitting of the debt itself and the lien and that that would set aside the sale and I guess undo the whole sale, would have to be the result of defendant's argument if accepted. The assignment of the future amounts to be received in my mind does not constitute an improper, or not improper, but does not constitute a split of the debt and the lien that would preclude the HOA from foreclosing. I don't believe that was the affect or certainly the intent of that agreement. And I don't believe that that would preclude the plaintiff from taking title to the property as a bona fide purchaser for value without notice of this alleged defect in the sale. So again it would not give rise to an ability for the Bank to set aside the sale because of the alleged split as with respect to the plaintiff at the HOAs foreclosure sale.

Okay, I think I've addressed all the arguments. For all of those reasons I do find that there is no genuine issue of material fact and the plaintiff is entitled to judgment as a matter of law. So I am granting the plaintiff's renewed motion for summary judgment and denying Carrington's motion for summary judgment. I'll need you to prepare an order addressing the issues so that the Supreme Court can take a look at it and see what they think about these issues. Obviously run it past counsel before you submit it to me for signature.

MR. MISKEY: Of course, Your Honor. Can we make sure that this gets certified as a final order so it's appealable?

THE COURT: It addresses all claims pending in the case so it would be, when entered, a final order.

MR. MISKEY: Thank you, Your Honor.

THE COURT: Okay. You're welcome.

[Hearing concluded at 10:10 a.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

EXHIBIT 39

EXHIBIT 39

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DISTRICT COURT

CLARK COUNTY, NEVADA

R. VENTURES VIII, LLC, Plaintiff, vs. TAYLOR, BEAN & WHITAKER MORTGAGE CORP., Defendant.	CASE#: A684151 DEPT. VI

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

TUESDAY, AUGUST 9, 2016

RECORDER'S TRANSCRIPT OF HEARING
R VENTURES VIII, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS

APPEARANCES:

For the Plaintiff: THOMAS MISKEY, ESQ.

For the Defendants: REX D. GARNER, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

Las Vegas, Nevada, Tuesday, August 9, 2016

[Case called at 8:38 a.m.]

MR. MISKEY: Good morning, Your Honor, Thomas Miskey on behalf of plaintiff R Ventures VIII.

MR. GARNER: Rex Garner on behalf of Carrington Mortgage.

THE COURT: Good morning. Alright, so we're on R Venture's motion for attorney's fees and costs. So I've read the motion, opposition, and reply. So first let me clarify the motion was based on NRS 116.3116, the statutory fee provision. And you also relied on the offer of judgment provisions. It was pointed out in the response that the statutory provision was repealed. So I guess are you still relying on Rule 68 or -- because then there wasn't much discussion about that?

MR. MISKEY: No, Your Honor, we're not relying on that as a basis for the attorney's fees.

THE COURT: Okay, so we're just looking at the statutory provision at this point?

MR. MISKEY: Yes, Your Honor.

THE COURT: Okay. Alright, so with that understanding go ahead.

MR. MISKEY: The defendant's argument essentially does not challenge our assertion of the reasonableness of the attorney's fees or the mandatory language in the statute. Really what this argument is about is whether this fees provision applies or not. And this is essentially an issue of statutory interpretation as we laid out in our briefing.

Just going over a quick summary, first we turn to the language of the statute. The language appears very broad. They used very broad language

indicating any action prevailing party as opposed to narrowing the class defined and it's merely the Association. We believe this lends credence to our argument that this is a more expansive attorney's fees provision.

THE COURT: So is this case an action brought under this section?

MR. MISKEY: Yes, Your Honor. Without NRS 116 we would have no tenable claim for quiet title. It essentially it's enforcing the HOA's foreclosure sale for lack of a better point. We -- the foreclosure sale vests with the purchaser the superior title and the Bank has essentially challenged that.

It's not -- the argument of this case was not that we didn't purchase the property. It was all about NRS 116, whether it applied, whether it was constitutional. And on that basis we believe that if at a very minimum the NRS 116 provision does not explicitly provide a cause of auction there's an implicit cause of action based on the multiple protections given to purchasers throughout NRS 116. To name a few the conclusive presumption language, the fact that we take title without equity or rights of redemption, and that we are not liable for the disbursements of excess proceeds. All of those evidence of Legislatures intents to protect a third-party purchaser and this is one logical extension of that.

Further, it's consistent with the underlying purpose to permit HOAs to foreclose by incentivizing the purchasers and by protecting the purchasers as I just previously stated. With that unless the Court has any further questions.

THE COURT: So seeking attorney's fees of $24,005 and costs of $1,460.50. So the attorney's fees, the billing statements unless I'm missing it don't show me who the biller is for any particular entry. So there's rates --a lot of hourly rates of $150, some at $265. I see some at $85. So how does that work?

MR. MISKEY: For the $85 that is our paralegal staff. The $150 is my hourly

rate. And the $265 is Mr. Coon's partner rate.

THE COURT: Okay. Alright, I think that's all I have for now. Thank you.

MR. MISKEY: Thank you.

MR. GARNER: Good morning, Your Honor. Thank you for the clarification. I wasn't sure from the reply either whether they were still relying on the offer of judgment.

THE COURT: Right.

MR. GARNER: With respect to NRS 116 I think the issue is very simple. Was this case brought under NRS 116 or wasn't it? The statute only permits fees for cases brought under NRS 116. We pointed out to you that they had two claims here, one for declaratory relief, Your Honor, which was brought under NRS 30. And for permanent and preliminary injunction, which was not brought under NRS 116 either. So I think it's a stretch to say that plaintiff brought its case under NRS 116. NRS 116 obviously relevant to the issues in the lawsuit, Your Honor, but it was not brought under that. The entire scheme NRS 116 was designed for the relationship between homeowners and their HOAs, the HOA to collect, the homeowners to fight. R Ventures is neither one of those. It's not an HOA trying to collect assessments and it's not a homeowner fighting against its HOA. That portion of NRS 116 also has been at the same time that the offer of judgment statute was repealed was also changed so it no longer exists.

But the super priority buyers, Your Honor, aren't the class of people for which NRS 116 was designed to benefit. I think they are an incidental beneficiary of a system that was designed to maximize the recovery for HOAs trying to collect on past due assessments. So for all those reasons, Your Honor, NRS 116 fee provision doesn't apply to this case

THE COURT: So there's a request, right, for declaratory relief and for injunction -- injunctive relief? And that's, you know, how the claims are identified. But we know that the dec relief and injunctive relief are remedies. And so really doesn't it depend on what the underlying issue is about? And isn't this case about what priority there is if you buy the property at an HOA lien foreclosure sale?

MR. GARNER: Yes, Your Honor, but the fact remains that the statute provides for fees for cases brought under it. And that -- under NRS 116 and NRS 116 provides several causes of action for homeowner's associations, not for buyers of foreclosure liens. So the cause of action --

THE COURT: Where does it say that?

MR. GARNER: It provides that, Your Honor --

THE COURT: It says a judgment or decree in any action --

MR. GARNER: Right.

THE COURT: -- brought under the section must include costs and reasonable attorney's fees.

MR. GARNER: Right, brought under that section. And that section, NRS 116.3116, sub 7 allows an HOA to bring an action to recover sums owed to it. And subsection 11 provides a cause of action to the HOA to bring an action of foreclosure upon the lien. Those are the two actions that the NRS 116 provisions for, Your Honor. They don't provide for declaratory relief or permanent injunction.

THE COURT: Okay, give me a sec. So it's hard because I printed the statute, which is --

MR. GARNER: It's been changed.

THE COURT: -- the new revised version, so I'm trying to find the referenced sections. So tell me -- let's talk about those sections you just mentioned.

MR. GARNER: Those sections, Your Honor, we cited to those on page 3 and 4 of our opposition.

THE COURT: Okay.

MR. GARNER: They're both subsections within the former version of 116.3116.

THE COURT: Uh-huh.

MR. GARNER: 7 and 11 are the subsections which provide causes of action to the HOA to either bring an action to recover the sum, so sue the homeowner for it or under subsection 11 bring an action to foreclose on the lien. And R Ventures brought neither of those actions because it is not an HOA.

THE COURT: So your reading is that this section, which is now in subsection 12 but used to be in subsection 8 where it says a judgment or decree in any action brought under this section. That refers only to the subsection above it which talks about this section doesn't prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure. So you're saying if there were an action to recover sums for which this creates a lien then that would be an action under this section?

MR. GARNER: Yes, Your Honor. And it makes sense when you think what the Legislature is trying to do is provide an opportunity for HOAs to recover past due assessments and to obtain their attorney's fees so they don't have to eat that cost and then spread that burden among the rest of the homeowner's who are paying their assessments on time so the rest of the community doesn't have to pick up for those who aren't paying.

THE COURT: And then the other section you referred to talks about that basically if there's an action by the association to collect assessments or foreclose a

lien then the Court can appoint a receiver, and then it gets into how that would work.

MR. GARNER: Yes, and again, Your Honor, all of those things have a cost associated with them that shouldn't be borne by homeowners who are paying on time but should rather be borne by the homeowner who isn't. And then when the HOA forecloses on the lien and hopefully gets a buyer incentivized through the statute to get a maximum recovery they can cover all of those costs.

THE COURT: So what if I didn't have an independent buyer at the HOA foreclosure? Say it was HOA bought the property at a credit bid and then they were the ones seeking a dec relief, would that be covered by a judgment or decree in an action brought under this section?

MR. GARNER: I'm sorry, your hypothetical's involved with a --

THE COURT: I apologize.

MR. GARNER: -- was it a foreclosure?

THE COURT: Right.

MR. GARNER: A judicial foreclosure or a non-judicial foreclosure?

THE COURT: HOA foreclosure --

MR. GARNER: Uh-huh.

THE COURT: -- if the buyer at this sale were the HOA itself and not R Ventures --

MR. GARNER: Right.

THE COURT: -- and then they brought a quiet title action like this one.

MR. GARNER: Uh-huh.

THE COURT: Would that be -- and they won, would that be a judgment or decree in action brought under this section?

MR. GARNER: I don't know the answer to that, Your Honor. I've not been

presented with that.

THE COURT: Because that wouldn't be to recover sums and it wouldn't be trying to get a receiver appointed.

MR. GARNER: Right.

THE COURT: And you're saying those are the only circumstances that are actions under this section?

MR. GARNER: That's how I read the statute, Your Honor.

THE COURT: Okay. Thank you. Counsel.

MR. MISKEY: I would just reiterate the point that the Bank's position is a very narrow reading of the statute and the language is very broad and we believe very clear. As laid out in our complaint we reference NRS 116 throughout in combination for our request for declaratory relief for quiet title. And with that we rest.

THE COURT: Okay, so the complaint in this case and the entire dispute of this case was the plaintiff being the buyer at the HOA foreclosure sale and seeking quiet title ultimately that the first deed of trust holder, the defendant, no longer had the deed of trust on the property because it was foreclosed out by the foreclosure by the HOA at the super priority lien. The super priority lien and its existence and the priority that it has is set forth under NRS 116.3116.

And the dec relief quiet title claim of the complaint, which is the first claim for relief references not only NRS Chapter 30 which allows dec relief actions, but specifically references NRS 116.3116 in the title of the claim as the basis for it and throughout the substance of the claim relies on that section. And similarly the second claim for relief which seeks an injunction to prevent defendants from foreclosure relies on the priority given under Chapter 116 as the reason why they in fact should not be permitted to foreclosure.

And as I read the attorney's fee provision under NRS 116.3116 it is mandatory that a judgment in any action brought under this section must include costs and reasonable attorney's fees. And I think that this section while there are a couple of subsections that reference certain kinds of actions as pointed out by the defense here. I think that that is too narrow a reading for this attorney fee provision to think that after all this discussion about liens and priorities the only type of action considered an action under this subsection is based on these two provisions, one of which just says this section doesn't prohibit this other kind of an action to recover sums due. And one of which says by the way if you're bringing an action regarding the lien you can also ask for a receiver. I don't believe that the Legislature intended those to set forth the only circumstances where in fact costs and reasonable attorney's fees would be warranted.

So with plaintiff having abandoned the argument on the offer of judgment but as to the basis for seeking attorney's fees and costs under NRS 116.3116 I am going to grant that request. There was no dispute raised in the opposition about the reasonableness of the fees and costs being sought and I -- the attorney's fees sought are $24,005. In considering the *Brunzel* factors, including the qualities of the advocate, the character of the work to be done, the work actually performed by the lawyers and the result obtained I do find -- and after reviewing the bills that were submitted, which contain the detail regarding the work that was done, that the work was reasonably and necessarily done for the nature of the case, the issues that were raised, the motion practice that occurred and certainly the result obtain, I find that the fees of $24,005 are reasonable under the circumstances.

Additionally the cost of $1460.50 reasonably and necessarily incurred, so I'm granting the motion for a total of $25,465.50. And so, Mr. Miskey, I'll need

you to prepare a proposed order. Run it past counsel before you submit it.

MR. MISKEY: Thank you, Your Honor.

THE COURT: Thank you.

MR. GARNER: Thank you, Your Honor.

[Hearing concluded at 8:57 a.m.]

* * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

EXHIBIT 40

EXHIBIT 40

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CLERK OF THE COURT

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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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

THIS MATTER having come on for hearing on August 9, 2016 at 8:30 am, THOMAS MISKEY, Esq., of COOPER COONS, LTD, appearing as counsel for the Plaintiff R VENTURES VIII, LLC, REX D. GARNER, ESQ., of AKERMAN, LLP, appearing for Defendant CARRINGTON MORTGAGE HOLDINGS, LLC, and the Court having heard the representations of counsel and after having examined the records and documents on file in the above-entitled matter and being fully advised;

///

THE COURT HEREBY FINDS:

1. NRS 116.3116(8) provides for a mandatory award of reasonable attorney's fees for a prevailing party for any action brought under this section.

2. Plaintiff's first claim for declaratory relief was brought under and based in NRS 116.3116.

3. Plaintiff's second claim for injunctive relief was brought under and based in NRS 116.3116.

4. Plaintiff's claims are of the type contemplated by NRS 116.3116(8) and thus it applies to the instant action.

5. Plaintiff is the prevailing part in this action and thus is entitled to an award of attorney's fees.

6. The Court has examined Plaintiff's submitted fees and costs under the standard set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 and found them reasonable because of the nature and extent of the litigation.

7. Upon examination, Plaintiff's submitted costs in the amount of one thousand and four hundred and sixty dollars and fifty cents ($1,460.50) was necessarily and reasonably incurred in this action.

8. Upon examination, Plaintiff's submitted attorney's fees in the amount of twenty four thousand and five dollars ($24,005.00) was necessarily and reasonably incurred in this action.

IT IS HEREBY ORDERED that Plaintiff's Renewed Motion for Attorney's Fees and Costs is **GRANTED.**

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IT IS FURTHER ODERED that Defendant Carrington Mortgage Holdings, LLC's shall pay a monetary judgement in the amount of twenty five thousand, four hundred and sixty five dollars and fifty cents ($25,465.50) to Plaintiff R Ventures VIII, LLC.

DATED this 31 day of August, 2016.

JUDGE ELISSA F. CADISH

Submitted by:

COOPER COONS, LTD.
Attorneys at Law

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F: (702) 998-1503
Attorneys for Plaintiff

EXHIBIT 41

EXHIBIT 41

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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; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-684151-C

Dept. No.: VI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE an Order Granting Plaintiff's Motion for Fees and Costs was entered in the above captioned matter on September 8, 2016, a copy of which is attached hereto.

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There are no social security numbers contained in this document.

DATED this 30th day of September, 2016.

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies on September 30, 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	
Contact	**Email**
Akerman Las Vegas Office	akermanlas@akerman.com

/s/ Kim Hexamer

An employee of COOPER COONS, LTD.

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CLERK OF THE COURT

J. CHARLES COONS, ESQ.
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(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 ROE CORPORATIONS II through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-684151-C

Dept. No.: VI

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

THIS MATTER having come on for hearing on August 9, 2016 at 8:30 am, THOMAS MISKEY, Esq., of COOPER COONS, LTD, appearing as counsel for the Plaintiff R VENTURES VIII, LLC, REX D. GARNER, ESQ., of AKERMAN, LLP, appearing for Defendant CARRINGTON MORTGAGE HOLDINGS, LLC, and the Court having heard the representations of counsel and after having examined the records and documents on file in the above-entitled matter and being fully advised;

///

THE COURT HEREBY FINDS:

1. NRS 116.3116(8) provides for a mandatory award of reasonable attorney's fees for a prevailing party for any action brought under this section.

2. Plaintiff's first claim for declaratory relief was brought under and based in NRS 116.3116.

3. Plaintiff's second claim for injunctive relief was brought under and based in NRS 116.3116.

4. Plaintiff's claims are of the type contemplated by NRS 116.3116(8) and thus it applies to the instant action.

5. Plaintiff is the prevailing part in this action and thus is entitled to an award of attorney's fees.

6. The Court has examined Plaintiff's submitted fees and costs under the standard set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 and found them reasonable because of the nature and extent of the litigation.

7. Upon examination, Plaintiff's submitted costs in the amount of one thousand and four hundred and sixty dollars and fifty cents ($1,460.50) was necessarily and reasonably incurred in this action.

8. Upon examination, Plaintiff's submitted attorney's fees in the amount of twenty four thousand and five dollars ($24,005.00) was necessarily and reasonably incurred in this action.

IT IS HEREBY ORDERED that Plaintiff's Renewed Motion for Attorney's Fees and Costs is **GRANTED**.

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IT IS FURTHER ODERED that Defendant Carrington Mortgage Holdings, LLC's shall pay a monetary judgement in the amount of twenty five thousand, four hundred and sixty five dollars and fifty cents ($25,465.50) to Plaintiff R Ventures VIII, LLC.

DATED this 31 day of August, 2016.

JUDGE ELISSA F. CADISH

Submitted by:

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
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Attorneys for Plaintiff

EXHIBIT 42

EXHIBIT 42

SAO
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Attorneys for Carrington Mortgage Holdings, LLC

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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,

v.

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

Defendants.

Case No.: A-13-684151-C
Dept.: VI

AMENDED STIPULATION AND ORDER FOR NRCP 54(B) CERTIFICATION

Plaintiff R Ventures VIII, LLC (**Plaintiff**) by and through counsel, Thomas A. Miskey, Esq. and Defendant Carrington Mortgage Holdings, LLC (**Carrington**) by and through counsel, Natalie L. Winslow, Esq. stipulate and agree that the following three orders should be certified by the Court under NRCP 54(b):

- 4/27/2016 order granting Plaintiff's motion for summary judgment
- 8/17/2016 order denying Carrington's motion for reconsideration

{40259043;1}

- 9/8/2016 order granting Plaintiff's motion for attorney's fees and costs

DATED this 7 day of December, 2016.

AKERMAN LLP

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Attorneys for Carrington Mortgage Holdings, LLC

COOPER & COONS, LLC

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ORDER

Upon consideration this day of the stipulation of all of the parties,

IT IS HEREBY ORDERED that pursuant to NRCP 54(b), the court finds that there is no just reason for delay and makes an express direction for the entry of judgment of:

- 4/27/2016 order granting Plaintiff's motion for summary judgment
- 8/17/2016 order denying Carrington's motion for reconsideration
- 9/8/2016 order granting Plaintiff's motion for attorney's fees and costs

IT IS SO ORDERED.

HON. JUDGE ELISSA F. CADISH BL

Dated: January 5 2017, 2016

Respectfully submitted by:
AKERMAN, LLP

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EXHIBIT 43

EXHIBIT 43

NTSO
ARIEL E. STERN, ESQ.
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NATALIE L. WINSLOW, ESQ.
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Email: natalie.winslow@akerman.com

Attorneys for Carrington Mortgage Holdings, LLC

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, 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.	Case No.: A-13-684151-C Dept.: VI **NOTICE OF ENTRY OF AMENDED STIPULATION AND ORDER FOR NRCP 54(B) CERTIFICATION**

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TEL.: (702) 634-5000 – FAX: (702) 380-8572

...

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TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:

PLEASE TAKE NOTICE that the Amended Stipulation And Order For NRCP 54(B) Certification has been entered on January 9, 2017, a copy of which is attached hereto.

DATED this 10th day of January 2017.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
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Attorneys for Defendant Carrington Mortgage Holdings LLC

AKERMAN LLP
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 10th day of January, 2017 I caused to be served a true and correct copy of foregoing **NOTICE OF ENTRY OF AMENDED STIPULATION AND ORDER FOR NRCP 54(B) CERTIFICATION** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

J. Charles Coons, Esq.
Thomas Miskey, Esq.
COOPER COONS
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144

Attorneys for Plaintiff

/s/ Allen G .Stephens
AN EMPLOYEE OF AKERMAN LLP

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EXHIBIT A

EXHIBIT A

SAO
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Attorneys for Carrington Mortgage Holdings, LLC

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,

v.

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

Defendants.

Case No.: A-13-684151-C
Dept.: VI

AMENDED STIPULATION AND ORDER FOR NRCP 54(B) CERTIFICATION

Plaintiff R Ventures VIII, LLC (**Plaintiff**) by and through counsel, Thomas A. Miskey, Esq. and Defendant Carrington Mortgage Holdings, LLC (**Carrington**) by and through counsel, Natalie L. Winslow, Esq. stipulate and agree that the following three orders should be certified by the Court under NRCP 54(b):

- 4/27/2016 order granting Plaintiff's motion for summary judgment
- 8/17/2016 order denying Carrington's motion for reconsideration

- 9/8/2016 order granting Plaintiff's motion for attorney's fees and costs

DATED this 7 day of December, 2016.

AKERMAN LLP

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Attorneys for Carrington Mortgage Holdings, LLC

COOPER & COONS, LLC

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ORDER

Upon consideration this day of the stipulation of all of the parties,

IT IS HEREBY ORDERED that pursuant to NRCP 54(b), the court finds that there is no just reason for delay and makes an express direction for the entry of judgment of:

- 4/27/2016 order granting Plaintiff's motion for summary judgment
- 8/17/2016 order denying Carrington's motion for reconsideration
- 9/8/2016 order granting Plaintiff's motion for attorney's fees and costs

IT IS SO ORDERED.

HON. JUDGE ELISSA F. CADISH

Dated: January 5, 2017

Respectfully submitted by:
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.	**Supreme Court Case No. 71437** **District Court Case No. A684151**

APPEAL

From the Eighth Judicial District Court
The Honorable ELISSA CADISH, District Judge
District Court Case No. A-13-684151-C

JOINT APPENDIX, VOLUME IV

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Attorneys for Appellant

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Volume	Tab	Date Filed	Document	Bates Number
I	5.	10/04/2013	Affidavit of Service – Bank of America, N.A.	JA000017
I	6.	10/04/2013	Affidavit of Service – Southern Terrace Homeowners Association	JA000019
I	15.	08/06/2015	Affidavit of Service of Carrington Mortgage Holding, LLC's Answer, Counterclaims and Crossclaims – Southern Terrace Homeowners Association	JA000107
I	4.	10/04/2013	Affidavit of Service of Summons and Complaint – Wells Fargo, N.A.	JA000015
IV	42.	01/09/2017	Amended Stipulation and Order for NRCP 54(B) Certification	JA000710
I	14.	07/27/2015	Carrington Mortgage Holding, LLC's Answer, Counterclaims and Crossclaims	JA000046
IV	29.	06/01/2016	Carrington Mortgage Holdings, LLC's Case Appeal Statement	JA000607
IV	27.	05/19/2016	Carrington Mortgage Holdings, LLC's Motion for Reconsideration of Orders on Summary Judgment	JA000568
II	18.	02/24/2016	Carrington Mortgage Holdings, LLC's Motion for Summary Judgment	JA000239
IV	30.	06/01/2016	Carrington Mortgage Holdings, LLC's Notice of Appeal	JA000611
IV	34.	07/25/2016	Carrington Mortgage Holdings, LLC's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	JA000646
II	20.	03/14/2016	Carrington Mortgage Holdings, LLC's Opposition to R Ventures VIII, LLC's Motion for Summary Judgment	JA000291
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III	23.	03/25/2016	Errata to Carrington Mortgage Holdings, LLC's Motion for Summary Judgment	JA000336
I	2.	06/26/2013	Initial Appearance Fee Disclosure	JA000011
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IV	43.	01/10/2017	Notice of Entry of Amended Stipulation and Order for NRCP 54(B) Certification	JA000713
IV	37.	08/18/2016	Notice of Entry of Order Denying Carrington Mortgage Holdings, LLC's Motion for Reconsideration	JA000660
I	9.	01/13/2014	Notice of Entry of Order Dismissing Southern Terrance Homeowners Association	JA000026
III	26.	05/03/2016	Notice of Entry of Order Granting Bank of America, N.A.'s Motion to Dismiss	JA000562
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IV	28.	06/01/2016	Opposition to Carrington Mortgage Holdings, LLC's Motion for Reconsideration of Orders on Summary Judgment	JA000601
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Volume	Tab	Date Filed	Document	Bates Number
IV	38.	08/31/2016	Transcript of Hearing on Plaintiff's Renewed Motion for Summary Judgment and Carrington Mortgage Holdings, LLC's Motion for Summary Judgment	JA000665
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IV	35.	07/29/2016	Reply in Support of Motion for Attorney's Fees and Costs	JA000652
IV	36.	08/17/2016	Order Denying Carrington Mortgage Holdings, LLC's Motion for Reconsideration	JA000658
IV	37.	08/18/2016	Notice of Entry of Order Denying Carrington Mortgage Holdings, LLC's Motion for Reconsideration	JA000660
IV	38.	08/31/2016	Transcript of Hearing on Plaintiff's Renewed Motion for Summary Judgment and Carrington Mortgage Holdings, LLC's Motion for Summary Judgment	JA000665

Volume	Tab	Date Filed	Document	Bates Number
IV	39.	08/31/2016	Transcript of Hearing on R Ventures VIII, LLC's Motion for Attorney's Fees and Costs	JA000691
IV	40.	09/08/2016	Order Granting Plaintiff's Motion for Attorney's Fees and Costs	JA000701
IV	41.	09/29/2016	Notice of Entry of Order Granting Plaintiff's Motion for Attorney's Fees and Costs	JA000704
IV	42.	01/09/2017	Amended Stipulation and Order for NRCP 54(B) Certification	JA000710
IV	43.	01/10/2017	Notice of Entry of Amended Stipulation and Order for NRCP 54(B) Certification	JA000713

DATED this 25th day of April, 2017.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.
ARIEL E. STERN, ESQ.
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NATALIE L. WINSLOW, ESQ.
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Las Vegas, Nevada 89144

Attorneys for Carrington Mortgage Holdings, LLC

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 IV**, via this Court's Electronic Filing System to the following:

J. Charles Coons, Esq.
Thomas A. Miskey, Esq.
COOPER COONS, LTD.
10655 Park Run Drive, Suite 130
Las Vegas, NV 89144

Attorneys for Respondent

/s/ Allen G. Stephens
An employee of AKERMAN LLP