

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
)
Appellant,)

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 71875

vs.)

JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
RECONTRUST COMPANY NA, a Texas)
corporation; EZ PROPERTIES, LLC, a Nevada)
limited liability company; K&L BAXTER)
FAMILY LIMITED PARTNERSHIP, a Nevada)
limited partnership; FCH FUNDING, INC, an)
unknown corporate entity,)
Respondents.)

APPEAL

From the Eighth Judicial District Court,

The Honorable Jerry A. Wiese II , District Judge

District Court Case No. A-15-715532-C

JOINT APPENDIX - VOLUME 5

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and Recontrust Company, N.A.*

DISTRICT COURT**CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

v.

JAMES R. BLAHA, an individual; BANK OF
AMERICA, N.A., a National Banking
Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
RECONTRUST COMPANY, N.A., a Texas
corporation; JOSE PEREZ, JR., an individual;
EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC., an unknown
corporate entity; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

Defendants.

Case No.: A-15-715532-C

Dept.: VIII

**DEFENDANTS BANK OF AMERICA,
N.A. AND RECONTRUST, N.A.'S
AMENDED ANSWER TO PLAINTIFF'S
COMPLAINT AND BANK OF
AMERICA'S COUNTERCLAIM
AGAINST PLAINTIFF AND CROSS-
CLAIMS AGAINST HOA AND HOA
TRUSTEE**

Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing,
LP (**Bank of America**) and Recontrust Company, N.A. (**Recontrust**) (collectively **Defendants**)
hereby file this amended answer to Plaintiff Las Vegas Development Group, LLC's (**Plaintiff**)
Complaint:

AMENDED ANSWER TO COMPLAINT

PARTIES

1
2 1. Defendants lack sufficient information to admit or deny the allegations of Paragraph
3 1, and therefore deny the same.

4 2. Defendants admit the allegations of Paragraph 2.

5 3. Defendants admit the allegations of Paragraph 3.

6 4. Defendants lack sufficient information to admit or deny the allegations of Paragraph
7 4, and therefore deny the same.

8 5. Defendants lack sufficient information to admit or deny the allegations of Paragraph
9 5, and therefore deny the same.

10 6. Defendants lack sufficient information to admit or deny the allegations of Paragraph
11 6, and therefore deny the same.

12 7. Defendants lack sufficient information to admit or deny the allegations of Paragraph
13 7, and therefore deny the same.

14 8. Defendants lack sufficient information to admit or deny the allegations of Paragraph
15 8, and therefore deny the same.

16 9. The allegations of Paragraph 9 relate to alleged fictitious parties, and Defendants lack
17 sufficient information to admit or deny allegations related to unknown fictitious parties, and
18 therefore deny the same.

GENERAL ALLEGATIONS

19
20 10. Defendants adopt and incorporate by reference all the preceding paragraphs as though
21 set forth fully herein. To the extent a response is required, Defendants deny the allegations of
22 Paragraph 10.

23 11. Defendants state that the recorded document speaks for itself. To the extent a
24 response is required, Defendants admit the allegations of Paragraph 11.

25 12. To the extent the allegations of Paragraph 12 contain Plaintiff's legal conclusions, no
26 response is required. To the extent a response is required, Defendants deny the allegations of
27 Paragraph 12, and demand strict proof thereof.
28

1 13. To the extent the allegations of Paragraph 13 describe statutory provisions, no
2 response is required. To the extent a response is required, Defendants admit the allegations of
3 Paragraph 13.

4 14. To the extent the allegations of Paragraph 14 describe statutory provisions, no
5 response is required. To the extent a response is required, Defendants admit only that a portion of an
6 HOA's lien can have priority over a first deed of trust.

7 15. To the extent the allegations of Paragraph 15 describe statutory provisions, no
8 response is required. To the extent a response is required, Defendants admit only that a portion of an
9 HOA's lien can have priority over a first deed of trust.

10 16. Defendants lack sufficient information to admit or deny the allegations of Paragraph
11 16, and therefore deny the same.

12 17. Defendants lack sufficient information to admit or deny the allegations of Paragraph
13 17, and therefore deny the same.

14 18. Defendants admit only that Bank of America once claimed an interest in the Property
15 by way of its senior Deed of Trust. Defendants lack sufficient information to admit or deny the
16 remaining allegations of Paragraph 18, and therefore deny the same.

17 19. Defendants state that the recorded documents speak for themselves. To the extent a
18 response is required, Defendants admit the allegations of Paragraph 19.

19 20. Defendants state that the recorded documents speak for themselves. To the extent a
20 response is required, Defendants admit the allegations of Paragraph 20.

21 21. Defendants admit the allegations of Paragraph 21.

22 22. Defendants lack sufficient information to admit or deny the allegations of Paragraph
23 22, and therefore deny the same.

24 23. Defendants lack sufficient information to admit or deny the allegations of Paragraph
25 23, and therefore deny the same.

26 24. Defendants state that the recorded documents speak for themselves. To the extent a
27 response is required, Defendants admit the allegations of Paragraph 24.

1 25. Defendants state that the recorded documents speak for themselves. To the extent a
2 response is required, Defendants admit the allegations of Paragraph 25.

3 26. Defendants lack sufficient information to admit or deny the allegations of Paragraph
4 26, and therefore deny the same.

5 27. Defendants state that the recorded documents speak for themselves. To the extent a
6 response is required, Defendants admit the allegations of Paragraph 27.

7 28. Defendants lack sufficient information to admit or deny the allegations of Paragraph
8 28, and therefore deny the same.

9 29. Defendants admit only that a Trustee's Deed Upon Sale states that the Property was
10 sold at a foreclosure sale on April 12, 2011. Defendants lack sufficient information to admit or deny
11 the remaining allegations of Paragraph 29, and therefore deny the same.

12 30. Defendants lack sufficient information to admit or deny the allegations of Paragraph
13 30, and therefore deny the same.

14 31. Defendants admit only that a Trustee's Deed Upon Sale recorded on April 13, 2011
15 purports to convey the Property to Plaintiff. Defendants specifically deny that their respective
16 interests in the Property were extinguished by the HOA foreclosure sale. Defendants further deny
17 that Plaintiff is in fact the legal and equitable owner of the Property.

18 32. Defendants deny the allegations of Paragraph 32, and demand strict proof thereof.

19 33. Defendants deny the allegations of Paragraph 33, and demand strict proof thereof.

20 34. To the extent the allegations of Paragraph 34 describe statutory provisions, no
21 response is required. To the extent a response is required, Defendants admit the allegations of
22 Paragraph 34.

23 35. To the extent the allegations of Paragraph 35 describe statutory provisions, no
24 response is required. To the extent a response is required, Defendants admit only that a portion of an
25 HOA's lien can have priority over a first deed of trust.

26 36. Defendants lack sufficient information to admit or deny the allegations of Paragraph
27 36, and therefore deny the same.

1 37. Defendants lack sufficient information to admit or deny the allegations of Paragraph
2 37, and therefore deny the same.

3 38. Defendants lack sufficient information to admit or deny the allegations of Paragraph
4 38, and therefore deny the same.

5 39. Defendants lack sufficient information to admit or deny the allegations of Paragraph
6 39, and therefore deny the same.

7 40. Defendants lack sufficient information to admit or deny the allegations of Paragraph
8 40, and therefore deny the same.

9 41. Defendants admit the allegations of Paragraph 41.

10 42. Defendants admit the allegations of Paragraph 42.

11 43. Defendants lack sufficient information to admit or deny the allegations of Paragraph
12 43, and therefore deny the same.

13 44. Defendants lack sufficient information to admit or deny the allegations of Paragraph
14 44, and therefore deny the same.

15 45. Defendants deny the allegations of Paragraph 45, and demand strict proof thereof.

16 46. Defendants deny the allegations of Paragraph 46, and demand strict proof thereof.

17 47. To the extent the allegations of Paragraph 47 describe statutory provisions or contain
18 Plaintiff's legal conclusions, no response is required. To the extent a response is required,
19 Defendants deny the allegations of Paragraph 47, and demand strict proof thereof.

20 48. To the extent the allegations of Paragraph 48 describe statutory provisions or contain
21 Plaintiff's legal conclusions, no response is required. To the extent a response is required,
22 Defendants deny the allegations of Paragraph 48, and demand strict proof thereof.

23 49. Defendants deny the allegations of Paragraph 49, and demand strict proof thereof.

24 50. Defendants deny the allegations of Paragraph 50, and demand strict proof thereof.

25 51. Defendants deny the allegations of Paragraph 51, and demand strict proof thereof.

26 52. Defendants deny the allegations of Paragraph 52, and demand strict proof thereof.

27 53. Defendants state that the recorded document speaks for itself. To the extent a
28 response is required, Defendants admit the allegations of Paragraph 53.

1 54. Defendants state that the recorded document speaks for itself. To the extent a
2 response is required, Defendants admit the allegations of Paragraph 54.

3 55. Defendants admit that Recontrust conducted a foreclosure sale pursuant to the First
4 Deed of Trust. Defendants deny the remaining allegations of Paragraph 55, and demand strict proof
5 thereof.

6 56. Defendants state that the recorded documents speak for themselves. To the extent a
7 response is required, Defendants admit only that EZ Properties purchased the Property at the
8 foreclosure sale. Defendants deny the remaining allegations of Paragraph 56, and demand strict
9 proof thereof.

10 57. Defendants admit only that EZ Properties purchased the Property at the foreclosure
11 sale. Defendants lack sufficient information to admit or deny the remaining allegations of Paragraph
12 57, and therefore deny the same.

13 58. Defendants state that the recorded document speaks for itself. To the extent a
14 response is required, Defendants lack sufficient information to admit or deny the allegations of
15 Paragraph 58, and therefore deny the same.

16 59. Defendants state that the recorded document speaks for itself. To the extent a
17 response is required, Defendants lack sufficient information to admit or deny the allegations of
18 Paragraph 59, and therefore deny the same.

19 60. Defendants lack sufficient information to admit or deny the allegations of Paragraph
20 60, and therefore deny the same.

21 61. Defendants state that the recorded document speaks for itself. To the extent a
22 response is required, Defendants lack sufficient information to admit or deny the allegations of
23 Paragraph 61, and therefore deny the same.

24 62. To the extent the allegations of Paragraph 62 contain Plaintiff's legal conclusions, no
25 response is required. To the extent a response is required, Defendants admit only that the Nevada
26 Supreme Court held that NRS 116.3116 does provide homeowners associations with a limited super-
27 priority lien in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*

63. To the extent the allegations of Paragraph 63 contain Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants admit that the Nevada Supreme Court held that NRS 116.3116 does provide homeowners associations with a limited super-priority lien in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* Defendants further state that the Nevada Supreme Court has made no pronouncement regarding the constitutionality of NRS 116, *et seq.*

64. To the extent the allegations of Paragraph 64 describe statutory provisions or contain Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants deny that the quoted language has the meaning ascribed to it by Plaintiff.

65. To the extent the allegations of Paragraph 65 describe statutory provisions or contain Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 65, and demand strict proof thereof.

66. Defendants deny the allegations of Paragraph 66, and demands strict proof thereof.

FIRST CAUSE OF ACTION

(Quiet Title Against All Defendants)

67. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 67.

68. Defendants deny the allegations of Paragraph 68, and demand strict proof thereof.

69. Defendants deny the allegations of Paragraph 69, and demand strict proof thereof.

70. Defendants deny the allegations of Paragraph 70, and demand strict proof thereof.

71. Defendants deny the allegations of Paragraph 71, and demand strict proof thereof.

72. Defendants deny the allegations of Paragraph 72, and demand strict proof thereof.

73. Defendants deny the allegations of Paragraph 73, and demand strict proof thereof.

74. Defendants deny that they claim any interest in the Property. The remaining allegations are not directed at Defendants, and thus no response is required.

75. Defendants deny that there is a justiciable controversy between Defendants and Plaintiff regarding the right, title, and interest to the Property. The remaining allegations of Paragraph 75 are not directed at Defendants, and thus no response is required.

76. Defendants deny that they claim any interest in the Property. The remaining allegations of Paragraph 76 are not directed at Defendants, and thus no response is required.

77. Defendants deny the allegations of Paragraph 77, and demand strict proof thereof.

78. Defendants deny that there is a justiciable controversy between Defendants and Plaintiff regarding the right, title, and interest to the Property. The remaining allegations of Paragraph 78 are not directed at Defendants, and thus no response is required.

79. Defendants deny the allegations of Paragraph 79, and demand strict proof thereof.

80. Defendants deny the allegations of Paragraph 80, and demand strict proof thereof.

81. Defendants deny the allegations of Paragraph 81, and demand strict proof thereof.

82. Defendants deny the allegations of Paragraph 82, and demand strict proof thereof.

83. Defendants deny the allegations of Paragraph 83, and demand strict proof thereof.

SECOND CAUSE OF ACTION

(Unjust Enrichment against BANA [BAC Home Loans], Recontrust, and EZ Properties)

84. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 84.

85. Defendants lack sufficient information to admit or deny the allegations of Paragraph 85, and therefore deny the same.

86. Defendants deny the allegations of Paragraph 86, and demand strict proof thereof.

87. Defendants admit only that Bank of America sold the Property pursuant to its rights under its senior Deed of Trust. Defendants deny the remaining allegations of Paragraph 87, and demand strict proof thereof.

88. Defendants deny the allegations of Paragraph 88, and demand strict proof thereof.

89. Defendants deny the allegations of Paragraph 89, and demand strict proof thereof.

90. Defendants deny the allegations of Paragraph 90, and demand strict proof thereof.

91. Defendants deny the allegations of Paragraph 91, and demand strict proof thereof.

THIRD CAUSE OF ACTION

(Equitable Mortgage against all Defendants)

92. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 92.

93. Defendants lack sufficient information to admit or deny the allegations of Paragraph 93, and therefore deny the same.

94. Defendants deny the allegations of Paragraph 94, and demand strict proof thereof.

95. Defendants admit only that Bank of America sold the Property pursuant to its rights under its senior Deed of Trust. Defendants deny the remaining allegations of Paragraph 95, and demand strict proof thereof.

96. Defendants deny the allegations of Paragraph 96, and demand strict proof thereof.

97. Defendants deny the allegations of Paragraph 97, and demand strict proof thereof.

98. Defendants deny the allegations of Paragraph 98, and demand strict proof thereof.

99. Defendants deny the allegations of Paragraph 99, and demand strict proof thereof.

100. Defendants deny the allegations of Paragraph 100, and demand strict proof thereof.

101. Defendants deny the allegations of Paragraph 101, and demand strict proof thereof.

FOURTH CAUSE OF ACTION

(Slander of Title against all Defendants)

102. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 102.

103. Defendants deny the allegations of Paragraph 103, and demand strict proof thereof.

104. Defendants deny the allegations of Paragraph 104, and demand strict proof thereof.

105. Defendants state that the recorded document speaks for itself. To the extent a response is required, Defendants admit the allegations of Paragraph 105.

106. Defendants state that the recorded document speaks for itself. To the extent a response is required, Defendants admit the allegations of Paragraph 106.

107. Defendants state that the recorded document speaks for itself. To the extent a response is required, Defendants admit the allegations of Paragraph 107.

108. Defendants deny the allegations of Paragraph 108, and demand strict proof thereof.

109. Defendants deny the allegations of Paragraph 109, and demand strict proof thereof.

110. Defendants deny the allegations of Paragraph 110, and demand strict proof thereof.

111. Defendants deny the allegations of Paragraph 111, and demand strict proof thereof.

112. Defendants deny the allegations of Paragraph 112, and demand strict proof thereof.

FIFTH CAUSE OF ACTION

(Conversion against BOA [BAC Home Loans] and Recontrust)

113. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 113.

114. Defendants deny the allegations of Paragraph 114, and demand strict proof thereof.

115. Defendants deny the allegations of Paragraph 115, and demand strict proof thereof.

116. Defendants deny the allegations of Paragraph 116, and demand strict proof thereof.

117. Defendants admit only that Bank of America sold the Property pursuant to its rights under its senior Deed of Trust. Defendants deny the remaining allegations of Paragraph 117, and demand strict proof thereof.

118. Defendants admit only that Bank of America sold the Property pursuant to its rights under its senior Deed of Trust. Defendants deny the remaining allegations of Paragraph 118, and demand strict proof thereof.

119. Defendants deny the allegations of Paragraph 119, and demand strict proof thereof.

120. Defendants deny the allegations of Paragraph 120, and demand strict proof thereof.

121. Defendants deny the allegations of Paragraph 121, and demand strict proof thereof.

122. Defendants deny the allegations of Paragraph 122, and demand strict proof thereof.

SIXTH CAUSE OF ACTION

(Equitable Relief – Wrongful Foreclosure)

123. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 123.

124. Defendants deny the allegations of Paragraph 124, and demand strict proof thereof.

125. Defendants deny the allegations of Paragraph 125, and demand strict proof thereof.

126. Defendants deny the allegations of Paragraph 126, and demand strict proof thereof.

127. Defendants deny the allegations of Paragraph 127, and demand strict proof thereof.

128. Defendants deny the allegations of Paragraph 128, and demand strict proof thereof.

129. Defendants deny the allegations of Paragraph 129, and demand strict proof thereof.

130. Defendants deny the allegations of Paragraph 130, and demand strict proof thereof.

SEVENTH CAUSE OF ACTION**(Equitable Relief – Rescission [sic])**

131. Defendants adopt and incorporate by reference all the preceding paragraphs as though set forth fully herein. To the extent a response is required, Defendants deny the allegations of Paragraph 131.

132. Defendants deny the allegations of Paragraph 132, and demand strict proof thereof.

133. Defendants deny the allegations of Paragraph 133, and demand strict proof thereof.

134. Defendants deny the allegations of Paragraph 134, and demand strict proof thereof.

135. Defendants deny the allegations of Paragraph 135, and demand strict proof thereof.

136. Defendants deny the allegations of Paragraph 136, and demand strict proof thereof.

137. Defendants deny the allegations of Paragraph 137, and demand strict proof thereof.

138. Defendants deny the allegations of Paragraph 138, and demand strict proof thereof.

139. Defendants deny the allegations of Paragraph 139, and demand strict proof thereof.

PRAYER FOR RELIEF

A. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph A of the Prayer.

1 B. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph B of the
2 Prayer.

3 C. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph C of the
4 Prayer.

5 D. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph D of the
6 Prayer.

7 E. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph E of the
8 Prayer.

9 F. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph F of the
10 Prayer.

11 G. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph G of the
12 Prayer.

13 H. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph H of the
14 Prayer.

15 I. Defendants deny that Plaintiff is entitled to the relief requested in Paragraph I of the
16 Prayer.

17 **AFFIRMATIVE DEFENSES**

18 Defendants assert the following additional defenses. Discovery and investigation of this case
19 is not yet complete, and Defendants reserve the right to amend this Answer by adding, deleting, or
20 amending defenses as may be appropriate. In further answer to the Complaint, and by way of
21 additional defenses, Defendants aver as follows:

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 Plaintiff has failed to state facts sufficient to constitute any cause of action against any
25 Defendant.

26 **SECOND AFFIRMATIVE DEFENSE**

27 **(Void for Vagueness)**

1 To the extent that Plaintiffs' interpretation of NRS 116.3116 is accurate, the statute, and
2 Chapter 116, are void for vagueness as applied to this matter.

3 **THIRD AFFIRMATIVE DEFENSE**

4 **(Due Process Violations)**

5 A senior deed of trust beneficiary cannot be deprived of its property interest in violation of
6 the Procedural Due Process Clause of the Fourteenth Amendment of the United States Constitution
7 and Article 1, Sec. 8, of the Nevada Constitution.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 **(Tender, Estoppel, Laches, and Waiver)**

10 The super-priority lien was satisfied prior to the homeowners association's foreclosure under
11 the doctrines of tender, estoppel, laches, or waiver.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Commercial Reasonableness and Violation of Good Faith)**

14 The homeowners association's foreclosure sale was not commercially reasonable, and the
15 circumstances of the sale of the property violated the homeowners association's obligation of good
16 faith and duty to act in a commercially reasonable manner.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Failure to Mitigate Damages)**

19 Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps
20 to mitigate its damages, if any.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(No Standing)**

23 Plaintiff lacks standing to bring some or all of its claims and causes of action.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 Defendants aver the affirmative defense of unclean hands.

27 **NINTH AFFIRMATIVE DEFENSE**

28 **(Plaintiff is Not Entitled to Relief)**

Defendants deny that Plaintiff is entitled to any relief for which it prays.

TENTH AFFIRMATIVE DEFENSE

(Failure to Do Equity)

Defendants aver the affirmative defense of failure to do equity.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice)

Defendants were not provided proper notice of the “super-priority” assessment amounts and of the homeowners association’s foreclosure sale, and any such notice provided to Defendants failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

TWELFTH AFFIRMATIVE DEFENSE

(Void Foreclosure Sale)

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

THIRTEENTH AFFIRMATIVE DEFENSE

(Federal Law)

The homeowners association’s sale is void or otherwise fails to extinguish the applicable deed of trust because it violates provisions of the United States Constitution and/or applicable federal law.

FOURTEENTH AFFIRMATIVE DEFENSE

(Due Process — Facially Unconstitutional Provisions)

Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in” notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice to a record lien holder before depriving that lien holder of its property rights, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of the Nevada Constitution.

FIFTEENTH AFFIRMATIVE DEFENSE

(SFR Investments Cannot be Applied Retroactively)

1 The Deed of Trust cannot be extinguished by the HOA foreclosure sale because the Nevada
2 Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014)
3 cannot be applied retroactively.

4 SIXTEENTH AFFIRMATIVE DEFENSE

5 (Additional Affirmative Defenses)

6 Pursuant to NRCP 11, Defendants reserve the right to assert additional affirmative defenses
7 in the event discovery and/or investigation disclose the existence of other affirmative defenses.

8 PRAYER FOR RELIEF

9 WHEREFORE, Defendants pray for the following:

- 10 1. That Plaintiff's Complaint be dismissed in its entirety with prejudice and that Plaintiff
11 take nothing by way of its Complaint;
- 12 2. For attorney's fees and costs for defending this action; and
- 13 3. For such other and further relief as this Court deems just and proper.

14 CROSS-CLAIMS

15 GENERAL ALLEGATIONS

- 16 1. Bank of America, N.A. (**Bank of America**) is a national association with its principal
17 place of business in North Carolina.
- 18 2. Plaintiff/Counter-Defendant Las Vegas Development Group, LLC (**Plaintiff**) is a
19 Nevada limited liability company doing business in Clark County, Nevada.
- 20 3. Cross-Defendant Nevada Trails II Community Association (**HOA**) is a Nevada non-
21 profit corporation doing business in Clark County, Nevada.
- 22 4. Cross-defendant Absolute Collection Services, LLC (**HOA Trustee**) is a Nevada
23 limited liability company doing business in Clark County, Nevada.
- 24 5. Venue is proper in the Eighth Judicial District under NRS 13.010(a) because this
25 action seeks to determine an interest in property located within Clark County, Nevada.
- 26
- 27
- 28

7. When these assessments are not paid, the homeowners association may both impose and foreclose on a lien.

9. NRS 116.3116 makes a homeowners association's lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a homeowners association's lien is senior to a first deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2)(c).

10. According to the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), if a homeowners association properly forecloses on its super-priority lien, it can extinguish a first deed of trust. However, the HOA's foreclosure in this case did not extinguish Bank of America's first deed of trust because the foreclosure did not comply with Nevada law and was commercially unreasonable as a matter of law. To deprive Bank of America of its deed of trust under the circumstances of this case would deprive Bank of America of its due process rights.

11. On or about March 16, 2007, Jose Perez, Jr. (**Borrower**) refinanced a loan secured by real property located at 7639 Turquoise Stone Court, Las Vegas, Nevada 89113 (the **Property**) by way of another loan in the amount of \$456,000.00, which was secured by a deed of trust (the **Deed of Trust**). On the same day, Borrower executed this Deed of Trust in favor of Countrywide Bank,

1 FSB. (**Countrywide**), which was recorded on March 28, 2007. A true and correct copy of this Deed
2 of Trust is attached as **Exhibit A**.

3 12. This Deed of Trust was subsequently assigned to The Bank of New York Mellon
4 FKA The Bank of New York, as Trustee for the Certificateholders of the CWALT, Inc. Alternative
5 Loan Trust 2007-OA8 Mortgage Pass-through Certificates, Series 2007-OA8 via an Assignment of
6 Deed of Trust on November 19, 2010. This Assignment was recorded on December 2, 2010. A true
7 and correct copy of the Assignment is attached as **Exhibit B**.

8 13. This Deed of Trust was next assigned to Bank of America via a Corporation
9 Assignment of Deed of Trust Nevada on April 12, 2011. This Assignment was recorded on April
10 14, 2011. A true and correct copy of the Assignment is attached as **Exhibit C**.

11 14. The Deed of Trust provides that, if the Borrower defaults in paying the indebtedness
12 the Deed of Trust secures, or fails to perform any agreement in the Note or Deed of Trust, Bank of
13 America may, upon notice to the Borrower, declare the amounts owed under the Note immediately
14 due and payable.

15 15. The Borrower defaulted under the terms of the Note and Deed of Trust.

16 16. Accordingly, after complying with all statutory requirements, Bank of America
17 foreclosed on the Property, selling it to EZ Properties, LLC at public auction on August 29, 2011, for
18 \$151,300.00. A true and correct copy of the Trustee's Deed Upon Sale Nevada is attached as
19 **Exhibit D**. EZ Properties subsequently sold the Property to James Blaha.

20 **The HOA Lien and Foreclosure**

21 17. Upon information and belief, Borrower failed to the pay the HOA all amounts due to
22 it. Accordingly, on April 12, 2010, the HOA, through its agent, the HOA Trustee, recorded a Notice
23 of Delinquent Assessment Lien. The Lien stated the total amount due to the HOA was \$908.00,
24 which included assessments, dues, interest, and fees. A true and correct copy of the Lien is attached
25 as **Exhibit E**. The Lien neither identifies the super-priority amount claimed by the HOA, nor
26 describes the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

27 18. On July 23, 2010, the HOA, through the HOA Trustee, recorded a Notice of Default
28 and Election to Sell Under Notice of Delinquent Assessment. The Notice stated the total amount

1 due to the HOA was \$1,917.00, which included assessments, dues, interest, and fees. A true and
2 correct copy of the Notice of Default is attached as **Exhibit F**. The Notice neither identifies the
3 super-priority amount claimed by the HOA, nor describes the “deficiency in payment” required by
4 NRS 116.31162(1)(b)(1).

5 19. In response, Bank of America sent a letter to the HOA Trustee, which inquired as to
6 the super-priority amount of the HOA’s lien, and stated that Bank of America “offer[s] to pay the
7 [super-priority] sum upon presentation of adequate proof of the same by the HOA.” A true and
8 correct copy of the Letter, which states the incorrect date due to the automatic date change function
9 in Microsoft Word, is attached as **Exhibit G**.

10 20. The HOA Trustee responded on August 12, 2010, explaining it did not believe the
11 super-priority lien could be foreclosed independently, as the lien did not come into existence until
12 after the senior deed of trust on a property was foreclosed. The HOA Trustee explained that it
13 “recognize[d] [Bank of America]’s position as the first mortgage company as the senior lien holder.”
14 A true and correct copy of this letter is attached as **Exhibit H**.

15 21. After making these representations to Bank of America, the HOA Trustee proceeded
16 with the foreclosure process of the sub-priority portion of the HOA’s lien, recording a Notice of
17 Trustee’s Sale on October 28, 2010. This Notice stated the total amount due to the HOA was
18 \$2,989.00, which included assessments, dues, interest, and fees, and set the foreclosure sale for
19 December 7, 2010. A true and correct copy of the Notice of Sale is attached as **Exhibit I**. The
20 Notice neither identifies the super-priority amount claimed by the HOA, nor describes the
21 “deficiency in payment” required by NRS 116.31162(1)(b)(1).

22 22. In none of the recorded documents nor in any notice did the HOA specify whether it
23 was foreclosing on the super-priority portion of its lien, if any, or on the sub-priority portion of its
24 lien.

25 23. In none of the recorded documents nor in any notice did the HOA specify that Bank
26 of America’s interest in the Property would be extinguished by the HOA foreclosure. The HOA
27 Trustee’s correspondence to Bank of America, in fact, indicated Bank of America’s interest in the
28 Property would not be extinguished by any foreclosure sale conducted by the HOA.

1 24. On April 12, 2011, the HOA, through the HOA Trustee, non-judicially foreclosed on
2 the HOA's interest in the Property, selling that interest to Plaintiff for \$5,200.01. A true and correct
3 copy of the Trustee's Deed Upon Sale is attached as **Exhibit J**.

4 25. The HOA's foreclosure sale was invalid and did not extinguish Bank of America's
5 first Deed of Trust because Bank of America's super-priority tender extinguished any super-priority
6 lien held by the HOA.

7 26. The HOA Trustee's sale of the HOA's interest in the Property for less than 1% of the
8 value of the loan secured by Bank of America's first Deed of Trust and, on information and belief, a
9 similarly diminutive percentage of the Property's fair market value, is commercially unreasonable
10 and not in good faith as required by NRS 116.1113.

11 27. The HOA's foreclosure sale was commercially unreasonable because neither the
12 HOA nor its agents identified the super-priority portion of the lien prior to the sale, as required by
13 NRS 116.31162(b)(1), and thereby deprived Bank of America of its ability to submit payment of the
14 super-priority amount.

15 28. The HOA's foreclosure sale was invalid and did not extinguish Bank of America's
16 Deed of Trust because Bank of America attempted to obtain the super-priority amount from the
17 HOA Trustee prior to the foreclosure sale in an attempt to submit payment and protect its interest.
18 Neither the HOA nor any of its agents provided this information to Bank of America prior to
19 conducting the foreclosure sale.

20 **FIRST CAUSE OF ACTION**

21 **(Quiet Title Against Plaintiff)**

22 29. Bank of America repeats and re-alleges the preceding paragraphs as though fully set
23 forth herein and incorporates the same by reference.

24 30. Pursuant to NRS 30.010, et seq., this Court has the power and authority to declare
25 Bank of America's rights and interests in the Property.

26 *NRS Chapter 116 Violates Bank of America's Right to Procedural Due Process*

1 31. Bank of America asserts that Chapter 116 of the Nevada Revised Statutes' scheme of
2 HOA super-priority non-judicial foreclosure violates Bank of America's procedural due process
3 rights under the state and federal constitutions.

4 32. The Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of
5 the Nevada Constitution protect Bank of America from being deprived of its Deed of Trust in
6 violation of procedural due process guarantees of notice and an opportunity to be heard.

7 33. Bank of America asserts that there is no way to apply Nevada's scheme of non-
8 judicial HOA super-priority foreclosure that complies with Nevada and the United States' respective
9 guarantees of procedural due process.

10 34. The state of Nevada has become sufficiently intertwined with HOA foreclosures such
11 that state and federal procedural due process protections for Bank of America's Deed of Trust apply,
12 to wit:

13 a) The super-priority lien did not exist at common law, but rather is imposed by
14 legislative fiat.

15 b) Nevada's legislature made super-priority mandatory and it could not be
16 altered by private contract.

17 c) The super-priority lien has no nexus whatsoever to a private agreement
18 between the HOA and Bank of America, but, again, is imposed by legislative enactment.

19 35. Since the state of Nevada is responsible for the creation of the super-priority lien and
20 has made it mandatory, then the state of Nevada's HOA super-priority can fairly be said to be the
21 result of state action subject to procedural due process safeguards.

22 36. On its face, Nevada's scheme of non-judicial HOA super-priority foreclosure lacks
23 any pre- or post- deprivation methods of providing Bank of America with notice and an opportunity
24 to be heard:

25 a) NRS 116.31162 and NRS 116.311635 do not require that an HOA provide
26 Bank of America with written notice of the sum that constitutes the super-priority portion of
27 the assessment lien.
28

1 b) Chapter 116 of NRS seeks to compel Bank of America to pay the entirety of
2 the HOA's lien, but does not provide Bank of America with any procedure for
3 reimbursement.

4 c) Chapter 116 of NRS seeks to insulate its scheme of super-priority non-judicial
5 foreclosure by providing a purchaser at an HOA foreclosure sale with title that is not subject
6 to equity or right of redemption.

7 d) Chapter 116 of NRS fails to provide Bank of America with a statutorily-
8 enforceable mechanism to compel an HOA to inform Bank of America of the sum of the
9 HOA super-priority amount.

10 e) Chapter 116 of NRS fails to provide Bank of America with a private right of
11 action before the foreclosure to contest the HOA's failure to provide it with constitutionally-
12 mandated notice of the super-priority sum and a right to challenge the HOA's calculation of
13 that sum.

14 f) Chapter 116 of NRS fails to provide Bank of America with a private right of
15 action after the foreclosure to contest the HOA's failure to provide it with constitutionally-
16 mandated notice of the super-priority sum.

17 37. Bank of America requests that this Court set aside the HOA foreclosure sale because
18 NRS 116's scheme of HOA super-priority foreclosure violates the procedural due process clauses of
19 The Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada
20 Constitution.

21 *Additional Reasons the HOA Foreclosure Sale Did Not Extinguish the Senior Deed of Trust*

22 38. The HOA sale did not extinguish the Deed of Trust for additional reasons stated
23 below.

24 39. The foreclosure sale did not extinguish the Deed of Trust because the recorded
25 notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required
26 by Nevada law, including, without limitation: whether the deficiency included a "super-priority"
27 component, the amount of the super-priority component, how the super-priority component was
28 calculated, or the consequences for failure to pay the super-priority component.

1 40. The foreclosure sale did not extinguish the Deed of Trust because Bank of America
2 tendered the super-priority amount to the HOA Trustee, thereby extinguishing the super-priority
3 portion of the HOA's lien.

4 41. The foreclosure sale did not extinguish the Deed of Trust because the sale was
5 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS
6 116.1113 in several respects, including, without limitation: the lack of sufficient notice, the sale of
7 the Property for a fraction of the loan balance or actual market value of the Property, a foreclosure
8 that was not calculated to promote an equitable sales price for the Property or to attract proper
9 prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a
10 maximum profit for the HOA and HOA Trustee without regard to the rights and interests of those
11 who have an interest in the loan and made the purchase of the Property possible in the first place.

12 42. The foreclosure sale did not extinguish the Deed of Trust because Plaintiff does not
13 qualify as a bona fide purchaser for value, because it was aware, or should have been aware, of the
14 existence of the Deed of Trust and the satisfaction of the super-priority component of the HOA's
15 lien.

16 SECOND CAUSE OF ACTION

17 (Unjust Enrichment Against the HOA)

18 43. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
19 fully herein and incorporates the same by reference.

20 44. Under NRS 116.3116(2), a homeowners association's lien is split into two portions:
21 one which has super-priority, and another which is subordinate to a senior deed of trust.

22 45. The portion of the lien with super-priority consists of only the last nine months of
23 assessments for common expenses incurred prior to the institution of an action to enforce the lien.
24 The remainder of a homeowners association's lien is subordinate to a senior deed of trust.

25 46. Bank of America, through counsel, offered to pay the super-priority "sum upon
26 presentation of adequate proof of the same by the HOA" prior to the HOA's foreclosure sale. This
27 amount constituted the last nine months of HOA assessments—the full amount the HOA could claim
28 had super-priority over the Deed of Trust.

1 47. The HOA, through the HOA Trustee, rejected Bank of America's full super-priority
2 tender, and informed Bank of America of its position that the super-priority lien could not be
3 foreclosed independently, but instead came into existence only after the first deed of trust was
4 foreclosed.

5 48. Rather than accepting a payment which would satisfy the super-priority portion of its
6 lien, and despite its representations to Bank of America, the HOA, through the HOA Trustee,
7 foreclosed on the Property.

8 49. By foreclosing on the Property after rejecting Bank of America's full super-priority
9 tender, the HOA was unjustly enriched in an amount at least equal to the full value of the proceeds it
10 received from the foreclosure sale.

11 50. Bank of America is entitled to a reasonable amount of the benefits obtained by the
12 HOA based on a theory of unjust enrichment.

13 51. Bank of America was required to retain an attorney to prosecute this action, and is
14 therefore entitled to collect its reasonable attorney's fees and costs.

15 **THIRD CAUSE OF ACTION**

16 **(Unjust Enrichment Against the HOA Trustee)**

17 52. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
18 fully herein and incorporates the same by reference.

19 53. By continuing the foreclosure process after rejecting a tender which extinguished the
20 super-priority portion of the HOA's lien, the HOA Trustee provided itself with the opportunity to
21 perform many additional services relating to the foreclosure on behalf of the HOA.

22 54. Consequently, the HOA Trustee has been unjustly enriched by refusing in bad faith to
23 accept Bank of America's tender of the full super-priority amount. The HOA Trustee has been
24 unjustly enriched in an amount at least equal to the charges for services rendered after it rejected
25 Bank of America's tender.

26 55. Bank of America is entitled to a reasonable amount of the benefits obtained by the
27 HOA Trustee based on a theory of unjust enrichment.

1 56. Bank of America was required to retain an attorney to prosecute this action, and is
2 therefore entitled to collect its reasonable attorney's fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **(Tortious Interference with Contractual Relations Against the HOA and HOA Trustee)**

5 57. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
6 fully herein and incorporates the same by reference.

7 58. On March 16, 2007, Borrower executed a Deed of Trust in favor of Countrywide.

8 59. On April 12, 2011, the Deed of Trust was assigned to Bank of America.

9 60. On July 23, 2010, the HOA, through the HOA Trustee, recorded a Notice of Default
10 and Election to Sell Under Notice of Delinquent Assessment.

11 61. After the HOA Trustee recorded the Notice of Default, Bank of America offered to
12 pay the super-priority amount to the HOA Trustee to satisfy the super-priority portion of the HOA's
13 lien. This amount constituted the last nine months of delinquent assessments—the maximum
14 amount the HOA could claim had super-priority over the Deed of Trust. The HOA Trustee rejected
15 this super-priority tender.

16 62. Rather than accepting a payment which would satisfy the super-priority portion of its
17 lien, and despite its representations to Bank of America, the HOA, through the HOA Trustee,
18 foreclosed on the Property, purporting to sell the HOA's interest to Plaintiff for \$5,200.01.

19 63. The HOA's decision to foreclose on the Property rather than accepting Bank of
20 America's super-priority tender was designed to disrupt the contractual relationship between Bank of
21 America and Borrower by extinguishing the senior Deed of Trust.

22 64. The HOA's foreclosure allowed the HOA to recover the full value of its lien, rather
23 than just the amount of the lien with super-priority over Bank of America's Deed of Trust.

24 65. While the HOA Trustee's rejection of tender and subsequent foreclosure sale allowed
25 the HOA to recover the full value of its nominal lien, it has put in dispute whether Bank of
26 America's Deed of Trust was the senior lien on the Property when it was foreclosed.

27 66. Bank of America is entitled to a declaration establishing that its Deed of Trust
28 survived the foreclosure sale, or, in the alternative, monetary damages equal to the value secured by

1 its Deed of Trust that was purportedly extinguished as a direct result of the HOA and HOA Trustee's
2 intentional acts.

3 67. Bank of America was required to retain an attorney to prosecute this action, and is
4 therefore entitled to collect its reasonable attorney's fees and costs.

5 **FIFTH CAUSE OF ACTION**

6 **(Breach of NRS 116.1113 Against the HOA and HOA Trustee)**

7 68. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
8 fully herein and incorporates the same by reference.

9 69. NRS 116.1113 provides that every duty governed by NRS 116, Nevada's version of
10 the Uniform Common Interest Ownership Act, must be performed in good faith.

11 70. Prior to the foreclosure of the Property, Bank of America tendered the full super-
12 priority amount to the HOA Trustee. The HOA Trustee, acting on behalf of the HOA, rejected the
13 super-priority tender.

14 71. Rather than accepting this super-priority payment, the HOA and HOA Trustee
15 determined in bad faith to foreclose on the Property pursuant to NRS 116.

16 72. While the HOA Trustee's rejection of tender and subsequent bad-faith foreclosure
17 sale allowed the HOA to recover the full value of its nominal lien, it has put in dispute whether Bank
18 of America's Deed of Trust was the senior lien on the Property when it was foreclosed.

19 73. Bank of America is entitled to a declaration establishing that its Deed of Trust
20 survived the foreclosure sale, or, in the alternative, monetary damages equal to the value secured by
21 its Deed of Trust that was purportedly extinguished as a direct result of the HOA and HOA Trustee's
22 bad-faith foreclosure.

23 74. Bank of America was required to retain an attorney to prosecute this action, and is
24 therefore entitled to collect its reasonable attorney's fees and costs.

25 **SIXTH CAUSE OF ACTION**

26 **(Wrongful Foreclosure Against the HOA and HOA Trustee)**

27 75. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
28 fully herein and incorporates the same by reference.

1 76. Prior to the HOA's foreclosure sale, Bank of America tendered the full super-priority
2 amount of the HOA's lien to the HOA Trustee. The HOA Trustee, acting on behalf of the HOA,
3 rejected the super-priority tender.

4 77. Bank of America's tender extinguished the super-priority portion of the HOA's lien.
5 Consequently, the HOA's foreclosure of the super-priority portion of its lien was wrongful, as
6 Borrower was not in default for that portion of the lien.

7 78. The HOA and HOA Trustee's wrongful foreclosure has put in dispute whether Bank
8 of America's Deed of Trust was the senior lien on the Property when it was foreclosed.

9 79. Bank of America is entitled to a declaration establishing that its Deed of Trust
10 survived the foreclosure sale, or, in the alternative, monetary damages equal to the value secured by
11 its Deed of Trust that was purportedly extinguished as a direct result of the HOA and HOA Trustee's
12 wrongful foreclosure.

13 80. Bank of America was required to retain an attorney to prosecute this action, and is
14 therefore entitled to collect its reasonable attorney's fees and costs.

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1. A declaration establishing that the super-priority portion of the HOA's lien is eliminated as a result of Bank of America's tender of the full super-priority amount;
2. A declaration establishing that Bank of America's Deed of Trust was not extinguished by the HOA's foreclosure sale;
3. Judgment in Bank of America's favor against the HOA for the damages it caused Bank of America in an amount in excess of \$10,000.00;
4. Judgment in Bank of America's favor against the HOA Trustee for the damages it caused Bank of America in an amount in excess of \$10,000.00;
5. Reasonable attorney's fees as special damages and the costs of the suit; and
6. For such other and further relief the Court deems proper.

AKERMAN LLP

Email: william.habdas@akerman.com

*Attorneys for Bank of America, N.A., successor
by merger to BAC Home Loans Servicing, LP,
and Recontrust Company, N.A.*

EXHIBIT A

20070328-0002128

Assessor's Parcel Number:
17610213042
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.



Fee: \$38.00
N/C Fee: \$25.00

03/28/2007 10:05:23
T20070054312

Requestor:
CHICAGO TITLE

Debbie Conway CDO
Clark County Recorder Pgs: 25

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
STACY NORFLEET
Recording Requested By:
J. KEPHART

Countrywide Bank, FSB.



650 WHITE DRIVE, STE 280
LAS VEGAS
NV 89119

[Space Above This Line For Recording Data]

07023095

[Escrow/Closing #]

REDACTED

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DEED OF TRUST

MIN 1001337-0002063434-4

DEFINITIONS

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

NEVADA-Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 16

VMP -6A(NV) (0507) CHL (11/05)(d)

VMP Mortgage Solutions, Inc.

Form 3029 1/01



* 2 3 9 9 1 *



(A) "Security Instrument" means this document, which is dated MARCH 16, 2007, together with all Riders to this document.

(B) "Borrower" is

JOSE PEREZ JR, AN UNMARRIED MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

Countrywide Bank, FSB.

Lender is a

FED SVGS BANK

organized and existing under the laws of THE UNITED STATES
1199 North Fairfax St. Ste. 500

. Lender's address is

Alexandria, VA 22314

(D) "Trustee" is

ReconTrust Company, N.A

225 West Hillcrest Dr., MSN TO-02

Thousand Oaks 91360

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

(F) "Note" means the promissory note signed by Borrower and dated MARCH 16, 2007

The Note states that Borrower owes Lender

FOUR HUNDRED FIFTY SIX THOUSAND and 00/100

Dollars (U.S. \$ 456,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2037

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

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

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

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

DOC ID #: REDACTED

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

CLARK

:

[Name of Recording Jurisdiction]

LOT ONE HUNDRED THIRTY (130) OF NEVADA TRAILS NO. 22 PHASE 1,
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 122 OF PLATS, PAGE
85, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

which currently has the address of

7639 TURQUOISE STONE CT, LAS VEGAS

[Street/City]

Nevada 89113-3275 ("Property Address"):

[Zip Code]

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

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

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums

any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

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

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

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

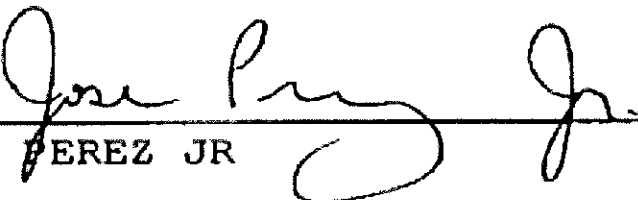
23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00 .

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.


_____(Seal)
JOSE PEREZ JR -Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on March 21, 2007 by
Jose Perez Jr.

Danielle Happeny

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065



DOC ID #: REDACTED

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this SIXTEENTH day of MARCH, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Countrywide Bank, FSB.

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

7639 TURQUOISE STONE CT
LAS VEGAS, NV 89113-3275

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY

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

[Name of Planned Unit Development]

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

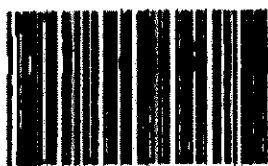
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CHL (12/05)(d)

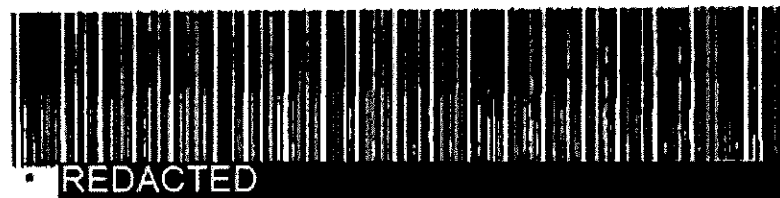
Page 1 of 3

VMP Mortgage Solutions, Inc.

Form 3150 1/01



* 2 3 9 9 1 *



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

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

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

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

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

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

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

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

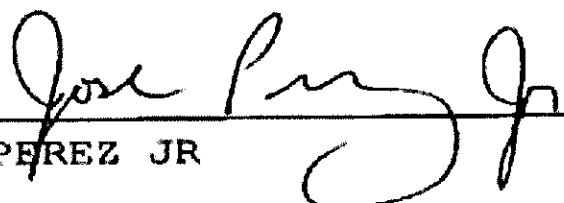
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby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

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

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

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



JOSE PEREZ JR (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

ADJUSTABLE RATE RIDER
(PayOption MTA Twelve Month Average Index - Payment Caps)

07023095
[Escrow/Closing #]

REDACTED

[Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this SIXTEENTH day of MARCH, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Countrywide Bank, FSB.

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

7639 TURQUOISE STONE CT
LAS VEGAS, NV 89113-3275
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

• PayOption MTA ARM Rider
1E310-XX (09/05)(d)

Page 1 of 6



2. INTEREST**(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 8.500 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 3.000 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of the Note is the rate I will pay both before and after any default described in Section 7(B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of MAY, 2007, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & ONE-HALF percentage point(s) (3.500 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS**(A) Time and Place of Payments**

I will make a payment every month.

DOC ID #: REDACTED

I will make my monthly payments on the FIRST day of each month beginning on May, 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on APRIL 01, 2037, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,922.51, unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of MAY, 2008, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This 7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my Minimum Payment would cause me to exceed that limit, I will instead pay a new Minimum Payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the tenth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, the Note Holder may provide me with up to three (3) additional payment options that are **greater** than the Minimum Payment, which are called "Payment Options." The Payment Options are calculated using the new interest rate in accordance with Section 2(D). I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

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(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

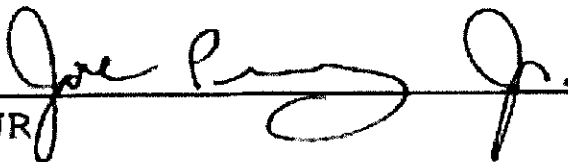
If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

DOC ID #: REDACTED

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



JOSE PEREZ JR -Borrower

-Borrower

-Borrower

-Borrower

EXHIBIT B

When recorded, mail to:
BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING, LP
400 National Way, Mail Stop SV-46
Simi Valley, CA 93065

File Number: 10-93322
Loan Number: REDACTED
APN: 176-10-213-042

Inst #: 201012020000210
Fees: \$14.00
N/C Fee: \$0.00
12/02/2010 08:01:24 AM
Receipt #: 597687
Requestor:
MILES, BAUER, BERGSTROM & W
Recorded By: ARO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF DEED OF TRUST

KNOW ALL MEN BY THESE PRESENTS That MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS, INC.) as Beneficiary under that certain DEED OF TRUST executed by

JOSE PEREZ JR, AN UNMARRIED MAN, As Trustor

To RECONTRUST COMPANY, N.A.

On the 28th day of March, 2007 under Filing No. 20070054312 of the Records of Clark County, State of Nevada, given to secure the payment of a promissory note for the sum of Four Hundred Fifty-Six Thousand and 0/100 Dollars (\$456,000.00) and interest, has endorsed said Note and does hereby ASSIGN AND TRANSFER to

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN TRUST 2007-OA8 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-OA8

all right, title and interest in said Note and all rights accrued under said Deed of Trust and all indebtedness secured thereby. The said Deed of Trust covers real property situated in said County and State described as follows:

"LOT ONE HUNDRED THIRTY (130) OF NEVADA TRAILS NO. 22 PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 122 OF PLATS, PAGE 85, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA"

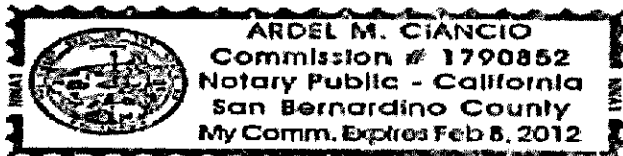
IN WITNESS WHEREOF said Assignor has caused this instrument to be signed and attested by its corporate seal on **NOV 19 2010**

MERS INC. AS NOMINEE FOR ORIGINAL LENDER
COUNTRYWIDE BANK, FSB

By: *[Signature]* **Michelle Reinhard**
- AGENT **Certifying Officer**

State of *California*
County of *Los Angeles*

On **NOV 19 2010** before me, **Ardel M. Ciancio** personally appeared **Michelle Reinhard**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person(s) or the entity upon behalf of which is the person(s) acted, executed the instrument. I Certify under PENALTY OR PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal

[Signature] (Seal)

EXHIBIT C

FIDELITY NATIONAL
RECORDING REQUESTED BY:
RECONTRUST COMPANY, N.A.
AND WHEN RECORDED MAIL DOCUMENT TO:
BAC Home Loans Servicing, LP
400 National way SIMI VALLEY, CA 93065

Inst #: 201104140003342
Fees: \$14.00
N/C Fee: \$0.00
04/14/2011 01:42:46 PM
Receipt #: 740795
Requestor:
LPS DEFAULT TITLE AND CLOSING
Recorded By: AEA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

TS No. 09-0109511
TITLE ORDER#: 090542250
APN 176-10-213-042

CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 03/16/2007,
EXECUTED BY: JOSE PEREZ JR, AN UNMARRIED MAN, TRUSTOR; TO RECONTRUST
COMPANY, N.A, TRUSTEE AND RECORDED AS INSTRUMENT NO. 0002128 ON 03/28/2007, IN
BOOK 20070328, OF OFFICIAL RECORDS IN THE COUNTY RECORDER'S OFFICE OF CLARK
COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE
MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS
ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: April 12, 2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC.

State of: TEXAS

County of: TARRANT

BY: A 2 mar 4 / 12 / 2011
Alicia Turner, Assistant Secretary

Alicia Turner

APR 12 2011

On APR 12 2011 before me Elsie E. Kroussakis, personally appeared
Asst. Sec. know to me (or proved to me on the oath of ED DL or through
ED DL) to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.
Witness my hand and official seal.

Elsie E. Kroussakis
Notary Public's Signature

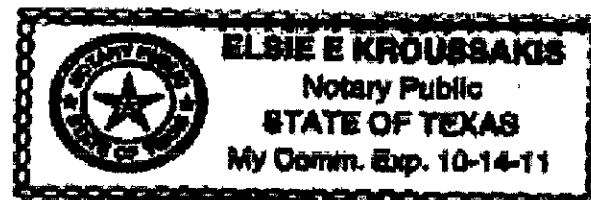


EXHIBIT D

5-1

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

Inst #: 201109190002647
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$772.65 Ex: #
09/19/2011 04:05:58 PM
Receipt #: 917906
Requestor:
SHUMWAY VAN & HANSEN CHTD
Recorded By: SOL Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN# 176-10-213-042
11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

TITLE OF DOCUMENT (DO NOT Abbreviate)
TRUSTEE'S DEED UPON SALE NEVADA

Title of the Document on cover page must be **EXACTLY** as it appears on the first page of the document to be recorded.

Recording requested by:
SHUMWAY VAN & HANSEN, CHTD.

Return to:
Name EZ Properties, LLC
Address 131 Cliff Valley Drive
City/State/Zip Las Vegas, NV 89148

This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of \$1.00 will apply.
To print this document properly—do not use page scaling.
P:\Recorder\Forms 12_2010

RECORDING REQUESTED BY:
RECONTRUST COMPANY
AND WHEN RECORDED MAIL TO:
EZ PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COM
8985 S EASTERN AVE STE100

LAS VEGAS, NV 89123

Forward Tax Statements to Address listed above

TS No. 09-0109511

Title Order No. 090542250

TRUSTEE'S DEED UPON SALE NEVADA

APN# 176-10-213-042

The amount of the unpaid debt was \$ 567,553.28

The amount paid by the Grantee was \$ 151,300.00

The property is in the city of LAS VEGAS, County of CLARK

The documentary transfer tax is \$ 772.65. The Grantee herein was not the beneficiary.

RECONTRUST COMPANY, N.A., as the duly appointed Trustee, under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without covenant or warranty to: EZ PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY herein called Grantee, the following described real property situated in CLARK County, Nevada:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust executed by JOSE PEREZ JR, AN UNMARRIED MAN, as Trustor, recorded on 03/28/2007, Instrument Number 0002128 (or Book 20070328, Page) Official Records in the Office of the County Recorder of CLARK County. All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, and the mailing, posting, and publication of the Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its power under said Deed of Trust sold said real property at public auction on 08/29/2011. Grantee, being highest bidder at said sale became the purchaser of said property for the amount bid, which amount was \$ 151,300.00.

DATED: September 07, 2011

RECONTRUST COMPANY, N.A., Successor Trustee

State of: Texas

County of: Tarrant

BY: Stephanie Y. King 9-8-11
Stephanie Y. King AVP

On 9/8/11 before me R. Robinson, personally appeared STEPHANIE Y. KING AVP know to me (or proved to me on the oath of DL) or through DL to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed. Witness my hand and official seal.

[Signature]
Notary Public's Signature

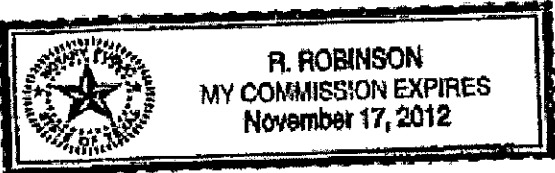


EXHIBIT A

REF. NO.: 09-0109511

**LOT ONE HUNDRED THIRTY (130) OF NEVADA TRAILS NO. 22 PHASE 1, AS SHOWN BY
MAP THEREOF ON FILE IN BOOK 122 OF PLATS, PAGE 85, IN THE OFFICE OF THE
COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a. 176-10-213-042
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 151,300.00

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

(_____)

c. Transfer Tax Value:

\$ ~~772.65~~ 151,300

d. Real Property Transfer Tax Due

\$ 772.65

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature  Capacity GRANTOR

Signature  Capacity GRANTEE

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: RECONTRUST, N.A.
Address: 400 NATIONAL WAY
City: SIMI VALLEY
State: CALIFORNIA Zip: 93065

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: EZ PROPERTIES LLC
Address: 8985 S EASTERN AVE STE100
City: LAS VEGAS
State: NEVADA Zip: 89123

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

Print Name: SALESMAN VON & HANSEN Escrow #: _____
Address: 8985 S. EASTERN AVE 100
City: LV State: NV Zip: 89123

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT E

Inst #: 201004120001709

Fees: \$15.00

N/C Fee: \$0.00

04/12/2010 12:10:20 PM

Receipt #: 307691

Requestor:

CAMCO

Recorded By: MJM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:

Attn: Kelly Mitchell

Absolute Collection Services, LLC

PO Box 12117

Las Vegas, NV 89112

(702) 531-3394 phone

APN # 176-10-213-042

Notice of Delinquent Assessment Lien

This **NOTICE OF DELINQUENT ASSESSMENT** is being given pursuant to N.R.S. 117.70 et seq. or N.R.S. 116.3115 et. Seq. and N.R.S. 116.3116 through 116.31168 et. Seq. and the provisions of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the Homeowners Association as follows:

Association Claimant: NEVADA TRAILS II CA Declarations of CC&Rs recorded 6/8/04 Instrument No: 0002308, Book No.: 20040608, Page No:___ County of CLARK, and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is as follows: Legal Unit No.: 7639 Turquoise Stone Ct., Nevada Trails #22 Phase 1 Plat Book 122 Page 85 Lot 130

The reputed owner is: JOSE PEREZ, JR.

Common address: 7639 Turquoise Stone Ct., Las Vegas NV 89113

Owner's mailing address: 7777 S. Jones Blvd #1151, Las Vegas NV 89139

DELINQUENCY #A1263

Total Amount due as of 04/09/10	\$908.00
---------------------------------	----------

Additional monies shall accrue under this claim at the rate of the claimant's periodic assessments, plus permissible late charges, costs of collection and interest and other charges, if any, that shall accrue subsequent to the date of this notice.

The acting agency for enforcement on this lien is:

ABSOLUTE COLLECTION SERVICES, LLC
PO BOX 12117
LAS VEGAS NV 89112
(702) 531-3394

DATED: 04/10/10


RICHARD KAYE, Trustee Sales Officer

STATE OF NEVADA
COUNTY OF CLARK

On 4/10/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, RICHARD KAYE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), 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.


KELLY MITCHELL, Notary Public



EXHIBIT F

Inst #: 201007230000868

Fees: \$16.00

N/C Fee: \$0.00

07/23/2010 09:49:40 AM

Receipt #: 437120

Requestor:

CAMCO

Recorded By: CYV Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Return to:
Attn: Kelly Mitchell
Absolute Collections Services, LLC
PO Box 12117
Las Vegas, NV 89112
(702) 531-3394

APN # 176-10-213-042

TS NO: A1263

Title Order No:

**NOTICE OF DEFAULT AND ELECTION TO
SELL UNDER NOTICE OF DELINQUENT
ASSESSMENT**

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default may be recorded or mailed. The amount is **\$1917.00** as of **July 21, 2010** and will increase until your account becomes current. Upon your written request, **Nevada Trails II** will give you a written itemization of the entire amount you must pay. You and the Association may mutually agree in writing prior to the time the notice of sale is posted to, amount other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2). Following the expiration of the time period previously referred to, unless a separate written agreement between you and the Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by the Association.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, contact the following trustee who has been authorized by the Association to enforce its lien by sale: Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, 702-531-3394.

THIS NOTICE is given pursuant to NRS 117.070 et. Seq. or NRS 116.3115 et. Seq. and NRS 116.3116 through 116.31168 et. Seq., and pursuant to that certain Notice of

Delinquent Assessment Lien, recorded on 4/12/10 as Document no. 0001709 book 20100412 of Official Records in the office of the Recorder of Clark County, State of Nevada.

Owner: **Jose Perez Jr**
Property Address: **7639 Turquoise Stone Ct, Las Vegas, NV 89113**

Legal Description-shown on the Subdivision map recorded in Book No. 122 Page(s) 85 Inclusive, of Maps of the County of Clark, State of Nevada.

If you have any questions, you should contact a lawyer. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION

NOTICE IS HEREBY GIVEN THAT: Absolute Collection Services, LLC, is the duly appointed Trustee/Agent authorized by the Association, pursuant to the terms contained in that certain Declaration of Covenants, Conditions and Restrictions, Recorded on 6/8/04 as document number 0002308-20040608 of Official Records in the Office of the Recorder of Clark County, Nevada, and any and all amendments or annexations of record thereto, describing the land therein. That the beneficial Interest under said Notice of Delinquent Assessment is presently held by the Association. That a breach of, and default in, the obligation for which said Covenants, Conditions and Restrictions as security has occurred in that the payment(s) have not been made of:

Periodic assessments, less credits and offsets, plus any late charges, interest, fees, charges, collection costs, trustee's fees, and attorney fees, if any.

That by reason thereof, the present Association under such Covenants, Conditions and Restrictions, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Covenants, Conditions and Restrictions and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the herein described property, lien by said Association, to be sold to satisfy the obligations secured thereby.

PLEASE NOTE THAT WE ARE A DEBT COLLECTOR.

Date: 7/21/10

Absolute Collection Services, LLC as Trustee

[Signature]
Richard Kaye, Trustee Sale Officer

STATE OF NEVADA
COUNTY OF CLARK

On 7/22/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), 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.

[Signature]
Kelly Mitchell, Notary Public



EXHIBIT G

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
GINA M. CORENA
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
KRISTA J. NIELSON
MARK S. BRAUN
Also Admitted in Iowa & Missouri
HADI R. SEYED-ALI *
ROSEMARY NGUYEN *
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
KRISTIN S. WEBB *
BRIAN H. TRAN *
ANNA A. GHAJAR *



* CALIFORNIA OFFICE
1231 E DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

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

August 8, 2016

Nevada Trails II
Absolute Collections Services, LLC
PO Box 12117
Las Vegas, NV 89112

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 7639 Turquoise Stone Court, Las Vegas, NV 89113*
MBBW File No. REDACTED

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for BAC Home Loans Servicing, LP afka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to these issues. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

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

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

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...
- The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 21, 2010. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BAC.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

EXHIBIT H



Absolute Collection Services, LLC

PO BOX 12117, Las Vegas, NV 89112
www.absolute-collection.com

Phone 702.531.3394
Fax 702.531.3396

CORRESPONDENCE RECEIPT

September 21, 2010

Rock Jung
Miles, Bauer, Bergstrom & Winters LLP
2200 Paseo Verde Pkwy, Ste 250
Henderson NV 89052
FAX 702.531.3396

RE: Nevada Trails II CA: 7639 Turquoise Stone Ct.: MBBW File No. **REDACTED**

Dear Mr. Jung:

I am in receipt of your most recent correspondence regarding a Statement of Account for the above-mentioned property. Please note that in conversations past, you had stated your clients position of paying for 9 months of assessments and no late fees, collection costs, etc., all occurring before foreclosure by your client.

I am making you aware that it is our view that without the action of foreclosure, a 9 month Statement of Account is not valid. At this time, I respectfully request that you submit the Trustees Deed Upon Sale showing your client's possession of the property and the date that it occurred. At that time, we will provide a 9 month super priority lien Statement of Account.

As discussed, any Statement of Account from us will show the entire amount owed. We intend to proceed on the above-mentioned account up to and including foreclosure. All such notifications have been and will be sent to all interested parties. We recognize your client's position as the first mortgage company as the senior lien holder. Should you provide us with a recorded Notice of Default or Notice of Sale, we will hold our action so your client may proceed.

Per our previous conversation, a Statement of Account costs \$25 and is not good for a sale/transfer of the property. If, after reviewing the information above, you would still like a Statement of Account, please email me at customerservice@absolute-collection.com or fax the above number. If you would like an actual payoff demand that is good for the sale/transfer of a property, please visit our website at www.absolute-collection.com and go to Order Documents. The upfront fee for the demand is \$150 and we take all major credit cards or you may send the funds to the above address and provide an email/fax so we may get the demand to you.

If you have further questions, please feel free to contact us.

Sincerely,

Kelly Mitchell, Collection Manager
Absolute Collection Services, LLC

PLEASE NOTE WE ARE A DEBT COLLECTOR

EXHIBIT I

Return to:
Attn: Kelly Mitchell
Absolute Collections Services, LLC
PO Box 12117
Las Vegas, NV 89112
(702) 531-3394

APN # 176-10-213-042
TS NO: A1263
Title Order No: 45010-10-26456G1-01
HOA: Nevada Trails II CA

Inst #: 201010280002540
Fees: \$15.00
N/C Fee: \$0.00
10/28/2010 12:26:14 PM
Receipt #: 558529
Requestor:
CAMCO
Recorded By: MJM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ABSOLUTE COLLECTION SERVICES, LLC AT 702-531-3394. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT 877-829-9907 OR 702-486-4480 IMMEDIATELY.

You are in default under a Notice of Delinquent Assessment LIEN, dated APRIL 12, 2010. Unless you take action to protect your property, it may be sold at public sale. If you need an explanation of the nature of the proceedings against you, you should contact a lawyer.

NOTICE IS HEREBY GIVEN THAT: On DECEMBER 7, 2010 at 4:00 PM, at the front entrance to Absolute Collection Services, LLC, 1820 E Sahara Ave #111, Las Vegas NV 89104, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on JUNE 8, 2004 as instrument number 0002308 Book 20040608 of official records of Clark County, as the duly appointed agent and pursuant to Notice of Delinquent Assessment LIEN, recorded on 4/12/10 as Document No. 0001709 in Book 20100412 of Official Records in the Office of the Recorder of Clark County, Nevada, **WILL SALE AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH**, (payable at time of sale in lawful money of the United States) all right, title and interest in the following commonly known property as:

Address: 7639 TURQUOISE STONE CT.
City, State, Zip: LAS VEGAS NV 89113

The owner(s) of said property as of the date of the recording of said lien is purported to be:

JOSE PEREZ, JR

The undersigned agent disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum due under said Notice of Delinquent Assessment Lien, with interest thereon, as provided in said notice, advances, if any, estimated fees, charges, and expenses of the Trustee, to-wit:

\$2,989.00 Estimated Accrued interest and additional advances, if any, will increase this figure prior to sale.

The Notice of Default and Election to Sell the described property was recorded on JULY 23, 2010 as instrument 0000868 Book 20100723 in the official records of Clark County.

PLEASE NOTE THAT WE ARE A DEBT COLLECTOR

Date: 10/28/10

Absolute Collection Service, LLC
1820 E Sahara Ave #111
Las Vegas NV 89104
702-531-3394


Richard Kaye, Trustee's Sale Officer

STATE OF NEVADA
COUNTY OF CLARK

On 10/28/10 before me, the undersigned, a Notary Public in and for said county, personally appeared, Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), 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.


Kelly Mitchell, Notary Public



EXHIBIT J

Inst #: 201104130000979
Fees: \$16.00 N/C Fee: \$0.00
RPTT: \$28.05 Ex: #
04/13/2011 09:15:29 AM
Receipt #: 738709
Requestor:
CAMCO
Recorded By: BJB Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 176-10-213-042

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

Title No. A1263
Account NO. REDACTED
TS No. 45010-10-26456G1-01

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TRUSTEE'S DEED UPON SALE

The undersigned declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary
- 2) The amount of the unpaid debt together with costs was \$5,200.01
- 3) The amount paid by the grantee at the trustee sale was \$5,200.01
- 4) The documentary transfer tax is \$ 28.05
- 5) City Judicial District of LAS VEGAS

And **Absolute Collection Services, LLC.**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to: **Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910**

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

7639 Turquoise Stone Ct., Las Vegas NV 89113

Legal Description-shown on the Subdivision map recorded in Book No. 122 Page(s) 85 Inclusive, of Maps of the Country of Clark, State of Nevada; See Exhibit A Attached

AGENT STATES THAT:

This conveyance is made pursuant to the powers granted to NEVADA TRAILS II CA and conferred upon appointed trustee by the provisions of the Nevada Revised Statutes, the NEVADA TRAILS II CA governing documents (CC&R's) recorded as instrument number 0002308 Book 20040608 on JUNE 8, 2004 and that certain Notice of Delinquent Assessment Lien recorded on APRIL 12, 2010 instrument number

0001709 Book 20100412 Official Records of CLARK County; and pursuant to NRS 117.070 et Seq. or NRS 116.3115 et Seq and NRS 116.3116 through 116.31168 et Seq. The name of the owner(s) of the property (trustor) was: JOSE PEREZ, JR.

Default occurred as set forth in a Notice of Default and Election to Sell, recorded on JULY 23, 2010 as Instrument 0000868 Book 20100723 which was recorded in the office of the recorder of said county. Absolute Collection Services, LLC. Has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of NEVADA TRAILS II CA at public auction on April 12, 2011 at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$5,200.01 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: April 13, 2011


By Richard Kaye on behalf of Absolute Collection Services

STATE OF NEVADA)
COUNTY OF CLARK)

On 4/13/11 before me, Kelly Mitchell, personally appeared Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.



Kelly Mitchell, Notary Public



EXHIBIT "A"

**LOT ONE HUNDRED THIRTY (130) OF NEVADA TRAILS NO. 22 PHASE 1, AS SHOWN BY MAP
THEREOF ON FILE IN BOOK 122 OF PLATS, PAGE 85 , IN THE OFFICE OF THE COUNTY RECORDER
OF CLARK COUNTY, NEVADA.**

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a. 176-10-213-042
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

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

\$ 5200.01
()
\$ 5200.01
\$ 28.05

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: [Signature]

Capacity: Member, Grantor

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Absolute Collection Services
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION
(REQUIRED)

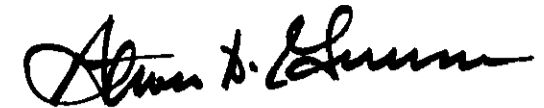
Print Name: Las Vegas Development Group LLC
Address: 397 BRD Ave Suite
City: CITRUS AVE
State: CA Zip: 91910

COMPANY REQUESTING RECORDING

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

Escrow #: N/A - Foreclosure
State: NV Zip: 89112

As a public record this form may be recorded/microfilmed



CLERK OF THE COURT

JMSJ
LAW OFFICES OF KEVIN R. HANSEN
KEVIN R. HANSEN, ESQ.
Nevada Bar No. 6336
AMY M. WILSON, ESQ.
Nevada Bar No. 13421
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Las Vegas, Nevada 89146
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kevin@kevinrhansen.com
amy@kevinrhansen.com
Attorneys for Defendants
EZ Properties, LLC & K&L Baxter
Family Limited Partnership

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP,
LLC, a Nevada limited liability company,

Plaintiff,

vs.

JAMES R. BLAHA, an individual; BANK OF
AMERICA, NA, a National Banking
Association Successor by merger to BAC
HOME LOANS SERVICING, LP;
RECONSTRUCT COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC, an
unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

Defendants

Case No.: A-15-715532-C
Dept. No.: XXX

DEFENDANTS EZ PROPERTIES, LLC. AND K&L BAXTER FAMILY LIMITED
PARTNERSHIP JOINDER TO DEFENDANTS JAMES R. BLAHA AND NOBLE
HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants, EZ PROPERTIES, LLC and K&L BAXTER FAMILY
LIMITED PARTNERSHIP by and through their attorneys KEVIN R. HANSEN, ESQ. and AMY

LAW OFFICES OF KEVIN R. HANSEN

5440 W. Sahara Ave., Suite 206

Las Vegas, Nevada 89146

Telephone: (702) 478-7777 Facsimile: (702) 728-2484

1 M. WILSON, ESQ. of the LAW OFFICES OF KEVIN R. HANSEN to file this Joinder to
2 Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC'S Motion for Summary
3 Judgement.

4 Said Joinder expressly adopts and incorporates the Memorandum of Points and Authorities
5 set forth by Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC and Defendants
6 EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP file this
7 Joinder upon such grounds.

8 Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED
9 PARTNERSHIP join in each argument of the moving Defendants as said Defendants are in the
10 same chain of title and when moving Defendants are dismissed, EZ PROPERTIES, LLC and K&L
11 BAXTER FAMILY LIMITED PARTNERSHIP should likewise be dismissed as well.

12 WHEREFORE, Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY
13 LIMITED PARTNERSHIP respectfully request that this Honorable Court grant this Motion to
14 Join Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC's Motion for Summary
15 Judgement.

16 Dated this 16 day of August, 2016.

17
18
19 **LAW OFFICES OF KEVIN R. HANSEN**

20
21
22 
23 KEVIN R. HANSEN, ESQ.

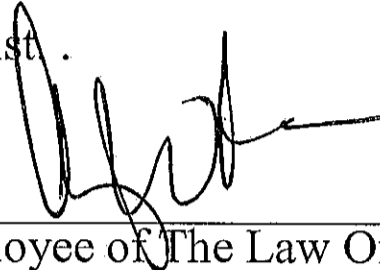
24 Nevada Bar No. 6336

25 5440 W. Sahara Ave., Suite 206

26 Las Vegas, Nevada 89146
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Law Offices of Kevin R. Hansen and that on the 16th day of August, 2016 I caused to be served a true and correct copy of the foregoing **DEFENDANTS' EZ PROPERTIES, LLC, AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO BLAHA DEFENDANTS MOTION FOR SUMMARY JUDGMENT** via electronic filing and/or service with the Eighth Judicial District Court to those parties listed on the Court's Master Service List.



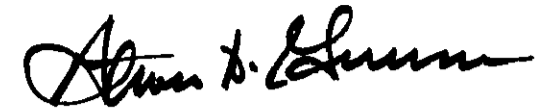
An employee of The Law Offices of Kevin R. Hansen

LAW OFFICES OF KEVIN R. HANSEN

5440 W. Sahara Ave., Suite 206

Las Vegas, Nevada 89146

Telephone: (702) 478-7777 Facsimile: (702) 728-2484



CLERK OF THE COURT

JMOT
LAW OFFICES OF KEVIN R. HANSEN
KEVIN R. HANSEN, ESQ.
Nevada Bar No. 6336
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kevin@kevinrhansen.com
amy@kevinrhansen.com
Attorneys for Defendants
EZ Properties, LLC & K&L Baxter
Family Limited Partnership

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP,
LLC, a Nevada limited liability company,

Plaintiff,

vs.

JAMES R. BLAHA, an individual; BANK OF
AMERICA, NA, a National Banking
Association Successor by merger to BAC
HOME LOANS SERVICING, LP;
RECONSTRUCT COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC, an
unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

Defendants

Case No.: A-15-715532-C
Dept. No.: XXX

**DEFENDANTS EZ PROPERTIES, LLC. AND K&L BAXTER FAMILY LIMITED
PARTNERSHIP JOINDER TO DEFENDANT BANK OF AMERICA, N.A'S MOTION
TO ADD AFFIRMATIVE DEFENSES AND TO ADD PARTIES AND ASSERT
CLAIMS**

COMES NOW the Defendants, EZ PROPERTIES, LLC and K&L BAXTER FAMILY
LIMITED PARTNERSHIP by and through their attorneys KEVIN R. HANSEN, ESQ. and AMY

LAW OFFICES OF KEVIN R. HANSEN

5440 W. Sahara Ave., Suite 206

Las Vegas, Nevada 89146

Telephone: (702) 478-7777 Facsimile: (702) 728-2484

1 M. WILSON, ESQ. of the LAW OFFICES OF KEVIN R. HANSEN to file this Joinder to
2 Defendant BANK OF AMERICA N.A.'s Motion to Add Affirmative Defenses and to Add Parties
3 and Assert Claims.

4 Said Joinder expressly adopts and incorporates the Memorandum of Points and Authorities
5 set forth by Defendant BANK OF AMERICA N.A., and Defendants EZ PROPERTIES, LLC and
6 K&L BAXTER FAMILY LIMITED PARTNERSHIP file this Joinder upon such grounds.

7 Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED
8 PARTNERSHIP join in each argument of the moving Defendant as said Defendants are in the
9 same chain of title and when moving Defendant's Motion is granted, the Motion should be likewise
10 granted as to EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP
11 as well.

12 WHEREFORE, Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY
13 LIMITED PARTNERSHIP respectfully request that this Honorable Court grant this Motion to
14 Join Defendant BANK OF AMERICA N.A.'S Motion To Add Affirmative Defenses and to Add
15 Parties and Assert Claims.
16

17 Dated this 16 day of August, 2016.
18

19 **LAW OFFICES OF KEVIN R. HANSEN**

20
21 

22 KEVIN R. HANSEN, ESQ.

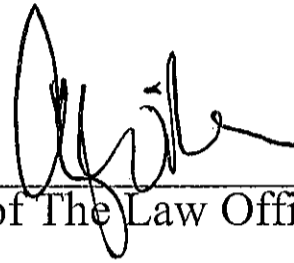
23 Nevada Bar No. 6336

24 5440 W. Sahara Ave., Suite 206

25 Las Vegas, Nevada 89146
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Law Offices of Kevin R. Hansen and that on the 16th day of August, 2016 I caused to be served a true and correct copy of the foregoing **DEFENDANTS' EZ PROPERTIES, LLC, AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO BANK OF AMERICA N.A.'s MOTION TO ADD AFFIRMATIVE DEFENSES AND TO ADD PARTIES AND ASSERT CLAIMS** via electronic filing and/or service with the Eighth Judicial District Court to those parties listed on the Court's Master Service List. .



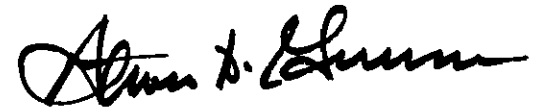
An employee of The Law Offices of Kevin R. Hansen

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CLERK OF THE COURT

JMSJ

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
WILLIAM S. HABDAS, ESQ.
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1160 Town Center Drive, Suite 330
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Email: william.habdas@akerman.com

*Attorneys for Bank of America, N.A., successor
by merger to BAC Home Loans Servicing, LP,
and Recontrust Company, N.A.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

v.

JAMES R. BLAHA, an individual; BANK OF
AMERICA, N.A., a National Banking
Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
RECONTRUST COMPANY, N.A., a Texas
corporation; JOSE PEREZ, JR., an individual;
EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC., an unknown
corporate entity; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

Defendants.

Case No.: A-15-715532-C

Dept. No.: VIII

**DEFENDANT BANK OF AMERICA,
N.A.'S JOINDER TO DEFENDANTS
JAMES R. BLAHA AND NOBLE HOME
LOANS, INC.'S MOTION FOR
SUMMARY JUDGMENT**

Defendant Bank of America, N.A. (**Bank of America**), by and through its attorneys of the
law firm of AKERMAN LLP, hereby file this Joinder to the Motion for Summary Judgment (**Motion**)
filed by James R. Blaha and Noble Home Loans, Inc. (collectively, **Noble Homes**).

In its Motion, Noble Homes argues that Plaintiff Las Vegas Development Group, LLC's
(**LVDG**) claims seeking to set aside Bank of America's foreclosure of its Deed of Trust fail for

1 several reasons, including that the claims are time-barred, barred by the doctrine of laches, and
2 barred by the doctrine of equitable estoppel. Each of LVDG's claims against Bank of America are
3 dependent on the purported invalidity of Bank of America's Deed of Trust foreclosure sale. As
4 such, Noble Homes' argument in its Motion that the Deed of Trust sale is valid applies with equal
5 force to LVDG's claims against Bank of America. If the Deed of Trust foreclosure sale is held to be
6 valid, all LVDG's claims against Bank of America fail as a matter of law. Accordingly, Bank of
7 America joins the Motion for Summary Judgment filed by James R. Blaha and Noble Home Loans,
8 Inc.

9 DATED: August 25, 2016.

10
11 **AKERMAN LLP**

12 /s/ William S. Habdas

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

13 WILLIAM S. HABDAS, ESQ.

Nevada Bar No. 13138

14 AKERMAN LLP

1160 Town Center Drive, Suite 330

15 Las Vegas, Nevada 89144

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16 Facsimile: (702) 380-8572

Email: darren.brenner@akerman.com

17 Email: william.habdas@akerman.com

18 *Attorneys for Bank of America, N.A., successor*
19 *by merger to BAC Home Loans Servicing, LP,*
20 *and Recontrust Company, N.A.*
21
22
23
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25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2016 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing, **DEFENDANT BANK OF AMERICA, N.A.’S JOINDER TO DEFENDANTS JAMES R. BLAHA AND NOBLE HOME LOANS, INC.’S MOTION FOR SUMMARY JUDGMENT**, postage prepaid and addressed to:

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
croteaulaw@croteaulaw.com

Attorneys for Plaintiff Las Vegas Development Group LLC

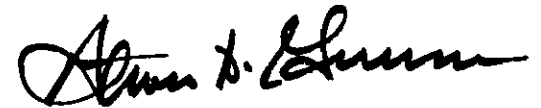
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bwood@klnevada.com
sowens@klnevada.com

*Attorneys for James R. Blaha and Noble Home Loans, Inc.,
formerly known as FCH Funding, Inc.*

Kevin R. Hansen, Esq.
THE LAW OFFICES OF KEVIN R HANSEN
kevin@kevinrhansen.com
gabriela@kevinrhansen.com

*Attorneys for EZ Properties LLC, and
K&L Baxter Family Limited Partnership*

/s/ Jill Sallade
An employee of AKERMAN LLP



CLERK OF THE COURT

1 **OMSJ**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 ***

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)

13 Plaintiff,)

Case No. A-15-715532-C
Dept. No. XXX

14 vs.)

15 JAMES R. BLAHA, an individual; BANK OF)
16 AMERICA, NA, a National Banking)
17 Association, as successor by merger to BAC)
18 HOME LOANS SERVICING, LP;)
19 RECONTRUST COMPANY NA, a Texas)
20 corporation; JOSE PEREZ, JR. an individual;)
21 EZ PROPERTIES, LLC, a Nevada limited)
22 liability company; K&L BAXTER FAMILY)
23 LIMITED PARTNERSHIP, a Nevada limited)
24 partnership; FCH FUNDING, INC, an unknown)
25 corporate entity; DOE individuals I through)
26 XX; and ROE CORPORATIONS I through)
27 XX,)

Defendants.)

Date of Hearing: September 13, 2016
Time of Hearing: 9:00 a.m.

23 **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

24 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
25 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
26 Opposition to Defendants, James R. Blaha and Noble Home Loans, Inc.'s, Motion for Summary
27 Judgment. This Opposition is made and based upon the attached memorandum of points and
28

1 authorities, all pleadings, papers and documents on file herein, and any oral argument that the
2 Court may entertain at the hearing of this matter.

3 DATED this 26th day of August, 2016.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
6 /s/ Timothy E. Rhoda
7 ROGER P. CROTEAU, ESQ.
8 Nevada Bar No. 4958
9 TIMOTHY E. RHODA, ESQ.
10 Nevada Bar No. 7878
11 9120 West Post Road, Suite 100
12 Las Vegas, Nevada 89148
13 (702) 254-7775
14 *Attorney for Plaintiff*
15 **LAS VEGAS DEVELOPMENT GROUP, LLC**

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **INTRODUCTION**

18 For the past several years, the purchasers of real properties at homeowners association
19 lien foreclosure sales have been embroiled in litigation with purportedly secured deed of trust
20 holders such as Bank of America, N.A. (“BANA”) regarding the force and effect of NRS
21 §116.3116, which provides an HOA with a superpriority lien on an individual homeowner's
22 property for up to nine months of unpaid HOA dues. In a nutshell, the purchasers of these
23 properties have always asserted that HOA lien foreclosure sales served to extinguish all junior
24 liens, including a first position deed of trust, pursuant to black letter lien law. Deed of trust
25 holders such as BANA incorrectly asserted that their security interests survived the HOA lien
26 foreclosure sales.

27 Until relatively recently, the conflicting positions of the purchasers and the purported
28 secured mortgage holders were the subject of significant dispute. However, on September 18,
2014, the Nevada Supreme Court, in the matter of *SFR Investments Pool I, LLC v. U.S. Bank,*
N.A., 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014),
definitively determined that the foreclosure of a HOA’s superpriority lien does indeed extinguish

1 a first deed of trust, stating as follows:

2 We must decide whether this is a true priority lien such that its foreclosure
3 extinguishes a first deed of trust on the property and, if so, whether it can be
4 foreclosed nonjudicially. We answer both questions in the affirmative and
5 therefore reverse.

6 Pursuant to its decision in *SFR Investments*, the Nevada Supreme Court resolved the
7 divergent opinions that previously existed in the state and federal courts of the State of Nevada
8 regarding the force, effect and interpretation of NRS §116.3116 *et seq.* In doing so, the Nevada
9 Supreme Court clarified that the statute provides a homeowners association with a true
10 superpriority lien over real property that can and does extinguish a first deed of trust when non-
11 judicially foreclosed. *Id.* The Nevada Supreme Court also recognized that a foreclosure deed
12 “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is
13 conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all
14 other persons.’” *See id.* at *3 (citing NRS 116.3116.31166(2)). Moreover, under Nevada law, the
15 HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS
16 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed”; “that
17 a trustee or other person, whose duty it was to convey real property to a particular person, has
18 actually conveyed to that person, when such presumption is necessary to perfect the title of such
19 person or a successor in interest”; “that private transactions have been fair and regular”; and “that
20 the ordinary course of business has been followed.”).

21 At issue herein is real property commonly known as 7639 Turquoise Stone Court, Las
22 Vegas, Nevada 89113, Assessor Parcel No. 176-10-213-042 (*the “Property”*). BANA formerly
23 held a deed of trust recorded against the Property in the Official Records of the Clark County
24 Recorder as Instrument No. 200703280002128 (*“First Deed of Trust”*). See Motion, Exhibit 1.
25 Plaintiff is the rightful owner of the Property, having purchased all right, title and interest in it at
26 an HOA Foreclosure Sale dated April 12, 2011. Pursuant to N.R.S. §116.3116 *et seq.* as
27 interpreted by the Nevada Supreme Court in the matter of *SFR Investments*, the HOA
28 Foreclosure Sale served to extinguish the then-existing First Deed of Trust pursuant to Nevada
law.

1 County, Nevada. *Id.*, ¶27. See also Motion, Exhibit 7. Upon information and belief, the Notice
2 of Trustee's Sale was served upon the Former Owner, as well as all interested parties holding a
3 security interest in the Property. *Id.*, ¶28. On or about April 12, 2011, HOA caused a foreclosure
4 sale ("*HOA Foreclosure Sale*") to be conducted pursuant to the powers conferred by the Nevada
5 Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164; the CC&Rs; the Notice of
6 Delinquent Assessment Lien; and the Notice of Default and Election to Sell. *Id.*, ¶29.

7 Plaintiff purchased the Property by successfully bidding at the HOA Foreclosure Sale in
8 accordance with N.R.S. 116.3116, *et seq.* *Id.*, ¶30. On or about April 13, 2011, a Trustee's Deed
9 Upon Sale ("*HOA Foreclosure Deed*") was recorded in the Official Records of the Clark County
10 Recorder as Instrument No. 201104130000979, vesting title to the Property in the Plaintiff. *Id.*,
11 ¶31. A copy of the HOA Foreclosure Deed is attached hereto and incorporated herein by
12 reference as Exhibit 1. The Court may take judicial notice of the recorded documents attached
13 hereto because they are public and "[c]apable of accurate and ready determination by resort to
14 sources whose accuracy cannot reasonably be questioned..." NRS 47.130 (2)(b); *see also Lee v.*
15 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("court may take judicial notice of matters
16 of public record."). The HOA Foreclosure Sale complied with all requirements of law, including
17 but not limited to, the recording and mailing of copies of the Notice of Delinquent Assessment
18 and Notice of Default, and the recording, posting and publication of the Notice of Sale.
19 *Complaint.*, ¶32. See also Exhibit 1. From that point forward, Plaintiff was the rightful owner of
20 the Property free and clear of any encumbrances.

21 On or about April 14, 2011, after the HOA Foreclosure Sale had taken place and after its
22 First Deed of Trust had been extinguished, BANA and/or Recontrust caused a Notice of Default
23 and Election to Sell to be recorded in the Official Records of the Clark County Recorder as
24 Instrument No. 201104140003343. *Complaint.*, ¶53. See also Motion, Exhibit 11. On or about
25 August 9, 2011, BANA and/or Recontrust caused a Notice of Trustee's Sale to be recorded in the
26 Official Records of the Clark County Recorder as Instrument No. 201108090003456. *Id.*, ¶54.
27 See also Motion, Exhibit 14. On or about August 29, 2011, Recontrust purported to conduct a
28 foreclosure sale ("*Bank Foreclosure Sale*") based upon the First Deed of Trust. *Id.*, ¶55.

1 EZ Properties purported to purchase the Property at the Bank Foreclosure Sale and on
2 September 19, 2011, a Trustee's Deed Upon Sale Nevada was recorded in the Official Records of
3 the Clark County Recorder as Instrument No.201109190002647, purportedly vesting title in its
4 name. *Id.*, ¶56. See also Motion, Exhibit 15.

5 On or about September 30, 2011, EZ Properties purported to transfer the Property to
6 Blaha by deed recorded in the Official Records of the Clark County Recorder as Instrument No.
7 201109300001615. *Id.*, ¶58. See also Motion, Exhibit 16. Upon information and belief, Blaha
8 purchased the Property from EZ Properties with the aid of a mortgage loan from FCH Funding,
9 Inc. ("*FCH Funding*"). *Id.*, ¶59. On or about December 30, 2011, FCH Funding recorded a
10 deed of trust against the Property in the Official Records of the Clark County Recorder as
11 Instrument No. 201112300003312 ("*FCH Funding Deed of Trust*"). *Id.*, ¶60. See also Motion,
12 Exhibit 17. Upon information and belief, FCH Funding, now known as Noble Home Loans, Inc.,
13 continues to hold the FCH Funding Deed of Trust, thereby claiming a security interest in the
14 Property.

15 LEGAL ARGUMENT

16 1. STATEMENT OF THE LAW

17 Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may
18 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;
19 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*
20 *Equipment Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under
21 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits,
22 if any, that are properly before the court demonstrate that no genuine issue of material fact exists,
23 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. Adv.
24 Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at
25 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court
26 must first determine, in the light most favorable to the non-moving party "whether issues of
27 material fact exist, thus precluding judgment by summary proceeding." *National Union Fire Ins.*
28

1 *Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

2 The Supreme Court has indicated that Summary Judgment is a drastic remedy and that
3 the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev. 507,
4 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).
5 “Actions for declaratory relief are governed by the same liberal pleading standards that are
6 applied in other civil actions.” See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846,
7 858 P.2d 1258, 1260-61 (1993).

8 For purposes of this Motion, the allegations of the Plaintiff’s Complaint and the evidence
9 must be viewed in the light most favorable to the Plaintiff. There is little, if any, dispute
10 regarding the facts at hand. For example, there is no doubt that the Plaintiff purchased the
11 Property at the HOA Foreclosure Sale. There is no doubt that the Bank Foreclosure Sale took
12 place after the HOA Foreclosure Sale. There is also no doubt that EZ Properties, Blaha, and
13 FCH Funding each possessed actual or constructive notice of the Plaintiff’s ownership interest;
14 the HOA Foreclosure proceedings; and the extinguishment of the First Deed of Trust prior to the
15 time that they each acquired their respective purported interests in the Property.

16 Pursuant to *SFR Investments*, the First Deed of Trust upon which BANA purported to
17 foreclose was extinguished at the time of the HOA Foreclosure Sale. Thus, BANA possessed no
18 power nor right to foreclose upon the Property and the Bank Foreclosure was completely void
19 and ineffective. For purposes of this Motion, the Plaintiff’s allegations related to the
20 extinguishment of the First Deed of Trust must be accepted as true. The instant Motion
21 demonstrates a fundamental lack of understanding of various aspects of real property law and
22 must be denied.

23 **2. THE FIRST DEED OF TRUST WAS EXTINGUISHED AS A MATTER OF LAW**
24 **AT THE TIME OF THE HOA FORECLOSURE SALE**

25 Until the Nevada Supreme Court’s decision in the matter of *SFR Investments*, a question
26 existed regarding whether or not the Property continued to secure the First Deed of Trust after the
27 HOA Foreclosure Sale. The Nevada Supreme Court settled this question, holding that the non-
28

1 judicial foreclosure of a homeowners association's super-priority lien extinguishes a first deed of
2 trust. Pursuant to *SFR Investments*, the Nevada Supreme Court has determined that the non-
3 judicial foreclosure of an HOA lien extinguishes a first deed of trust. Pursuant to N.R.S.
4 §116.31166(1), the recitals made in the HOA Foreclosure Deed are conclusive proof of the
5 matters recited, e.g., that the process complied with the applicable law for foreclosure of HOA
6 liens.

7 The recitals of the HOA Foreclosure Deed establish both the default by the Former
8 Owner of the Property and the HOA's compliance with each of the notice requirements of NRS
9 §116.31162 through 116.31168 for the HOA Foreclosure Sale. Specifically, the HOA
10 Foreclosure Deed states that "Absolute Collection Services, LLC. Has complied with all
11 requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of
12 Notice of Delinquent Assessment and Notice of Default and the posting and publication of the
13 Notice of Sale." See Exhibit 1. Thus, it is conclusively proven that the notices were, in fact,
14 mailed to the appropriate parties.

15 The conclusive presumption contained in NRS 116.31166 is consistent with the common
16 law presumption that "[a] nonjudicial foreclosure sale is presumed to have been conducted
17 regularly and fairly; one attacking the sale must overcome this common law presumption 'by
18 pleading and proving an improper procedure and the resulting prejudice.'" *Fontenot v. Wells*
19 *Fargo Bank*, 198 Cal. App. 4th 256, 272, 129 Cal. Rptr. 3d 467 (2011). Furthermore, "[t]he
20 conclusive presumption precludes an attack by the trustor on a trustee's sale to a bona fide
21 purchaser even though there may have been a failure to comply with some required procedure
22 which deprived the trustor of his right of reinstatement or redemption." *Moeller v. Lien*, 25 Cal.
23 App. 4th 822, 831, 30 Cal. Rptr. 777 (1994). The detailed and comprehensive statutory
24 requirements for a foreclosure sale are indicative of a public policy which favors a final and
25 conclusive foreclosure sale as to the purchaser. See Miller & Starr, California Real Property 3d
26 §10:210.

27 Furthermore, the HOA Foreclosure Sale and the resulting HOA Foreclosure Deed are
28

1 both presumed valid. N.R.S. 47.250(16)-(18) (stating that there are disputable presumptions
2 “that the law has been obeyed”; “that a trustee or other person, whose duty it was to convey real
3 property to a particular person, has actually conveyed to that person, when such presumption is
4 necessary to perfect the title of such person or a successor in interest”; “that private transactions
5 have been fair and regular”; and “that the ordinary course of business has been followed.”). A
6 presumption not only fixes the burden of going forward with evidence, but it also shifts the
7 burden of proof. *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995)
8 (citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) These
9 presumptions impose on the party against whom they are directed the burden of proving that the
10 nonexistence of the presumed fact is more probable than its existence. *Id.* (citing N.R.S.
11 47.180.).

12 Since the Nevada Supreme Court’s decision in the matter of *SFR Investments*, the Court
13 has determined that N.R.S. 116.31166 does not “eliminate the equitable authority of the courts to
14 consider quiet title actions when an HOA’s foreclosure deed contains conclusive recitals.”
15 *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5 (2016). Thus, it appears that
16 the Court has determined that the recitals of the HOA Foreclosure Deed are not necessarily
17 conclusive in the face of obviously contradicting information. Here, however, the Defendants’
18 Motion does not argue that the HOA Foreclosure Sale was deficient pursuant to its Motion.

19 The instant Motion seems to assert that the Defendants believe that defects existed in the
20 HOA Foreclosure Sale. See Motion, p. 4, fn. 2. Although the Defendants recite certain factual
21 allegations and attach certain exhibits that appear to be directed towards such arguments, they
22 expressly state that their Motion is limited to the issues related to the purported untimeliness of
23 the Plaintiff’s Complaint. As a result, the collateral issues will not be discussed herein. With
24 that said, it is worthy to note that the evidence attached to the Defendants’ Motion proves
25 without a shadow of a doubt that BANA possessed actual notice of the HOA Foreclosure
26 proceedings based upon its correspondence to the HOA dated September 16, 2010, which states
27 on its face that it was sent “in response to your Notice of Default with regard to the HOA
28

1 assessments purportedly owed on the above-referenced property.” See Motion, Exhibit 4. Thus,
2 it is readily apparent that BANA possessed actual notice of the HOA Foreclosure proceedings.
3 Despite this actual notice, no evidence has been presented that BANA ever satisfied any portion
4 of the HOA Lien prior to the HOA Foreclosure Sale.

5 **3. NRS 107.080(5)-(6) IS INAPPLICABLE WHERE BANA POSSESSED NO VALID**
6 **SECURITY INTEREST UPON WHICH TO FORECLOSE AND THE BANK**
7 **FORECLOSURE SALE WAS THUS VOID FROM THE OUTSET**

8 Defendants’ first argument is premised upon an assertion that Plaintiff’s claims are barred
9 by the then-existing 90-day time limitation of NRS 107.080(5)(b). This argument is misfounded.
10 By way of this action, the Plaintiff does not contest the Bank Foreclosure Sale itself but rather the
11 authority behind the Bank Foreclosure Sale. A wrongful foreclosure claim challenges the
12 authority behind the foreclosure, not the foreclosure act itself. *McKnight Family, LLP v. Adept*
13 *Mgmt. Servs.*, 310 P.3d 555, 559 (Nev. 2013)

14 It is clear that NRS 107.080(5) does not impact the Plaintiff’s ability to attack the validity
15 of the Bank Foreclosure Sale. In fact, NRS 107.080(5) does exactly the opposite. NRS
16 107.080(5) specifically provides that “[e]very sale made under the provisions of this section and
17 other sections of this chapter vests in the purchaser **the title of the grantor** and any successors in
18 interest without equity or right of redemption.” NRS 107.080(5) (Emphasis added). Thus, the
19 statute explicitly provides that a purchaser such as EZ Properties receives only that title that the
20 grantor possesses to give. In this case, BANA possessed no title to give at the time of the Bank
21 Foreclosure Sale because the First Deed of Trust was extinguished at the time of the HOA
22 Foreclosure Sale. There was no valid basis for the Bank’s Foreclosure Sale and BANA could
23 thus convey nothing. Under these circumstances, NRS 107.080(5) is not of assistance to the
24 Defendants. In fact, it conclusively proves that EZ Properties acquired no interest in the Property
25 at the time of the void Bank Foreclosure Sale. Like BANA, EZ Properties could convey nothing
26 to Blaha because its title was invalid. Likewise, NRS 107.080(6) is inapplicable to the facts at
27 hand.
28

1 NRS 107.080(6) provides as follows:

2 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of
3 subsection 4 to the grantor, to the person who holds the title of record on the date
4 the notice of default and election to sell is recorded, to each trustor or to any other
5 person entitled to such notice, the person who did not receive such proper notice
6 may commence an action pursuant to subsection 5 within 60 days after the date on
7 which the person received actual notice of the sale.

8 NRS 107.080(6) pertains to factual situations where a foreclosing entity fails to provide notice as
9 required by NRS 107.080(3) and 107.080(4). The Plaintiff has not made any allegations
10 regarding when or if it received notice of the Bank Foreclosure Sale. In any event, such notice or
11 lack thereof is not a basis for this action.

12 **4. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED WHERE THE BANK**
13 **FORECLOSURE SALE WAS VOID FROM THE OUTSET**

14 N.R.S. §107.080 governs non-judicial foreclosure sales of real property pursuant to deeds
15 of trust. However, such statute obviously presupposes that a deed of trust exists. In this case, no
16 valid deed of trust existed at the time of the Bank Foreclosure Sale and such sale was thus void
17 ab initio. Under these circumstances, as stated above, N.R.S. §107.080 is inapplicable to the
18 facts at hand. Furthermore, N.R.S. §107.080(5) as it existed in 2011 provided that a foreclosure
19 sale may be declared void under certain circumstances. Notably, it does not state that a
20 foreclosure sale shall not be set aside unless such circumstances are present.

21 N.R.S. 107.080(5) (2011) states as follows:

22 5. Every sale made under the provisions of this section and other sections of this
23 chapter vests in the purchaser the title of the grantor and any successors in interest
24 without equity or right of redemption. A sale made pursuant to this section may be
25 declared void by any court of competent jurisdiction in the county where the sale
26 took place if:

(a) The trustee or other person authorized to make the sale does not substantially
comply with the provisions of this section or any applicable provision of NRS
107.086 and 107.087;

(b) Except as otherwise provided in subsection 6, an action is commenced in the
county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is
recorded in the office of the county recorder of the county where the sale took
place within 30 days after commencement of the action.

27 N.R.S. §107.080(5) relates to procedural errors that might occur during the course of a non-
28 judicial foreclosure sale that may be authorized under a deed of trust. However, again, the statute

1 presupposes that a security interest exists and that a sale is authorized – not that a sale is
2 conducted without any authority whatsoever pursuant to void and extinguished deed of trust.

3 Again, what the Defendants fail to understand is the Bank Foreclosure Sale was and is
4 void. Because BANA possessed no security interest upon which to foreclose, it is completely
5 irrelevant whether notices were mailed to or received by the Plaintiff. It is likely irrelevant what,
6 if anything, the Plaintiff did in response. The fact that the unauthorized Bank Foreclosure Sale
7 may have been carried out in the “proper” manner cannot in any way validate the void
8 proceeding.

9 N.R.S. §107.080(4) provides as follows:

10 4. The trustee, **or other person authorized to make the sale under the terms of**
11 **the trust deed or transfer in trust**, shall, after expiration of the applicable period
12 specified in paragraph (d) of subsection 2 following the recording of the notice of
breach and election to sell, and before the making of the sale, give notice of the
time and place thereof by recording the notice of sale and by:

13 (a) Providing the notice to each trustor, any other person entitled to notice
pursuant to this section and, if the property is operated as a facility licensed under
chapter 449 of NRS, the State Board of Health, by personal service or by mailing
14 the notice by registered or certified mail to the last known address of the trustor
and any other person entitled to such notice pursuant to this section;

15 (b) Posting a similar notice particularly describing the property, for 20 days
successively, in a public place in the county where the property is situated;

16 (c) Publishing a copy of the notice three times, once each week for 3 consecutive
weeks, in a newspaper of general circulation in the county where the property is
situated or, if the property is a time share, by posting a copy of the notice on an
Internet website and publishing a statement in a newspaper in the manner required
17 by subsection 3 of NRS 119A.560; and

18 (d) If the property is a residential foreclosure, complying with the provisions of
19 NRS 107.087.

20 Thus, although it goes without saying, the foreclosure of a deed of trust may only be commenced
21 and carried out where a entity is authorized to make the sale. This can never be the case where a
22 deed of trust has been previously extinguished as a matter of law such as is the case herein.

23 The Plaintiff is not bound by law to complain of a foreclosure sale that was void ab initio
24 within the time period set forth in N.R.S. §107.080. On the contrary, because the sale was void
25 at the outset, it is as though it never occurred. “One cannot acquire title to the land of another by
26 paying the taxes on it, nor will a claim of title under a void deed, although recorded, ripen into a
27 fee by lapse of time, nor will limitations run against the owner of record in favor of a claimant
28

1 not in possession, nor is it incumbent upon the owner to sue for cancellation of a void deed, or to
2 take steps to remove a cloud upon his title. . . . If he desires to have the cloud removed the law
3 affords a remedy, but he is not compelled to go to that expense, and his failure to do so cannot be
4 considered laches, nor will it operate as an estoppel against him. A mere claim of title even of
5 record, unaccompanied by adverse holding, will not start the statute." *Secret Valley Land Co. v.*
6 *Perry*, 187 Cal. 420, 425-426 (Cal. 1921).

7 The Plaintiff was the rightful owner of the Property at the time of the Bank Foreclosure
8 Sale, the Plaintiff was the rightful owner of the Property after the Bank Foreclosure Sale, and the
9 Plaintiff remains the rightful owner of the Property to this date. BANA's unauthorized, void and
10 ineffective Bank Foreclosure Sale did nothing to change this fact. Indeed, after the First Deed of
11 Trust was extinguished as a matter of law by the HOA Foreclosure Sale, there was no act that
12 BANA could have taken which could have conceivably impacted the ownership of the Property.
13 The Plaintiff is not complaining of a procedural defect that may have occurred during the course
14 of the bank's foreclosure proceedings. On the contrary, the Plaintiff is asserting that the Bank
15 Foreclosure Sale was wrongful and void ab initio from the outset.

16 While the statute of limitations is not an unconscionable defense, it is not such a
17 meritorious defense that either the law or the fact should be strained in aid of it, nor should this
18 court indulge in any presumptions in its favor. *Howard v. Waale-Camplan & Tiberti, Inc.*, 67
19 Nev. 304, 217 P.2d 872 (1950). Defendants' efforts to impose the 90-day limitation of N.R.S.
20 §107.080(5) to the facts at hand are strained to say the least. Pursuant to law, the Plaintiff is
21 entitled to bring an action for quiet title within 5 years after the time that it held title and
22 possession. It did so and the instant Motion is thus without merit.

23 **5. THE APPLICABLE PERIOD OF LIMITATIONS TO THIS ACTION IS THE**
24 **FIVE YEAR STATUTE OF NRS §11.080**

25 The statute of limitations applicable to this action is five years. This period of limitations
26 is set forth in NRS 11.080, which provides as follows:

27 **Seisin within 5 years; when necessary in action for real property.** No action
28 for the recovery of real property, or for the recovery of the possession thereof

1 other than mining claims, shall be maintained, unless it appears that the plaintiff
2 or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the
premises in question, within 5 years before the commencement thereof.

3 In this case, there is no dispute that the Plaintiff held title to the Property within the 5 years prior
4 to the filing of this action. Plaintiff held record title and possession of the Property from no later
5 than the recording of the HOA Foreclosure Deed in its favor on April 13, 2011, until at least
6 August 29, 2011, the date on which the Bank Foreclosure Sale took place. This action was filed
7 on March 19, 2015, well within the 5 year time period in which the Plaintiff has a right to file an
8 action for the recovery of real property. As a result, the instant action has been timely brought
9 and the instant Motion is without merit.

10 **6. THE EQUITABLE DOCTRINE OF LACHES IS NOT APPLICABLE TO THIS**
11 **ACTION**

12 Defendants assert that the doctrine of laches should be applied to prevent the Plaintiff
13 from challenging the void Bank Foreclosure Sale. The Defendants do not explain why Plaintiff
14 should not be entitled to rely upon the statute of limitations specifically enacted by the Nevada
15 Legislature and set forth in NRS 11.080, which explicitly provides the Plaintiff with a 5 year
16 period in which to file a claim and recover its Property.

17 "A quiet title action is now considered to be one in law, not equity, and hence the doctrine
18 of laches cannot apply. [Citations.]" *Connolly v. Trabue*, 204 Cal.App.4th 1154, 1167 (2012). In
19 other words, the period established by the applicable statute of limitations for a quiet title action
20 stands firm and is not shortened by acts or omissions that could be interpreted as an unreasonable
21 delay. As set forth above, the statute of limitations applicable to this action is the 5 year statute
22 of limitations of NRS 11.080. This 5-year period may not be shortened by acts or omissions that
23 could be interpreted as unreasonable delay.

24 Especially strong circumstances must exist to sustain a defense of laches when the statute
25 of limitations has not run. *Langir v. Ardent*, 82 Nev. 28, 409 P.2d 891 (1966). The Nevada
26 Legislature has imposed a 5-year period of time in which a party may seek to recover real
27 property. This limitations period commences running at the time that the entity no longer holds
28

1 ownership or possession of the property. While the time period may be shortened under certain
2 circumstances by NRS 107.080, any shortened time period is limited to circumstances where the
3 subject foreclosure sale is authorized – not where it is void ab initio. A void sale and void deed
4 are ineffective for any purpose. Because the Bank Foreclosure was void, no valid change of
5 ownership ever occurred. Under such circumstances, Plaintiff simply may not be divested of the
6 Property.

7 **7. THE BANK FORECLOSURE SALE WAS VOID AND THEREFORE**
8 **INEFFECTIVE FOR ANY AND ALL PURPOSES**

9 A void real estate transaction is one where the law deems that no transfer actually
10 occurred. An example of this is a deed from a party who does not own the real property that is
11 purported to be the subject of the deed. Such a transfer is ineffective for any and all purposes.
12 This is exactly the situation at hand where BANA purports to have foreclosed upon and sold the
13 Property based upon an invalid, extinguished deed of trust.

14 An absolute nullity such as a void deed will not constitute color of title, and the Statute of
15 Limitations will not run in favor of a person under it. *Nesbitt v. De Lamar's Nev. Gold Mining*
16 *Co.*, 24 Nev. 273 (Nev. 1898)(Citations omitted). Furthermore, a void deed will not connect a
17 grantee with grantor's possession, nor will it constitute the basis of an action. *Id.* There can be
18 no valid correction or confirmation of a void deed. 23 Am. Jur. 2d, Deeds, §287 (1965); 26
19 C.J.S., Deeds, §31 (1956). A void deed is invalid in law for any purpose whatsoever, such as a
20 deed to effectuate a prohibited transaction" 23 Am. Jur.2d, Deeds, §137.

21 A void deed cannot be the foundation of a good title and a bona fide purchaser for value
22 acquires no rights under it. *Marlenee v. Brown*, 21 Cal. 2d 668, 677 (Cal. 1943). A void deed
23 cannot pass title even in favor of an innocent purchaser or a bona fide encumbrancer for value.
24 *First Interstate Bank v. First Wyoming Bank*, 762 P.2d 379, 382 (Wyo. 1988). It is clearly well
25 established law that a void deed grants no rights to the grantee. This is what Defendants and
26 their counsel clearly do not understand.

27 Defendants seem to believe that anyone may sell real property, regardless of whether or
28

1 not he or she is the rightful owner and regardless of whether he or she otherwise possesses any
2 right to do so. In the world of Defendants and their counsel, a charlatan could sell the home of
3 an elderly retiree to an innocent third party and that third party can thereafter evict the rightful
4 homeowner and retain possession and ownership of her home against her interest. Again,
5 Defendants and their counsel simply do not comprehend the workings of the law.

6 **8. EVEN IF THE BONA FIDE PURCHASER DOCTRINE WAS APPLICABLE,**
7 **DEFENDANTS DO NOT QUALIFY AS BONA FIDE PURCHASERS FOR**
8 **VALUE**

9 Although the Defendants do not raise the issue in their Motion, it is likely that they will
10 claim that Blaha is a bona fide purchaser for value and that his claimed interest in the Property is
11 thus superior to that of the Plaintiff. As stated above, the bona fide purchaser doctrine is wholly
12 inapplicable to a void deed. However, even if the doctrine was applicable, Blaha would not
13 qualify because he possessed actual or constructive notice of the Plaintiff's claims.

14 NRS 111.180 provides as follows:

15 **Bona fide purchaser: Conveyance not deemed fraudulent in favor of bona**
16 **fide purchaser unless subsequent purchaser had actual knowledge,**
constructive notice or reasonable cause to know of fraud.

- 17 1. Any purchaser who purchases an estate or interest in any real property in good
18 faith and for valuable consideration and who does not have actual knowledge,
19 constructive notice of, or reasonable cause to know that there exists a defect in, or
20 adverse rights, title or interest to, the real property is a bona fide purchaser.
21 2. No conveyance of an estate or interest in real property, or charge upon real
property, shall be deemed fraudulent in favor of a bona fide purchaser unless it
appears that the subsequent purchaser in such conveyance, or person to be
benefited by such charge, had actual knowledge, constructive notice or reasonable
cause to know of the fraud intended.

22 To entitle a party to the character of a bona fide purchaser, without notice, he must have acquired
23 the legal title, and have actually paid the purchase money before receiving notice of the equity of
24 another party. *Bailey v. Butner*, 64 Nev. 1, 14 (Nev. 1947). A "subsequent purchaser with
25 notice, actual or constructive, of an interest in the land superior to that which he is purchasing is
26 not a purchaser in good faith, and not entitled to the protection of the recording act." *Allison*
27 *Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471 P.2d 666, 669 (1970). In this case, Blaha
28 can never qualify as a bona fide purchaser for value because he possessed actual or constructive

1 notice of the defects, adverse rights, title and interest to the Property.

2 It is undisputed that the HOA caused its HOA Lien, Notice of Default and Election to Sell
3 and Notice of Trustee's Sale to be recorded. Thereafter, it is undisputed that Plaintiff purchased
4 the Property by successfully bidding at the HOA Foreclosure Sale. It is further undisputed that
5 on or about April 13, 2011, the HOA Foreclosure Deed was recorded in the Official Records of
6 the Clark County Recorder as Instrument No. 201104130000979, vesting title to the Property in
7 the name of Plaintiff. See Exhibit 1.

8 NRS 111.320 provides as follows:

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

13 EZ Properties is purported to have purchased the Property at the Bank Foreclosure Sale on
14 August 29, 2011. Thereafter, EZ Properties is purported to have sold the Property to Blaha on or
15 about September 30, 2011. However, it is patently obvious that prior to either of these transfers,
16 the HOA and the Plaintiff caused various documents to be recorded which provided actual notice
17 of the HOA Foreclosure Sale and the resulting ownership interest of the Plaintiff. Because the
18 HOA Foreclosure Deed was recorded in the Office of the Clark County Recorder, pursuant to
19 NRS §111.320, both EZ Properties and Blaha were imparted with notice of the contents thereof
20 and both Defendants must be deemed to have taken title to the Property with notice of this
21 information.

22 EZ Properties and/or Blaha may claim that they were ignorant of the fact that the First
23 Deed of Trust was extinguished as a matter of law at the time of the HOA Foreclosure Sale.
24 However, it has often been said that ignorance of the law does not constitute an excuse. The fact
25 that the Defendants may not have been understood the effect of the law provides them with no
26 excuse and certainly does not serve to validate the Bank Foreclosure Sale which was founded
27 upon a non-existent security interest. Nor can the Defendants' ignorance provide them with a
28

property right that does not otherwise exist.

9. THE DEFENDANTS ARE NOT WITHOUT REMEDIES

Although the Defendants may not understand the nature of their claims, they are not without remedies. While the Defendants possess no rightful claim to the Property, they do possess remedies in the form of valid claims against BANA. As the party that purported to sell the Property without any right or authorization, BANA is liable to Defendants for any and all damages that they may have suffered under a wide range of legal theories. Defendants would be best served to focus their attention upon these claims.

10. THE DOCTRINE OF EQUITABLE ESTOPPEL IS INAPPLICABLE TO THIS ACTION

The Defendants' next argument asserts that the Plaintiff's claims should be barred by the doctrine of equitable estoppel. As set forth in the Defendants' Motion, the elements of equitable estoppel include the following:

(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

Teriano v. Nev. State Bank (In re Harrison Living Trust), 121 Nev. 217, 223 (Nev. 2005).

Equitable estoppel in favor of the Defendants is inappropriate herein for the same reasons that the Defendants do not qualify as bona fide purchasers for value. Specifically, the Defendants possessed actual or constructive notice of the Plaintiff's claims. Thus, they were not ignorant regarding the true state of facts.

As discussed above, Blaha possessed actual or constructive notice of the HOA Foreclosure Sale and the resulting ownership interest of the Plaintiff. Blaha likewise must be deemed to have knowledge of the fact that the Plaintiff possessed a 5 year period of time in which to reclaim its Property as a matter of right pursuant to NRS 11.080. Under such circumstances, Blaha cannot be deemed to be ignorant of the true state of facts. Blaha was constructively aware of all of the Plaintiff's rights at the time that he purchased the Property.

1 Noticeably absent from the Defendants' analysis of *Teriano* is mention of any statute of
2 limitations expressly granting a period of time in which to challenge the action complained of
3 therein. This is contrary to the instant matter, where the Nevada Legislature has expressly
4 granted a 5-year period of time in which to recover real property pursuant to NRS 11.080.
5 Pursuant to statute, this time period commences upon the time that the plaintiff is no longer
6 possessed of the property. This statutory time period is 5 years – not 1 year, not 3 years, not 4
7 years – but 5 years.

8 Blaha may not close his eyes to the Plaintiff's ownership of the Property or the HOA
9 Foreclosure Sale proceedings, both of which he undisputably possessed actual or constructive
10 notice of. Nor may Blaha avoid the fact that Plaintiff possessed 5 years in which to recover its
11 Property pursuant to Nevada law. Blaha purchased the Property with knowledge of these facts.
12 While he may have been ignorant regarding the **effect** of a homeowners foreclosure sale or the
13 effect that it had upon the First Deed of Trust, he was not ignorant of the facts themselves. In
14 any event, ignorance cannot form a basis for his claims or defenses.

15 **11. PLAINTIFF HAS STATED A VALID CLAIM FOR EQUITABLE MORTGAGE**

16 Plaintiff's claim for Equitable Mortgage is against all of the Defendants hereto and is, in
17 fact, more of an *in rem* cause of action. Plaintiff asserts that the Bank Foreclosure Sale was
18 unauthorized, void and ineffective and that it remains the rightful owner of the Property. To the
19 extent that the Plaintiff is not awarded free and clear title to the Property, any damages that are
20 awarded to it should be secured by the Property under equitable grounds.

21 **12. WHILE THE PLAINTIFF'S CLAIMS RELATED TO THE RECOVERY OF ITS**
22 **PROPERTY ARE NOT TIME-BARRED, ANY CLAIM THAT THE HOA**
23 **FORECLOSURE SALE IS OR WAS INVALID IS TIME-BARRED**

24 Pursuant to NRS 40.010, a quiet title action "may be brought by any person against
25 another who claims an estate or interest in real property, adverse to the person bringing the
26 action, for the purpose of determining such adverse claim." "A claim for declaratory relief is
27 subject to a statute of limitations generally applicable to civil claims." *Zuill v. Shanahan*, 80 F.3d
28

1 1366, 1369-70 (9th Cir. 1996); *Levald v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993)
2 (noting that statute of limitations applicable to damages action applies equally to claims for
3 declaratory judgment). A quiet title claim is subject to the five-year limitations period of NRS §
4 11.070. *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, 2016 U.S. Dist. LEXIS
5 43592, 9-10 (D. Nev. Mar. 31, 2016).

6 Much like the instant case, *Amber Hills II* involved a deed of trust holder's claim that its
7 deed of trust was unaffected by a homeowners association lien foreclosure sale. In *Amber Hills*
8 *II*, the defendant asserted that the plaintiff's claims were governed by a 3-year statute of
9 limitations because the claims were based upon liability created by statute. *Id.* The United States
10 District Court for the District of Nevada rejected this assertion, holding that the applicable statute
11 of limitations was five years. The District Court held that a deed of trust holder was neither
12 "seized" nor "possessed" of real property by virtue of a deed of trust. *Id.* However, the Court
13 read NRS 40.010 and NRS 11.070 together, finding that "§ 40.010 allows anyone with an interest
14 in the property to sue to determine adverse claims, and § 11.070 provides the corresponding
15 limitations period for such claims." *Id.* at *10.

16 The HOA Foreclosure Sale at issue herein took place on April 12, 2011. Although
17 BANA filed a Motion herein on August 9, 2016, requesting leave to amend its Answer to include
18 claims against the HOA and trustee that carried out the HOA Foreclosure Sale, no party has to
19 date asserted any claims against either of said parties. Although the law is not necessarily settled
20 regarding whether a 3-year or 5-year statute of limitations applies to cases such as that at bar, it is
21 clear that the 5-year statute adopted in *Amber Hills II* is the lengthiest statute of limitations that
22 can be deemed to apply. Because more than five years has passed since the HOA Foreclosure
23 Sale and no party has asserted any claims against the HOA, any claims asserting that the HOA
24 Foreclosure Sale was invalid or ineffective are time-barred. Thus, the HOA Foreclosure Sale
25 must be assumed to have been valid and effective.

26 //

27 //

13. **THIS COURT NEED NOT BE CONCERNED WITH THE NINTH CIRCUIT
COURT OF APPEALS' DECISION IN THE MATTER OF BOURNE VALLEY**

Since the filing of the instant Motion, the Ninth Circuit Court of Appeals has issued a decision in the matter *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983 (9th Cir. Aug. 12, 2016), finding that N.R.S. Chapter 116 “facially violated mortgage lenders’ constitutional due process rights.” *Bourne Valley Ct. Trust*, 2016 WL 4254983 at *5. The *Bourne Valley* majority opinion does not address the fact that the Supreme Court of Nevada has already construed NRS 116.3116 *et seq.* to require notice to the mortgage lenders. *See Las Vegas Dev. Grp., LLC v. Yfantis*, No. 2:15-cv-01127-APG-CWH, Order Temporarily Staying Case, at *1 (D. Nev. Aug. 18, 2016)(Gordon, J.). In *Yfantis*, Judge Gordon went on to state as follows:

Federal courts are not free to reinterpret a state statute once it has been interpreted by that state’s highest court. *See Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1146 (9th Cir. 2001) (“[I]t is solely within the province of the state courts to authoritatively construe state legislation.”). Nor does the majority’s analysis employ Nevada’s rules of statutory construction under which the state’s laws are presumptively constitutional and must be given any reasonable construction to avoid declaring the statute unconstitutional. *See State v. Castaneda*, 245 P.3d 550, 552 (Nev. 2010) (en banc).

Id. at *2. Nevertheless, *Bourne Valley* at the moment is controlling authority for federal district courts in the Ninth Circuit that, if it stands, will significantly impact the hundreds of HOA foreclosure cases pending in this District. *Id.* However, as this Court is aware, *Bourne Valley* is not binding upon it.

It is likely that the Defendants will raise the issue of *Bourne Valley* in their Reply. However, as noted by Judge Gordon, said decision ignores the fact that the Supreme Court of Nevada has already construed NRS 116.3116 *et seq.* to require notice to the mortgage lenders. This Court must follow the decision of the Nevada Supreme Court in the matter of SFR Investments and not be swayed by *Bourne Valley*.

Bourne Valley was only recently issued. A petition for panel rehearing and rehearing en banc. In addition, *Bourne Valley* Court Trust has moved stay publication of, and to prohibit citation to, the *Bourne Valley* opinion. *Bourne Valley*, No. 15-15233, ECF No. 36-1 at 3-4.

Moreover, the Nevada Supreme Court has recently ordered that oral argument take place regarding the same issues addressed therein on or about September 8, 2016. In the meantime, until the matter is fully and finally resolved by the Nevada Supreme Court, Bourne Valley should not have an impact upon this Court's decision.

III.

CONCLUSION

For all the reasons set forth above, the instant Motion must be denied. The entire Motion is premised upon a lack of understanding of real property law and the effect – or lack thereof – of a void deed. Because BANA's First Deed of Trust was extinguished as a matter of law pursuant to NRS Chapter 116, BANA possessed no right nor basis to conduct the Bank Foreclosure Sale and such sale was void ab initio. As a result, neither EZ Properties nor Blaha received valid title to the Property. The Property continues to belong to the Plaintiff and, in fact, there has never been a time since the HOA Foreclosure Sale at which the Property did not belong to the Plaintiff. At the very least, numerous questions of material fact exist which preclude summary judgment.

DATED this 26th day of August, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 26th day of August, 2016, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Akerman LLP
Contact Email
Akerman Las Vegas Office akermanlas@akerman.com
Darren T. Brenner, Esq. darren.brenner@akerman.com
William S. Habdas, Esq. William.Habdas@akerman.com

Kolesar and Leatham
Contact Email
Aaron R. Maurice amaurice@klnevada.com
Brittany Wood bwood@klnevada.com
Susan A. Owens sowens@klnevada.com

Law Offices of Kevin R Hansen
Contact Email
Kevin R. Hanesn, Esq kevin@kevinrhansen.com

The Law Offices of Kevin R Hansen
Contact Email
Gabriela Mercado, Paralegal gabriela@kevinrhansen.com

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

Inst #: 201104130000979

Fees: \$16.00 N/C Fee: \$0.00

RPTT: \$28.05 Ex: #

04/13/2011 09:15:29 AM

Receipt #: 738709

Requestor:

CAMCO

Recorded By: BJB Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 176-10-213-042

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

Title No. A1263
Account NO. 77527
TS No. 45010-10-26456G1-01

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TRUSTEE'S DEED UPON SALE

The undersigned declares:

- 1) The grantee herein WAS NOT the foreclosing beneficiary
- 2) The amount of the unpaid debt together with costs was \$5,200.01
- 3) The amount paid by the grantee at the trustee sale was \$5,200.01
- 4) The documentary transfer tax is \$ 28.05
- 5) City Judicial District of LAS VEGAS

And **Absolute Collection Services, LLC.**, as the duly appointed Trustee under the Notice of Delinquent Assessment hereinafter described, does hereby GRANT and CONVEY, but without warranty, express or implied, to: **Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910**

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of CLARK, State of NEVADA, described as follows:

7639 Turquoise Stone Ct., Las Vegas NV 89113

Legal Description-shown on the Subdivision map recorded in Book No. 122 Page(s) 85 Inclusive, of Maps of the Country of Clark, State of Nevada; See Exhibit A Attached

AGENT STATES THAT:

This conveyance is made pursuant to the powers granted to NEVADA TRAILS II CA and conferred upon appointed trustee by the provisions of the Nevada Revised Statutes, the NEVADA TRAILS II CA governing documents (CC&R's) recorded as instrument number 0002308 Book 20040608 on JUNE 8, 2004 and that certain Notice of Delinquent Assessment Lien recorded on APRIL 12, 2010 instrument number

0005

0001709 Book 20100412 Official Records of CLARK County; and pursuant to NRS 117.070 et Seq. or NRS 116.3115 et Seq and NRS 116.3116 through 116.31168 et Seq. The name of the owner(s) of the property (trustor) was: JOSE PEREZ, JR.

Default occurred as set forth in a Notice of Default and Election to Sell, recorded on JULY 23, 2010 as instrument 0000868 Book 20100723 which was recorded in the office of the recorder of said county. Absolute Collection Services, LLC. Has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of NEVADA TRAILS II CA at public auction on April 12, 2011 at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$5,200.01 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: April 13, 2011


By Richard Kaye on behalf of Absolute Collection Services

STATE OF NEVADA)
COUNTY OF CLARK)

On 4/13/11 before me, Kelly Mitchell, personally appeared Richard Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

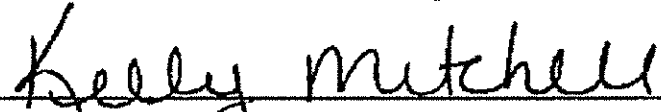

Kelly Mitchell, Notary Public



EXHIBIT "A"

LOT ONE HUNDRED THIRTY (130) OF NEVADA TRAILS NO. 22 PHASE 1, AS SHOWN BY MAP
THEREOF ON FILE IN BOOK 122 OF PLATS, PAGE 85 , IN THE OFFICE OF THE COUNTY RECORDER
OF CLARK COUNTY, NEVADA.

ASSESSOR'S COPY

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 176-10-213-042
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 5200.01

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

()

c. Transfer Tax Value:

\$ 5200.01

d. Real Property Transfer Tax Due

\$ 28.05

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: [Signature]

Capacity: Member, Grantee

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Absolute Collection Services
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Las Vegas Development Group LLC
Address: 397 3RD Ave Suite
City: CITRUS AVE
State: CA Zip: 91910

COMPANY REQUESTING RECORDING

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

Escrow #: N/A - Foreclosure

State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

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