

Case No. 74416

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

MARCHAI B.T., A BANK TRUST,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable LINDA MARIE BELL
District Court Case No. A-13-689461-C, Consolidated With A-16-742327-C

JOINT APPENDIX VOLUME 1

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Attorneys for Appellant SFR Investments Pool 1, LLC

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1	3	11/07/2013	Affidavit of Service	JA_0074
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1	9	12/27/2013	Affidavit of Service	JA_0108
5	25	09/14/2016	Affidavit of Service	JA_1118
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5	22	03/24/2016	SFR's Notice of Entry of Decision and Order	JA_1071
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4	15	02/04/2016	SFR's Opposition to Marchai's Motion for Summary Judgment	JA_0852
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5	31	01/31/2017	Wyeth Ranch Community Association's Answer and Affirmative Defenses	JA_1143
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7	37	08/21/2017	Wyeth Ranch's Reply in Support of Motion for Summary Judgment	JA_1470

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7	37	08/21/2017	Wyeth Ranch's Reply in Support of Motion for Summary Judgment	JA_1470
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TAB 1

I. Party Information

Plaintiff(s) (name/address/phone):

MARCHI B.T.

Attorney (name/address/phone):

Benjamin D. Petiprin, Esq. (NV Bar 11681)
Law Offices of Les Zieve
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-856 Fax: (702) 446-989

Defendant(s) (name/address/phone):

CRISTELA PEREZ, ET. AL.

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<div><input type="checkbox"/> Landlord/Tenant<div><input type="checkbox"/> Unlawful Detainer</div></div> <div><input checked="" type="checkbox"/> Title to Property<div><input checked="" type="checkbox"/> Foreclosure</div><div><input type="checkbox"/> Liens</div><div><input type="checkbox"/> Quiet Title</div><div><input type="checkbox"/> Specific Performance</div></div>		

☐ **Condemnation/Eminent Domain**☐ **Other Real Property**

☐ Partition

☐ Planning/Zoning

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|-----------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

September 30, 2013

Date

/s/ Benjamin D. Petiprin

Signature of initiating party or representative

COMP

LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898


CLERK OF THE COURT

Attorneys for plaintiff Marchai B.T.

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES 1 through 10, inclusive, and ROES 1
through 10, inclusive.

Defendants.

A- 13- 689461- C
CASE NO.:

DEPT. NO.: **XXVI**

**COMPLAINT FOR JUDICIAL
FORECLOSURE OF DEED OF TRUST**

*Exempt from Arbitration
Action Involves Real Property*

COMES NOW Plaintiff, Marchai B.T., a Bank Trust ("Plaintiff"), and alleges as follows:

1. Plaintiff is, and at all times herein mentioned, a Bank Trust duly authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of Clark, State of Nevada, and is legally described as set forth in **Exhibit "1"** attached hereto, and incorporated herein by this reference. The property is commonly known as: 7119 Wolf Rivers Avenue, Las Vegas, NV 89131 (the "Subject Property"), Clark County Assessor's Parcel Number 125-15-811-013.

1 3. Plaintiff is informed and believes that Cristela Perez ("Borrower") is an
2 individual, residing in the City of Las Vegas, County of Clark, State of Nevada and has an
3 ownership interest in or to the Subject Property by reason of a deed of trust.

4 4. Plaintiff is informed and believes that SFR Investments Pool 1, LLC ("SFR
5 Investments") is a limited liability company, and has an interest in the Subject Property or some
6 part of it by reason of a trustee's deed upon sale and is the record owner of the Subject Property.

7 5. Plaintiff is informed and believes that U.S. Bank National Association, N.D. ("US
8 Bank") is a national association, and has an interest in the Subject Property or some part of it by
9 reason of a junior lien, which interest is subsequent to that of Plaintiff.

10 6. Plaintiff is ignorant of the true names and capacities of individual defendants sued
11 herein as DOES 1 through 10, inclusive, and corporations, partnerships or other business entities
12 sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such
13 fictitious names. Plaintiff is informed and believes that defendants named herein as DOES 1
14 through 10 and ROES 1 through 10 have, or may claim to have, some right, title or interest in
15 and to the Subject Property, the exact nature of which is unknown to Plaintiff and Plaintiff will
16 seek leave to amend this complaint ("Complaint") to allege their true names and capacities when
17 and as ascertained, and will further ask leave to join said defendants in these proceedings.

18 7. On or about October 19, 2005, for valuable consideration, the Borrower made,
19 executed and delivered to CMG Mortgage, Inc. ("CMG Mortgage") that certain InterestFirst
20 Adjustable Rate Note dated October 19, 2005 (the "Note") evidencing a loan to the Borrower in
21 the original principal amount of \$442,000.00 ("Loan"). A copy of the Note is attached hereto as
22 **Exhibit "2"** and incorporated herein by this reference.

23 8. To secure payment of the principal sum and interest provided in the Note, as part
24 of the same transaction, Borrower executed and delivered to CMG Mortgage, as beneficiary, a
25 Deed of Trust (hereinafter the "Deed of Trust") dated October 19, 2005. A true and correct copy
26 of the Deed of Trust is attached hereto as **Exhibit "3"** and incorporated herein by this reference.
27 The Deed of Trust was recorded in book number 20051109 as instrument number 0001385 in the
28

1 Official Records of the Clark County Recorder's Office ("Official Records") on November 9,
2 2005.

3 9. The Deed of Trust was then assigned to CitiMortgage, Inc. by that certain
4 Corporate Assignment of Deed of Trust ("Assignment") recorded in book number 20120605 and
5 instrument number 0003133 in the Official Records on June 5, 2012. The Deed of Trust was
6 subsequently assigned to U.S. Bank National Association, as Trustee for Stanwich Mortgage
7 Loan Trust, Series 2012-6 by that certain Assignment of Mortgage (Assignment 2") recorded in
8 book number 20120726 as instrument number 0002017 in the Official Records on July 26, 2012.
9 The Deed of Trust was then assigned to Plaintiff by that certain Assignment of Deed of Trust
10 ("Assignment 3") recorded in book number 20130812 as instrument number 0002562 in the
11 Official Records on August 12, 2013. True and correct copies of the Assignment, Assignment 2
12 and Assignment 3 are attached hereto as **Exhibit "4"** and incorporated herein by this reference.

13 10. On or about January 30, 2006, defendant US Bank funded a loan to Borrower in
14 the original principal sum of \$100,000.00. The loan was, and is evidenced by a Deed of Trust
15 ("Junior Deed of Trust") recorded in book number 20060406 as instrument number 0004914 of
16 the Official Records. A true and correct copy of the Junior Deed of Trust is attached hereto as
17 **Exhibit "5"** and incorporated herein by this reference.

18 11. Wyeth Ranch Homeowners Association ("HOA") recorded multiple Notice of
19 Delinquent Assessment Liens, Notice of Defaults, and Notice of Trustees Sales between
20 November 5, 2007 and October 31, 2012. Most recently, HOA recorded that certain Notice of
21 Trustee's Sale in book number 20130731 as instrument number 0001002 of the Official Records
22 on July 31, 2013. The trustee's sale was held on August 28, 2013 at 2:00 P.M.

23 12. Defendant SFR Investments purchased the Subject Property at the trustee's sale
24 for the amount of \$21,000.00, as referenced in that certain Trustee's Deed Upon Sale ("TDUS")
25 recorded in book number 20130909 as instrument number 0001816 of the Official Records. A
26 true and correct copy of the TDUS is attached hereto as **Exhibit "6"** and incorporated herein by
27 this reference.
28

1 13. Plaintiff is informed and believes that on October 1, 2011 a default occurred
2 under the terms of the Note, in that the Borrower failed to make the regular monthly installment
3 payment due on that date and all subsequent payments in the approximate amount of \$2,657.39.

4 14. That certain Notice of Intent to Foreclose (“Notice of Intent”) dated October 3,
5 2012 was subsequently mailed to the Borrower. A true and correct copy of the Notice of Intent
6 is attached hereto as **Exhibit “7”** and incorporated herein by this reference. The Notice of Intent
7 provided notice to the Borrower of her default under the terms of the Note and Deed of Trust of
8 monthly payments obligations in the amount of \$36,281.60. The Notice of Intent indicated that
9 acceleration and foreclosure and public sale of the Subject Property would occur if the amount in
10 default was not cured within 30 days. The Notice of Intent further provided that the Borrower
11 has the right to reinstate the Loan following acceleration pursuant to the terms under the Note
12 and Deed of Trust, and that Borrower has a right to assert in any foreclosure action the non-
13 existence of a default and any other defenses to acceleration and foreclosure.

14 15. The subject Note provides that, if the payors default in payment of any installment
15 when due, or in the performance of any agreement in the subject Deed of Trust securing payment
16 of the subject Note, the entire principal and interest will become immediately due and payable at
17 the option of the noteholder. The subject Deed of Trust provides that, if the trustors default in
18 paying any indebtedness secured by the subject Deed of Trust, or in the performance of any
19 agreement in the subject Note or Deed of Trust, the entire principal and interest secured by the
20 subject Deed of Trust will, at the option of the beneficiary, become immediately due and
21 payable.

22 16. The Deed of Trust further provides that in the event of a default, the lender may
23 invoke the power of sale and after the required notices and time frames, sell the Subject Property
24 at a public auction.

25 17. By the terms of the subject Note, the Borrower promised and agreed to pay to
26 Plaintiff monthly installments of \$2,657.39, principal and interest, beginning December 1, 2005.
27 The Borrower has wholly failed, neglected and refused to pay the installment that was due on
28 October 1, 2011 and the subsequent months, up to and including the date of this Complaint. The

1 total of the monthly payments in default including accrued fees and interest is approximately
2 \$74,440.01. For such failure and default under the subject Note and Deed of Trust, Plaintiff has
3 elected to declare the entire remaining sum of principal and interest immediately due and
4 payable. Additional interest will accrue at the rate of \$38.30 per day for each additional day
5 from October 1, 2011 to the date of entry of judgment in this action.

6 18. Plaintiff may hereafter be required to expend additional sums to protect its
7 security in the Subject Property. In the subject Deed of Trust, the Borrower agreed to pay any
8 sums expended by Plaintiff. Plaintiff will amend this Complaint to allege the nature and
9 amounts of such sums if Plaintiff is required to make the additional expenditures.

10 19. Under the subject Note and Deed of Trust, the Borrower, agreed that, if any action
11 were instituted on the Note or Deed of Trust, she, as defendant, would pay the sum fixed by the
12 Court as Plaintiff's attorneys' fees and that these charges would also become a lien against the
13 Subject Property. Because of the above-described defaults, it has become necessary for Plaintiff
14 to employ an attorney to commence and prosecute this foreclosure action. The reasonable value
15 of services of counsel in this action shall be proved at or after trial in this action.

16 **FIRST CAUSE OF ACTION**

17 **(For Judicial Foreclosure of Deed of Trust, Against all Defendants)**

18 20. Plaintiff realleges and incorporates herein by reference each and every allegation
19 set forth in Paragraphs 1 through 19 of the Complaint as though set forth in full.

20 21. Despite Plaintiff's demands for payment under the Note and Deed of Trust,
21 Borrower has failed and refused to pay Plaintiff its indebtedness due, and Borrower is now in
22 default under the Note and Deed of Trust.

23 22. As a result of the default under the Note as secured by the Deed of Trust, Plaintiff
24 seeks to exercise its right under the Deed of Trust to foreclose on the Subject Property. And
25 Plaintiff seeks a Judgment of this Court foreclosing said Deed of Trust with the Court to award
26 Judgment for any deficiency which may remain after applying all proceeds of the sale of the
27 Subject Property applicable to the Judgment procured hereunder. The filing of this action does
28

1 not constitute a waiver of Plaintiff's right to proceed with a non-judicial foreclosure if it so
2 elects.

3 23. The Note and Deed of Trust provide that in the event of default thereunder by the
4 Borrowers, Plaintiff is entitled to recover its costs, including reasonable attorneys' fees, incurred
5 in enforcement thereof. Plaintiff has employed Benjamin D. Petiprin of the Law Offices of Les
6 Zieve, licensed and practicing attorney in the State of Nevada, for the purpose of instituting and
7 prosecuting the within action. Attorneys' fees have been, and continue to be incurred in an
8 amount to be proven at trial.

9 24. As a result of Borrower's default and breach, Plaintiff has been damaged in the
10 amount of the principal balance of the loan, accrued interest, late charges, advances, expenses
11 and attorneys' fees and costs which remain due under the Note and Deed of Trust.

12 WHEREFORE, Plaintiff prays for relief as follows:

13 **As to the First Cause of Action**

- 14 1. That the Court enter a money judgment against Borrower defendant only:
- 15 a. The sum of \$430,113.48 principal, together with interest as allowed at the
16 Note rate currently at 3% from October 1, 2011, to the date of judgment, according to proof;
- 17 b. Costs of this action and reasonable attorneys' fees;
- 18 c. Additional sums, if any, that Plaintiff hereafter expends to protect its
19 interest in the Subject Property, together with interest, according to proof.
- 20 2. That the Court adjudge the rights, claims, ownership, liens, titles and demands of
21 defendants are subject, subordinate and subsequent to Plaintiff's Deed of Trust;
- 22 3. That the Court order, adjudge, and decree that the Subject Deed of Trust be
23 foreclosed and that the usual Judgment be made for the sale of the Subject Property, according to
24 law, by the Sheriff of the County of Clark, or by a levying officer to be appointed by the Court;
25 that the proceeds of the sale be applied in payment of the amounts due to Plaintiff; that
26 defendants and all persons claiming under them subsequent to the execution of said Deed of
27 Trust, either as lien claimants, judgment creditors, claimants under a junior trust deed,
28 purchasers, encumbrances and otherwise, be barred and foreclosed from all rights, claims,

1 interest or equity of redemption of the Subject Property and every part of the Subject Property
2 when the time for redemption has lapsed;

3 4. That the Court award Plaintiff judgment and execution against Borrower
4 defendant only for any deficiency that may remain after applying all proceeds of the sale of the
5 Subject Property duly applicable to satisfy the amounts by the Court under paragraph 1 of this
6 demand for judgment;

7 5. That the Court permit Plaintiff or any other party to this suit, to become
8 purchasers at the foreclosure sale; that when the time for redemption has lapsed, the levying
9 officer or Sheriff, as the case may be, shall execute a deed to the purchaser of the Subject
10 Property at the sale; and that the purchaser be given possession of the Subject Property upon
11 production of the levying officer's or Sheriff's Deed;

12 6. For attorneys' fees according to proof in an amount the Court deems reasonable;

13 7. That the Court award all other appropriate and just relief.

14 8. For costs of suit incurred herein; and

15 9. For such other and further relief as the Court may deem just and proper.

16
17
18 DATED: September 30, 2013

LAW OFFICES OF LES ZIEVE

19
20 By: /s/ Benjamin D. Petiprin
21 Benjamin D. Petiprin, Esq.
22 Attorney for Plaintiff
23 Marchai B.T.
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

LEGAL DESCRIPTION

PARCEL I:

LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS DOCUMENT NO. 01353 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

EXHIBIT 2

EXHIBIT 2

Perez (R)
2,329,588.9

Loan No.: 32501493

InterestFirstSM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published In
The Wall Street Journal) – Rate Caps)

10/31
CL

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MIN: 1000724-0032501493-7
MERS TELEPHONE: (888) 679-6377

October 19, 2005
[Date]

LAS VEGAS
[City]

NEVADA
[State]

LF MQ CP
7119 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 442,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is CMG MORTGAGE, INC.. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.000%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the FIRST day of every month, beginning on December 1, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on November 1, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,841.67 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Fannie Mae Uniform Instrument

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(page 1 of 5)

usc3530



32501493



NOTE

JA_0013

Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the **FIRST** day of **November, 2010**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each 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.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One-Fourth** percentage points (2.250%) 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%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than Two percentage points (2.000%) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be five percent (5.00%) of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That

Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead 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 also may 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 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.

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



CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Pay to the order of:

Without Recourse
CMG MORTGAGE, INC.

By: _____

Name and Title: _____

PAY TO THE ORDER OF
WITHOUT RECOURSE
CITIMORTGAGE, INC.

CMG MORTGAGE, INC.
A CALIFORNIA CORPORATION
3160 CROWN CANYON ROAD, #350
SUNNYVALE, CA 94086


Divina Lanam
ASSISTANT SECRETARY

FIXED/ADJUSTABLE RATE ASSUMPTION RIDER

THIS ASSUMPTION RIDER is made this 19th day of October, 2005, 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 person whether one or more, (the "Borrower") to secure Borrower's Note to CMG MORTGAGE, INC. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

7119 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131

MO LF (PROPERTY ADDRESS)

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

- A. **ASSUMPTION.** Any person purchasing the Property from Borrower may assume full liability to repay Borrower's Note to Lender under the terms and conditions set out in this Assumption Rider.
- B. **AGREEMENT.** Lender may require the Purchaser to sign an assumption agreement, in the form required by Lender, which obligates the Purchaser to keep all the promises and agreements made in the Note and Security Instrument. Borrower will continue to be obligated under the Note and Security Instrument unless Lender releases Borrower in writing.
- C. **APPLICABILITY.** Lender is bound by these conditions and terms, as follows:
 - 1. Lender shall have no obligation to allow assumption by a purchaser from Borrower until the initial fixed interest rate payable on the Note changes to an adjustable rate;
 - 2. This Assumption Rider applies only to the first transfer of the Property by Borrower and not to a foreclosure sale;
 - 3. Purchaser must be an individual, not a partnership, corporation or other entity.
 - 4. Purchaser must meet Lender's credit underwriting standards for the type of loan being assumed as if Lender were making a new loan to Purchaser;
 - 5. Purchaser shall assume only the balance due on the Note at the time of assumption for the term remaining on the Note;
 - 6. If applicable, Borrower's private mortgage insurance coverage must be transferred to the Purchaser in writing, unless waived by Lender;

MB-2117 1/95

(5/1, 7/1, 10/1 ARM)

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RIDER

7. If Borrower's Note has a conversion feature and Borrower has exercised the right of conversion of this loan to a fixed rate loan from Lender, this Assumption Rider is void and Lender has no obligation to allow assumption by a Purchaser from Borrower; and
8. Lender must reasonably determine that Lender's security will not be impaired by the loan assumption.

D. ASSUMPTION RATE. Lender will allow assumption by Purchaser at Borrower's Note interest rate in effect at the time of assumption.

E. ADDITIONAL CHARGES. In addition, Lender may charge an amount up to one percent (1%) of the current Note balance and its normal loan closing costs, except the cost of a real estate appraisal.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants of this Assumption Rider.



CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

CONFIDENTIAL

True Certified Copy
of Original

NOTE ALLONGE

Statement of Purpose: This Note Allonge is attached to and made part of the Note, for the purpose of Noteholder Endorsements to evidence transfer of interest.

Loan Number: 2003295889

Loan Date: 10/19/2005 **Original Loan Amount:** \$ 442,000.00

Originator: CMG MORTGAGE, INC.

Original Mortgagor: CRISTELA PEREZ

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NV 89131

Pay to The Order of
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6
Without Recourse



Id No: *12035949*

CITIMORTGAGE, INC.

By:

M. E. Wileman, Vice President

ALLONGE

Pay to the Order of:

MARCHAI B.T.

Without Recourse:

Original Loan Amount: \$442,000.00

Dated: 10/19/2005

Made By: CRISTELA PEREZ

Premises Secured: 7119 WOLF RIVERS AVENUE
LAS VEGAS, NEVADA 89131

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH
MORTGAGE LOAN TRUST, SERIES 2012-6, BY CARRINGTON MORTGAGE
SERVICES LLC., AS ATTORNEY IN FACT

By: 

Name: GREG SCHLEPPY

Title: SR. VICE PRESIDENT

7000035044

EXHIBIT 3

EXHIBIT 3



20051109-0001385

Assessor's Parcel Number: 125-15-811-013
 When recorded mail to:
CMG MORTGAGE, INC.
3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CALIFORNIA 94583
 Loan No.: 32501493

Fee: \$38.00

N/C Fee: \$0.00

11/09/2005

09:44:04

T20050204478

Requestor:

FIDELITY NATIONAL TITLE

Frances Deane

KGP

Clark County Recorder

Pgs: 22

Mail Tax Statements to:

CRISTELA PEREZ *mo*
7119 WOLF RIVERS AVENUE
LAS VEGAS, NEVADA 89131

Prepared By:

Recording Requested By:

31

22

62902864 [Space Above This Line For Recording Data]
DEED OF TRUST

MIN 1000724-0032501493-7

MERS TELEPHONE: (888) 679-6377

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.

(A) "Security Instrument" means this document, which is dated **October 19, 2005**, together with all Riders to this document.

(B) "Borrower" is **CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY**. Borrower is the trustor under this Security Instrument.

(C) "Lender" is **CMG MORTGAGE, INC.**. Lender is a corporation organized and existing under the laws of the State of **CALIFORNIA**. Lender's address is **3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583**.

(D) "Trustee" is **FIDELITY NATIONAL TITLE AGENCY OF NEVADA**.

(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

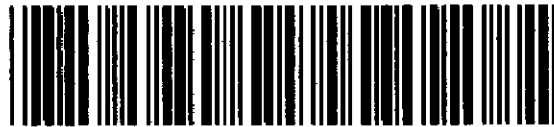
NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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Initials: *af*

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DEED

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 **October 19, 2005**. The Note states that Borrower owes Lender **Four Hundred Forty Two Thousand And 00/100 Dollars (U.S. \$ 442,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 1, 2035**.

(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 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

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

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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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]:

LOT 13 IN BLOCK A OF WYETH RANCH- UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. A NON- EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FOURTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Parcel ID Number: 125-15-811-013

LF MA 
7119 WOOL RIVERS AVENUE
LAS VEGAS [City], Nevada 89131 [Zip Code] ("Property Address"):

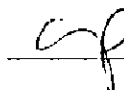
which currently has the address of
[Street]

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

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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

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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 for 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

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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.

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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

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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.

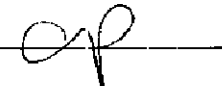
8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or 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

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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)

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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

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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

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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.

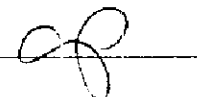
16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable 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

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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.

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

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Initials: CP

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,

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

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Initials: cf

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

NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS
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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. \$ 4,420.00.

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

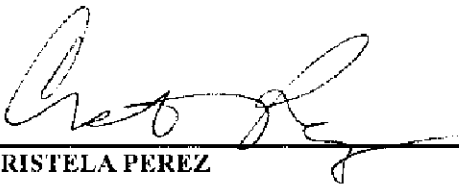
Form 3029 1/01

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Initials: af

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.

Witnesses:

_____	 CRISTELA PEREZ	(Seal) -Borrower
_____	_____	(Seal) -Borrower
_____	_____	(Seal) -Borrower
_____	_____	(Seal) -Borrower

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 10-20-05 by
CRISTELA PEREZ

Mary Quackenbush
My Commission Expires: 05-31-09



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

FIXED/ADJUSTABLE RATE RIDER**(LIBOR One-Year Index (As Published In The Wall Street Journal)- Rate Caps)**

THIS FIXED/ADJUSTABLE RATE RIDER is made this **19th** day of **October, 2005**, 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 Fixed/Adjustable Rate Note (the "Note") to **CMG MORTGAGE, INC.** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

LF MQ **7119 WOPL RIVERS AVENUE, LAS VEGAS, NEVADA 89131**

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **5.000%**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the **FIRST** day of **November, 2010**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

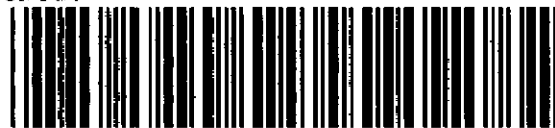
(B) The Index

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR -- Single Family - Fannie Mae Uniform Instrument Form 3187 6/01

(Page 1 of 4)

Initials: 

usc3187



32501493



RIDER

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each 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.

(C) Calculation of Changes Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One-Fourth** percentage points (2.250%) 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%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.


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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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

MULTISTATE FIXED/ADJUSTABLE RATE RIDER – WSJ One-Year LIBOR – Single Family – Fannie Mae Uniform Instrument Form 3187 6/01

(Page 2 of 4)

Initials: 

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be 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.

MULTISTATE FIXED/ADJUSTABLE RATE RIDER – WSJ One-Year LIBOR – Single Family – Fannie Mae Uniform
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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 also may 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 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 Fixed/Adjustable Rate Rider.



CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

EXHIBIT 4

EXHIBIT 4

Inst #: 201206050003133

Fees: \$18.00

N/C Fee: \$0.00

06/05/2012 03:42:06 PM

Receipt #: 1187409

Requestor:

NATIONWIDE TITLE CLEARING

Recorded By: JACKSM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

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

Signed: DERRICK WHITE
ASST. SECRETARY

Parcel #: 125-15-811-013

When Recorded Mail To:
CitiMortgage, Inc.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683
Investor L#

**CORPORATE ASSIGNMENT OF DEED OF TRUST**

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR)**, by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to **CITIMORTGAGE, INC., WHOSE ADDRESS IS 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368-2240 (800)283-7918, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE)**.

Said Deed of Trust made by **CRISTELA PEREZ**, and recorded on 11/09/2005 as Instrument # 0001385, and/or Book 20051109, Page , in the Recorder's office of CLARK, Nevada. .

Date: 05/25/2012 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS.

By: DERRICK WHITE
ASST. SECRETARY

FORM5\FRMNV1



15926922

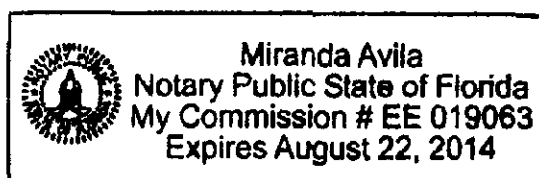
Parcel #: 125-15-811-013
Investor L#

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on 05/25/2012 (MM/DD/YYYY), by DERRICK WHITE as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Signed: _____

MIRANDA AVILA
Notary Public - State of FLORIDA
Commission expires: 08/22/2014



Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

Mail Tax Statements to: CRISTELA PEREZ
7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

CIMAV 15926922 -@ MERS (MOM) EMK3826611 MIN 100072400325014937 MERS PHONE
1-888-679-MERS FORM5\FRMNV1



15926922

Inst #: 201207260002017

Fees: \$18.00

N/C Fee: \$0.00

07/26/2012 10:44:40 AM

Receipt #: 1248352

Requestor:

ORION FINANCIAL GROUP

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

PREPARED BY & RETURN TO:

M. E. Wileman

2860 Exchange Blvd. # 100

Southlake, TX 76092

Parcel # 125-15-811-013

Assignment of Mortgage

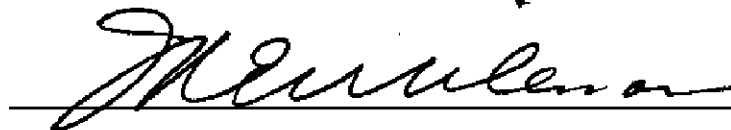
Send Any Notices to Assignee.

For Valuable Consideration, the undersigned, **CITIMORTGAGE, INC. 4050 REGENT BLVD, MAIL STOP N2A-222, IRVING, TX 75063 (Assignor)** by these presents does assign and set over, without recourse, to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6 1610 E. St. Andrews Pl, Suite B150, Santa Ana, CA 92705 (Assignee)** the described mortgage with all interest, all liens, any rights due or to become due thereon, executed by **CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY** to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS. Said mortgage **Dated: 10/19/2005** is recorded in the State of NV, County of Clark on 11/9/2005, Book **20051109 Instrument# 0001385 AMOUNT: \$ 442,000.00** Property Address: 7119 WOLF RIVERS AVENUE,, LAS VEGAS NV 89131

IN WITNESS WHEREOF, the undersigned corporation/trust has caused this instrument to be executed by its proper officer. Executed on: 07/26/2012

CITIMORTGAGE, INC.

By:



M. E. Wileman, Authorized Signator



PEREZ JDM *12031213*

NV Clark

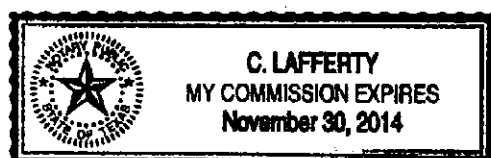
MIN 100072400325014937

MERS Phone 888-679-6377

CITICAP/WL17-2012/AS

State of Texas, County of Tarrant

On 07/26/2012, before me, the undersigned, M. E. Wileman, who acknowledged that he/she is Authorized Signator of/ for CITIMORTGAGE, INC. and that he/she executed the foregoing instrument and that such execution was done as the free act and deed of CITIMORTGAGE, INC.



C. Lafferty

Notary public, C. Lafferty
My commission expires: November 30, 2014

MAIL TAX BILL TO:

CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY Property
Address: 7119 WOLF RIVERS AVENUE,, LAS VEGAS NV 89131

12031213

MIN 100072400325014937 MERS Phone 888-679-6377
NV Clark CITICAP/WL17-2012/AS

Inst #: 201308120002562

Fees: \$18.00

N/C Fee: \$25.00

08/12/2013 02:42:09 PM

Receipt #: 1729913

Requestor:

LSI TITLE AGENCY INC.

Recorded By: CDE Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Peak Loan Servicing
5900 Canoga Ave Suite 200
Woodland Hills CA 91367

Parcel ID# : 125-15-811-013

Ln# 7000035044/PEREZ

SPACE ABOVE THIS LINE FOR RECORDER'S USE

130170768

Assignment of Deed of Trust

Date of Assignment: 3/12/13

**"This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title"**

Assignor: : U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6

Assignee : MARCHAI B.T.

Executed By: CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY To
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR CMG MORTGAGE,
INC. and FIDELITY NATIONAL TITLE AGENCY OF NEVADA, as Trustee, Date of Deed of Trust:
10/19/2005 Recorded: 11/09/2005 in Book/Reel/Liber: — Page: —as Instrument/CFN No.: 20051109-0001385 in
Official Records of the CLARK County, State of NEVADA

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NEVADA 89131

Parcel ID #: 125-15-811-013

Legal:

LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK
112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
A NON-EXCLUSIVE EASEMENT FOR INGESS, EGRESS, USE AND ENJOYMENT OF THE COMMON
LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS
THE SAME MAY BE AMENDED FROM TIME TO TIME.

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and
other good and valuable consideration, paid to the above named assignor, the receipt and sufficiency of which is hereby
acknowledged, said Assignor here by assigns unto the above-named Assignee, the said Deed of Trust, secured thereby,
which all moneys now owning or that may hereafter become due or owning in respect thereof, and the full benefit of all
the powers and of all the covenants and provisos therein contained, and the said Assignor hereby Grants and conveys
unto the said Assignee, the Assignor's beneficial interest under the Deed of Trust.

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in the said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written

Dated: 3/12/13

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6, BY
CARRINGTON MORTGAGE SERVICES LLC. AS ATTORNEY
IN FACT


Witness: LETICIA MACIAS


By: GREG SCHLEPPY, SR. VICE PRESIDENT

State of CALIFORNIA
County of ORANGE

On 3/12/13 before me, ANGELICA ROSALES PACHECO, Notary Public personally appeared GREG SCHLEPPY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.


WITNESS my hand and official seal.


Notary: ANGELICA ROSALES PACHECO



EXHIBIT 5

EXHIBIT 5



20060406-0004914

Fee: \$21.00
N/C Fee: \$0.00

04/06/2006 17:00:22
T20060061379

Requestor:
FIRST AMERICAN TITLE INSURANCE LENDI

Frances Deane KXC
Clark County Recorder Pgs: 8

Assessor's Parcel Number: 125-15-811-013

Mail Tax Statements To (name and address):
CRISTELA PEREZ AND ROBERT ROSE
7119 WOLF RIVERS AVE
LAS VEGAS NV 89131

Return To (name and address):
First American
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115

State of Nevada Space Above This Line For Recording Data
Order #: 8744120
ALS #: 3000434454 DEED OF TRUST
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Deed of Trust (Security Instrument) is 12/26/2006
..... and the parties, their addresses and tax identification numbers, if
required, are as follows:
GRANTOR: CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPARATE
PROPERTY 3000434454

☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors,
their signatures and acknowledgments.

TRUSTEE: U.S. Bank Trust Company, National Association
111 S.W. Fifth Avenue, Suite 3500
Portland, OR 97204

LENDER: U.S. Bank, National Association N.D.
4325 17th Avenue S.W.
Fargo, ND 58103

RECORDERS MEMO

POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is
acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance
under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to
Trustee, in trust for the benefit of Lender, with power of sale, the following described property
(if property description is in metes and bounds the name and mailing address of the person who
prepared the legal description must be included):

The real estate deed of trust herein is described in Exhibit "A" which is attached hereto and hereby
incorporated herein by reference.

8744120

(page 1 of 7)

NEVADA - HOME EQUITY LINE OF CREDIT DEED OF TRUST
(NOT FOR FNMA, FHLMC, FHA OR VA USE)

Expend - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

The property is located in CLARK..... at 7119 WOLF RIVERS AVE.....
(County)
..... LAS VEGAS....., Nevada 89131.....
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 100,000.00..... This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. SECURED DEBT AND FUTURE ADVANCES. The term "Secured Debt" is defined as follows:
 - A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)
 - B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
 - C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Grantor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

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(page 2 of 7)

Exempt - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.
- Payments.** Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- Prior Security Interests.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.
- Claims Against Title.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.
- Property Condition, Alterations and Inspection.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.
- Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.
- Authority to Perform.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.
- Leaseholds; Condominiums; Planned Unit Developments.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- Condemnation.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

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(page 3 of 7)

ExDere - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding sentence can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

8. **DEFAULT.** Grantor will be in default if any of the following occur:

Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following:

(a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

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Expers - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Grantor represents, warrants and agrees that:

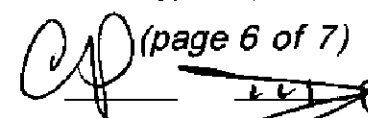
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(page 5 of 7)

Expere - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

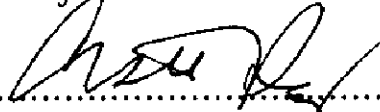

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. SEVERABILITY; INTERPRETATION. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. SUCCESSOR TRUSTEE. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. WAIVERS. Except to the extent prohibited by law, Grantor waives all appraisal and homestead exemption rights relating to the Property.
18. LINE OF CREDIT. The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

8744120

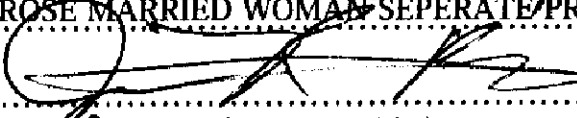
 (page 6 of 7)~~Expects~~ - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

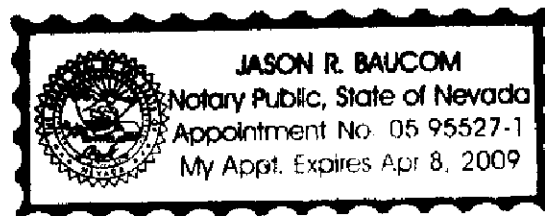
19. APPLICABLE LAW. This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. RIDERS. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
[Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other
21. ☐ ADDITIONAL TERMS.

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

 1/30/06 (Signature) CRISTELA PEREZ (Date)
 1/30/06 (Signature) ROBERT ROSE (Date)

ACKNOWLEDGMENT: Nevada STATE OF, COUNTY OF Clark } ss.
This instrument was acknowledged before me this 30th day of January, 2006.
(Individual) by CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPERATE PROPERTY
My commission expires:

 (Notary Public)
Branch (Title and Rank) Manager



8744120

(page 7 of 7)

Exberts - 1994 Bankers Systems, Inc., St. Cloud, MN Form OCP-REDT-NV 6/25/2003

EXHIBIT "A"**LEGAL DESCRIPTION**

A PARCEL OF LAND SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK,
WITH A STREET LOCATION ADDRESS OF 7119 WOLF RIVERS AVE; LAS VEGAS,
NV 89131-0139 CURRENTLY OWNED BY CRISTELA PEREZ HAVING A TAX
IDENTIFICATION NUMBER OF 125-15-811-013 AND BEING THE SAME
PROPERTY MORE FULLY DESCRIBED IN BOOK/PAGE OR DOCUMENT NUMBER
40721003728 DATED 7/19/2004 AND FURTHER DESCRIBED AS WYETH
RANCH-UNIT 2 PLAT BOOK 112 PAGE 8 LOT 13 BLOCK A PT S2 SE4 SEC 15
TWP 19 RGN 60.

125-15-811-013

7119 WOLF RIVERS AVE; LAS VEGAS, NV 89131-0139

20060131701500

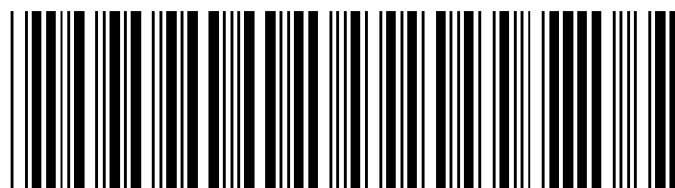
27313887/f


PEREZ
8744120FIRST AMERICAN LENDERS ADVANTAGE
DEED OF TRUST

EXHIBIT 6

EXHIBIT 6

Carrington Mortgage Services, LLC
PO Box 9050
Temecula, CA 92589-9050



2266385873

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Carrington Mortgage Services, LLC
Attn: Payment Processing
PO Box 79001
Phoenix, AZ 85062-9001

Send Correspondence to:
Carrington Mortgage Services, LLC
PO Box 54285
Irvine, CA 92619-4285

20121004-51



CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139



NO565

JA_0062

October 3, 2012

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

Property Address: 7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

RE: Loan Number: 7000035044

NOTICE OF INTENT TO FORECLOSE

Dear Mortgagor(s):

The above referenced loan is in default because the monthly payment(s) due on and after October 1, 2011 have not been received. The amount required to cure this delinquency, as of the date of this letter, is \$36,281.60, less \$0.00, monies held in Unapplied.

SUBSEQUENT PAYMENTS, LATE CHARGES, AND OTHER FEES WILL BE ADDED TO THE ABOVE STATED REINSTATEMENT AMOUNT AS THEY ARE ASSESSED.

Please remit the total amount due in CERTIFIED FUNDS, utilizing one of the following payment resources:

OVERNIGHT MAIL:
Carrington Mortgage Services, LLC
ATTN: Cashiering Dept.
1610 E. Saint Andrew Place, Ste. B-150
Santa Ana, Ca. 92705

| WESTERN UNION QUICK COLLECT
| Any Western Union Location:
| Code City: CARRINGTONMS
| Code State: CA
|

IF YOU ARE UNABLE TO BRING YOUR ACCOUNT CURRENT, PLEASE CONTACT CARRINGTON MORTGAGE SERVICES, LLC TO DISCUSS HOME RETENTION ALTERNATIVES TO AVOID FORECLOSURE AT (888) 788-7306 OR BY MAIL AT 1610 E. SAINT ANDREW PLACE, SUITE B-150, SANTA ANA, CA 92705.

YOU MAY ALSO CONTACT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") HOTLINE NUMBER AT (800) 569-4287 OR YOU CAN VISIT THEM AT <http://www.hud.gov/foreclosure/index.cfm> TO FIND OUT OTHER OPTIONS YOU MAY HAVE TO AVOID FORECLOSURE.



Failure to cure the delinquency within 30 days of the date of this letter may result in acceleration of the sums secured by the Deed of Trust or Mortgage and in the sale of the property.

You have the right to reinstate your loan after legal action has begun. You also have the right to assert in foreclosure, the non-existence of a default or any other defense to acceleration and foreclosure.

Should you have any questions, please contact our office at (888) 788-7306, 5:00 AM to 9:00 PM Monday through Thursday, 5:00 AM to 5:00 PM Friday, 6:00 AM to 10:00 AM Saturday and 8:00 AM to 12:00 PM Sunday, Pacific Time.

Sincerely,

Loan Servicing Department
Carrington Mortgage Services, LLC

-IMPORTANT BANKRUPTCY NOTICE

If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

-CREDIT REPORTING

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

-MINI MIRANDA

This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

-HUD STATEMENT

Pursuant to section 169 of the Housing and Community Development Act of 1987, you may have the opportunity to receive counseling from various local agencies regarding the retention of your home. You may obtain a list of the HUD-approved housing counseling agencies by calling the HUD nationwide toll free telephone number at (800) 569-4287.

-EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers CMS' compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

EXHIBIT 7

EXHIBIT 7

Inst #: 201309090001816

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$1568.25 Ex: #

09/09/2013 10:59:56 AM

Receipt #: 1763390

Requestor:

ALESSI & KOENIG, LLC

Recorded By: JACKSM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, B-214
Las Vegas, NV 89119

A.P.N. No.125-15-811-013

TS No. 11632

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC
The Foreclosing Beneficiary herein was: Wyeth Ranch Community Association
The amount of unpaid debt together with costs: \$14,677.80
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$21,000.00
The Documentary Transfer Tax: \$1,568.25
Property address: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139
Said property is in [] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): CRISTELA PEREZ

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded December 20, 2011 as instrument number 0001246, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: WYETH RANCH-UNIT 2 PLAT LOT 13 BLOCK A, as per map recorded in Book 112, Pages 8 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on August 28, 2013 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

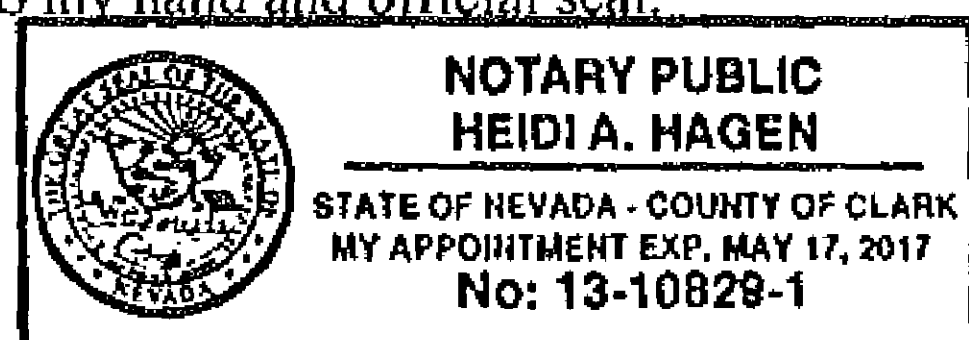
State of Nevada)
County of Clark)

AUG 29 2013

SUBSCRIBED and SWORN before me _____, Ryan Kerbow

WITNESS my hand and official seal.

(Seal)



(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 125-15-811-013
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 21,000.00

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

c. Transfer Tax Value: \$ 307,403.00

d. Real Property Transfer Tax Due \$ 1,568.25

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SFR Investments Pool 1, LLC
Address: 5030 Paradise Road, B-214
City: Las Vegas
State: NV Zip: 89119

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

TAB 2

NPEN
LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898


CLERK OF THE COURT

Attorneys for plaintiff Marchai B.T.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES 1 through 10, inclusive, and ROES 1
through 10, inclusive.

Defendants.

CASE NO.: A-13-689461-C

DEPT. NO.: XXVI

NOTICE OF PENDENCY OF ACTION

NOTICE IS HEREBY GIVEN that an action has been instituted and is now pending in the District Court of the State of Nevada, in and for the County of , upon the complaint of Marchai B.T. ("Plaintiff"), against the above-named defendants Cristela Perez, SFR Investments Pool 1, LLC, a limited liability company, U.S. Bank National Association, N.D., a national association that the object of that action is a judicial foreclosure on Plaintiff's lien in first position on the property, securing Plaintiff's loan to the same extent, with interest, on the real property located at: 7119 Wolf Rivers Avenue, Las Vegas, NV 89131 with a legal description of:

///

1 PARCEL I:

2 LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON
3 FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER
4 OF CLARK COUNTY, NEVADA.

5 PARCEL II:

6 A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF
7 THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE
8 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED
9 OCTOBER 4, 2002 IN BOOK 20021004 AS DOCUMENT NO. 01353 AS THE SAME MAY
10 BE AMENDED FROM TIME TO TIME.

11 DATED: October 3, 2013

LAW OFFICES OF LES ZIEVE

12
13 By: /s/ Benjamin D. Petiprin
14 Benjamin D. Petiprin, Esq.
15 Attorneys for Plaintiff
16 Marchai B.T.
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1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Les Zieve, and not
3 a party to nor interested in the within matter; that on the 3rd day of October 2013, service of the
4 **NOTICE OF PENDENCY OF ACTION** was made:

5 () by serving the following parties electronically through CM/ECF as set forth below;

6 (X) by depositing a copy in the United States Mail postage prepaid to the parties listed below:

7 Robert D. Rose Jr.
8 7119 Wolf Rivers Ave
9 Las Vegas, NV 89131
Courtesy Copy

10 Robert D. Rose Jr.
11 17450 Burbank Blvd. #104
12 Encino, CA 91316
Courtesy Copy

13 Resident
14 7119 Wolf Rivers Ave
15 Las Vegas, NV 89131-0139
Courtesy Copy

16 CMG Mortgage, Inc.
17 3160 Crow Canyon Road, Suite 240
18 San Ramon, California 94583
Courtesy Copy

19 Mortgage Electronic Registration Systems, Inc.
20 P.O. Box 2026
21 Flint, MI 48501-2026
Courtesy Copy

22 CitiMortgage, Inc
23 1000 Technology Drive
24 O'Fallon, MO 63368-2240
Courtesy Copy

25 CitiMortgage, Inc
26 C/O NTC 2100 Alt. 19 North
27 Palm Harbor, FL 34683
Courtesy Copy

28 ///

///

1 Attn: Kelly Mitchell
2 Wyeth Ranch HOA
3 PO Box 12117
4 Las Vegas, NV 89112

5 ***Courtesy Copy***

6 Wyeth Ranch HOA
7 C/O Complete Association Management Company (CAMCO)
8 PO Box 12117
9 Las Vegas, NV 89112

10 ***Courtesy Copy***

11 Wyeth Ranch HOA
12 C/O Alessi & Koenig, LLC
13 9500 W. Flamingo Rd., Suite 100
14 Las Vegas, Nevada 89147

15 ***Courtesy Copy***

16 Attn: Kelly Mitchell
17 Wyeth Ranch Homeowners Assoc.
18 PO Box 12117
19 Las Vegas, NV 89112

20 ***Courtesy Copy***

21 Wyeth Ranch Homeowners Association
22 C/O CAMCO
23 PO Box 12117
24 Las Vegas, NV 89112

25 ***Courtesy Copy***

26 Wyeth Ranch Community Association
27 C/O Alessi & Koenig, LLC
28 9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147

Courtesy Copy

Toscana-Wyeth Ranch Landscape Maintenance Association
C/O Ken Williams
1820 E. Sahara STE 101
Las Vegas, NV 89104

Courtesy Copy

///

///

///

1 Toscana-Wyeth Ranch Landscape Maintenance Association
2 C/O Ken Williams
3 P.O. Box 12117
4 Las Vegas, NV 89112
5 *Courtesy Copy*

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/s/ Michele Dapello
Michele Dapello, an employee of
Law Offices of Les Zieve

TAB 3

Electronically Filed
11/07/2013 09:06:13 AM

IN THE DISTRICT COURT, EIGHTH JUDICIAL DISTRICT, CLARK COUNTY, NEVADA

MARCHAI B.T., A BANK TRUST

Plaintiff/Petitioner

vs.

CRISTELA PEREZ, AN INDIVIDUAL; SFR
INVESTMENTS POOL 1, LLC, A LIMITED
LIABILITY COMPANY; U.S. BANK NATIONAL
ASSOCIATION, N.D., A NATIONAL
ASSOCIATION;

Defendant/Respondent

Hearing Date:

CASE NO:
A-13-689461-CAFFIDAVIT OF SERVICE OF:
NOTICE OF PENDENCY OF ACTION; CIVIL
COVER SHEET; COMPLAINT FOR JUDICIAL
FORECLOSURE OF DEED OF TRUST; EXHIBITS;
AFFIDAVIT OF SERVICE; SUMMONS - CIVIL

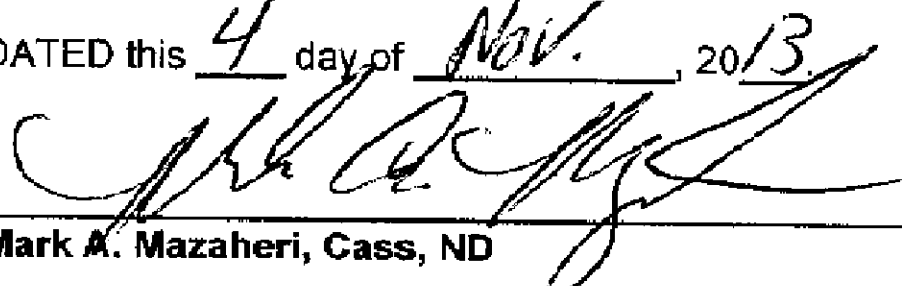
CLERK OF THE COURT

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

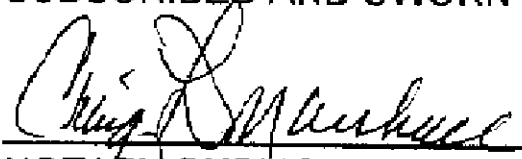
On the **4th** day of **November**, 2013, at 11:10 AM, at the address of **US Bank Service Center, 4325 17TH Avenue SW, FARGO, Cass County, ND 58103**; this affiant served the above described documents upon **U.S. BANK NATIONAL ASSOCIATION N.D.** by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with **Amy Bachmeier, VICE PRESIDENT, REGISTERED AGENT, A white female approx. 40-45 years of age 5'6"-5'8" in height weighing 160-180 lbs with blonde hair and glasses.**

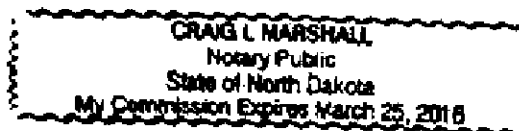
No Information was provided or discovered that indicates that the subjects served are members of the U.S. military.

DATED this 4 day of Nov., 2013.


Mark A. Mazaheri, Cass, ND

SUBSCRIBED AND SWORN to before me this 4 day of Nov., 2013


NOTARY PUBLIC in and for the State of **North Dakota**
Residing at: _____
My Commission Expires: 3-25-16



FOR: **Zieve, Les Law Offices**
REF: **888000604**

ORIGINAL AFFIDAVIT OF
SERVICE

Tracking #: **30078120 SEA FIL**



TAB 4

IN THE DISTRICT COURT, EIGHTH JUDICIAL DISTRICT, CLARK COUNTY, NEVADA

MARCHAI B.T., A BANK TRUST

Plaintiff/Petitioner

vs.

CRISTELA PEREZ, AN INDIVIDUAL; SFR
INVESTMENTS POOL 1, LLC, A LIMITED
LIABILITY COMPANY; U.S. BANK NATIONAL
ASSOCIATION, N.D., A NATIONAL
ASSOCIATION;

Defendant/Respondent

Hearing Date:

CASE NO:
A-13-689461-C

FILED

NOV 12 2013

AFFIDAVIT OF SERVICE OF:
NOTICE OF PENDENCY OF ACTION, CIVIL COURT
COVER SHEET; COMPLAINT FOR JUDICIAL
FORECLOSURE OF DEED OF TRUST; EXHIBITS;
AFFIDAVIT OF SERVICE; SUMMONS - CIVIL

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 4th day of November, 2013, at 11:10 AM, at the address of US Bank Service Center, 4325 17TH Avenue SW, FARGO, Cass County, ND 58103; this affiant served the above described documents upon U.S. BANK NATIONAL ASSOCIATION N.D. by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Amy Bachmeier, VICE PRESIDENT, REGISTERED AGENT, A white female approx. 40-45 years of age 5'6"-5'8" in height weighing 160-180 lbs with blonde hair and glasses.

No Information was provided or discovered that indicates that the subjects served are members of the U.S. military.

DATED this 4 day of Nov., 2013.

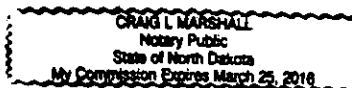
Mark A. Mazaheri, Cass, ND

SUBSCRIBED AND SWORN to before me this 4 day of Nov., 2013

Craig L. Marshall
NOTARY PUBLIC in and for the State of North Dakota

Residing at:

My Commission Expires: 3-25-16



FOR: Zieve, Les Law Offices
REF: 888000604

ORIGINAL AFFIDAVIT OF
SERVICE

Tracking #: 30078120 SEA FIL



RECEIVED

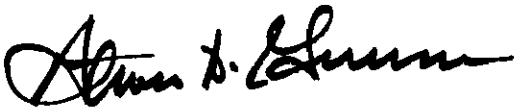
NOV 12 2013

CLERK OF THE COURT

A-13-689461-C
AOS
Affidavit of Service
3146856



TAB 5


CLERK OF THE COURT

AACC
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

**ANSWER, COUNTERCLAIM, AND
CROSS CLAIM**

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

SFR INVESTMENTS POOL 1, LLC (“SFR”) hereby answers the Plaintiff MARCHAI B.T.’s complaint as follows:

INTRODUCTION

1. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 1 of the complaint, and therefore denies said allegations.

2. The document referenced in paragraph 2 of the complaint speaks for itself and SFR denies any allegations inconsistent with the document.

3. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 3 of the complaint, and therefore denies said allegations, except that, upon information and belief, Cristela Perez is an individual, residing in Nevada.

4. SFR admits that it claims an ownership interest in the subject property pursuant to a recorded foreclosure deed recorded in the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

5. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 5 of the complaint, and therefore denies said allegations.

6. The allegations contained in paragraph 6 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 6 of the complaint.

7. The document referenced in paragraph 7 of the complaint speaks for itself, and SFR denies any allegations inconsistent with the document.

8. The document referenced in paragraph 8 of the complaint speaks for itself, and SFR denies any allegations inconsistent with the document.

9. The documents referenced in paragraph 9 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents.

10. The document referenced in paragraph 10 of the complaint speaks for itself, and SFR

denies any allegations inconsistent with the document.

11. The documents referenced in paragraph 11 of the complaint speak for themselves. SFR admits the allegations contained in paragraph 11 of the complaint.

12. The document referenced in paragraph 12 of the complaint (Trustee's Deed Upon Sale) is not attached to the complaint as Exhibit 6 as stated in paragraph 12. That notwithstanding, the document attached as Exhibit 6 speaks for itself, and SFR denies any allegations inconsistent with the document. SFR admits that it purchased the subject property for \$21,000.00 at a public foreclosure auction.

13. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

14. The document referenced in paragraph 14 of the complaint (Notice of Intent to Foreclose) is not attached to the complaint as Exhibit 7. That notwithstanding the document attached as Exhibit 7 speaks for itself, and SFR denies any allegations inconsistent with the document.

15. The documents referenced in paragraphs 15, 16, 17, 18 and 19 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents. Further, the allegations in paragraphs 15, 16, and 17 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR is without sufficient knowledge or information to form a belief as the truth of the factual allegations contained in paragraphs 15, 16, 17, 18 and 19 of the complaint and therefore denies the same.

FIRST CAUSE OF ACTION
(Judicial Foreclosure of Deed of Trust)

16. SFR repeats and realleges its answers to paragraphs 1 through 19 of the complaint as though fully set forth herein.

17. The allegations contained in paragraph 21 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required; SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in

paragraph 21 of the complaint, and therefore denies said allegations.

18. The allegations contained in paragraph 22 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies that Plaintiff has a right under the Deed of Trust to foreclose on the subject property either judicially or non-judicially.

19. The documents referenced in paragraph 23 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents. Further, the allegations contained in paragraph 23 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained therein.

20. The allegations contained in paragraph 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies that amounts remain due under the Deed of Trust and is without sufficient knowledge or information to form a belief as the truth of the remaining factual allegations contained in paragraph 24 of the complaint and therefore denies the same.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.

2. Plaintiff is not entitled to relief from or against SFR, as Plaintiff has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Plaintiff.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Plaintiff.

6. Plaintiff's claims are barred because SFR complied with applicable statutes and with the requirements and regulations of the State of Nevada.

7. Plaintiff's causes of action are barred in whole or in part by the applicable statutes of

1 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

2 8. Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

3 9. Plaintiff has no standing to enforce the first deed of trust and the underlying promissory
4 note.

5 10. The first deed of trust and other subordinate interests in the Property were extinguished
6 by the Association foreclosure sale held in accordance with NRS Chapter 116.

7 11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative
8 defenses may not have been alleged herein insofar as sufficient facts were not available after
9 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend
10 this Answer to assert any affirmative defenses if subsequent investigation warrants.

11 **COUNTERCLAIM AND CROSSCLAIM**

12 **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

13 SFR INVESTMENTS POOL 1, LLC (“SFR”), hereby demands quiet title and requests
14 injunctive relief against Counter-Defendant MARCHAI B.T., a Bank Trust (“Marchai”); and
15 Cross-Defendants CRISTELA PEREZ (“Perez”) and U.S. BANK NATIONAL
16 ASSOCIATION, N.D (“U.S. Bank”) as follows:

17
18 **I. PARTIES**

19 1. SFR is a Nevada limited liability company with its principal place of business in Clark
20 County, Nevada and the current title owner of the property commonly known as **7119 Wolf**
21 **Rivers Avenue, Las Vegas, NV 89131; Parcel No. 125-15-811-013** (the “Property”).

22 2. Upon information and belief, Counter-Defendant, Marchai is a bank trust that may claim
23 an interest in the Property via a 2005 deed of trust securing a loan originated by CMG
24 Mortgage, Inc.

25 3. Upon information and belief, Cross-Defendant, Perez is a Nevada resident and former
26 title owner to the Property.

1 4. Upon information and belief, Cross-Defendant, U.S. Bank is a national association that
2 may claim an interest in the Property via a 2006 deed of trust securing a home equity line of
3 credit.

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

10 6. Upon information and belief, each of the Cross-Defendants sued herein as ROES
11 CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in
12 some manner for the events an happenings herein that SFR seeks to enjoin; that when the true
13 names capacities of such defendants become known, SFR will ask leave of this Court to amend
14 this counterclaim and cross-claim to insert the true names, identities and capacities together with
15 proper charges and allegations.

16 **II. GENERAL ALLEGATIONS**

17 **SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts**

18 7. SFR acquired the Property at a publicly-held foreclosure auction on August 28, 2013 in
19 accordance with NRS 116.3116, et. seq. (“Association foreclosure sale”).

20 8. The resulting foreclosure deed to SFR was recorded in the Official Records of the Clark
21 County Recorder as Instrument No. 201309090001816.

22 9. Wyeth Ranch Community Association (the “Association”) had a lien pursuant to NRS
23 116.3116(1) (“Association Lien”) that was perfected at the time the Association recorded its
24 declaration of CC&Rs.

25 10. The Association foreclosure sale was conducted by Alessi & Koenig, LLC, agent for the
26 Association, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
27 116.31162-116.31168, the Association’s governing documents (CC&R’s) and a Notice of
28 Delinquent Assessment Lien which was recorded on December 20, 2011 in the Official Records

of the Clark County Recorder as Instrument No. 201112200001246.

11. As recited in the foreclosure deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment Lien, Notice of Default and Election to Sell Under Homeowners Association Lien, and the recording, posting and publication of the Notice of Sale.

12. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and encumbrances of unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

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

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

15. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot be waived by agreement or contract, including any subordination clause in the CC&Rs.

16. According to NRS 116.1108, real property law principles supplement the provisions of NRS 116.

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

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

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

20. Upon information and belief, the Association or its agent Alessi distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

21. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the requirement to pay assessments to the Association and of the Association Lien.

22. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the Association's foreclosure proceedings.

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

24. Upon information and belief, Counter-Defendant Marchai had actual or constructive notice of the super-priority portion of the Association Lien.

25. Upon information and belief, at all relevant times, Counter-Defendant Marchai had internal policies and procedures relating to super-priority liens.

26. Upon information and belief, Counter-Defendant Marchai knew or should have known that its interest in the Property could be extinguished through foreclosure if it failed to cure the super-priority portion of the Association Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

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

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

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

29. Upon information and belief, Cross-Defendant Perez obtained title to the Property in July

1 of 2004 through a Grant Bargain Sale Deed from Robert D. Rose, Jr.

2 30. On November 9, 2005, CMG Mortgage, Inc. ("CMG") recorded a deed of trust against
3 the Property in the Official Records of the Clark County Recorder as Instrument Nos.
4 200511090001385 ("First Deed of Trust").

5 31. The First Deed of Trust includes a legal description referencing the Association's
6 declaration of CC&Rs.

7 32. Upon information and belief, the Association was formed and its declaration of CC&Rs
8 was recorded in the Official Records of the Clark County Recorder prior to the time that the First
9 Deed of Trust and Second Deed of Trust were recorded.

10 33. Upon information and belief, CMG had actual or constructive notice of the Association
11 Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

12 34. On or about June 05, 2012 CitiMortgage Inc. recorded a Corporate Assignment of Deed
13 Trust wherein CMG assigned all of its rights under the First Deed of Trust to CitiMortgage, Inc.
14 in the Official Records of the Clark County Recorder as Instrument No. 201206050003133.

15 35. On or about July 26, 2012, US Bank National Association as trustee for Stanwhich
16 Mortgage Loan Trust ("Stanwhich") recorded an Assignment of Mortgage wherein
17 CitiMortgage, Inc. assigned all of its rights under the October 19, 2005 mortgage to US Bank
18 National Association as trustee for Stanwhich Mortgage in the Official Records of the Clark
19 County Reporter as Instrument 201207260002017.

20 36. On or about August 12, 2013, Plaintiff Marchai caused an Assignment of Deed Trust
21 wherein US Bank National Association as trustee for Stanwhich assigned all of its rights under
22 the October 19, 2005 mortgage to Plaintiff Marchai. The original date of the assignment was
23 March 12, 2013.

24 37. On or about September 30, 2013, Marchai filed a Complaint for Judicial Foreclosure on
25 Deed of Trust despite the fact that their security interest in the Property was extinguished by the
26 foreclosure of the Association Lien.

27 38. Cross-Defendant Perez's ownership interest in the Property was extinguished by the
28 foreclosure of the Association Lien.

1 39. Cross-Defendant U.S. Bank's security interest in the Property was extinguished by the
2 foreclosure of the super priority portion of the Association Lien.

3 **III. FIRST CLAIM FOR RELIEF**
4 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS**
5 **116.3116)**

6 40. SFR repeats and realleges the allegations of paragraphs 1 - 39 as though fully set forth
7 herein and incorporates the same by reference.

8 41. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority
9 to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant
10 and Cross-Defendants' adverse claims in the Property.

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

14 43. SFR obtained title to the Property pursuant to a foreclosure deed, which was recorded in
15 the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

16 44. Upon information and belief, Cross-Defendant Perez, may claim an ownership interest in
17 the Property.

18 45. Upon information and belief, Cross-Defendant US Bank, may claim an ownership
19 interest in the Property.

20 46. Upon information and belief, Counter-Defendant Marchai claims an interest in the
21 Property through the Deed of Trust even after the Association foreclosure sale.

22 47. A foreclosure sale conducted pursuant to NRS 116.31162 - 116.31168, like all
23 foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and
24 encumbrances, including deeds of trust.

25 48. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has
26 priority over the First Deed of Trust.

27 49. Counter-Defendant and Cross-Defendants were duly notified of the Association
28 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately
existed.

1 50. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title
2 owner of the Property pursuant to the quitclaim deed obtained from the Association; (2) the
3 Association foreclosure deed was valid and enforceable; (3) the Association foreclosure sale
4 extinguished Counter-Defendant and Cross-Defendants' ownership and security interests in the
5 Property; and (4) SFR's rights and interest in the Property are superior to any adverse interest
6 claimed by Counter-Defendant and Cross-Defendants.

7 51. SFR seeks an order from the Court quieting title to the Property in favor of SFR.
8

9 **IV. SECOND CLAIM FOR RELIEF**
10 **(Preliminary and Permanent Injunction)**

11 52. SFR repeats and realleges the allegations of paragraphs 1- 53 as though fully set forth
12 herein and incorporate the same by reference.

13 53. Pursuant to NRS 116.31166, the Association foreclosure sale vested title in the
14 Association "without equity or right of redemption," and the Foreclosure deed is conclusive
15 against the Property's "former owner, his or her heirs and assigns, and all other persons."

16 54. On or about August 28, 2013, SFR obtained title to the Property pursuant to a
17 Foreclosure deed from the Association.

18 55. Counter-Defendant Marchai may claim that it maintained an interest in the Property
19 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

20 56. Cross-Defendants, Perez and US Bank may claim an ownership interest in the Property.

21 57. A foreclosure sale based on the Deed of Trust is invalid as Counter-Defendant and Cross-
22 Defendants lost their interest in the Property, if any, at the Association foreclosure sale in 2013.

23 58. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
24 would be invalid because their interest in the Property, if any, was extinguished by the
25 Association foreclosure sale.

26 59. Any attempt to take or maintain possession of the Property by Counter-Defendant and
27 Cross-Defendants would be invalid because their interest in the Property, if any, was
28 extinguished by the Association foreclosure sale.

60. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

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

62. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

63. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

VI. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

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

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

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

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

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

Dated this 13th day of November, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2013, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief to the following parties:

Benjamin D. Petiprin, Esq.
LAW OFFICES OF LES ZIEVE
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Attorney for Marchai B.T.

/s/ Andrew M. David
An Employee of Howard Kim & Associates

IAFD
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

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

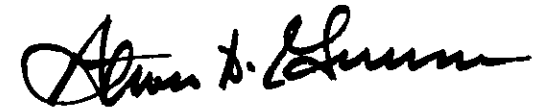
SFR INVESTMENTS POOL 1, LLC	\$223.00
TOTAL	\$223.00

DATED November 13th, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

TAB 6



CLERK OF THE COURT

LISP

APN #: 125-15-811-013

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

E-mail: howard@hkimlaw.com

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

E-mail: diana@hkimlaw.com

JACQUELINE A. GILBERT, ESQ.

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HOWARD KIM & ASSOCIATES

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national
association; DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

Case No. A-13-689461-C

Dept. No. XXVI

NOTICE OF LIS PENDENS

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,
Counter-Defendant/Cross-Defendants.

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

PLEASE TAKE NOTICE that the above-entitled counter-claim as described in this notice, was commenced on November 13, 2013, in the above-named Court, located at 200 Lewis Avenue, Las Vegas, Nevada, 89155, by SFR INVESTMENTS POOL 1, LLC ("SFR") against MARCHAI B.T., a Bank Trust; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; CRISTELA PEREZ, an individual; and DOES I through X; and ROE CORPORATIONS I through 10, inclusive, and any and all persons unknown, claiming any right, title, estate, lien or interest in the real property described in the counter-claim, adverse to SFR'S ownership or any cloud upon SFR'S title thereto. The counter-claim is now pending in the above-named Court.

This counter-claim affects title to specific real property and the right to possession of specific real property situated in Clark County, Nevada, commonly known as **7119 Wolf Rivers Avenue, Las Vegas, NV 89131** legally described as follows:

LOT 13, UNIT 2, BLOCK A OF WYETH RANCH, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS PAGE 8, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA

and more particularly described as Clark County Assessor Parcel Number **125-15-811-013**.

DATED November 13th, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

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Phone: (702) 485-3300

Fax: (702) 485-3301

Attorneys for Plaintiff

TAB 7

CCAN
LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898


CLERK OF THE COURT

Attorneys for plaintiff Marchai B.T.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES 1 through 10, inclusive, and ROES 1
through 10, inclusive.

Defendants.

CASE NO.: A-13-689461-C

DEPT. NO.: XXVI

ANSWER TO COUNTERCLAIM

Plaintiff and counterdefendant Marchai B.T. ("Marchai"), by and through its attorneys, the LAW OFFICES OF LES ZIEVE, answers the counterclaim of defendant SFR Investments Pool 1, LLC ("Defendant") as follows:

1. Marchai admits the allegations in paragraphs 1-4, 30, 34-36, 38, and 46.
2. Marchai denies the allegations in paragraphs 18, 24, 26, 49-50, and 57-63.
3. Marchai is without sufficient information and belief to admit or deny the allegations in paragraphs 5-6, 19, 21-23, 25, 27, 29, 31-33, 39, 43-45, and 54, and on that basis denies them.

- 1 4. There are no allegations to admit or deny in paragraphs 40 and 51-52 and therefore
2 Marchai does not admit or deny anything in those paragraphs.
- 3 5. The allegations in paragraphs 7, 9-17 (paragraph 14 is omitted in the counterclaim),
4 20, 28, 41-42, 47-48, and 53 call for a legal conclusion and no response is necessary.
5 To the extent a response is required: Marchai is without sufficient information and
6 belief to admit or deny those allegations and on that basis denies them.
- 7 6. Marchai admits the allegation that a foreclosure deed recorded as instrument no.
8 201309090001816 in the Official Records of the Clark County Recorder's Office and
9 denies all other allegations in paragraph 8.
- 10 7. Marchai admits it filed a complaint for judicial foreclosure on September 30, 2013,
11 and denies all other allegations in paragraph 37.
- 12 8. Marchai admits the allegation that it maintains an interest in the Property through the
13 First Deed of Trust but denies all other allegations in paragraph 55.
- 14 9. Marchai admits the allegation that it claims an ownership interest in the Property but
15 denies all other allegations in paragraph 56.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

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

19 Defendant fails to state a claim on which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 All causes of action alleged by Defendant are barred by the applicable statute of
23 limitations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Waiver)**

26 All causes of action alleged by Defendant are barred by the doctrine of waiver, laches,
27 and estoppel.

28 ///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 All causes of action alleged by Defendant are barred by the doctrine of unclean hands.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Statute of Frauds)**

6 All causes of action alleged by Defendant are barred by the applicable statute of frauds.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Equitable Estoppel)**

9 The conduct of Defendant bars any relief under the principles of equitable estoppel.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(NRCP 8)**

12 Marchai incorporates by references all affirmative defenses enumerated in Rule 8 of the
13 Nevada Rules of Civil Procedure as though fully set forth herein.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Intervening or Supervening Acts)**

16 All injuries or damages alleged by Defendant, if any, are a direct and proximate cause of
17 intervening or supervening acts of a person or persons other than Plaintiff and over which
18 Plaintiff did not nor reasonably could have exercised control.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Conditions Precedent)**

21 Defendants failed to satisfy conditions precedent to bring an action against Plaintiff.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Attorney's Fees and Costs)**

24 There is no basis for recovery of attorney's fees or costs from Marchai.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Lien Priority – NRS 116.3116)**

27 Any lien interest purportedly held by Defendant in the property that is the subject of this
28 litigation is inferior to Marchai's first deed of trust interest in the property.

1 **TWEFLTH AFFIRMATIVE DEFENSE**

2 **(Reservation of Rights)**

3 All affirmative defenses may not be listed here because facts may exist unknown to
4 Marchai at this time. Marchai reserves its right to amend its answer to add such affirmative
5 defenses in the event further information or investigation warrants it.

6 Marchai PRAYS FOR JUDGMENT AS FOLLOWS:

- 7 1. Defendant takes nothing by way of their counterclaim;
8 2. The counterclaim is dismissed as against Marchai with prejudice;
9 3. For reasonable attorney's fees and costs;
10 4. For any other relief this Court deems proper.

11 DATED: December 3, 2013

LAW OFFICES OF LES ZIEVE

14 By: /s/ Benjamin D. Petiprin
15 Benjamin D. Petiprin, Esq.
16 Attorney for Plaintiff and Counterdefendant
17 Marchai B.T.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of the Law Offices of Les Zieve, and not a party to nor interested in the within matter; that on the 3rd day of December 2013, service of the **ANSWER TO COUNTERCLAIM** was made:

() by serving the following parties electronically through CM/ECF as set forth below;

(X) by depositing a copy in the United States Mail postage prepaid to the parties listed below:

Cristela Perez
7119 Wolf Rivers Ave.
Las Vegas, NV 89131-013
Defendant

Diana S. Cline, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorney for Defendant SFR Investment Pool 1, LLC

US Bank National Association, ND
4325 17th Avenue S.W.
Fargo, ND 58103
Defendant

Robert D. Rose Jr.
7119 Wolf Rivers Ave
Las Vegas, NV 89131
Courtesy Copy

Robert D. Rose Jr.
17450 Burbank Blvd. #104
Encino, CA 91316
Courtesy Copy

CMG Mortgage, Inc.
3160 Crow Canyon Road, Suite 240
San Ramon, California 94583
Courtesy Copy

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, MI 48501-2026
Courtesy Copy

1 CitiMortgage, Inc
2 1000 Technology Drive
3 O'Fallon, MO 63368-2240
4 ***Courtesy Copy***

5 CitiMortgage, Inc
6 C/O NTC 2100 Alt. 19 North
7 Palm Harbor, FL 34683
8 ***Courtesy Copy***

9 Attn: Kelly Mitchell
10 Wyeth Ranch HOA
11 PO Box 12117
12 Las Vegas, NV 89112
13 ***Courtesy Copy***

14 Wyeth Ranch HOA
15 C/O Complete Association Management Company (CAMCO)
16 PO Box 12117
17 Las Vegas, NV 89112
18 ***Courtesy Copy***

19 Wyeth Ranch HOA
20 C/O Alessi & Koenig, LLC
21 9500 W. Flamingo Rd., Suite 100
22 Las Vegas, Nevada 89147
23 ***Courtesy Copy***

24 Attn: Kelly Mitchell
25 Wyeth Ranch Homeowners Assoc.
26 PO Box 12117
27 Las Vegas, NV 89112
28 ***Courtesy Copy***

Wyeth Ranch Community Association
C/O Alessi & Koenig, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Courtesy Copy

Toscana-Wyeth Ranch Landscape Maintenance Association
C/O Ken Williams
1820 E. Sahara STE 101
Las Vegas, NV 89104
Courtesy Copy

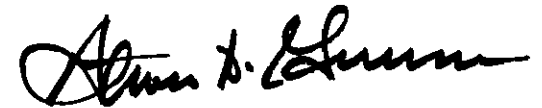
1 Toscana-Wyeth Ranch Landscape Maintenance Association
2 C/O Ken Williams
3 P.O. Box 12117
4 Las Vegas, NV 89112
5 *Courtesy Copy*

6 /s/ Michele Dapello
7 Michele Dapello, an employee of
8 Law Offices of Les Zieve
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TAB 8

AFFT

Howard Kim & Associates, Attorneys at Law
Diana S. Cline, Esq.
1055 Whitney Ranch Dr., Suite 110
Henderson, NV 89014
State Bar No.: 10580
Attorney(s) for: Plaintiff(s)



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Marchai B.T., a Bank Trust

vs

Cristela Perez, an individual; et al

Plaintiff(s)

Defendant(s)

Case No.: A-13-689461-C

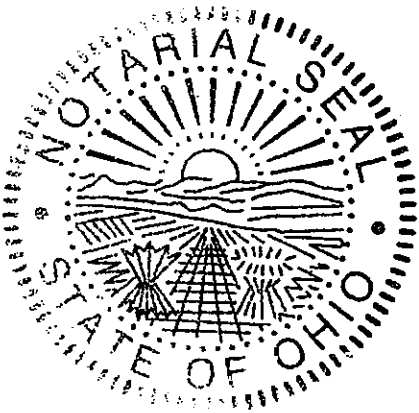
Dept. No.: XXVI

Date:

Time:

AFFIDAVIT OF SERVICE

Jack R. Latham, Jr., being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(les) of the Summons: Notice of Lis Pendens : Answer, Counterclaim, and Cross claim; Initial Appearance Fee Disclosure (NRS Chapter 19) on the 10th day of December, 2013 and served the same on the 11th day of December, 2013 at 2:06 pm by serving the Defendant(s), U.S. Bank National Association, N.D., a national association by personally delivering and leaving a copy at Corporate Office, 425 Walnut Street, Cincinnati, OH 45202 with Jessica Hopkins as Banker an agent lawfully designated by statute to accept service of process.



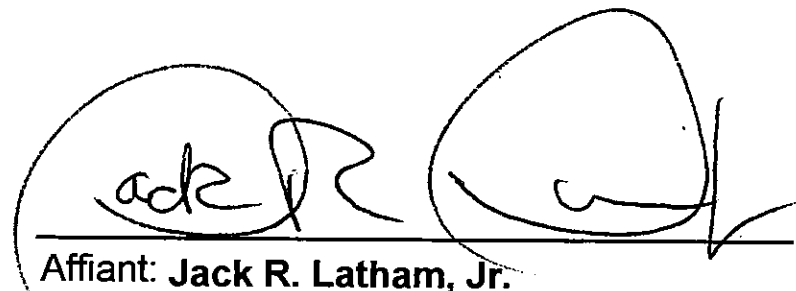
CELINE M. ESTILL
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Clermont County
My Comm. Exp. 7/11/15

State of Ohio, County of Clermont

SUBSCRIBED AND SWORN to before me on this

12th day of Dec., 2013


Notary Public


Affiant: Jack R. Latham, Jr.

WorkOrderNo 1310946



TAB 9

1 **AFFT**
2 Howard Kim & Associates, Attorneys at Law
3 Diana S. Cline, Esq.
4 1055 Whitney Ranch Dr., Suite 110
5 Henderson, NV 89014
6 State Bar No.: 10580
7 Attorney(s) for: Counterclaimant/Cross-Claimant

Electronically Filed
12/27/2013 01:04:39 PM

[Signature]

CLERK OF THE COURT

8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **Marchai B.T., a Bank Trust**
13 **vs**
14 **Cristela Perez, an individual, et al.**

Plaintiff(s)

Defendant(s)

Case No.: **A-13-689461-C**

Dept. No.: **XXVI**

Date:

Time:

15 **AFFIDAVIT OF SERVICE**

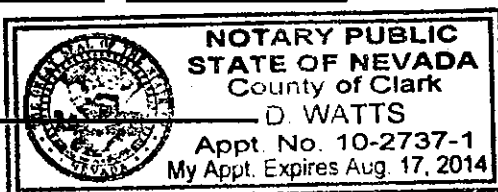
16 I, Lana Paige, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United
17 States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a
18 party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:
19 Summons; Notice of Lis Pendens ; Answer, Counterclaim, and Cross Claim; Initial Appearance Fee
20 Disclosure (NRS Chapter 19) on the 13th day of December, 2013 and served the same on the 23rd day of
21 December, 2013 at 10:00 am by serving to Defendant, Cristela Perez, an individual by personally delivering and
22 leaving a copy with Bob, Boyfriend (White, Male, Brown Hair age 35, 230 lbs., 6'2"), a person of suitable age and
23 discretion residing at the Defendant's usual place of abode located at 7107 Saddle Back Dr.,
24 Las Vegas, NV 89166.

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33 **State of Nevada, County of Clark**

34 **SUBSCRIBED AND SWORN to before me on this**

35 23rd day of December 2013

36 *[Signature]*
Notary Public **D. Watts**



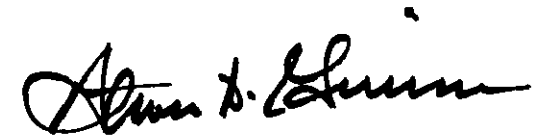
[Signature]
Affiant **Lana Paige**

#: **R-067806**

Legal Process Service License # 604
WorkOrderNo **1310947**

193

TAB 10



CLERK OF THE COURT

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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **MARCHAI, B.T., a Nevada business**
14 **trust,**

15 **Plaintiff,**

16 **vs.**

17 **CRISTELA PEREZ, an individual; et al.**

18 **Defendants.**

Case No.: A-13-689461-C
Dept. No. XXVI

19 **AND ALL RELATED CLAIMS**

20 **MARCHAI, B.T.'S MOTION FOR SUMMARY JUDGMENT**

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MARCHAI, B.T.'S MOTION FOR SUMMARY JUDGMENT

In accordance with N.R.C.P. 56, Marchai, B.T. moves this Court for an order granting summary judgment in its favor and against SFR Investments Pool 1, LLC on the grounds that there exist no genuine issues of material fact and Marchai is entitled to a judgment as a matter of law. Marchai bases this motion on the pleadings and papers on file, the following memorandum of points and authorities, the Appendix of Exhibits to Marchai B.T.'s Motion for Summary Judgment submitted contemporaneously herewith, and any argument heard by the Court.

DATED this 14th day of January 2016.

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By: 
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TAKE NOTICE that Marchai will bring the foregoing Marchai, B.T.'s Motion for Summary Judgment before the above-captioned Court on the 16 day of February 2016 at 9:00 A.M.

DAVID J. MERRILL, P.C.

2

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The first issue presented in this motion is whether Marchai is entitled to summary judgment on its claim for judicial foreclosure. The indisputable answer to this question is yes. Marchai is the holder of a note secured by a deed of trust. The borrower, Cristela Perez, defaulted under the terms of the note and deed of trust and, despite demand, has failed to cure the delinquency. Accordingly, this Court should grant summary judgment in favor of Marchai on its claim for judicial foreclosure.

The second issue presented by this motion is whether this Court should deny SFR's counterclaim for declaratory relief and quiet title and enter summary judgment in favor of Marchai and against SFR. Again, the irrefutable answer to this question is yes.

Although this Court has undoubtedly already confronted several of the hundreds of pending cases concerning the foreclosure of an association's lien and its affect upon a first deed of trust, *this case is unique*. Here, Wyeth Ranch Homeowners Association "instituted an action" to enforce its lien in either 2008 (when it served Perez with a notice of delinquent assessment), 2009 (when it recorded a notice of default and election to sell), or 2010 (when it recorded a notice of sale). However, *after* Wyeth Ranch recorded the notice of sale in 2010, Perez *paid* Wyeth Ranch *more than two years of association dues*; far in excess of the (at most) nine months of association dues that receive "superpriority" treatment. Because Perez satisfied the superpriority portion of Wyeth Ranch's lien, the foreclosure concerned, at most, the subpriority portion of the lien. Consequently, whatever SFR acquired at the foreclosure sale it acquired subject to Marchai's deed of trust.

First, this Court must rely solely upon the deed to determine precisely what interest, if any, SFR acquired. Here, however, the plain language of the deed states that SFR acquired *Alessi & Koenig, LLC*’s “right, title, and interest” in the property. The problem for SFR is that *Alessi had no right, title, or interest in the property*.

Second, the Nevada Supreme Court has concluded that only the “proper foreclosure” of an association’s lien can extinguish a first deed of trust. Here, however, Wyeth Ranch did not properly conduct the foreclosure as it failed to mail the notices to the persons and in the manner required by the statutes.

Third, the Nevada Supreme Court's opinion in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, has rendered NRS 116.3116 void for vagueness under the due process clauses of both the United States and Nevada Constitutions. For example, due process prohibits abrupt changes in the meaning of a law as they fail to impart fair notice, yet that is precisely what the court has done. The court interpreted "institution of an action" in a manner that directly conflicts with two Nevada statutes that pre-existed NRS 116.3116, both of which make clear that "institution of an action" refers to a judicial action. The court compounded the abrupt change in the law by interpreting the word "action" differently in NRS 116.3116(2) than it means in NRS 116.3116(6), (7), or (10).

The void for vagueness doctrine also prohibits statutes so vague that the parties must guess at their meaning. Although the court concluded “institution of an action” can mean the filing of a complaint or a nonjudicial foreclosure, the court failed to define the “action” in the context of a nonjudicial foreclosure. However, for associations, homeowners, and security interest holders to determine whether the lien has expired under the three-year statute of limitations or the beginning of the

1 nine month look back period that comprises the superpriority portion of the
2 association's lien, defining the "action" is critical.

3 The structure of NRS 116 also failed to give fair notice that the nonjudicial
4 foreclosure of an association's lien could extinguish a first deed of trust. For
5 example, the statute does not require the association to provide notice of the
6 superpriority portion of its lien, did not (at the time) grant the holder of a security
7 interest the right to obtain a breakdown of the lien, and does not recognize the right
8 of the holder of a security interest to pay the lien and prevent the foreclosure. It is
9 beyond the pale to assume that a security interest holder would understand that a
10 statute that provides no notice of the amount required to protect its interest, no
11 right to obtain that amount, and no right to cure the delinquency could still
12 extinguish its property rights.

13 NRS 116's conflicting language concerning the manner of service and the
14 ability of an association to credit bid and collect the entire amount of its lien also
15 renders the statute void for vagueness. For example, if, as many like SFR suggest,
16 NRS 116 incorporates the service requirements of NRS 107.090, then the manner of
17 service under NRS 107.090 directly conflicts with the manner of service provided in
18 NRS 116. In addition, the plain language of NRS 116 seems to allow an association
19 to "credit bid" the full amount of its lien, but that directly conflicts with *SFR's*
20 conclusion that only a small portion receives superpriority treatment. Finally, NRS
21 appears to permit the association to collect the full amount of its lien before any
22 money flows to subordinate lien holders, yet this again conflicts with *SFR*.

23 In essence, NRS 116 is a poorly drafted statute. The Nevada Supreme
24 Court's attempt to interpret the uninterpretable only highlighted and enhanced the
25 incredibly conflicting, unintelligible language. Due process requires more from a
26 legislature than scratching words on paper and leaving everyone else to figure it
27
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1 out, particularly when those words place millions of dollars, if not hundreds of
2 millions, in deeds of trust at risk. Accordingly, Marchai respectfully asks this Court
3 to declare NRS 116.3116 unconstitutional as void for vagueness.

4 Fourth, even if this Court can see past the glaring inequity in failing to give
5 holders of a security interest fair notice that their first deed of trust may be at risk
6 from the nonjudicial foreclosure of an association's lien, NRS 116 suffers from
7 another constitutional infirmity. Specifically, NRS 116 fails to satisfy due process,
8 on its face, under both the United States and Nevada Constitutions because it fails
9 to require notice to the holder of a security interest. Instead, the notice provisions
10 of NRS 116 require the holder of a security interest to "opt in" to receive notice.
11 However, "opt in" notice provisions do not satisfy due process. Accordingly, Marchai
12 respectfully requests that the Court declare NRS 116 unconstitutional.

13 Fifth, NRS 116.3116 also violates the takings clauses of the United States
14 and Nevada Constitutions, rendering it void and unenforceable, as it would
15 extinguish Marchai's property rights in the name of making an association whole on
16 a miniscule amount without providing compensation to Marchai.

17 Sixth, assuming this Court can overcome the substantial hurdles facing SFR
18 as set forth above, this Court should still refuse to apply *SFR* retroactively. The
19 United States District Court for the District of Nevada, recently confronted this
20 issue and concluded that *SFR* should apply prospectively only. Since the
21 foreclosure in this case pre-dated *SFR*, the foreclosure in this case should have no
22 affect upon Marchai's deed of trust.

23 Seventh, and finally, this Court can (and should) also declare the sale in this
24 case commercially unreasonable. The association issued numerous notices, many of
25 which were confusing and non-sensical, and failed to rescind all but one of those
26 notices. Ultimately, the foreclosure resulted in a purchase price of less than 7% of
27

1 the price at which SFR valued the property. As a result, this Court should conclude
2 that the sale was not commercially reasonable.

3 No genuine issues of material fact exist that prevent this Court from entering
4 summary judgment in favor of Marchai and against SFR. Accordingly, Marchai
5 respectfully requests that the Court grant this motion.

6 II. STATEMENT OF UNDISPUTED FACTS

7 **A. In 2004, Cristela Perez purchased the property as a second**
8 **home by obtaining two loans from Countrywide Home Loans,**
9 **both of which Countrywide secured through the recording of**
10 **deeds of trust.**

11 On July 21, 2004, Cristela Perez, a resident of California, purchased from
12 Pulte Homes the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada
13 89131 (the "Property") for \$457,545.00.¹ Title in the Property, which is located in
14 the Wyeth Ranch community, vested in Perez, a married woman as her sole and
15 separate property.² Perez purchased the Property as a second home.³ To purchase
16 the Property, Perez entered into two loans with Countrywide Home Loans, Inc.—
17 one for \$366,000.00 and a second for \$68,631.00—both of which Countrywide
18 secured through the recording of two Deeds of Trust.⁴

21 ¹ See Decl. of David J. Merrill ("Merrill Decl.") ¶¶ 2–6, attached to the App. of Exs. to Marchai,
22 B.T.'s Mot. for Summ. J. ("App.") as Ex. 1; Aff. of David Alessi as Custodian of Records for Alessi &
23 Koenig (Nov. 10, 2015), attached to the App. as Ex. 2; Grant, Bargain, Sale Deed at 1, 4 (July 21,
2004), attached to the App. as Ex. 2-A.

24 ² See Ex. 2-A.

25 ³ See Deed of Trust at 22–23 (July 21, 2004), attached to the App. as Ex. 2-B.

26 ⁴ See Deed of Trust, attached to the App. as Ex. 2-B; Deed of Trust at 1–3 (July 21, 2004),
27 attached to the App. as Ex. 2-C.

1 **B. In October 2005, Perez refinanced her two loans by obtaining**
2 **one loan from CMG Mortgage and in January 2006, she**
3 **obtained a home equity line of credit from U.S. Bank.**

4 On October 19, 2005, Perez refinanced her two loans with Countrywide by
5 entering into one InterestFirst Adjustable Rate Note (the “Note”) with CMG
6 Mortgage, Inc. in the amount of \$442,000.00.⁵ On November 9, 2005, CMG
7 Mortgage secured the Note through the recording of a Deed of Trust against the
8 Property.⁶

9 On April 6, 2006, U.S. Bank, N.A. recorded a Deed of Trust against the
10 Property to secure a home equity line of credit that U.S. Bank extended to Perez in
11 January 2006.⁷

12 **C. In September 2008, Wyeth Ranch Homeowners Association**
13 **commenced non-judicial foreclosure proceedings against Perez**
14 **due to the non-payment of her assessments.**

15 The Wyeth Ranch Homeowners Association collected its association dues on
16 the first day of each quarter.⁸ In 2008, Wyeth Ranch collected \$420.00 per
17 quarter—\$140.00 per month—for its association dues.⁹ Perez failed to timely pay
18 dues to Wyeth Ranch on January 1, April 1, or July 1, 2008.¹⁰ Consequently, on
19 September 30, 2008, Alessi & Koenig, LLC, an agent hired by Wyeth Ranch to

20 ⁵ See Decl. of Chaim Freeman (“Freeman Decl.”) ¶ 2, attached to the App. as Ex. 3; *see also*
21 InterestFirst Adjustable Rate Note (Oct. 19, 2005), attached to the App. as Ex. 3-A.

22 ⁶ Deed of Trust (Nov. 9, 2005), attached to the App. as Ex. 2-D. Following the refinance of the
23 loan, on November 21, 2005, Countrywide reconveyed its two deeds of trust. *See* Merrill Decl. ¶¶ 7–
24 8; *see also* Substitutions of Trustee and Full Reconveyances, attached to the App. as Exs. 1-A & 1-B.

25 ⁷ *See* Deed of Trust (Apr. 6, 2006), attached to the App. as Ex. 4.

26 ⁸ *See* Wyeth Ranch Homeowners Ass’n Statement to Cristela Perez (Sept. 17, 2008), attached
27 to the App. as Ex. 2-E.

28 ⁹ *See id.*

¹⁰ *See id.* Perez ultimately made a payment of \$507.60 on April 16, 2008. *See* Resident
Transaction Detail (Apr. 9, 2013), attached to the App. as Ex. 2-F.

1 collect assessments, commenced foreclosure proceeding against Perez by sending
2 her, via certified mail, a Notice of Delinquent Assessment Lien.¹¹ According to the
3 Notice of Delinquent Assessment Lien, Perez owed Wyeth a total of \$1,425.17,
4 which included collection costs, attorney' fees, late fees, service charges, and
5 interest.¹² Alessi recorded the Notice of Delinquent Assessment Lien on October 8,
6 2008.¹³

7 In 2009, Wyeth Ranch increased its assessments from \$420.00 per quarter to
8 \$457.50 per quarter; \$152.50 per month.¹⁴

9 On January 5, 2009, Alessi recorded a Notice of Default and Election to Sell
10 Under Homeowners Association Lien on behalf of Wyeth Ranch.¹⁵ According to the
11 notice of default, Perez owed Wyeth Ranch \$3,096.46 as of December 17, 2008.¹⁶ On
12 January 7, 2009, Alessi mailed the notice of default by certified mail to Perez, CMG
13 Mortgage, and others.¹⁷

14 On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude
15 Non-Judicial Foreclosure and Conduct Trustee Sale, in which Wyeth Ranch
16
17
18

19 ¹¹ See Notice of Delinquent Assessment Lien (Sept. 30, 2008), attached to the App. as Ex. 2-G.

20 ¹² See *id.*

21 ¹³ See Merrill Decl. ¶ 9; see also Notice of Delinquent Assessment (Lien), attached to the App.
22 as Ex. 1-C.

23 ¹⁴ See Ex. 2-F.

24 ¹⁵ See Notice of Default and Election to Sell Under Homeowners Association Lien (Jan. 5,
2009), attached to the App. as Ex. 2-H.

25 ¹⁶ See *id.*

26 ¹⁷ See Certified Mail Receipts (Jan. 7, 2009), attached to the App. as Ex. 2-I.

1 authorized Alessi to proceed with the non-judicial foreclosure of its assessment
2 lien.¹⁸ According to Wyeth Ranch, Perez owed \$3,330.32 in assessments.¹⁹

3 In 2010, Wyeth Ranch increased its assessments from \$457.50 to \$478.50 per
4 quarter, or \$159.50 per month.²⁰

5 In accordance with Wyeth Ranch's authorization, on January 14, 2010, Alessi
6 recorded a Notice of Trustee's Sale, which set a foreclosure sale for February 17,
7 2010.²¹ The Notice of Trustee's Sale stated Wyeth Ranch's intention to foreclose
8 upon the lien recorded on October 8, 2008.²² According to the notice, Perez owed
9 Wyeth Ranch \$6,964.25 for unpaid assessments.²³ On January 25, 2010, Alessi
10 mailed the Notice of Trustee's Sale by certified mail to Perez, CMG Mortgage, the
11 Ombudsman's Office, and others.²⁴

12 **D. Wyeth Ranch failed to complete the foreclosure it instituted in**
13 **2008, but instead accepted \$2,170.00 in assessment payments**
14 **from Perez.**

15 Despite instituting foreclosure proceedings in 2008 that included the
16 recording of a notice of delinquent assessment, notice of default, and notice of
17 trustee's sale, by January 2010, Wyeth Ranch had still failed to complete the
18

19 ¹⁸ See Merrill Decl. ¶¶ 10–12; *see also* Certificate of Custodian of Records Pursuant to NRS
20 52.260, attached to the App. as Ex. 5; Authorization to Conclude Non-Judicial Foreclosure and
Conduct Trustee Sale (Nov. 5, 2009), attached to the App. as Ex. 5-A.

21 ¹⁹ *See id.*

22 ²⁰ *See* Ex. 2-F.

23 ²¹ *See* Notice of Trustee's Sale (Jan. 14, 2010), attached to the App. as Ex. 2-J.

24 ²² *See id.*

25 ²³ *See id.*

26 ²⁴ *See* Certified Mail Receipts (Jan. 25, 2010), attached to the App. as Ex. 2-K.

1 foreclosure. Instead, Wyeth Ranch began communicating with Perez about the
2 outstanding assessments and accepted \$2,170.00 in payments from Perez.

3 For example, on February 3, 2010, Alessi sent a demand to Perez and her
4 husband, Robert Rose, in which Alessi claimed that Perez owed Wyeth Ranch
5 \$6,977.61.²⁵ In response to the demand, on February 12, 2010, Rose paid Wyeth
6 Ranch \$900.00, which equates to payment of 6.43 months of association dues.²⁶

7 Following its receipt of the \$900.00 payment from Perez, on April 13, 2010,
8 Alessi sent Perez a letter proposing a payment plan for the payment of the past due
9 assessments to Wyeth Ranch.²⁷ The payment plan offered by Wyeth Ranch
10 required Perez to pay \$690.78 per month starting in April 2010 through December
11 2010.²⁸ Although Perez did not make the payments required of her in the payment
12 plan, she did continue to make payments. For example, on May 11, 2010, Perez
13 made a \$300.00 payment to Wyeth Ranch for past due assessments, another 2.14
14 months' worth of association dues.²⁹

15 Even though Perez had paid nearly nine months of past due assessments
16 following Wyeth Ranch's commencement of foreclosure proceedings, in July 2013,
17 Wyeth Ranch continued with its foreclosure. On July 13, 2010, Alessi sent Perez a
18 Pre-Notice of Trustee Sale Notification based upon the Notice of Delinquent
19 Assessment Lien recorded on October 8, 2008, and the Notice of Default and
20

21 ²⁵ See Facsimile Cover Letter from Alessi to Rose and Perez (Feb. 3, 2010), attached to the App.
22 as Ex. 2-L.

23 ²⁶ See MoneyGram Money Order from Rose to Alessi (Feb. 12, 2010), attached to the App. as
Ex. 2-M.

24 ²⁷ Letter from Alessi to Perez (Apr. 13, 2010), attached to the App. as Ex. 2-N.

25 ²⁸ See *id.*

26 ²⁹ See Western Union Money Order (May 11, 2010), attached to the App. as Ex. 2-O.

1 Election to Sell Recorded on January 5, 2009.³⁰ The Pre-Notice of Trustee's Sale
2 demanded payment from Perez in the amount of \$19,071.21.³¹

3 In response to Wyeth Ranch's demand, Perez made another \$805.00 in
4 assessment payments between August 2010 and and March 2011. For example, on
5 August 2, 2010, Perez paid Wyeth Ranch \$250.00.³² Perez followed her August 2,
6 2010 payment with a payment of \$220.00 on September 29, 2010.³³ On November
7 30, 2010, Perez paid Wyeth Ranch another \$175.00.³⁴ Finally, on March 10, 2011,
8 Perez paid another \$160.00 to Wyeth Ranch.³⁵ Thus, between August 2010 and
9 March 2011, Perez paid another 5.75 months worth of association dues.
10 Accordingly, after Wyeth Ranch commenced its foreclosure proceedings in
11 September 2008, by March 2011 Perez paid a total of \$2,005.00, or 14.32 months'
12 worth of assessments.

13 On March 9, 2011, Alessi recorded a Rescission of Notice of Trustee's Sale,
14 which rescinded the notice Alessi recorded on January 14, 2011.³⁶

15
16 ³⁰ See Pre-Notice of Trustee Sale Notification from Alessi to Perez (July 13, 2010), attached to
the App. as Ex. 2-P.

17 ³¹ See *id.*

18 ³² See Check No. 3395 from Perez to Alessi & Koenig (Aug. 2, 2010), attached to the App. as Ex.
19 2-Q.

20 ³³ See Western Union Money Order from Rose to Alessi (Sept. 29, 2010), attached to the App. as
Ex. 2-R.

21 ³⁴ See Western Union Money Order from Perez to Alessi (Nov. 30, 2010), attached to the App.
22 as Ex. 2-S.

23 ³⁵ See Western Union Money Order from Perez to Alessi (Mar. 10, 2011), attached to the App.
as Ex. 2-T.

24 ³⁶ See Merrill Decl. ¶ 13; see also Rescission of Notice of Trustee's Sale (Mar. 9, 2011), attached
25 to the App. as Ex. 1-D. Although the notice claims to rescind the Notice of Trustee's Sale recorded on
26 January 11, 2010, Alessi did not record a Notice of Trustee's Sale on January 11, 2010. Marchai
assumes that Alessi meant to state that it rescinded the notice recorded on January 14, 2010, as it
does refer to instrument number 2589, which is the January 14, 2010 Notice of Trustee's Sale.

1 On March 29, 2011, Alessi recorded another Notice of Trustee's Sale based
2 upon the January 5, 2009 Notice of Default and Election to Sell.³⁷ On April 4, 2011,
3 Alessi mailed the Notice of Trustee's Sale by certified mail to Perez, CMG Mortgage,
4 the ombudsman and others.³⁸

5 On June 2, 2011, Wyeth Ranch executed another authorization to allow
6 Alessi to complete the non-judicial foreclosure and conduct the trustee sale.³⁹ The
7 authorization claimed that Perez owed Wyeth Ranch \$4,730.03 in delinquent
8 assessments.⁴⁰ In accordance with the June 2, 2011 authorization from Wyeth
9 Ranch, on July 27, 2011, Alessi sent Perez a Breach of Payment Plan letter claiming
10 that she breached her obligations under the payment plan and that Alessi would
11 continue the foreclosure.⁴¹ In response to the letter, on August 4, 2011, Perez paid
12 Wyeth Ranch another \$165.00.⁴² Thus, since Wyeth Ranch commenced its
13 foreclosure in September 2008, Perez paid Wyeth Ranch a total of \$2,170.00, or 15.5
14 months of association dues.

15 On October 1, 2011, Perez defaulted under the terms of her loan from CMG
16 Mortgage.⁴³

18 ³⁷ See Merrill Decl. ¶ 14; *see also* Notice of Trustee's Sale (Mar. 29, 2011), attached to the App.
as Ex. 1-E.

19 ³⁸ Certified Mail Receipts (Apr. 4, 2011), attached to the App. as Ex. 2-U.

20 ³⁹ Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale (June 2,
21 2011), attached to the App. as Ex. 5-B.

22 ⁴⁰ *See id.*

23 ⁴¹ See Breach of Payment Plan letter from Veney to Perez (July 27, 2011), attached to the App.
as Ex. 2-V.

24 ⁴² See Personal Money Order from Perez to Alessi (Aug. 4, 2011), attached to the App. as Ex. 2-
25 W.

26 ⁴³ See Freeman Decl. ¶ 5; *see also* letter from Carrington Mortgage Services, LLC to Perez (Oct.
27 3, 2012), attached to the App. as Ex. 3-E.

1 **E. Instead of completing the foreclosure it began in 2008, in 2011,**
2 **Wyeth Ranch started a new foreclosure without rescinding any**
3 **of the prior notices and continued to accept payments from**
4 **Perez.**

5 In 2011, Wyeth Ranch charged \$448.50 each quarter (or \$149.50 per month)
6 for assessments.⁴⁴ On November 29, 2011, Alessi sent Perez a lien letter by first
7 class mail to the Property, to which Alessi attached a Notice of Delinquent
8 Assessment Lien.⁴⁵ On December 7, 2011, Alessi sent that same letter to the Perez
9 at the Property by Certified Mail.⁴⁶ Interestingly, Alessi did not send the letter to
10 Perez's mailing address as it had done the prior notices.⁴⁷ Confusingly, the Notice
11 of Delinquent Assessment Lien, claims a total amount due from Perez to Wyeth
12 Ranch of \$9,296.56, yet it claims \$9,559.06 was due for "Collection and/or Attorney
13 Fees, assessments, interest, late fees, and service charges," and \$450.00 for
14 collection costs.⁴⁸ On December 20, 2011, Alessi recorded the Notice of Delinquent
15 Assessment Lien, but did not release or rescind the Notice of Delinquent
16 Assessment Lien it recorded in 2008.⁴⁹

17 On January 25, 2012, Alessi followed up with the Notice of Delinquent
18 Assessment Lien by mailing Perez a Pre-Notice of Default Letter demanding that
19 Perez pay Wyeth Ranch \$9,865.06 in past due assessments.⁵⁰

20 ⁴⁴ See Ex. 2-F.

21 ⁴⁵ See Lien Letter from Alessi to Perez (Nov. 29, 2011), attached to the App. as Ex. 2-X.

22 ⁴⁶ See *id.*

23 ⁴⁷ Compare Ex. 2-X with Ex. 2-U.

24 ⁴⁸ See Ex. 2-X.

25 ⁴⁹ See Notice of Delinquent Assessment (Lien) (Dec. 20, 2011), attached to the App. as Ex. 2-Y;
26 Merrill Decl. ¶ 15; Clark County Recorder Records Search & Order System (Jan. 11, 2016), attached
27 to the App. as Ex. 1-F.

28 ⁵⁰ See Pre-Notice of Default letter from Kerbow to Perez (Jan. 25, 2012), attached to the App. as
 Ex. 2-Z.

1 On February 28, 2012, Alessi recorded a Notice of Default and Election to Sell
2 Under Homeowners Association Lien, but failed to release or rescind the Notice of
3 Default and Election to Sell it recorded on January 5, 2009.⁵¹ According to the
4 notice, as of February 14, 2012, Perez owed Wyeth Ranch \$10,625.06 in unpaid
5 assessments.⁵² The notice states that Perez first defaulted on her obligations to
6 Wyeth Ranch in January 2008, yet it states that Alessi prepared the notice
7 pursuant to the Notice of Delinquent Assessment Lien recorded on December 20,
8 2011.⁵³ On March 5, 2012, Alessi mailed the notice by certified mail to both the
9 Property and Perez's mailing address, but Alessi provided no evidence that it
10 mailed the notice to CMG Mortgage.⁵⁴ In addition, it appears that Alessi served
11 only Perez by certified mail.⁵⁵

12 In response to the notice of default, on March 19, 2012, Perez paid Wyeth
13 Ranch \$300.00.⁵⁶ On May 7, 2012, Rose paid Wyeth another \$295.00.⁵⁷ Thus,
14 between March 19 and May 7, 2012, Perez paid \$595.00 in assessments to Wyeth.
15
16
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18

19 ⁵¹ See Notice of Default and Election to Sell Under Homeowners Association Lien (Feb. 28,
20 2012), attached to the App. as Ex. 2-AA; *see also* Ex. 1-F.

21 ⁵² *See id.*

22 ⁵³ *See id.*

23 ⁵⁴ See Notice of Default 10-Day Mailings (Mar. 5, 2012), attached to the App. as Ex. 2-BB; *see also* mailing receipts (Mar. 5, 2012), attached to the App. as Ex. 2-AA.

24 ⁵⁵ *See id.*

25 ⁵⁶ See Personal Money Order (Mar. 19, 2012), attached to the App. as Ex. 2-CC.

26 ⁵⁷ See Personal Money Order (May 7, 2012), attached to the App. as Ex. 2-DD.

1 **F. In May 2012, CMG Mortgage assigned its interest in its deed of**
2 **trust to CitiMortgage and endorsed the note to payable to the**
3 **order of CitiMortgage.**

4 On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the
5 nominee for CMG Mortgage, Inc., assigned CMG Mortgage's deed of trust to
6 CitiMortgage, Inc.⁵⁸ Likewise, CMG Mortgage endorsed the note payable to the
7 order of CitiMortgage.⁵⁹ On June 5, 2012, CitiMortgage recorded a Corporate
8 Assignment of Deed of Trust.⁶⁰

9 **G. In July 2012, Wyeth Ranch continued with its foreclosure, and**
10 **Perez continued to make payments.**

11 On July 18, 2012, Alessi sent Perez a Pre-Notice of Trustee Sale Notification,
12 in which Alessi demanded that Perez pay Wyeth Ranch \$11,371.07.⁶¹ Confusingly,
13 Alessi claims that it sent the Pre-Notice of Trustee's Sale Notification pursuant to
14 the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the
15 Notice of Default and Election to Sell recorded nearly three years earlier on
16 January 5, 2009.⁶² In response to the Pre-Notice of Trustee Sale Notification, on
17 July 26, 2012, Perez paid Wyeth Ranch another \$165.00.⁶³

18 **H. In July 2012, CitiMortgage assigned its interest in the deed of**
19 **trust, and endorsed the note, to U.S. Bank, N.A.**

20 On July 26, 2012, CitiMortgage assigned the deed of trust that it obtained
21 from CMG Mortgage to U.S. Bank, N.A., as trustee for Stanwich Mortgage Loan

22 ⁵⁸ See Freeman Decl. ¶ 3; see also Corporate Assignment of Deed of Trust (June 5, 2012),
23 attached to the App. as Ex. 3-C.

24 ⁵⁹ See Ex. 3-A.

25 ⁶⁰ See Ex. 3-C.

26 ⁶¹ See Pre-Notice of Trustee Sale Notification (July 18, 2012), attached to the App. as Ex. 2-EE.

27 ⁶² See *id.*

28 ⁶³ See Western Union Money Order from Perez and Rose to Alessi (July 26, 2012), attached to
 the App. as Ex. 2-FF.

1 Trust, Series 2012-6.⁶⁴ CitiMortgage also signed an allonge, endorsing the note
2 payable to U.S. Bank.⁶⁵ On July 26, 2012, U.S. Bank recorded the Assignment of
3 Mortgage with the Clark County Recorder.⁶⁶ On October 3, 2012, Carrington
4 Mortgage Services, LLC, the servicer for the loan assigned to U.S. Bank, sent Perez
5 a Notice of Intent to Foreclose.⁶⁷ According to the notice, Perez defaulted on the
6 loan on October 1, 2011 and owed U.S. Bank \$36,281.60.⁶⁸

7 **I. In October 2012, Alessi recorded yet another Notice of**
8 **Trustee's Sale.**

9 On October 10, 2012, Alessi prepared yet another Notice of Trustee's Sale.⁶⁹
10 According to the notice, Alessi stated its intention to sell the Property at a
11 foreclosure sale on November 28, 2012.⁷⁰ The notice claims that Alessi will conduct
12 the sale pursuant to the lien recorded on December 20, 2012.⁷¹ According to the
13 notice, Perez owed \$11,656.07.⁷² According to an Affidavit of Service prepared by
14 Daniel Vidovic, on October 21, 2012, he served Perez with a copy of the Notice of
15 Trustee Sale by posting a copy of the Notice of Trustee's Sale on the Property.⁷³
16 Vidovic also claimed that he posted the Notice of Trustee Sale for twenty

17 ⁶⁴ See Assignment of Mortgage (July 26, 2012), attached to the App. as Ex. 2-GG.

18 ⁶⁵ See Ex. 3-A.

19 ⁶⁶ See Ex. 2-GG.

20 ⁶⁷ See Ex. 3-E.

21 ⁶⁸ See *id.*

22 ⁶⁹ See Notice of Trustee's Sale (Oct. 10, 2012), attached to the App. as Ex. 2-HH.

23 ⁷⁰ See *id.*

24 ⁷¹ See *id.*

25 ⁷² See *id.*

26 ⁷³ See Aff. of Service (Nov. 26, 2012), attached to the App. as Ex. 2-II.

1 consecutive days at three public places in the county, but failed to state the date on
2 which he made the posting.⁷⁴ On October 25, 2012, Alessi mailed the Notice of
3 Trustee's Sale by certified mail to Perez at the Property and her mailing address,
4 and to U.S. Bank and the Ombudsman's Office.⁷⁵ However, Alessi did not send the
5 notice by first class mail.⁷⁶ Finally, on October 31, 2012, Alessi recorded the Notice
6 of Trustee's Sale, but did not rescind the Notice of Trustee's Sale it recorded on
7 March 29, 2011.⁷⁷

8 In response to the Notice of Trustee's Sale, on November 13, 2012, Perez
9 made a \$300.00 payment to Wyeth Ranch towards her assessments.⁷⁸

10 **J. On March 12, 2013, U.S. Bank assigned its interest in the Deed**
11 **of Trust to Marchai.**

12 On March 12, 2013, U.S. Bank assigned its interest in the Deed of Trust to
13 Marchai, B.T., a Nevada business trust, which it recorded with the Clark County
14 Recorder on August 12, 2013.⁷⁹ Contemporaneously with the assignment, U.S.
15 Bank executed an allonge endorsing the note to Marchai.⁸⁰

18
19 ⁷⁴ See *id.*

20 ⁷⁵ See Notice of Trustee's Sale Mailings (Oct. 25, 2012), attached to the App. as Ex. 2-JJ.

21 ⁷⁶ See *id.*

22 ⁷⁷ See Notice of Trustee's Sale (Oct. 31, 2012), attached to the App. as Ex. 2-KK; *see also* Ex. 1-F.

23 ⁷⁸ See Check No. 2166 from Perez to Alessi & Koenig (Nov. 13, 2012), attached to the App. as
24 Ex. 2-LL.

25 ⁷⁹ See Freeman Decl. ¶¶ 1, ; *see also* Assignment of Deed of Trust (Aug. 12, 2013), attached to
the App. as Ex. 3-F.

26 ⁸⁰ See Ex. 3-A.

On July 11, 2013, Alessi executed yet another Notice of Trustee's Sale, in which it claimed that it was the "duly appointed Trustee" pursuant to a lien recorded on December 20, 2011.⁸¹ The notice claimed that Perez owed \$14,090.80 in unpaid assessments.⁸² According to the notice, Alessi intended to sell the Property at a foreclosure sale on August 28, 2013.⁸³ On July 29, 2013, Alessi served the Notice of Trustee's Sale by certified mail upon Perez at the Property and her mailing addresses and upon the Ombudsman's Office, but did not serve anyone by first class mail.⁸⁴ In addition, Alessi did not serve Marchai.⁸⁵ On July 30, 2013, Nevada Legal Support Services, LLC posted the notice at three different public places in the county.⁸⁶ On July 31, 2013, Nevada Legal Support Services posted a copy of the notice on the Property.⁸⁷ That same day, Alessi recorded the notice with the Clark County Recorder, but again failed to rescind the Notice of Trustee's Sale recorded on October 31, 2012.⁸⁸ Nevada Legal News published the Notice of Trustee's sale on August 2, 9, and 16, 2013.⁸⁹

⁸⁹ See Aff. of Publication (Aug. 16, 2013), attached to the App. as Ex. 2-QQ.

1 L. On August 28, 2013, Alessi conducted the foreclosure sale, at
2 which time SFR Investments Pool 1, LLC purchased Alessi's
3 interest in the Property for \$21,000.00.

4 On August 28, 2013, Alessi conducted a foreclosure sale, ostensibly based
5 upon the Notice of Delinquent Assessment Lien recorded on December 20, 2011.⁹⁰
6 At the foreclosure sale, SFR Investments Pool 1, LLC submitted the winning bid of
7 \$21,000.00.⁹¹ According to Alessi, Perez owed Wyeth Ranch \$14,677.80 in
8 assessments at the time of the foreclosure.⁹² The Declaration of Value asserts that
9 the Property has a "Transfer Tax Value" of \$307,403.00.⁹³

10 On September 9, 2013, Alessi recorded with the Clark County Recorder a
11 Trustee's Deed Upon Sale.⁹⁴ According to the plain language of the Trustee's Deed
12 Upon Sale, Alessi conveyed to SFR all of Alessi's "right, title and interest" in the
13 Property.⁹⁵ However, neither SFR nor Alessi have provided any documents
14 demonstrating that Alessi had any "right, title, or interest" in the Property.

15 Perez has failed to pay the amounts due and owing on the note.⁹⁶ As of
16 January 14, 2016, Perez owes Marchai a total of \$489,372.77; \$430,113.48 for the
17 unpaid principal balance of the note, \$52,812.81 in interest, \$5,328.48 in late
18 charges, and \$1,118.00 in loan fees.⁹⁷

19 ⁹⁰ See Trustee's Deed Upon Sale (Sept. 9, 2013), attached to the App. as Ex. 2-RR.

20 ⁹¹ See *id.*

21 ⁹² See *id.*

22 ⁹³ See *id.*

23 ⁹⁴ See *id.*

24 ⁹⁵ See *id.*

25 ⁹⁶ See Freeman Decl. ¶ 7.

26 ⁹⁷ See *id.*

III. ARGUMENT

Pursuant to N.R.C.P. 56, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁹⁸ Although the Court must view the facts in the light most favorable to the nonmoving party, the nonmoving party must “set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.”⁹⁹ The nonmoving party may not rely on “the gossamer threads of whimsy, speculation and conjecture.”¹⁰⁰

A. The Court should enter summary judgment in favor Marchai on its claim for judicial foreclosure based upon Perez’s default on the note and deed of trust.

1. NRS 40.430 *et seq.* provides for judicial foreclosure in Nevada.

NRS 40.430 *et seq.* provides the statutory framework for judicial actions for foreclosure of real mortgages in Nevada and “must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.”¹⁰¹ In an action for judicial foreclosure, “the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds

⁹⁸ N.R.C.P. 56(c).

⁹⁹ *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

¹⁰⁰ *Id.* (citations omitted)

¹⁰¹ NRS § 40.430(2) (2015).

1 of the sale as provided in NRS 40.462.”¹⁰² “[A] creditor of a note secured by real
2 property must first pursue judicial foreclosure before recovering from the debtor
3 directly.”¹⁰³

4 **2. Perez obtained a loan from CMG Mortgage, which is**
5 **evidence by an InterestFirst Adjustable Rate Note and**
6 **secured by a Deed of Trust.**

7 On October 19, 2005, Perez obtained a loan from CMG Mortgage in the
8 original principal amount of \$442,000.00, which is evidenced by the InterestFirst
9 Adjustable Rate Note. On November 9, 2005, CMG Mortgage secured the note
10 through the recording of a Deed of Trust against the Property.

11 **3. Marchai is entitled to enforce the note and deed of trust.**

12 In 2012, the Nevada Supreme Court held that in order to enforce a deed of
13 trust through foreclosure, the deed of trust and underlying promissory note must be
14 held by the same party.¹⁰⁴ The Court dispelled any notion that “separation” of the
15 note and deed of trust, i.e., that separate parties at one time held an interest in the
16 deed of trust and note, precludes enforcement when the documents are ultimately
17 unified in the same holder. “Indeed, while entitlement to enforce both the deed of
18 trust and the promissory note is required to foreclose, nothing requires those
19 documents to be unified from the point of inception of the loan.”¹⁰⁵
20
21

22 ¹⁰² *Id.* § 40.430(1) (2015).

23 ¹⁰³ *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748,
24 750 (2005).

25 ¹⁰⁴ *Edelstein v. Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 260 (2012) (citing
Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1039 (9th Cir. 2011)).

26 ¹⁰⁵ *Edelstein*, 286 P.3d at 259 (citing *In re Tucker*, 441 B.R. 638, 644 (Bankr. W.D. Mo. 2010)).

a. Marchai is the current beneficiary of the Deed of Trust.

“To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing.”¹⁰⁶ This requirement parallels the requirements for assignments of a trust deed interest in lands generally, which “must be in writing, subscribed by the party creating, granting, assigning, or declaring the same, or by the party's lawful agent thereunto authorized in writing.”¹⁰⁷ An assignment of a beneficial interest in a deed of trust must further be recorded in the office of the recorder in which the property is located.¹⁰⁸

Here, CMG Mortgage, through MERS, assigned the Deed of Trust to CitiMortgage, who assigned the Deed of Trust to U.S. Bank, who ultimately assigned the Deed of Trust to Marchai. The assignments satisfy all of the above requirements: they are in writing; subscribed to by the agent of the prior beneficiary; and recorded in Clark County, where the Property is located. Marchai, as the current beneficiary of the Deed of Trust, is entitled to enforce it.¹⁰⁹

b. Marchai is the current payee of the Note.

Article 3 of the Uniform Commercial Code governs transfers of negotiable instruments like promissory notes.¹¹⁰ For a subsequent lender to establish it is entitled to enforce a note, it must “present evidence showing [e]ndorsement of the

¹⁰⁶ *Edelstein*, 286 P.3d at 260 (citing *Leyva v. National Default Servicing Corp.*, 127 Nev. Adv. Op. 40, 255 P.3d, 1275, 1279 (2011)).

¹⁰⁷ NRS § 111.205(1) (2015).

¹⁰⁸ *Id.* § 106.210 (2015).

¹⁰⁹ *See Edelstein*, 286 P.3d at 254 (noting that the beneficiary of a deed of trust is provided a lien interest as security for the underlying debt, subject to the laws on foreclosure and sale) (citing *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 298–99, 183 P.3d 895, 901–02 (2008); *Orr v. Ulyatt*, 23 Nev. 134, 140, 43 P. 916, 917–18 (1896)).

¹¹⁰ *Edelstein*, 286 P.3d at 261 (citing *Leyva*, 255 P.3d at 1279).

1 note either in its favor or in favor of [its servicer].”¹¹¹ When a promissory note is
2 endorsed to another party, the UCC permits a note to “be made payable to bearer or
3 payable to order,” depending on the type of endorsement.¹¹²

4 Here, the Note is payable to the order of Marchai. CMG Mortgage endorsed
5 the Note payable to the order of CitiMortgage. CitiMortgage, then executed an
6 allonge making the Note payable to U.S. Bank, who then executed another allonge
7 making the Note payable to Marchai. Accordingly, Marchai is entitled to enforce
8 the Note.¹¹³

9 **4. Marchai accelerated the amounts due on the loan due to**
10 **Perez’s default.**

11 Perez must pay the principal and interest on the debt evidenced by the Note
12 and failure to make such payments constitutes default and breach of the Note and
13 Deed of Trust. Upon default, the beneficiary of the Deed of Trust must provide
14 notice to Perez of the breach and provide 30 days to cure. If Perez fails to cure, the
15 beneficiary may accelerate the full payment of the Note and invoke the power of
16 sale and any other remedies permitted by law.

17 Here, Perez failed to make the October 1, 2011 payment on the Note and all
18 payments due thereafter, resulting in default under the terms of the Note and Deed
19 of Trust. On October 3, 2012, the loan servicer mailed Perez the Notice of Intent to
20 Foreclose as required under the plain language of the Deed of Trust. However,
21 Perez failed to cure within the time prescribed, and Marchai elected to accelerate
22 the amounts owed on the Loan as evidenced by filing the Complaint. The unpaid

23
24 ¹¹¹ *Edelstein*, 286 P.3d at 261 (citing *In re Veal*, 250 B.R. 897, 921 (9th Cir. BAP 2011); *see also*
Leyva, 255 P.3d at 1279.

25 ¹¹² *Leyva*, 255 P.3d at 1280 (citing NRS § 104.3109).

26 ¹¹³ *See id.*

1 principal balance, together with interest as allowed at the Note, late charges, and
2 loan fees through January 14, 2016 totals \$489,372.77.

3 Marchai elects to invoke the power of sale and is entitled to a judgment of
4 this Court ordering the Property sold at foreclosure in order to satisfy the amount
5 due and payable.¹¹⁴ Finally, Marchai seeks attorney's fees and costs incurred in
6 prosecuting this matter from Perez pursuant to that provision in the Deed of Trust.

7 Accordingly, Marchai respectfully requests that the Court enter summary
8 judgment in its favor on its claim for judicial foreclosure.

9 **B. The Court should enter summary judgment in favor of Marchai**
10 **and against SFR on its claim for declaratory relief/quiet title.**

11 NRS 40.010 provides that "an action may be brought by any person against
12 another who claims an estate or interest in real property adverse to the person
13 bringing the action, for the purpose of determining such adverse claim."¹¹⁵ "In a
14 quiet title action, the burden of proof rests with the plaintiff to prove good title in
15 himself."¹¹⁶ Here, SFR asks the Court to declare that Wyeth Ranch's foreclosure
16 extinguished Marchai's deed of trust and declare good title in favor of SFR.
17 However, SFR cannot prove good title in itself because Wyeth Ranch's foreclosure
18 had no effect upon Marchai's deed of trust.

24 ¹¹⁴ See NRS § 40.430(1).

25 ¹¹⁵ NRS § 40.010 (2015).

26 ¹¹⁶ See *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

1. Perez paid more than nine months of association dues after Wyeth Ranch “instituted an action” to enforce its lien, thus satisfying the “superpriority piece” of the association’s lien.

NRS 116.3116 grants an association “a lien on a unit for any construction penalty that is imposed against the unit’s owner pursuant to NRS 116.31035, any assessment levied against that unit or any fines imposed against the unit’s owner from the time the construction penalty, assessment or fine becomes due.”¹¹⁷ An association’s lien “is prior to all other liens and encumbrances on a unit except:”

- (a) Liens and encumbrances recorded before the recordation of the declaration . . . ;
- (b) *A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent . . .* and
- (c) Liens for real estate taxes and other governmental assessments or charges against the unit¹¹⁸

However, NRS 116.3116(2) also provides:

*The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the period 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*¹¹⁹

In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, the Nevada Supreme Court concluded that although the association has *one* lien that includes all “assessments,” the lien has two pieces: a superpriority piece, “consisting of the last nine months of HOA dues and maintenance and nuisance-abatement charges” and a

¹¹⁷ NRS § 116.3116(1) (2011). Because the Legislature has amended NRS 116 several times in the five years between the time Wyeth Ranch initiated the foreclosure and ultimately completed the foreclosure, Marchai will refer to the Court the date of the statute to which it cites.

¹¹⁸ NRS § 116.3116(2) (2011) (emphasis added).

¹¹⁹ *Id.* (emphasis added). When Wyeth Ranch sent Perez the Notice of Delinquent Assessment Lien in September 2008, the statute granted association’s superpriority of only six, not nine, months of dues. See NRS § 116.3116(2) (2003).

1 subpriority piece consisting of all other “assessments.”¹²⁰ According to *SFR*, the
2 “superpriority” piece of the association’s lien has priority over a first deed of trust,
3 but the “subpriority” piece is subordinate.¹²¹ Further, the court held that
4 “institution of an action” in the context of NRS 116.3116(2) includes nonjudicial
5 foreclosure as well as judicial foreclosure.¹²² Unfortunately, if “institution of an
6 action” includes the “action” in the context of a nonjudicial foreclosure, *SFR* failed to
7 define precisely when the “institution of an action” occurs to enable the parties to
8 determine what nine (or six) months of association dues would have priority over a
9 first deed of trust.¹²³ However, regardless of whether this Court concludes that the
10 “institution of an action” begins from service of the notice of delinquent assessment
11 lien, recording of the notice of default, or even recording of the notice of trustee’s
12 sale, here, Perez *paid* far more than nine (or six) months of assessments after
13 Wyeth Ranch instituted the action to enforce the lien.

14 Wyeth Ranch instituted an action to enforce the lien on September 30, 2008,
15 when it sent Perez a Notice of Delinquent Assessment Lien, on January 5, 2009,
16 when it first recorded a Notice of Default and Election to Sell Under Homeowners
17 Association Lien, or definitely by January 14, 2010, when it first recorded a Notice
18 of Trustee’s Sale. However, between February 3, 2010 and November 13, 2012,
19 Perez paid Wyeth Ranch \$3,230.00 in assessments. Even if this Court uses \$159.50
20 per month in association dues (the monthly charge for assessments in 2010)—which
21

22 ¹²⁰ 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014). In September 2008, when Wyeth Ranch sent
23 Perez the Notice of Delinquent Assessment Lien, NRS 116.3116 limited the “superpriority piece” to
six months of association dues. See NRS § 116.3116(2) (2003).

24 ¹²¹ See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 411.

25 ¹²² *Id.* at 414–15.

26 ¹²³ See *id.*

1 is higher than either 2008 (\$140.00 per month) or 2009 (\$152.50 per month)—Perez
2 still paid Wyeth Ranch 20.25 months of association dues *after* Wyeth Ranch
3 “instituted an action” to enforce its lien. Consequently, Perez *paid* the
4 “superpriority piece” of Wyeth Ranch’s lien and, thus, Wyeth Ranch could only
5 foreclose on the “subpriority piece.” Accordingly, whatever interest SFR purchased
6 at the foreclosure, it did so subject to Marchai’s deed of trust.¹²⁴

7 **2. According to the plain language of the Trustee’s Deed**
8 **Upon Sale, SFR acquired *nothing* at the foreclosure.**

9 When deciding what a party acquires by way of a foreclosure, courts must
10 ascertain the parties’ intent.¹²⁵ “The parties’ intent ‘must determine the nature and
11 extent of the estate conveyed,’ and ‘that intent can be ascertained *only* from the
12 language of the deed[]’ itself.”¹²⁶ Here, the plain language of the Trustee’s Deed
13 Upon Sale reveals that SFR acquired nothing by way of the foreclosure.

14 The Trustee’s Deed Upon Sale unambiguously states that SFR acquired all of
15 Alessi’s “right, title and interest” in the Property. However, Alessi *had no right,*
16 *title, or interest in the Property to convey.* Accordingly, the intent of the parties, as
17 ascertained from the language of the Trustee’s Deed Upon Sale reveals that SFR
18 acquired nothing by way of the foreclosure.¹²⁷

19
20 ¹²⁴ See SFR, 130 Nev. Adv. Op. 30, 334 P.3d at 411.

21 ¹²⁵ 7912 Limbwood Ct. Tr. v. Wells Fargo Bank, N.A., No. 2:13-CV-00506-APG-(GWF), 2015 WL
22 5123317, at *3 (Aug. 31, 2015).

23 ¹²⁶ *Id.* (emphasis added) (quoting *City Motel, Inc. v. State ex rel. State Dep’t of Highways*, 75
Nev. 137, 141, 336 P.2d 375, 377 (1959)).

24 ¹²⁷ See *id.* If SFR contends that the language of the Trustee’s Deed Upon Sale conveyed
25 something other than Alessi’s alleged interest in the Property, then the burden is upon SFR to ask
26 this Court to reform the deed, which it has failed to do. See *id.* (granting summary judgment in favor
of a lender and against the third-party purchaser at an association’s foreclosure sale by enforcing the
plain language of the deed when the third-party purchaser failed to seek to reform the deed).

3. Even if Perez had not satisfied the superpriority portion of the lien, Wyeth Ranch did not properly foreclose and, thus, the foreclosure could not extinguish Marchai's deed of trust.

SFR expressly concluded that "NRS 116.3116(2) gives an HOA a true superpriority lien, *proper foreclosure of which* will extinguish a first deed of trust."¹²⁸ Here, however, Wyeth Ranch did not properly foreclose.

First, despite having two additional mailing addresses for Perez, Alessi mailed the December 2011 Notice of Delinquent Assessment Lien to only the Property. However, NRS 116.31162 required Alessi to mail the notice to the Property and to the unit owners' address.¹²⁹

Second, although Alessi mailed the Notice of Default and Election to Sell to Perez and others, it does not appear that Alessi mailed the notice to CMG Mortgage, the holder of the deed of trust. In addition, it does not appear that Alessi served any lienholders by certified mail. If *SFR* contends that NRS 107.090 applies,¹³⁰ then failing to mail the notice to CMG Mortgage and failing to mail the notice by certified mail rendered the foreclosure improper.¹³¹

Third, although Alessi served the Notice of Trustee's Sale by certified mail, including upon the Ombudsman, Alessi failed to serve the notice by first-class mail as required by statute.¹³² However, courts recognize a distinction between service by first class mail and service by certified mail, return receipt requested.¹³³

¹²⁸ *SFR*, 130 Nev. Adv. Op. 30, 334 P.3d at 419.

¹²⁹ See NRS § 116.31162(1)(a) (2011).

¹³⁰ See *infra* §§ III.B.4–5.

¹³¹ See NRS § 107.090 (2011).

¹³² See NRS § 116.311635(1)(b) (2011).

¹³³ See *In re Frazier*, 394 B.R. 399, 400 (Bankr. E.D. Va. 2008) (recognizing that "there is a difference between first class mail and certified mail" and concluding that attempted service by

1 Because *SFR* only recognizes extinguishment of lien based upon a proper
2 foreclosure, Wyeth Ranch's foreclosure had no effect upon Marchai's deed of trust.¹³⁴

3 **4. Wyeth Ranch's nonjudicial foreclosure could not,**
4 **consistent with the void for vagueness doctrine of the**
5 **due process clause, extinguish Marchai's deed of trust.**

6 The Fifth Amendment to the United States Constitution provides that "No
7 person shall . . . be deprived of life, liberty, or property, without due process of
8 law."¹³⁵ Similarly, the Fourteenth Amendment provides that "No state shall . . .
9 deprive any person of life, liberty, or property, without due process of law."¹³⁶
10 Likewise, Nevada's Constitution also provides that "No person shall be deprived of
11 life, liberty, or property, without due process of law."¹³⁷ "[R]ooted in the Due
12 Process Clauses of the Fifth and Fourteenth Amendments," as well as in the Due
13 Process Clause of Nevada's Constitution, is the "void-for-vagueness doctrine."¹³⁸
14 Although the void for vagueness doctrine originated with respect to criminal laws
15 and expanded to include laws that infringe upon the First Amendment, the void for
16 vagueness doctrine now indisputably covers civil laws that do not touch upon
17 freedom of speech.¹³⁹

18 certified mail, return receipt requested did not comply with a rule that required service by first class
19 mail).

20 ¹³⁴ *SFR*, 130 Nev. Adv. Op. 30, 334 P.3d at 419.

21 ¹³⁵ U.S. Const. amend. V.

22 ¹³⁶ U.S. Const. amend XIV, § 1.

23 ¹³⁷ Nev. Const. art. 1, § 8, cl. 5.

24 ¹³⁸ *Carrigan v. Comm'n on Ethics*, 129 Nev. Adv. Op. 95, 313 P.3d 880, 884 (2013) (citing *State v.*
25 *Castaneda*, 126 Nev. Adv. Op. 45, 245 P.3d 550, 553 (2010)); see also *Eaves v. Bd. of Clark County*
26 *Comm'rs*, 96 Nev. 921, 924–925, 620 P.2d 1248, 1250 (1980) (recognizing the void for vagueness
27 doctrine under Article 1, Section 8 of the Nevada Constitution).

28 ¹³⁹ See *Loscombe v. City of Scranton*, 902 F. Supp. 2d 532, 545 (M.D. Penn. 2012) ("Though [the
void for vagueness] doctrine grew up within the criminal context, the vagueness principle has been
extended to the civil litigation context.") (citing *San Filippo v. Bongiovanni*, 961 F.2d 1125, 1135 (3d

1 A fundamental tenet of due process is that before a party is deprived of life,
2 liberty, or property, the party must receive notice and an opportunity to be heard.¹⁴⁰
3 The void for vagueness doctrine concerns the “notice” element of due process.¹⁴¹
4 Specifically, the void for vagueness doctrine recognizes “that laws which regulate
5 persons or entities must give fair notice of conduct that is forbidden or required.”¹⁴²
6 A law that does not give a person of “ordinary intelligence fair notice” of what the
7 law forbids or requires is unconstitutionally vague.¹⁴³ In other words, due process
8 prohibits laws that require one to “guess at its meaning.”¹⁴⁴ Likewise, the void for
9 vagueness doctrine also prohibits a law that “is so standardless that it authorizes or
10 encourages seriously discriminatory enforcement.”¹⁴⁵

11
12
13
14 Cir. 1992)); *see also F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012) (recognizing
15 that the void for vagueness doctrine applies “[e]ven when speech is not at issue.”); *Carrigan*, 129
16 Nev. Adv. Op. 95, 313 P.3d at 884 (recognizing that the void for vagueness doctrine applies to civil
laws).

17 ¹⁴⁰ *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (citing *Mullane v. Central*
Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656–57 (1949)).

18 ¹⁴¹ *See Fox Television Stations, Inc.*, 132 S. Ct. at 2317 (recognizing that laws must give fair
19 notice).

20 ¹⁴² *Id.* at 2317; *accord Eaves*, 96 Nev. at 924–925, 620 P.2d at 1249.

21 ¹⁴³ *Carrigan*, 129 Nev. Adv. Op. 95, 313 P.3d at 884 (citing *State v. Castaneda*, 126 Nev. Adv.
22 Op. 45, 245 P.3d 550, 553 (2010) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18, 130 S.
Ct. 2705, 2718 (2010))).

23 ¹⁴⁴ *Eaves*, 96 Nev. at 923, 620 P.2d at 1249 (citing *Connally v. General Constr. Co.*, 269 U.S. 385,
391, 46 S. Ct. 126, 127 (1926)); *Papchristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S. Ct. 839,
24 843 (1972)).

25 ¹⁴⁵ *Fox Television Stations*, 132 S. Ct. at 2317 (quoting *United States v. Williams*, 553 U.S. 285,
304, 128 S. Ct. 1830, 1845 (2008)); *accord Carrigan*, 129 Nev. Adv. Op. 95, 313 P.3d at 884 (citing
26 *Castaneda*, 126 Nev. Adv. Op. 45, 245 P.3d at 553 (quoting *Holder*, 561 U.S. at 18, 130 S. Ct. at
27 2718)).

1 “While statutes need not be written with mathematical precision, they must
2 be intelligible.”¹⁴⁶ “A law must be complete in all its terms and conditions when it
3 leaves the legislature, so that every person may know, by reading the law, what his
4 rights are and how it will operate when put into execution.”¹⁴⁷ Under the “void for
5 vagueness doctrine,” if the Legislature enacts a law that is “impermissibly vague,”
6 due process requires the courts to invalidate the law.¹⁴⁸

7 In *SFR*, the Nevada Supreme Court, for the first time, concluded that an
8 association’s lien “is a true priority lien” the nonjudicial foreclosure of which
9 “extinguishes a first deed of trust on the property.”¹⁴⁹ However, *SFR* did not address
10 the invalidity of the statute on void for vagueness grounds or whether the
11 beneficiary of a first deed of trust on property encumbered by an association’s lien
12 had fair notice (pre-*SFR*) that a nonjudicial foreclosure of an association’s lien
13 would extinguish its deed of trust. Marchai contends that it did not.

- 14 a. The statutory scheme governing the enforcement of an
15 association’s lien is so vague, indefinite, and uncertain
16 that, before the court issued its opinion in *SFR*, a security
17 interest holder could not reasonably understand that
18 nonjudicial foreclosure of an association lien would
19 extinguish its property rights.

20 In relevant part, NRS 116.3116(1) grants an association

21 a lien on a unit for any construction penalty that is imposed against
22 the unit’s owner pursuant to NRS 116.31035, any assessment levied
23 against that unit or any fines imposed against the unit’s owner *from*
24 *the time the construction penalty, assessment or fine becomes due.*¹⁵⁰

25 ¹⁴⁶ See *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1020 (9th Cir. 2013) (internal quotation
26 marks and citations omitted).

27 ¹⁴⁷ See *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 515 N.E.2d 1222, 1228
28 (Ill. 1987) (quoting *Mayhew v. Nelson*, 178 N.E. 921, 923 (Ill. 1931)); accord *Fox Television Stations, Inc.*, 132 S. Ct. at 2317.

¹⁴⁸ See *Fox Television Stations*, 132 S. Ct. at 2317.

¹⁴⁹ 130 Nev. Adv. Op. 75, 2, 334 P.3d 408, 409 (2014).

¹⁵⁰ NRS § 116.3116(1) (2011) (emphasis added).

Further, “[u]nless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraph (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section.”¹⁵¹ In other words, NRS 116.3116 grants the association a “lien” on all “assessments,” which includes any combination of: (1) assessments for common expenses (*i.e.* HOA dues); (2) fees or charges for the use, rental, or operation of common elements; (3) fees or charges for services provided to the units’ owners; (4) fees or charges for services provided to maintain the exterior of a unit or abate a public nuisance on the exterior of a unit pursuant to NRS 116.310312;¹⁵² (5) charges for late payment of assessments; (6) penalties for a unit owners’ failure to adhere to a construction schedule pursuant to NRS 116.310305; (7) fines for violations of the association’s governing documents imposed in accordance with NRS 116.31031;¹⁵³ (8) charges for the preparation and recordation of any amendments to the association’s declaration; (9) charges for the preparation and recordation of any statements of unpaid assessments; and (10) fees for preparing and furnishing the documents and certificate required by NRS 116.4109.¹⁵⁴ According to *SFR*, the association’s lien is a statutorily-imposed lien that the parties cannot alter or waive by contract.¹⁵⁵

¹⁵¹ See *id.*

¹⁵² The portion of an association’s lien that consists of charges incurred pursuant to NRS 116.310312 is commonly referred to as an “abatement lien.” However, an “abatement lien” is not a separate lien, but simply a portion of the association’s assessment lien. See NRS § 116.3116(1).

¹⁵³ The portion of an association’s lien that consists of fines imposed for violations of the association’s governing documents is commonly referred to as a “violation lien.” However, a “violation lien” is not a separate lien, but simply a portion of the association’s assessment lien. See NRS § 116.3116(1).

¹⁵⁴ See NRS § 116.3116(1) (2011); NRS § 116.3102(1)(j)–(n) (2011).

¹⁵⁵ See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418–419 (invalidating a mortgage savings clause contained in a covenant, condition, and restriction that subordinated the association’s lien to a

1 With respect to lien priority, NRS 116.3116(2) states that the association's
2 lien "is prior to all other liens and encumbrances on a unit *except*:"

3 (a) Liens and encumbrances recorded before the recordation of the
4 declaration . . . ;

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

7 (c) Liens for real estate taxes and other governmental assessments or
8 charges against the unit¹⁵⁶

9 However, NRS 116.3116(2) also contains the following sentence:

10 *The lien is also prior to all security interests described in paragraph (b)*
11 *to the extent of any charges incurred by the association on a unit*
12 *pursuant to NRS 116.310312 and to the extent of the assessments for*
13 *common expenses based on the periodic budget adopted by the*
14 *association pursuant to NRS 116.3115 which would have become due*
15 *in the absence of acceleration during the 9 months immediately*
16 *preceding institution of an action to enforce the lien*¹⁵⁷

17 *SFR* concluded that although the association has *one* lien that includes all
18 "assessments," the lien has two pieces: a superpriority piece, "consisting of the last
19 nine months of HOA dues and maintenance and nuisance-abatement charges" and a
20 subpriority piece consisting of all other "assessments."¹⁵⁸ According to *SFR*, the
21 "superpriority" piece of the association's lien has priority over a first deed of trust,
22 but the "subpriority" piece is subordinate.¹⁵⁹ Further, the court held that an
23 association may enforce its lien by nonjudicial foreclosure.¹⁶⁰ However, before *SFR*,

24 first deed of trust); *see also* NRS § 116.1104 (noting that the provisions in NRS 116 cannot be waived
25 or modified by contract unless expressly provided for in NRS 116).

26 ¹⁵⁶ NRS § 116.3116(2) (2011) (emphasis added).

27 ¹⁵⁷ *See id.* (emphasis added).

28 ¹⁵⁸ *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 411.

¹⁵⁹ *See id.*

¹⁶⁰ *Id.* at 414–15.

1 the beneficiary of a first deed of trust would not understand from NRS 116's
2 language that an association's nonjudicial foreclosure would extinguish its interest
3 unless it paid the "superpriority" piece. Thus, the statute deprived security interest
4 holders of fair notice that their interests were in danger and that they needed to
5 protect their interests. Accordingly, Marchai respectfully requests that this Court
6 conclude that NRS 116 is void for vagueness and grant summary judgment in favor
7 of Marchai and against SFR on its counterclaims.¹⁶¹

8 b. SFR's interpretation of "institution of an action" and
9 "action" did not provide fair notice consistent with due
10 process as it is an abrupt change from the accepted
11 statutory meaning.

12 i. *SFR's decision to interpret "institution of an action"*
13 *in NRS 116.3116 differently than the Nevada*
14 *Legislature has used the same phrase in other*
15 *statutes failed to give security interest holders fair*
16 *notice of its meaning.*

17 As set forth above, NRS 116.3116 limits the "superpriority" piece of the
18 association's lien to "the assessments for common expenses . . . which would have
19 become due in the absence of acceleration during the 9 months *immediately*
20 *preceding institution of an action to enforce the lien.*"¹⁶² While SFR has now
21 interpreted this to mean that an association need not file a judicial "action"—
22 although SFR does not define what constitutes the "institution of an action"—given
23 the use of the same phrase in other Nevada statutes to refer exclusively to the filing
24

25 ¹⁶¹ See *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1048, 111 S. Ct. 2720, 2731 (1991) (holding
26 Supreme Court Rule as interpreted by the Nevada Supreme Court void for vagueness because,
27 "absent any clarifying interpretation by the state court, the Rule fails to provide fair notice to those
28 to whom it is directed." (internal quotation marks and citations omitted)); *Spinelli v. Immanuel*
Lutheran Evangelical Congregation, Inc., 515 N.E.2d 1222, 1228 (Ill. 1987) (holding statute
governing employer's disclosure obligations unconstitutional because the statute's provisions were so
inconsistent and conflicting that an employer of ordinary intelligence "could not determine with
reasonable certainty which personnel documents are, or are not, subject to disclosure.")

¹⁶² NRS § 116.3116(2) (2011).

1 of a civil action, NRS 116.3116 failed to give security interest holders fair notice
2 that a nonjudicial foreclosure of an association's lien could threaten its interest.¹⁶³

3 The Legislature has used the phrase "institution of an action" in two other
4 statutes, *both of which mean the commencement of a civil action*. For example, the
5 Nevada Unfair Trade Practice Act provides that the Attorney General may
6 commence a *civil action* for violations of the act.¹⁶⁴ However, with respect to the
7 confidentiality of the Attorney General's investigation, the statute states:

8 Any procedure, testimony taken, document or other tangible evidence
9 produced, or answer made under NRS 598A.100 shall be kept
10 confidential by the Attorney General prior to the *institution of an*
action brought under this chapter for the alleged violation of the
provisions of this chapter under investigation¹⁶⁵

11 Thus, in NRS 598A.110, "institution of an action" refers to a civil action.¹⁶⁶

12 Likewise, the Legislature used the phrase "institution of action" to refer to a
13 civil action concerning the leasing of vehicles.¹⁶⁷ Specifically, NRS 100.115 provides
14 for liability against lessors of a commercial vehicle lease for violations of the
15 statute, which liability includes actual damages, statutory damages, and the "costs
16 of the action, together with a reasonable attorney's fee as determined by the
17 court."¹⁶⁸ That same statute also states:

18 A lessor has no liability under this section for any failure to comply
19 with any requirement imposed under NRS 100.105 if within 15 days
after discovering an error, and prior to *the institution of an action*

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21 ¹⁶³ See *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2318 (2012) (recognizing that an
"abrupt change" in the meaning of a law fails to provide fair notice and violates due process).

22 ¹⁶⁴ See NRS § 598A.180.

23 ¹⁶⁵ NRS § 598A.110 (emphasis added).

24 ¹⁶⁶ See *id.*

25 ¹⁶⁷ See §§ NRS 100.095, *et seq.*

26 ¹⁶⁸ See NRS § 100.115(1)(a)–(c).

1 under this section or the receipt of written notice of the error, the
2 lessor notifies the lessee of the error and makes whatever adjustments
3 in the appropriate account are necessary to insure that the lessee will
not be required to pay a charge in excess of the amount actually
disclosed or correctly determined.¹⁶⁹

4 Again, the language refers exclusively to the institution of a *civil action*.¹⁷⁰ Even
5 though two other Nevada statutes use “institution of an action” to refer to a civil
6 action, and the court had to presume that the Legislature knew of the language
7 from these statutes when adopting NRS 116.3116,¹⁷¹ *SFR* concluded that
8 “institution of an action” meant something different from (or more precisely in
9 addition to) the filing of a civil action.¹⁷² However, an abrupt change in the
10 interpretation of a law violates the void for vagueness doctrine as it fails to give fair
11 notice.¹⁷³ Here, *SFR*’s conclusion that the Legislature intended “institution of an
12 action” in NRS 116.3116 to mean something different than “institution of an action”
13 in NRS 598A.110 and NRS 100.115 constitutes an abrupt change for which Marchai
14 did not have fair notice.¹⁷⁴ In addition, adding to the lack of notice to Marchai and
15 the abrupt change that *SFR* effected, other court decisions that *pre-date SFR*
16 concluded that “institution of an action” requires the filing of a lawsuit.¹⁷⁵
17 Accordingly, NRS 116.3116 violates the void for vagueness doctrine.¹⁷⁶

18 ¹⁶⁹ See NRS § 100.115(2) (emphasis added).

19 ¹⁷⁰ See *id.*

20 ¹⁷¹ See *Cable v. State ex rel. Employers Ins. Co. of Nev.*, 122 Nev. 120, 125, 127 P.3d 528, 531
21 (2006) (recognizing that courts must presume that the legislature is aware of similar statutes).

22 ¹⁷² See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 414–417.

23 ¹⁷³ See *F.C.C. v. Fox Television Stations*, 132 S. Ct. 2307, 2318 (2012) (recognizing that an
“abrupt change” in the meaning of a law fails to provide fair notice and violates due process).

24 ¹⁷⁴ See *id.*

25 ¹⁷⁵ See *Trustees of MacIntosh Condominium Ass’n v. F.D.I.C.*, 908 F. Supp. 58, 63 (D. Mass.
26 1995) (“It is uncontested by the parties that a lawsuit is required before a lien for unpaid
27 condominium fees achieves a ‘super-priority’ status.”); *Benson v. Zoning Bd. of Appeal of Town of*
Westport, 873 A.2d 1017, 1022 (Conn. App. 2005) (“[O]ur review of statutes and appellate case law

- ii. *SFR's conclusion that "action" has different meanings within the same section constitutes an abrupt change in the meaning that failed to provide fair notice.*

Although *SFR* held that the word "action" in the phrase "institution of an action" includes both a civil action and nonjudicial foreclosure, the remaining instances of the word "action" *within* NRS 116.3116 refer exclusively to judicial proceedings.¹⁷⁷ In particular, NRS 116.3116 uses the word "action" *five times*, and in four of those five instances the word "action" refers only to a judicial action. For example, NRS 116.3116(6) states "[t]his section does not prohibit *actions* to recover sums for which subsection 1 creates a lien," and NRS 116.3116(7) provides that "[a] judgment or decree in any *action* brought under this section must include costs and reasonable attorney's fees for the prevailing party."¹⁷⁸ Likewise, NRS 116.3116(10) provides that, "[i]n an *action* by an association . . . to foreclose a lien created by this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to the unit's owner before commencement or during pendency of the *action*."¹⁷⁹ Nevertheless, *SFR* declared that the use of the word "action" in "institution of an action" means something different in NRS 116.3116(2) than it does in NRS 116.3116(6), (7), or (10).¹⁸⁰ In light of NRS 116.3116's nearly exclusive use of the word "action" to refer to judicial proceedings,

reveals that 'the institution of an action' has never been held to mean anything other than the filing of a civil action in court.")

¹⁷⁶ See *id.*; see also *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1048, 111 S. Ct. 2720, 2731 (1991) (holding a Nevada Supreme Court Rule as interpreted by the Nevada Supreme Court was void for vagueness).

¹⁷⁷ See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 415 n.5; NRS §§ 116.3116–.31168 (2011).

¹⁷⁸ NRS § 116.3116(6)–(7) (2011) (emphasis added).

¹⁷⁹ NRS § 116.3116(10) (2011) (emphasis added).

¹⁸⁰ *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 415.

1 NRS 116.3116 did not give fair notice that the word “action” as used in the phrase
2 “institution of an action” referred to some undefined “action” taken in connection
3 with a nonjudicial foreclosure.¹⁸¹ Again, *SFR*’s conclusion that “action” in NRS
4 116.3116(2) has a different meaning than the only conceivable meaning to “action”
5 in NRS 116.3116(6), (7), or (10) is an abrupt change for which Marchai had no
6 notice. Therefore, enforcing NRS 116.3116, as interpreted in *SFR*, violates the void
7 for vagueness doctrine.¹⁸²

8 iii. *NRS 116 does not define the event that triggers*
9 *NRS 116.3116’s nine month look-back period or the*
10 *event that must occur within 3 years for an*
association to enforce its lien for unpaid
assessments.

11 Although *SFR* concluded that the phrase “institution of an action” contained
12 in NRS 116.3116 means not only the filing of a civil action, but also the institution
13 of some undefined action in the context of a nonjudicial foreclosure,¹⁸³ neither NRS
14 116 nor *SFR* define the “institution of an action” in the context of the nonjudicial
15 foreclosure of an association’s lien.¹⁸⁴ Although the filing of a complaint clearly
16 institutes an action or proceeding to enforce the association’s lien, if “institution of
17 an action” means something other than filing a complaint, one has to guess when
18 the three-year statute of limitations and the nine-month look-back period begins.

19 The “superpriority” piece of the association’s lien consists of “the last nine
20 months of *unpaid HOA dues* and maintenance and nuisance-abatement charges.”¹⁸⁵

21
22 ¹⁸¹ See *F.C.C. v. Fox Television Stations*, 132 S. Ct. 2307, 2318 (2012) (recognizing that an
“abrupt change” in the meaning of a law fails to provide fair notice and violates due process).

23 ¹⁸² See *id.*

24 ¹⁸³ *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 414–417.

25 ¹⁸⁴ See *id.*; see also NRS § 116.3116 (2011).

26 ¹⁸⁵ *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 411.

1 However, from which date does the “last nine months” look-back period begin?
2 Presumably, the “last nine month” look-back period begins to run on the date the
3 association institutes an action to enforce the lien.¹⁸⁶ However, neither NRS
4 116.3116 nor *SFR* define this date.¹⁸⁷ Instead, the statute leaves the determination
5 to the arbitrary conclusion of the association. However, because NRS 116.3116
6 compels the payment of up to nine months of unpaid HOA dues immediately
7 preceding the institution of an action to satisfy the superpriority portion of the lien,
8 due process requires more specificity.¹⁸⁸ Otherwise, the parties must simply guess
9 as to how much must be paid to satisfy the superpriority portion of the lien.¹⁸⁹

10 Likewise, the date on which the association institutes an action to enforce the
11 lien may dictate whether the association’s lien has expired because NRS
12 116.3116(5) creates a three-year statute of limitations for the enforcement of the
13 association’s lien. Specifically, NRS 116.3116(5) provides that “[a] lien for unpaid
14 assessments is extinguished unless *proceedings to enforce the lien* are instituted
15 within 3 years after the full amount of the assessments becomes due.”¹⁹⁰ To add to
16 the confusion, NRS 116.3116(5) uses the word “proceedings” to enforce the lien
17 instead of “institution of an action.”¹⁹¹ Since service of the notice of delinquent

18 ¹⁸⁶ See NRS § 116.3116.

19 ¹⁸⁷ See generally NRS § 116.3116; *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d 408.

20 ¹⁸⁸ *F.C.C. v. Fox Broadcasting Stations*, 132 S. Ct. 2307, 2317 (2012) (recognizing that the due
21 process clause requires sufficient specificity in the law to prevent the law from arbitrary
22 enforcement).

23 ¹⁸⁹ See *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926) (“[A] statute
24 which either forbids or requires the doing of an act in terms so vague that men of common
intelligence must necessarily guess at its meaning and differ as to its application, violates the first
essential of due process of law.”)

25 ¹⁹⁰ NRS § 116.3116(5) (2011) (emphasis added).

26 ¹⁹¹ Compare *id.* with NRS § 116.3116(2) (2011).

1 assessment could, arguably, constitute “proceedings to enforce the lien” the lien
2 could ostensibly never expire so long as the association merely mails a notice of
3 delinquent assessment to the unit’s owner.¹⁹² Again, the statute leaves unit owners
4 and holders of a security interest subject to arbitrary decisions of the association
5 and guessing as to whether the association’s lien expired.¹⁹³ However, due process
6 requires more than abject guessing.¹⁹⁴ Without further specificity concerning what
7 constitutes the “institution of an action,” NRS 116.3116 is void for vagueness.¹⁹⁵

8 c. NRS 116 failed to provide fair notice that a nonjudicial
9 foreclosure would extinguish a first security interest as it
10 does not provide notice of the “superpriority” piece of the
11 lien, did not grant the holder of a first security interest
12 the right to obtain a payoff of the “superpriority” piece of
13 the lien, and does not recognize the right of the first
14 security interest holder to payoff the lien.

15 i. *NRS 116 does not require an association to give*
16 *notice of the “superpriority” amount of its lien.*

17 Although the statutory provisions concerning the notice of delinquent
18 assessment, the notice of default and election to sell, and the notice of sale all
19 require the association to state the amount of its lien, none of those provisions
20 require the association to provide notice that it will foreclose upon a “superpriority”
21

22 ¹⁹² See *id.* § 116.3116(5); see also *id.* § 116.31162(1)(a).

23 ¹⁹³ See *Connally*, 269 U.S. at 391, 46 S. Ct. at 127 (“[A] statute which either forbids or requires
24 the doing of an act in terms so vague that men of common intelligence must necessarily guess at its
25 meaning and differ as to its application, violates the first essential of due process of law.”)

26 ¹⁹⁴ See *id.*; see also *F.C.C. v. Fox Television Stations*, 132 S. Ct. 2307, 2317 (2012) (“[T]he void for
27 vagueness doctrine addresses at least two connected but discrete due process concerns: first, that
28 regulated parties should know what is required of them so they may act accordingly; second,
precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or
discriminatory way.”)

¹⁹⁵ See *id.* (declaring law void for vagueness as it failed to give fair notice); see also *Gentile v.*
State Bar of Nev., 501 U.S. 1030, 1048, 111 S. Ct. 2720, 2731 (1991) (declaring rule void for
vagueness “absent any clarifying interpretation” as it failed to give fair notice and could lead to
arbitrary enforcement).

1 piece of the lien or the amount of that “superpriority” piece.¹⁹⁶ Specifically, NRS
2 116 states that the notice of delinquent assessment must state “the amount of the
3 assessments and other sums which are due in accordance with *subsection 1* of NRS
4 116.3116”—that is, the amount of the association’s lien.¹⁹⁷ Likewise, the notice of
5 default and election to sell must specify the same amount.¹⁹⁸ Finally, the notice of
6 sale must expressly state “[t]he amount necessary to satisfy *the lien* as of the date of
7 the proposed sale.”¹⁹⁹ However, the “amount of the assessments and other sums
8 due” which comprises the association’s lien may include not only HOA dues, but
9 also, among other things, construction penalties, fines for violating the association’s
10 governing documents, expenses for maintaining the exterior of a unit, and late
11 fees.²⁰⁰ Unless the association itemizes its lien, neither the unit owner nor a
12 security interest holder can determine the “superpriority” and “subpriority” pieces
13 that comprise the association’s lien.²⁰¹

14 Moreover, the itemization of the lien is critical to a security interest holder
15 because even though the statute includes various charges and fees as part of the
16 association’s lien, the statute limits an association’s ability to impose and enforce
17 some charges. For example, “[t]he association may not foreclose a lien by sale based
18 on a fine or penalty for a violation of the governing documents of the association
19 unless: (a) The violation poses an imminent threat of causing a substantial adverse
20

21 ¹⁹⁶ See NRS §§ 116.31162–.311635 (2011).

22 ¹⁹⁷ NRS § 116.31162(1)(a) (2011) (emphasis added).

23 ¹⁹⁸ NRS § 116.31162(1)(b) (2011).

24 ¹⁹⁹ NRS § 116.311635(3)(a) (2011).

25 ²⁰⁰ See *supra* § III.B.4.a.

26 ²⁰¹ See *id.*

1 effect on the health, safety or welfare of the units' owners or residents of the
2 common-interest community; or (b) the penalty is imposed for failure to adhere to" a
3 construction schedule pursuant to NRS 116.310305.²⁰² Consequently, the
4 association's lien may include amounts on which the association *cannot foreclose*.²⁰³
5 Again, unless the association itemizes its lien, one cannot determine whether and
6 for what amounts the association can foreclose. These "conflicting and inconsistent
7 provisions" do not provide notice of what the association's lien consists of, which
8 renders NRS 116 "vague and uncertain and, therefore is unconstitutional in that it
9 violates . . . due process."²⁰⁴

- 10 ii. *NRS 116 did not provide the right for a first*
11 *security interest holder or any subordinate*
12 *lienholder to obtain from the association a*
13 *statement of the amount required to satisfy the*
14 *"superpriority" piece of the lien.*

15 The obvious response to the statute's failure to require the association to
16 itemize its lien is to allow a security interest holder to request a breakdown from
17 the association. However, the statute—as it existed at the time of the foreclosure in
18 this case—*did not recognize any right in the holder of a deed of trust to obtain a*
19 *breakdown of the lien.* Specifically, NRS 116.3116(8) stated:

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22 ²⁰² See NRS § 116.31162(4) (2011).

23 ²⁰³ See *id.* NRS 116.31162(4) also conflicts with *SFR* as *SFR* recognizes only two pieces to an
24 association's lien: a "superpriority" piece and a "subpriority" piece. *SFR*, 130 Nev. Adv. Op. 75, 334
P.3d at 411. NRS 116.31162(4), however, also recognizes a third piece upon which the association
cannot foreclose. See NRS § 116.31162(4).

25 ²⁰⁴ *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 515 N.E.2d 1222, 1228 (Ill.
26 1987) (declaring void for vagueness a statutory scheme that contained internal inconsistencies and
conflicting provisions).

1 The association, upon written request, shall furnish to *a unit's owner* a
2 statement setting forth the amount of unpaid assessments against the
unit.²⁰⁵

3 Notably, the definition of "unit owner" expressly *excludes* a security interest
4 holder.²⁰⁶ Because the statute neither required any notice of any claimed
5 "superpriority amount," nor provided a security interest holder a right to obtain
6 such an amount from the association, NRS 116 did not provide fair notice that a
7 security interest holder needed to protect itself.²⁰⁷ Accordingly, NRS 116 is void for
8 vagueness.²⁰⁸

9 iii. *NRS 116 does not recognize a right for anyone other
than the unit owner to pay any portion of the lien.*

10 In addition to its failure to provide notice of the "superpriority" lien amount
11 or to grant a security interest holder any method to obtain such an amount, the
12 statute also does not recognize the right of a security interest holder to satisfy the
13 "superpriority" piece of the association's lien before foreclosure. Specifically, NRS
14 116 permits an association to non-judicially foreclose its lien if "[t]he *unit's owner or*
15 *his successor in interest* has failed to pay the amount of the lien, including costs, fees
16 and expenses incident to its enforcement, for 90 days following the recording of the
17

18 ²⁰⁵ NRS § 116.3116(8) (emphasis added). In 2013, the Nevada Legislature amended NRS
19 116.4109 to require an association to provide a statement to holders of security interests upon
written request. See 2013 Nev. Stat. 3794.

20 ²⁰⁶ NRS § 116.095 ("Unit's owner" means a declarant or other person who owns a unit, or a
21 lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with
22 any lease the expiration or termination of which will remove the unit from the common-interest
community, but does not include a person having an interest in a unit solely as security for an
obligation.") (emphasis added).

23 ²⁰⁷ See *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 ("[A] statute which
24 either forbids or requires the doing of an act in terms so vague that men of common intelligence must
25 necessarily guess at its meaning and differ as to its application violates the first essential of due
process of law.")

26 ²⁰⁸ See *F.C.C. v. Fox Television Stations*, 132 S. Ct. 2307, 2317 (2012) (declaring law
unconstitutional as it failed to provide fair notice).

1 notice of default and election to sell.”²⁰⁹ Accordingly, the plain language of NRS 116
2 contemplates that *only* the unit’s owner or his successor in interest can satisfy the
3 lien to prevent foreclosure.²¹⁰ Again, the statutory definition of “unit’s owner”
4 expressly *excludes* a security interest holder.²¹¹ It is beyond the pale to assume that
5 a security interest holder would understand that a statute that provides no notice of
6 the amount required to protect its interest, no right to obtain that amount, and no
7 right to cure the delinquency could still extinguish its property rights.²¹²
8 Accordingly, this Court should declare that NRS 116.3116 violates due process as it
9 failed to provide fair notice that security interest holders had to protect their
10 property interests from an association’s nonjudicial foreclosure.²¹³

11 d. NRS 116, as interpreted by *SFR*, contains conflicting
12 language with respect to the manner of service, and the
13 ability of an association to credit bid the full amount of its
14 lien and collect the full amount of its lien, which renders
15 the statute void for vagueness.

16 A statute that “is so incomplete or conflicting and inconsistent in its
17 provisions that it cannot be executed, will be declared to be inoperative and void.”²¹⁴
18 Here, NRS 116, as interpreted in *SFR*, is conflicting and inconsistent in three ways.
19 First, the statutory scheme contains conflicting requirements concerning service of
20 the notices relating an association’s nonjudicial foreclosure. Second, the ability of

21 ²⁰⁹ See NRS § 116.31162(1)(c) (emphasis added).

22 ²¹⁰ See *id.*

23 ²¹¹ See NRS § 116.095.

24 ²¹² See *Fox Television Stations*, 132 S. Ct. at 2317 (declaring law unconstitutional as it failed to
25 provide fair notice).

26 ²¹³ See *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1048, 111 S. Ct. 2720, 2731 (1991); *Spinelli v.*
27 *Immanuel Lutheran Evangelical Congregation, Inc.*, 515 N.E.2d 1222, 1228 (Ill. 1987).

28 ²¹⁴ *Spinelli*, 515 N.E. 2d at 1228.

1 the association to credit bid the full amount of its lien conflicts with *SFR's*
2 conclusion that NRS 116.3116 creates a split lien that the association can foreclose
3 nonjudicially. Third, the order of payment set forth in the statute conflicts with
4 *SFR's* split lien interpretation. Accordingly, these inconsistent provisions render
5 the statute void for vagueness.²¹⁵

6 i. *NRS 116 imposes conflicting requirements*
7 *concerning service of notices relating to an*
8 *association's nonjudicial foreclosure.*

9 In addition to the problems concerning the interpretation of the word "action"
10 and the statute's failure to provide for notice and an opportunity to act, the notice
11 provisions set forth in NRS 116 are internally inconsistent. Although third-party
12 purchasers—like *SFR* here—argue that the vague statement in NRS 116.31168
13 incorporating NRS 107.090 by reference incorporates the service requirements set
14 forth in NRS 107.090, NRS 116 and NRS 107.090 conflict.²¹⁶ Specifically, with
15 respect to the service of a notice of default, NRS 116.31163 provides that "[t]he
16 association or other person conducting the sale shall also mail, within 10 days after
17 the notice of default and election to sell is recorded, a copy of the notice by *first-class*
18 *mail*"²¹⁷ Likewise, with respect to the service of a notice of trustee's sale, the
19 person conducting the sale must "[m]ail, on or before the date of first publication or
20 posting, a copy of the notice by *first-class mail*"²¹⁸ Accordingly, the plain
21 language of NRS 116.31163–.311635 in effect at the time of the foreclosure in this

21 ²¹⁵ *See id.*

22 ²¹⁶ *See SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 418.

23 ²¹⁷ NRS § 116.31163 (emphasis added).

24 ²¹⁸ NRS § 116.311635(1)(b) (emphasis added). In 2013, the Legislature amended NRS §
25 116.311635(1)(b) to require service of the notice of sale by certified or registered mail, return receipt
26 requested, but the language in effect at the time of the foreclosure in this case required only first
27 class mail. *See* 2013 Nev. Stat. 3791. In addition, NRS 116.31163 still requires service of the notice
28 of default only by first class mail, not certified or registered mail. *See* NRS § 116.31163.

1 case required the person conducting an association foreclosure to serve the notice of
2 default and notice of sale by *first class mail* upon the persons identified in the
3 statute.²¹⁹

4 NRS 107.090, however, conflicts directly with NRS 116.31163 and NRS
5 116.311635, as it requires the trustee to serve both notices by *registered or certified*
6 *mail, return receipt requested*. Specifically, with respect to the notice of default,
7 NRS 107.090 requires the trustee to “cause to be deposited in the *United States*
8 *mail an envelope, registered or certified, return receipt requested with postage*
9 *prepaid*, containing a copy of the notice”²²⁰ Likewise, the trustee must deposit
10 “in the *United States mail an envelope, registered or certified, return receipt*
11 *requested and with postage prepaid*, containing a copy of the notice of time and
12 place of sale, addressed to each person described in subsection 3.”²²¹ Therefore,
13 contrary to NRS 116.31163–.311635, NRS 107.090 requires the person conducting
14 the foreclosure to serve the notice of default and notice of sale by registered or
15 certified mail with return receipt requested.²²²

16 However, courts recognize a distinction between service by first class mail
17 and service by certified mail, return receipt requested.²²³ Thus, the inconsistent
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19

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21 ²¹⁹ See *id.*

22 ²²⁰ See NRS § 107.090(3) (emphasis added).

23 ²²¹ NRS § 107.090(4) (emphasis added).

24 ²²² See NRS § 107.090(3)–(4).

25 ²²³ See *In re Frazier*, 394 B.R. 399, 400 (Bankr. E.D. Va. 2008) (recognizing that “there is a
26 difference between first class mail and certified mail” and concluding that attempted service by
certified mail, return receipt requested did not comply with a rule that required service by first class
mail).

provisions concerning the method of service render the statute “inoperative and void.”²²⁴

- ii. *The plain language of NRS 116 allows a homeowners’ association to credit bid the full amount of its lien, even though only a portion receives “superpriority” treatment.*

In addition to the conflicting notice provisions, NRS 116.31164(2) directly conflicts with *SFR*. *SFR* concluded that the association’s lien has a “superpriority” piece and a “subpriority” piece.²²⁵ Accordingly, at a foreclosure sale in which an association has both “superpriority” and “subpriority” pieces to its lien, the association should be allowed to credit bid²²⁶ *only* the “superpriority” portion of its lien. Any contrary interpretation would allow the association to elevate the *full amount of its lien* (i.e. both the superpriority and subpriority pieces) over a first deed of trust. However, NRS 116 ostensibly provides for this.

Specifically, NRS 116 grants the association the right to “purchase the unit [at the sale] and hold, lease, mortgage or convey it.”²²⁷ In addition, the statute allows the association to purchase the property at the sale “by a credit bid *up to the amount of the unpaid assessments*²²⁸ and any permitted costs, fees and expenses incident to the enforcement of its lien.”²²⁹ In other words, the association can credit

²²⁴ See *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 515 N.E.2d 1222, 1228 (Ill. 1987).

²²⁵ See *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 411.

²²⁶ See NRS § 116.31164(2) (2011) (allowing an association to credit bid at a foreclosure sale).

²²⁷ See *id.*

²²⁸ Again, “assessments” does not simply include unpaid HOA dues, but also includes, among other things, fines for violations, construction penalties, abatement payments, and late fees. See NRS § 116.3116(1) (2011).

²²⁹ See NRS § 116.31164(2) (2011).

bid the *full amount of its lien*.²³⁰ Thus, the statute’s plain language contravenes *SFR*’s “split lien” interpretation because it permits the association to include in its credit bid amounts expressly *subordinate* to the first security interest (*e.g.* any amounts over and above nine months of unpaid HOA dues and any abatement costs).²³¹ Further, an association’s lien may include fines for violations of the association’s governing documents,²³² which amounts an association cannot enforce by foreclosure.²³³ Because NRS 116.31164(2)’s plain language conflicts with and is inconsistent with *SFR*, this Court must declare NRS 116.3116 void for vagueness.²³⁴

iii. *The plain language of NRS 116.31164 allows the homeowners’ association to collect the full amount of its lien before any amount falls to any subordinate lienholders.*

The comments to the Uniform Common Interest Ownership Act (“UCIOA”), which *SFR* relied upon when interpreting NRS 116.3116, provide that upon the sale of a unit in a planned community in which the unit owner has a mortgage, but has also failed to pay his assessments, the association gets paid its “superpriority” piece first from the sale proceeds, the mortgage gets paid second, and then the association receives payment for the “subpriority” piece of its lien before any payment to the unit owner.²³⁵ However, NRS 116.31164’s plain language ostensibly provides for

²³⁰ *See id.*

²³¹ *See id.*

²³² *See* NRS § 116.3116(1) (2011); NRS 116.3102(1)(m) (2011).

²³³ *See* NRS § 116.31162(5) (2011).

²³⁴ *See Spinelli*, 515 N.E.2d at 1228.

²³⁵ *See* Uniform Common Interest Ownership Act § 2-118, cmt. 10, Example 1B (1982) (recognizing that upon the sale of property in a planned community for \$50,000 in which the unit owner has a \$50,000 mortgage, but failed to pay 12 months of assessments at \$100 per month, the association would receive \$600—its superpriority piece under UCIOA—and the mortgage holder would receive \$49,400, with both the mortgage holder and association taking a \$600 loss each.)

1 payment of the “association’s lien” before payment of any other security interests.²³⁶

2 Specifically, NRS 116.31164 states that the person conducting the sale *shall*²³⁷

3 apply the proceeds from the sale in the following order:

4 (1) The reasonable expenses of sale;

5 (2) The reasonable expenses of securing possession before sale,
6 holding, maintaining, and preparing the unit for sale, including
7 payment of taxes and other governmental charges, premiums on
8 hazard and liability insurance, and, to the extent provided for by the
9 declaration, reasonable attorney’s fees and other legal expenses
10 incurred by the association;

11 (3) *Satisfaction of the association’s lien*;

12 (4) Satisfaction in the order of priority of any subordinate claim of
13 record; and

14 (5) Remittance of any excess to the unit’s owner.²³⁸

15 Again, the “association’s lien” consists of not just the nine-month “superpriority”
16 piece, but includes *all* of the monies owed by a unit owner to the association.²³⁹

17 Accordingly, the statute’s plain language ostensibly requires the person conducting
18 the sale to pay the association the *entire* amount of its lien before paying any other
19 lien holders.²⁴⁰ To avoid a conflict with *SFR*, this Court would have to conclude that
20 “association’s lien” in NRS 116.31164 does not really mean the “association’s
21 lien.”²⁴¹ However, this Court’s duty is to “ascertain the meaning of and to give effect

22 ²³⁶ See NRS § 116.31164.

23 ²³⁷ This Court interprets the word “shall” in statutes as mandatory language. See *Ewing v.*
24 *Fahey*, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970).

25 ²³⁸ NRS § 116.31164(3) (2011) (emphasis added).

26 ²³⁹ NRS § 116.3116(1) (2011).

27 ²⁴⁰ NRS § 116.31164(3) (2011).

28 ²⁴¹ See *id.*

1 to every valid act of the legislature,” not rewrite the law.²⁴² Because NRS
2 116.31164 conflicts with *SFR*’s interpretation of NRS 116.3116, this Court should
3 declare NRS 116.3116 void for vagueness.²⁴³

4 **5. In addition to being void for vagueness, NRS 116.3116**
5 **violates the due process clauses of both the United States**
6 **and Nevada Constitutions on its face as it fails to**
7 **mandate notice to holders of a security interest.**

8 NRS 116’s failure to require notice to holders of a security interest violates
9 the due process clauses of both the United States and Nevada Constitutions, which
10 renders the statute void and unenforceable.

11 a. NRS 116’s failure to require actual notice to holders of a
12 security interest violates due process and renders the
13 statute facially void and unenforceable.

14 Another fatal flaw to NRS 116, which the Nevada Supreme Court has not yet
15 addressed, is that none of the notice provisions provide for mandatory notice to the
16 holder of a security interest, despite the fact that *SFR* has now concluded that an
17 association’s nonjudicial foreclosure directly threatens their property rights.
18 Instead of requiring affirmative notice to the holder of a security interest, NRS 116
19 provides various “opt-in” provisions that would allow “any person with any interest”
20 to *request* notice in advance of a foreclosure sale by submitting a written request to
21 the association. Thus, under NRS 116, the affirmative duty is on the holder of a
22 security interest to request notice, not on the association to provide notice. This is
23 true even when the holder of a security interest has a prior recorded interest. Such
24 facially defective notice requirements highlight the constitutional infirmity of NRS
25 116 and necessitate voiding Wyeth Ranch’s sale.

26 ²⁴² See *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 515 N.E.2d 1222, 1228
27 (Ill. 1987).

28 ²⁴³ See *id.*

i. *Marchai's facial challenge is a legal issue of first impression.*

(a) Facial versus as-applied challenges.

An as-applied challenge asks a court to declare a statute unconstitutional under the specific facts of a case.²⁴⁴ Conversely, a facial challenge asks a court to declare a statute void because the alleged violation is intrinsic to the statute's terms, and does not depend on its application.²⁴⁵ In other words, the statute at issue is facially unconstitutional because it violated a constitutional right from the day it was enacted.²⁴⁶ Importantly, "individual application of facts do not matter" in a facial challenge and "the plaintiff's personal situation becomes irrelevant. It is enough that '[w]e have only the [statute] itself' and the 'statement of basis and purpose that accompanied its promulgation.'"²⁴⁷

A facial challenge is distinct from an as-applied challenge where enforcement and particular facts are integral to the claim. In as-applied challenges, the court evaluates whether a facially sound law was applied in an unconstitutional manner to a particular plaintiff.²⁴⁸ Accordingly, facial challenges attack the terms of a statute and as-applied challenges attack its execution.

²⁴⁴ See *Ezell v. City of Chicago*, 651 F.2d 684, 698–99 (7th Cir. 2011); Challenge, *Black's Law Dictionary* (9th ed. 2009) (an as-applied challenge is "a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party").

²⁴⁵ *Ezell*, 651 F.3d at 698–99; Challenge, *Black's Law Dictionary* (9th ed. 2009) (a facial challenge is a "claim that a statute is unconstitutional on its face—that is, always operates unconstitutionally").

²⁴⁶ See *Ezell*, 651 F.3d at 698–99 (holding that the City Council violated the Second Amendment when it created a gun law mandating firing-range training); *Seguin v. City of Sterling Heights*, 968 F.2d 584, 589–90 (6th Cir. 1992) (holding that a due process violation occurred when the City Council passed the zoning ordinance at issue).

²⁴⁷ *Ezell*, 651 F.3d at 697 (citing *Reno v. Flores*, 507 U.S. 292 (1993)); see also *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010) ("The important point is that plaintiff's claim and the relief that would follow . . . reach beyond the particular circumstances of the plaintiffs.").

²⁴⁸ *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997) ("If a statute is unconstitutional as applied, the State may continue to enforce the statute in different circumstances

(b) The Nevada Supreme Court has not yet considered a facial challenge to NRS 116.

The Nevada Supreme Court has not decided a direct facial challenge to NRS 116. In fact, the only time the court considered NRS 116 in the context of due process was in *SFR*. There, U.S. Bank made an *as-applied*—not facial—challenge to NRS 116, arguing that “the content of the notice it received” was not specific enough to satisfy due process requirements.²⁴⁹ Nor did the association’s notice to U.S. Bank explain “how the beneficiary of the first deed of trust c[ould] prevent the superpriority foreclosure sale.”²⁵⁰ In its opinion, the court chose not to address the bank’s as applied challenge because, “at the pleading stage, we credit the allegations of the complaint that SFR provided all statutorily required notices as true and sufficient to withstand a motion to dismiss.”²⁵¹

Accordingly, *SFR v. U.S. Bank* did not address whether and what type of notice was constitutionally required. Instead, all parties in that case acknowledged that some notice was received regardless of NRS 116’s requirements. Indeed, the court had no opportunity to decide any of the numerous facial shortcomings of NRS 116’s notice provisions.²⁵²

Here, in contrast, Marchai asserts a direct facial challenge to NRS 116. Consequently, this Court need only evaluate whether the terms of NRS 116 itself violate the Constitution. For the reasons set forth below, NRS 116 is

where it is not unconstitutional, but if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances.”)

²⁴⁹ *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d at 418.

²⁵⁰ *Id.* at 418–19.

²⁵¹ *Id.*; see also *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008).

²⁵² See generally *SFR*, 130 Nev. Adv. Op. 75, 334 P.3d 408; see also Resp’t Answering Br., *SFR Inv. Pool 1, LLC v. U.S. Bank*, 2013 WL 9743231, at *23–26.

1 unconstitutional because its “opt-in” notice provisions do not comply with minimum
2 due process requirements.

3 ii. *Due process requires that lienholders receive notice*
4 *before the foreclosure of real property.*

5 Due process requires that “at a minimum, [the] deprivation of life, liberty or
6 property by adjudication be preceded by notice and an opportunity for hearing
7 appropriate to the nature of the case.”²⁵³ The United States Supreme Court has
8 established the well-settled rule that state action affecting real property must be
9 accompanied by notice of the action. “An elementary and fundamental requirement
10 of due process in any proceeding which is to be accorded finality is notice reasonably
11 calculated, under all circumstances, to apprise interested parties of the pendency of
12 the action and afford them an opportunity to present their objections.”²⁵⁴

13 In *Mennonite Bd. of Missions v. Adams*, the United States Supreme Court
14 elaborated on this fundamental due process obligation, holding that any party with
15 an interest in real property subject to deprivation must receive “actual notice” of
16 the event that causes the deprivation.²⁵⁵ Additionally, “when notice is a person’s
17 due, process which is a mere gesture is not due process.”²⁵⁶ Moreover, “[n]otice by

18 ²⁵³ *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The Nevada Supreme
19 Court has “consistently relied upon the [United States] Supreme Court’s holdings interpreting the
20 federal Due Process Clause to define the fundamental liberties protected under Nevada’s due process
21 clause.” *State v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 52, 306 P.3d 369, 377 (2013); *Hernandez v.*
22 *Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 310 (2012) (holding that “the similarities
23 between the due process clauses contained in the United States and Nevada Constitutions, permit us
24 to look to federal precedent for guidance as we determine whether the procedures utilized in the
25 inquest proceedings regarding officer-involved deaths are consistent with the due process clause set
26 forth in Article 1, Section 8(5) of the Nevada Constitution.”) (citing *Rodriguez v. Dist. Ct.*, 120 Nev.
27 798, 808, 102 P.3d 41, 48 n.22 (2004) (which recognizes that “[t]he language in Article 1, Section 8(5)
28 of the Nevada Constitution mirrors the Due Process Clauses of the Fifth and Fourteenth
Amendments to the United States Constitution.”)).

24 ²⁵⁴ *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 484 (1988).

25 ²⁵⁵ 465 U.S. 791 (1983).

26 ²⁵⁶ *Mullane*, 339 U.S. at 314.

1 mail or other means as certain to ensure actual notice is a *minimum* constitutional
2 precondition to a proceeding which will adversely affect the liberty or property
3 interests of any party, whether unlettered or well versed in commercial practice.”²⁵⁷
4 While the extent of the required diligence may differ depending on the context,
5 *Mennonite* requires that reasonable steps be taken by the party seeking to convey or
6 burden the real property to provide actual notice to interested parties.²⁵⁸

7 (a) Statutory “opt in” notice provisions, like
8 those in NRS 116, do not satisfy due process.

9 Courts have repeatedly held that “opt-in” notice provisions like those at issue
10 in NRS 116 violate constitutional due process requirements. In the years following
11 the *Mullane* and *Mennonite* decisions, attempts to circumvent actual notice
12 requirements when real property was at issue did not pass constitutional muster.
13 Among the most popular was the use of an “opt in” provision—meaning that a
14 state’s foreclosure statute would require no notice to interested parties unless the
15 interested party affirmatively requested such notice. In *Small Engine Shop, Inc. v.*
16 *Cascio*, the United States Court of Appeals for the Fifth Circuit conducted an in-
17 depth analysis of Louisiana’s “opt in” clause contained in its real property
18 foreclosure statute and concluded it did not satisfy due process requirements.²⁵⁹
19 Like the notice provisions of NRS 116, the Louisiana foreclosure statute required an
20 individual or entity to affirmatively request notice by filing a request for notice in
21 the mortgage records of the parish where the property is located.²⁶⁰

22
23 ²⁵⁷ *Mennonite*, 462 U.S. at 798 (emphasis added).

24 ²⁵⁸ *See Mennonite*, 462 U.S. at 795–800.

25 ²⁵⁹ 878 F.2d 883, 893 (5th Cir. 1989).

26 ²⁶⁰ *Id.* at 885–86.

1 On appeal, the Fifth Circuit recognized that Louisiana’s burden-shifting
2 statute was at the center of the controversy. The court analyzed the validity of the
3 statute through the lenses of *Mennonite* and *Mullane*.²⁶¹ The court ultimately held
4 that the statute “as interpreted by the district court, cannot be squared with
5 *Mennonite*’s allocation of notice burdens.”²⁶² Specifically, because in *Mennonite* “the
6 Supreme Court held that any owner of property subject to deprivation must receive
7 ‘notice by mail or other means as certain to ensure actual notice,’” the state by
8 statute may not “prospectively shift the entire burden of ensuring adequate notice
9 to the property owner regardless of the circumstances.”²⁶³ NRS 116 is no different,
10 and allows those with property interests the right only to be heard “on demand,”
11 which it cannot do. NRS 116’s opt in notice provisions violate due process.

12 (b) NRS 116’s opt in provisions do not satisfy the
13 minimum notice requirements mandated by
14 the Supreme Court, rendering NRS 116 void
and unenforceable.

15 NRS 116 does not include any express or mandatory notice provision
16 requiring notice to the holder of a security interest. While NRS 116 expressly
17 addresses notice requirements in four separate provisions, those notice provisions
18 either do not apply to the holder of a security interest or require the holder of a
19 security interest to opt in and affirmatively request notice. The first such provision,
20 NRS 116.31162, governs the mailing of notice of delinquent assessments, and
21 nowhere requires that an association provide any notice to the holder of a security
22

23
24 ²⁶¹ *Id.* at 888.

25 ²⁶² *Id.* at 890; see also *Davis Oil Co. v. Mills*, 873 F.2d 774, 787–88 (5th Cir. 1989) (reaching an identical conclusion).

26 ²⁶³ *Small Engine Shop, Inc.*, 878 F.2d at 883–84 (citing *Mennonite*, 462 U.S. at 797).

1 interest of the delinquent assessment. Indeed, NRS 116.31162 makes no reference
2 to holders of security interests at all.

3 The three remaining notice provisions are each opt-in provisions, requiring
4 notice to holders of a security interest only upon its affirmative action seeking
5 notice. First, NRS 116.31163, which governs the mailing of the notice of default and
6 election to sell to certain interested persons, does not require associations to
7 affirmatively provide notice of default and election to sell to holders of security
8 interests. Instead, it is an opt-in provision, requiring notice only to

9 1. Each person who has requested notice pursuant to NRS 107.090
10 or 116.31168; [and]

11 2. Any holder of a recorded security interest encumbering the
12 unit's owner's interest *who has notified the association*, 30 days before
the recordation of the notice of default, of the existence of the security
interest.²⁶⁴

13 The foregoing does not require mandatory notice to holders of a security interest,
14 and instead shifts the burden to opt in. Conspicuously absent is any language
15 requiring an association to affirmatively notify the holder of a security interest of
16 the default and election to sell, in violation of basic due process requirements.

17 Next, NRS 116.31165 similarly does not require associations to affirmatively
18 provide notice of the time and place of the foreclosure sale to the holder of a security
19 interest. Rather, it again contains only an opt in provision, requiring notice to "[t]he
20 holder of a recorded security interest or the purchaser of the unit, *if either of them*
21 *has notified the association*, before the mailing of the notice of sale, of the existence
22 of the security interest, lease or contract of sale, as applicable."²⁶⁵

23
24
25 ²⁶⁴ NRS 116.31163 (2011) (emphasis added).

26 ²⁶⁵ NRS 116.31165 (2011) (emphasis added).

1 Finally, NRS 116.31168 likewise does not require that an association provide
2 notice to the holder of a security interest unless it first requests it. Like the previous
3 two, this provision unconstitutionally shifts the burden to the holder of a security
4 interest, requiring it to “opt in” to receive notice of default and election to sell. In
5 fact, the Legislature drafted NRS 116.31168 to address *requests* for notice of default
6 and election to sell. The caption reads: “Foreclosure of liens: *Requests* by interested
7 persons for *notice of default* and election to sell; right of association to waive default
8 and withdraw notice or proceeding to foreclose.”²⁶⁶ In addition to the caption, the
9 text itself plainly refers to requests by interested persons.²⁶⁷

10 Moreover, even if this provision required mandatory notice to the holder of a
11 security interest of the notice of default and election to sell (and it does not), that
12 alone is insufficient because it fails to address other forms of constitutionally
13 required notice such as the notice of trustee’s sale—a document that must be
14 recorded before any sale can take place. The holder of a security interest (and any
15 interested party for that matter) must additionally receive notice of the time and
16 place of sale, and default amounts to cure and prevent foreclosure. Notice of only
17 the breach and intent to sell does not comply with the notice requirements of
18 *Mullane*, *Mennonite*, or *Small Engine* and is insufficient to satisfy basic due process
19 requirements before a party’s interest in real property is disposed of.

20 Indeed, the dissent in *SFR v. U.S. Bank* acknowledged the potential “due
21 process implications of [the] holding” in the context of the failed as applied
22 challenge there.²⁶⁸ In so doing, the dissent cited to *Mullane*, noting that “when
23

24 ²⁶⁶ NRS 116.31168 (2011) (emphasis added.)

25 ²⁶⁷ *See id.*

26 ²⁶⁸ 130 Nev. Adv. Op. 75, 334 P.3d at 422.

1 notice is a person's due, process which is a mere gesture is not due process. The
2 means employed must be such as one desirous of actually informing the absentee
3 might reasonably adopt to accomplish it."²⁶⁹

4 The Nevada Legislature knows how to draft an express notice requirement—
5 it has done so in many places throughout NRS 116. But as to holders of a security
6 interest, NRS 116's notice provisions uniformly shift the burden to request notice,
7 which it cannot do.²⁷⁰ This Court should grant summary judgment in favor of
8 Marchai and against SFR on the counterclaims because NRS 116's notice provisions
9 are unconstitutional and violate due process.

10 **6. NRS 116.3116 violates the takings clauses of the United**
11 **States and Nevada Constitutions, rendering it void and**
unenforceable.

12 The Fifth Amendment to the United States Constitution prohibits "private
13 property be[ing] taken for public use without just compensation."²⁷¹ The Nevada
14 Constitution likewise provides that "[p]rivate property shall not be taken for public
15 use without just compensation having been first made."²⁷² As this Court has
16 concluded, the Takings Clause of the Nevada Constitution is more protective of
17 property rights than is that of the United States Constitution.²⁷³

18 The Nevada Supreme Court's construction of NRS 116 as extinguishing a
19 first-recorded deed of trust in favor of a homeowners' association's lien to
20 recover several months of assessments is a taking that violates both Constitutions.

22 ²⁶⁹ *Id.* (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)).

23 ²⁷⁰ *See Small Engine Shop, Inc.*, 878 F.2d at 893.

24 ²⁷¹ U.S. Const. amend. V; *Chicago B & Q.R. Co. v. Chicago*, 166 U.S. 226, 228–29 (1897).

25 ²⁷² Nev. Const., art. I., Section 8.

26 ²⁷³ *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006).

1 In *Sisolak*, this Court held that “a per se regulatory taking occurs when a public
2 agency seeking to acquire property for a public use enumerated in NRS 37.010 fails
3 to follow the procedures set forth in NRS 37, Nevada’s statutory provision on
4 eminent domain, and appropriates or permanently invades private property for
5 public use without first paying just compensation.”²⁷⁴ Yet *SFR v. U.S. Bank* makes
6 clear that is exactly what NRS 116 does. The foreclosure process does not purport to
7 follow NRS 37 procedures on eminent domain.

8 Instead, NRS 116 effects a transfer of a property interest from the party
9 otherwise entitled to it—here, a beneficiary under a deed of trust—to the real estate
10 investors snapping up borrowers’ homes at association foreclosure sales, and for the
11 stated public purpose of ensuring that associations are made whole on their
12 minimal dues and collections assessments.²⁷⁵ The result is a taking of property
13 without just compensation.

14 A lien is undeniably “property” within the meaning of the Clause.²⁷⁶ As such,
15 the extinguishment or destruction of a lien can be a taking under the Clause.²⁷⁷
16 Underscoring the taking present here, the Supreme Court struck down as
17 prohibited a law that, like NRS 116, took banks’ security interest in their
18 collateral.²⁷⁸ The *Radford* Court held the Frazier-Lemke Act, which allowed farmers
19 to buy their property at its current appraised value on a deferred payment plan,
20

21 ²⁷⁴ 122 Nev. at 670, 137 P.3d at 1127.

22 ²⁷⁵ *Chase Plaza Condo. Ass’n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 177 (D.C. 2014)
23 (noting that the purpose of the super-priority lien is to ensure prompt and efficient enforcement of
the association’s lien for unpaid assessments).

24 ²⁷⁶ *United States v. Sec. Indus. Bank*, 459 U.S. 70, 76–77 (1982).

25 ²⁷⁷ *Id.* at 77–78.

26 ²⁷⁸ *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935).

1 unconstitutional.²⁷⁹ The Act's infringement of a mortgagee's right to recover full
2 payment before being forced to abandon its security interest was impermissible
3 because that is "the essence" of a mortgage.²⁸⁰ The Court held that that the Act
4 impaired substantive property rights and held that Fifth Amendment eminent
5 domain proceedings and compensation were required to alter the mortgagee's
6 interest in that way.²⁸¹ The Court concluded:

7 For the Fifth Amendment commands that, however great the nation's
8 need, private property shall not be thus taken even for a wholly public
9 use without just compensation. If the public interest requires, and
10 permits, the taking of property of individual mortgagees in order to
11 relieve the necessities of individual mortgagors, resort must be had to
12 proceedings by eminent domain; so that, through taxation, the burden
13 of the relief afforded in the public interest may be borne by the
14 public.²⁸²

15 Decided during the Great Depression, *Radford* remains the law.²⁸³

16 A later Supreme Court case involving liens likewise makes clear that NRS
17 116 effects a taking.²⁸⁴ In *Armstrong*, where materialmen delivered materials to a
18 contractor for use in constructing navy boats and obtained liens in the vessels
19 pursuant to state law, the Court held that the government committed a taking
20 when it took title to and possession of the property and made it impossible for the
21 materialmen to enforce their liens.²⁸⁵ There, the statute gave the United States

22 ²⁷⁹ *Id.* at 580–81.

23 ²⁸⁰ *Id.*

24 ²⁸¹ *Id.*

25 ²⁸² *Id.* at 601–02.

26 ²⁸³ *See Sec. Indus. Bank*, 459 U.S. at 78 (citing *Radford* for approval); *Dewsnup v. Timm*, 502
27 U.S. 410, 419 (1992) (same).

28 ²⁸⁴ *Armstrong v. United States*, 364 U.S. 40, 48 (1960).

²⁸⁵ *Id.*

1 government the right to recover all unfinished work, including materials, free of
2 encumbrances, to protect the government's property interests. The Supreme Court
3 explained that the "total destruction by the Government of all value of these liens,
4 which constitute compensable property, has every possible element of a Fifth
5 Amendment 'taking'...."²⁸⁶ In other words, the lienholders had compensable
6 property, but "[i]mmmediately afterwards, they had none."²⁸⁷ And, "[t]his was not
7 because their property vanished into thin air," but rather because the value of the
8 liens had been destroyed by statutory fiat.²⁸⁸

9 Although in *Armstrong*, the government physically acquired the lien
10 property, the United States Supreme Court subsequently clarified that this fact was
11 not material in determining that a taking had occurred.²⁸⁹ Rather, the government's
12 "simply impos[ing] a general economic regulation," which "in effect transfers the
13 property interest from a private creditor to a private debtor" is also a taking.²⁹⁰ And
14 "takings analysis is not necessarily limited to outright acquisitions by the
15 government for itself."²⁹¹

16 NRS 116 thus effects a taking by extinguishing Marchai's property right in
17 the name of making association's whole on (minor) CC&R violation assessments and
18 (typically much larger) collection and attorney fees. There is no question that such a
19 taking is for public use. The Legislature, by allowing associations to have priority
20

21 ²⁸⁶ *Id.*

22 ²⁸⁷ *Id.*

23 ²⁸⁸ *Id.*

24 ²⁸⁹ *Sec. Indus. Bank*, 459 U.S. at 77–78.

25 ²⁹⁰ *Id.* at 78.

26 ²⁹¹ *Id.* (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)).

1 for payment, is following a policy concerning the support of associations and the
2 maintenance of common interest communities. Under NRS 116, however, there is
3 no compensation for the mortgage-holder when this public purpose is served, and
4 security worth hundreds of thousands of dollars is taken by law. NRS 116 deprives
5 Marchai (and all holders of security interests) of their interest in real property, thus
6 causing them to bear not only the burden of paying association assessments, but the
7 burden of losing their security interest in real property that is worth many times
8 what the association is owed, while conveying what can only be described as a
9 windfall to the entities purchasing the homes from under Nevada borrowers for
10 pennies on the dollar.

11 **7. This Court should not apply *SFR* retroactively to permit**
12 **extinguishment of Marchai's Deed of Trust.**

13 The Nevada Supreme Court issued its opinion in *SFR v. U.S. Bank, N.A.* on
14 September 18, 2014, which displaced over twenty years of practice with respect to
15 the relationship between first deeds of trust and an association's assessment liens.
16 Consequently, this Court should not apply *SFR* retroactively to permit
17 extinguishment of Marchai's Deed of Trust.

18 In *Chevron Oil Co. v. Huson*, the United States Supreme Court expanded the
19 application of the doctrine of non-retroactivity outside the criminal context, in both
20 constitutional and non-constitutional cases.²⁹² Specifically, the Court stated:

21 In our cases dealing with the non-retroactivity question, we have
22 generally considered three separate factors. First, the decision to be
23 applied non-retroactively must establish a new principle of law, either
24 by overruling clear past precedent on which litigants may have relied,
25 or by deciding an issue of first impression whose resolution was not
26 clearly foreshadowed. Second, it has been stressed that "we must . . .
weigh the merits and demerits in each case by looking to the prior
history of the rule in question, its purpose and effect, and whether
retrospective operation will further or retard its operation. Finally, we

26 ²⁹² 404 U.S. 97 (1971).

1 have weighed the inequity imposed by retroactive application, for
2 “[w]here a decision of this Court could produce substantial inequitable
3 results if applied retroactively, there is ample basis in our cases for
4 avoiding ‘the injustice or hardship’ by a holding of non-retroactivity.”²⁹³

5 Here, this Court should not apply *SFR* retroactively.

6 “[T]he first factor weighs heavily against the retroactive application of”
7 *SFR*.²⁹⁴ As *SFR* recognized, “Nevada’s state and federal district courts are divided
8 on whether NRS 116.3116 establishes a true priority lien.”²⁹⁵ In addition, “the
9 practice in the real estate industry prior to the announcement” in *SFR* “was to treat
10 such sales as not extinguishing first mortgages, such that traditional investors
11 would not bother to bid at such sales where the home was worth less than the first
12 mortgage.”²⁹⁶

13 The second factor also supports applying *SFR* prospectively because
14 “retroactive application of the rule would not further the purpose of the rule,” which
15 is to ensure that associations receive the superpriority portions of their liens.²⁹⁷
16 Here, Wyeth Ranch received from Perez well in excess of the superpriority portion
17 of the lien, plus it received the total outstanding amount of its lien from *SFR*.

18 Finally, the third factor also weighs against applying *SFR* retroactively.
19 Extinguishing a first deed of trust by the foreclosure of a miniscule lien, particularly
20 in a situation in which the notices provided by the statute and the statute itself are
21

22 ²⁹³ *Id.* at 106–07.

23 ²⁹⁴ *See Christina Tr. v. K & P Homes*, No. 2:15-CV-01534-RCJ-(VCF), 2015 WL 6962860 at *4
(D. Nev. Nov. 9, 2015).

24 ²⁹⁵ 334 P.3d at 412.

25 ²⁹⁶ *See Christina Tr.*, 2015 WL 6962860 at *4.

26 ²⁹⁷ *See id.* at *5.

1 unfathomably vague and incomprehensible, would sanction “an extremely, not just
2 a substantially, inequitable result.”²⁹⁸

3 Accordingly, Marchai respectfully requests that the Court grant summary
4 judgment in favor of Marchai and against SFR on its counterclaims.

5 8. Assuming, *arguendo*, that the nonjudicial foreclosure of
6 the Association’s lien did not violate due process, and
7 Alessi actually sold Wyeth Ranch’s interest, not its own,
8 this Court should void the foreclosure sale as
9 commercially unreasonable.

10 In connection with every contract or duty governed by NRS 116, associations
11 must act in good faith.²⁹⁹ Here, assuming *arguendo* that Alessi sold Wyeth Ranch’s
12 interest instead of its own, Wyeth Ranch failed to conduct its foreclosure sale in
13 good faith and in a commercially reasonable manner. In particular, “[a]lthough the
14 price obtained at the sale is not the sole determinative factor, nevertheless, it is one
15 of the relevant factors in determining whether the sale was commercially
16 reasonable. . . . A wide discrepancy between the sale price and the value of the
17 collateral compels close scrutiny into the commercial reasonableness of the sale.”³⁰⁰
18 For example, in *Will v. Mill Condominium Owner’s Association*, the property was
19 sold at a trustee’s sale pursuant to an association’s lien for \$3,510.10, which was the
20 amount of the lien, even though the property was worth approximately \$70,000.00
21 at the time of the sale.³⁰¹ There, the court held that “as a matter of law, the sale did

22 ²⁹⁸ See *id.*

23 ²⁹⁹ See NRS § 116.1113 (2011).

24 ³⁰⁰ See *Levers v. Rio King Land & Invest. Co.*, 93 Nev. 95, 98–99, 560 P.2d 917, 919–20 (1977)
25 (citations omitted); see also *Dennison v. Allen Group Leasing Corp.*, 110 Nev. 181, 186, 871 P.2d 288,
26 291 (1994) (“The conditions of a commercially reasonable sale should reflect a calculated effort to
27 promote a sales price that is equitable to both the debtor and the secured creditor. [... An] indication
28 of commercially unreasonable publicity may be found in the price obtained for the equipment and the
number of bidders at the public sale.”).

³⁰¹ 848 A.2d 336, 338 (Vt. 2004).

1 not conform with the requirements of good faith and commercial reasonableness set
2 forth by § 1-113 of the UCIOA.”³⁰² Specifically, the court noted that, even operating
3 under the seller’s and the purchaser’s mistaken belief that the property was subject
4 to a \$45,000 mortgage, the purchase price was still far below fair market value.³⁰³
5 The court concluded “the discrepancy [between the purchase price and the fair
6 market value of the unit] suggests that no efforts were made to attain the best price
7 for the unit.”³⁰⁴

8 Here, as in *Will*, the Property sold at a foreclosure sale for far less than fair
9 market value. According to the Trustee’s Deed, SFR paid just \$21,000.00 for a
10 property that SFR valued at \$307,403.00. The fact that SFR acquired the Property
11 for approximately 6.8% of its own valuation “compels close scrutiny into the
12 commercial reasonableness of the sale.”³⁰⁵ Based on the foregoing, the Association’s
13 foreclosure sale was not commercially reasonable, and the Court should void the
14 sale.

15 IV. CONCLUSION

16 No genuine issues of material fact exist that would prevent this Court from
17 entering summary judgment in favor of Marchai on its claims for judicial
18 foreclosure. Likewise, Marchai is entitled to judgment as a matter of law on SFR’s
19 counterclaims. Accordingly, Marchai asks this Court to enter a Judgment of
20 Foreclosure and Order of sale that includes:

22 ³⁰² *Id.* at 342. UCIOA § 1-113 is the uniform code’s analogue to NRS 116.1113.

23 ³⁰³ *Id.*

24 ³⁰⁴ *Id.*


25 ³⁰⁵ See *Levers v. Rio King Land & Invest. Co.*, 93 Nev. at 99, 560 P.2d at 920; see also *Will v. Mill*
26 *Condominium Owner’s Association*, 848 A.2d at 342.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
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- a. Determining that Marchai holds a valid and enforceable first priority security interest in the Property pursuant to the Deed of Trust;
- b. Determining that the priority of the rights, ownerships, liens, titles, and demands of SFR, U.S. Bank, and any other lienholders are junior and subject, subordinate, and subsequent to the Deed of Trust;
- c. Principal, interest, fees and costs in the amount of \$489,372.77;
- d. Attorney's fees and costs according to proof;
- e. Ordering the Property to be sold in the manner prescribed by law, and that a writ of sale be issued ordering and directing the conduct of such sale;
- f. Actual costs of foreclosure and sale, if any, that Marchai hereafter expends to protect its interest in the Property, together with interest according to proof.

DATED this 14th day of January 2016.

DAVID J. MERRILL, P.C.

By: 
DAVID J. MERRILL
Nevada Bar No. 6060
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(702) 566-1935
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January 2016, a copy of the foregoing Marchai, B.T.'s Motion for Summary Judgment was served electronically to the following through the Court's electronic service system:

Howard Kim & Associates

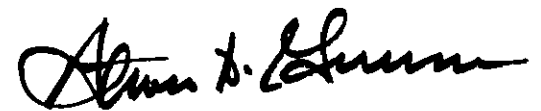
Contact	Email
Diana S. Cline	<u>diana@hkimlaw.com</u>
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Howard Kim & Associates

Contact	Email
E-Service for Howard Kim	<u>eservice@hkimlaw.com</u>


An employee of David J. Merrill, P.C.

TAB 11



CLERK OF THE COURT

MSJD

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

**SFR INVESTMENTS POOL 1, LLC's
MOTION FOR SUMMARY JUDGMENT**

Defendants.

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

SFR Investments Pool 1, LLC ("SFR") hereby moves for summary judgment against
MARCHAI B.T., a Bank Trust ("Marchai" or the "Bank"), pursuant to NRCP 56(c). This Motion
is based on the papers and pleadings on file herein, the following points and authorities, the
Declaration of JACQUELINE A. GILBERT, ESQ. ("Gilbert Decl."), attached as **Exhibit A**, the

1 Declaration of Paulina Kelso (“Kelso Decl.”), attached as **Exhibit B**, and such evidence and oral
2 argument as may be presented at the time of the hearing on this matter.

3 **NOTICE OF HEARING**

4 PLEASE TAKE NOTICE that on 16 day of FEBRUARY, 2016, in Department
5 XXIII of the above-entitled Court, at the hour of 9:00A a.m./~~p.m.~~, or as soon thereafter as
6 counsel may be heard, the undersigned will bring SFR’s Motion for Summary
7 Judgment before this Court for hearing.

8 DATED January 14, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 This case arises from Wyeth Ranch Community Association’s (the “Association”)
17 foreclosure of real property commonly referred to as **7119 Wolf Rivers Avenue, Las Vegas,**
18 **Nevada 89131; Parcel No. 125-15-811-013** (the “Property”). Specifically, on August 28, 2013,
19 the Association held a public auction of the Property based on unpaid monthly assessments.
20 Despite being mailed the notice of default and notices of sale, the Bank, the holder of the First
21 Deed of Trust, did nothing to protect its interest in the Property. At the foreclosure sale, SFR was
22 the highest bidder and purchased the Property for \$21,000.00.

23 On September 30, 2013, the Bank filed a Complaint against SFR seeking Judicial
24 Foreclosure of Deed of Trust. Nevada law is now clear: The Bank’s first deed of trust was
25 extinguished by the Association’s non-judicial foreclosure sale. See SFR Investments Pool I, LLC
26 v. U.S. Bank, N.A., 130 Nev. ___, ___, 334 P.3d 408, 419 (Nev. 2014). The recitals in the Trustee’s
27 Deed Upon Sale provide conclusive proof that the Bank was given notice of the sale and failed to
28 protect their interest. As such, summary judgment in favor of SFR on its claims for quiet title and

permanent injunction is warranted.

II. ALLEGATIONS IN THE COMPLAINT, PUBLIC RECORDS AND STATEMENT OF UNDISPUTED FACTS

Based on the conclusive recitals in the Association foreclosure deed, the Bank was on notice of the Association's lien and foreclosure of the Property but failed to act to preserve its rights. See Association foreclosure deed, attached hereto as **Ex. A-10**.

DATE	FACTS
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
July 21, 2004	Cristela Perez ("Perez") obtained title to the Property through grant bargain sale deed recorded as Instrument No. 200407210003728. ¹
November 9, 2005	First Deed of Trust in favor of CMG Mortgage Inc., recorded as Instrument No. 200511090001385. ²
December 20, 2011	Association recorded notice of delinquent assessments as Instrument No. 201112200001246. ³
February 28, 2012	Association recorded notice of default as Instrument No. 201202280000836. ⁴ The Bank was sent the Association's notice of default.⁵
June 5, 2012	Assignment transferring the beneficial interest in the First Deed of Trust to CitiMortgage Inc., recorded as Instrument No. 201206050003133. ⁶
July 26, 2012	Assignment transferring the beneficial interest in the First Deed of Trust to U.S. Bank, National Association, recorded as Instrument No. 201207260001002. ⁷
October 31, 2012	Association records an initial notice of foreclosure sale. ⁸ The Bank was sent the Association's notice of sale.⁹

¹ See Grant Bargain Sale Deed, attached hereto as **Ex. A-1**.

² See First Deed of Trust, attached hereto as **Ex. A-2**.

³ See, Association Notice of Delinquent Assessments attached hereto as **Ex. A-3**.

⁴ See Association Notice of Default, attached hereto as **Ex. A-4**.

⁵ See **Exhibit A-11**.

⁶ See Assignment First Deed of Trust, attached hereto as **Ex. A-5**.

⁷ See Assignment First Deed of Trust, attached hereto as **Ex. A-6**.

⁸ See Association Notice of Foreclosure Sale (2012), attached hereto as **Ex. A-7**.

⁹ See **Exhibit A-11**.

DATE	FACTS
July 31, 2013	Association records a second notice of foreclosure sale. ¹⁰ The Bank was sent the Association's notice of sale. ¹¹
August 12, 2013	Assignment transferring the beneficial interest in the First Deed of Trust to MARCHAI, B.T. recorded as Instrument No. 201308120002562. ¹²
Before August 28, 2013	No release of the super-priority lien was recorded. ¹³ No lis pendens was recorded by MARCHAI B.T. and/or its predecessor(s) in interest. ¹⁴
August 28, 2013	Association foreclosure sale took place. ¹⁵ SFR's manager showed up at the publically advertised sale, was the highest bidder at an auction with multiple bidders, and paid \$12,000.00 on behalf of SFR. ¹⁶ SFR has no reason to doubt the recitals in the Association foreclosure deed—if there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale. ¹⁷ Further, neither SFR, nor its manager, have any relationship with the Association besides owning property within the community and bidding on properties at auction. ¹⁸ Similarly, neither SFR, nor its manager, have any relationship with the Association's agent beyond attending auctions and bidding on properties. ¹⁹
September 9, 2013	Association foreclosure deed vesting title in SFR recorded as Instrument No. 201309090001816. ²⁰ The recitals in the foreclosure deed state that the conveyance was made pursuant to Nevada Revised Statutes and Notice of Delinquent Assessment Lien; and further: Default occurred as set forth in a Notice of Default and Election to Sell, which was recorded on in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied

¹⁰ See Association Notice of Foreclosure Sale (2013), attached hereto as Ex. A-8.

¹¹ See Exhibit A-11.

¹² See Assignment First Deed of Trust, attached hereto as Ex. A-9.

¹³ See Ex. B, Kelso Decl., ¶10.

¹⁴ See *id.*, at ¶6

¹⁵ See Association Foreclosure Deed, attached hereto as Ex. A-10.

¹⁶ *Id.*

¹⁷ See Exhibit B, Kelso Decl., at ¶ 7.

¹⁸ *Id.* at ¶¶ 8-9.

¹⁹ *Id.* at ¶¶ 8-9

²⁰ See Association Foreclosure Deed, Ex.A-10.

DATE	FACTS
	with. ²¹
September 18, 2014	Nevada Supreme Court issued opinion stating that a first deed of trust is extinguished at a non-judicial foreclosure sale pursuant to NRS 116.3116.

The notice of default was mailed to U.S. Bank.²² The notice of default and election to sell was sent to U.S. Bank, MERS, Citimortgage.²³

The Bank fails to allege any facts that would allow this Court to set aside the Association foreclosure sale. Thus, SFR's Motion for Summary Judgment should be granted.

III. LEGAL ARGUMENT

A. **Motion for Summary Judgment Standard.**

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v. Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it]." Wood, 121 Nev. at 32, 121 P.3d at 1031.

The non-moving party "is not entitled to build a case on the gossamer threads of whimsy,

²¹ *Id.*

²² See excerpts from documents produced by Alessi & Koenig, LLC, in response to subpoena, attached to Gilbert Decl. as Exhibit A-11. See specifically, Association proof of mailings of Notice of Default.

²³ *Id.*

speculation, and conjecture.” Id. Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment, like MARCHAI, must show that it can produce evidence at trial to support its claim or defense. Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414,417,633 P.2d 1220, 222 (1981).

B. SFR is Entitled to Summary Judgment on its Counterclaims for Quiet Title and Permanent Injunction Because the First Deed of Trust, Was Extinguished by the Association’s Non-Judicial Foreclosure Sale.

On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool I, LLC v. U.S. Bank, N.A., concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. 334 P.3d 408, 419 (Nev. 2014). In this case, after the homeowner and MARCHAI failed to pay the assessments, the Association foreclosed on the delinquent assessments in 2013, and thereby extinguished the first deed of trust.

On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool I, LLC v. U.S. Bank, N.A., concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR, 334 P.3d at 419. In this case, after the homeowner and Chase failed to cure the delinquency, the Association foreclosed on the delinquent assessments. In SFR, the Nevada Supreme Court recognized that a foreclosure deed “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 “is conclusive” as to the recitals “against the unit’s former owner, his or her heirs and assigns and all other persons.” Id. at 411-12 (citing NRS 116.3116.31166(2)). As Judge Susan Johnson found, “[w]hile the homeowners’ association and its agent must comply with NRS Chapter 116’s foreclosure requirements, no proof of such compliance is required beyond recitals stating as much in the trustee’s deed of sale. Bank of New York Mellon Corp. v. SFR Investments Pool 1, LLC, Case No. A-15-712683-C, 2015 WL 4945714 *5 (Nev.Dist.Ct. (Trial Order) (August 19, 2015), citing SFR, 334 P.3d at 411-412.

1 In other words, the requirement that an association foreclosure sale be “properly, lawfully
2 and fairly” carried out does not mean that a third party purchaser must provide evidence that a
3 security interest holder was provided adequate notice and that the security interest holder was not
4 thwarted in its attempts to cure the super priority lien. In fact, the recitals, in and of themselves are
5 conclusive. “If the trustee's deed recites that all statutory notice requirements and procedures
6 required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption
7 arises that the sale has been conducted regularly and properly; this presumption is **conclusive** as
8 to a bona fide purchaser.” Moeller v. Lien, 25 Cal.App.4th 822, 831-32 (Cal. Ct. App. 1994)
9 (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust and
10 Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice
11 (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). The “conclusive proof” standard “cannot be
12 overcome by any additional evidence or argument.” Employers Ins. Co. of Nev. v. Daniels, 122
13 Nev. 1009, 1016 n. 15, 145 P.3d 1024 (2006) (citing Black's Law Dictionary 1223 (8th ed. 2004)).
14 In fact, once conclusive proof is established by statute, “courts will not stop to inquire [whether
15 the presumption is correct or not] ... because the statute does not permit this conclusive proof to
16 be overcome....” Wilson v. Hill, 17 Nev. 401, ___, 30 Pac. 1076, 1077 (1888).

17 This conclusive proof is key because “[t]he conclusive presumption precludes an attack by
18 the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected
19 a proper tender of reinstatement by the trustor[,]” and even where “the sale price was only 25
20 percent of the value of the property. . . .” Moeller, 25 Cal.App.4th at 831-33.²⁴ In Nevada, unlike
21 California, the conclusive proof does not require that the purchaser be a BFP to rely on the recitals.
22 See Pro-Max Corp. v. Feestra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated

23
24 ²⁴ However, and while MARCHAI is precluded from having the foreclosure sale declared void,
25 MARCHAI may still recover damages from the trustee conducting the sale. Munger v. Moore, 11
26 Cal.App.3d 1, 89 Cal.Rptr. 323 (1970). In other words, MARCHAI's remedy, if one is required,
27 is damages. To the extent that MARCHAI suggests, even by inference, that taking title subject to
28 the first deed of trust is an option, the statute does not provide such an option. Unless MARCHAI
can demonstrate actual fraud, unfairness, or oppression **by the purchaser** at the publically
advertised and held auction, the purchaser should not be subject to any acts that would set aside
its unencumbered deed.

1 on reh'g (Jan. 31, 2001) (holding that no limitation of bona fide purchaser can be read into a statute
2 providing a conclusive presumption). As such, SFR need only present the deed and its recitals as
3 evidence that the sale was properly, lawfully, and fairly conducted.²⁵

4 The Hon. Philip Pro granted summary judgment in favor of a purchaser at an association
5 sale in a similar case. Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp.3d 1131
6 (D.Nev. 2015). When faced with almost identical recitals as those in this case, the Bourne Valley
7 court recognized the recitals in the foreclosure deed, i.e. "that there was a default, the proper
8 notices were given, the appropriate amount of time ha[d] elapsed . . . and notice of the sale was
9 given," met the burden of showing the required notices were sent to the lender. Id. at 1135.

10 In addition, the Hon. Linda Bell granted summary judgment in favor of SFR for the same
11 reasons cited by Judge Pro. See SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A., Case
12 No. A-13-682296-C, 2015 WL 4501851 (Nev.Dist.Ct. July 21, 2015). Specifically, Judge Bell
13 found that the recitals were conclusive against the bank, and unless the bank could present
14 "evidence of fraud, oppression or unfairness related to the foreclosure sale or some other legal
15 ground for setting aside the sale, summary judgment in favor of SFR [was] appropriate because
16 the Association complied with NRS 116 and therefore title vested in SFR." Id. at *5. Put simply,
17 where there were no irregularities in the proceedings of the sale, the sale cannot be set aside.
18 Moeller, 25 Cal.App.4th at 833. There needs to be finality to a foreclosure sale, so that buyers will
19 attend and bid, without the continued threat of lawsuits challenging their title. There is a sanctity
20 and finality to foreclosure sales where the deed contains the conclusive recitals. Cf. Moeller, 25
21 Cal.App.4th at 833. In the present case, The Bank cannot challenge the conclusive recitals as
22 against SFR, and therefore based on the conclusive proof of the recitals alone, SFR is entitled to
23 summary judgment.

24 Even if the conclusive proof of the recitals is not enough, (which it is), it is undisputed that
25 MARCHAI's predecessor in interest, U.S. Bank, was mailed all the necessary notices with respect
26 to the Association sale. Despite receiving all the required notices, the Bank and/or its predecessor
27

28 ²⁵ Although, as set forth more fully below, Sec. D, SFR is a bonafide purchaser for value.

1 in interest did absolutely nothing to protect its interest. As such, according to the Nevada Supreme
2 Court's binding interpretation of NRS 116.3116(2), because the Bank and/or its predecessor in
3 interest did not cure the deficiency after notice of the properly conducted Association foreclosure
4 sale, the first deed of trust was extinguished. Therefore, summary judgment in favor of SFR is
5 appropriate.

6 **C. SFR is Entitled to Summary Judgment on its Counterclaims for Quiet Title**
7 **and Permanent Injunction Because the Non-Judicial Foreclosure Sale**
8 **Vested Title in SFR Without Equity or Right of Redemption.**

9 The association foreclosure sale vested title in SFR "without equity or right of redemption."²⁶
10 SFR, 334 P.3d 408, 419 (Nev. 2014) citing NRS 116.31166(3). As the dissent in SFR explained,
11 "the owner, as well as the first security, will have no right to redeem the property under the
12 majority's holding." Id. citing NRS 116.31166(3) and Bldg. Energetix Corp. v. EHE, LP, 129 Nev.
13 ___, ___, 294 P.3d 1228, 1233 (2013) (recognizing that there is no right to redeem after a Chapter
14 107 non-judicial foreclosure sale because a sale under that chapter 'vests in the purchaser the title
15 of the grantor and any successors in interest without equity or right of redemption" (quoting NRS
16 107.080(5)).

17 This is consistent with long-standing Nevada non-judicial foreclosure law that "[i]f the sale
18 is properly, lawfully and fairly carried out, [the Bank] cannot unilaterally create a right of
19 redemption in [itself]." Golden v. Tomiyasu, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963). Nevada
20 law does not allow MARCHAI or the Court to create a redemption period to save MARCHAI
21 from its own inaction. As such, SFR is entitled to a declaration from this Court that the first deed

22 ²⁶ According to the Nevada Supreme Court,
23 **sales without equity or right of redemption vest the purchaser with**
24 **absolute title:**

25 [T]he law authorizing the mortgagee to sell is, in our opinion, so
26 thoroughly settled that it cannot now admit of a question. Such being the right of
27 the mortgagee, it follows as a necessary consequence that the purchaser from him
28 obtains an absolute legal title as complete, perfect and indefeasible as can exist or
be acquired by purchase; and a sale, upon due notice to the mortgagor, whether at
public or private sale, forecloses all equity of redemption as completely as a
decree of court.

In re Grant, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (quoting Bryant v. Carson River
Lumbering Co., 3 Nev. 313, 317-18 (1867)) (emphasis added).

1 of trust was extinguished by the Association foreclosure sale, and SFR should have title quieted in
2 its name.

3
4 **D. While Not Required, Even if there were Irregularities with the Sale, these
Cannot be Imputed to SFR Because SFR is a Bona Fide Purchaser.**

5 Nevada law does not require that SFR be a bona fide purchaser, therefore even if there
6 were any irregularities with the Association sale, as long as SFR did not participate in causing the
7 irregularities, they cannot be imputed to SFR. However, in this case, SFR is a bona fide purchaser.
8 A BFP purchases real property: (i) for value; and (ii) without notice of a competing or superior
9 interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). A
10 “purchaser for value” is one who has given “valuable consideration” as opposed to receiving the
11 property as a gift. Id. at 186-187, 591 P.2d at 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677,
12 680 (1971)(“A specific finding of what the consideration was may be implied from the record.”).
13 As discussed supra, Sec. B, finality in foreclosure sales to bona fide purchasers is a must to avoid
14 chilling the bidding. These continued attacks by the lenders on the association sales causes the
15 very issues with price that the lenders then complain of in their attacks on commercial
16 reasonableness. See Sec. E, infra.

17 In the present case, SFR paid valuable consideration for the Property at the public
18 foreclosure sale. At the time of the sale, SFR had no notice of a competing or superior interest in
19 the Property where the public records showed only that (1) a deed of trust was recorded after the
20 Association perfected its lien by recording its declaration of CC&Rs; and (2) there was a
21 delinquency by Perez, which resulted in the Association instituting foreclosure proceedings, and
22 after complying with NRS Chapter 116, was going to sell the Property at a public auction. Between
23 the date of the Notice of Sale was recorded (May 7, 2013), and the date SFR purchased the Property
24 (September 17, 2013), the Bank never recorded a lis pendens or other document alleging any
25 problems with the foreclosure process or the foreclosure sale. Ex. 1, ¶¶ 6 and 10.

26 Additionally, SFR has no relationship with the Association or Alessi & Koenig, LLC
27 (“Alessi”), except as a purchaser of Property. Ex. 2, ¶¶ 8 and 9. Therefore, nothing known to the
28 Association or Absolute about any purported irregularities in the foreclosure process could be

1 deemed known by SFR. Nevertheless, the Bank has not alleged any facts or introduced admissible
2 evidence that SFR had any knowledge precluding it from BFP status, other than an impotent deed
3 of trust.

4 Even if MARCHAI could present some credible evidence that SFR somehow knew that
5 MARCHAI's interest was superior for some reason other than MARCHAI's faulty interpretation
6 of the NRS Chapter 116, MARCHAI would still have to prove that SFR was not a BFP **and** that
7 SFR somehow induced the Association to fraudulently sell the Property to SFR. Bailey v. Butner,
8 64 Nev. 1, 8-9, 176 P.2d 226, 229-230 (1947). There is absolutely no evidence of fraud, and
9 therefore SFR is entitled to summary judgment.

10 **E. SFR is Entitled to Summary Judgment on its Counterclaims for Quiet Title**
11 **and Permanent Injunction Because the Foreclosure Sale Was Commercially**
12 **Reasonable.**

13 It is anticipated MARCHAI will claim that SFR is not entitled to summary judgment
14 because of the price paid for the Property. This argument, however, is fatally flawed for two
15 reasons. First, there is no requirement in NRS 116.3116 through 116.31168 that the foreclosure
16 sale price be commercially reasonable. The Nevada Supreme Court has held when interpreting a
17 statute: "where the language of a statute is plain and unambiguous, and its meaning clear and
18 unmistakable, there is no room for construction, and the courts are not permitted to search for its
19 meaning beyond the statute itself." Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074,
20 1077 (2001) (interpreting NRS §106.240). In Pro-Max, the district court read the statute as
21 providing protection for bona fide purchasers. The Nevada Supreme Court held that the statute
22 was clear and unambiguous, and the addition of a requirement of bona fide purchaser status before
23 the application of the statute was an improper limitation. The court stated that at the time of the
24 statute's enactment the legislature could have added language limiting the application of the statute
25 to bona fide purchaser, but it did not. Thus, the Nevada Supreme Court held that there could be
26 no addition to the statute of a bona fide purchaser requirement. Id. at 95, 1078. NRS §116.31164
27 and §116.31166 are clear and unambiguous. Neither contain a requirement that the sale be
28 "commercially reasonable" nor that the purchaser at the sale satisfy the requirements of a "bona

1 fide purchaser.”

2 Second, a commercial reasonableness analysis does not mean comparing the price paid to
3 value. The Nevada Supreme Court has held that commercial reasonableness of an association
4 foreclosure sale deals with analyzing the sale process, and whether fraud, unfairness or oppression
5 brought about the low price. Long v. Towne, 98 Nev. 11, 14, 639 P.2d 528, 530 (1982) (refusing
6 to unwind a sale where the mortgage had been fully paid and the property was sold at an association
7 foreclosure sale for \$3,000). The Long Court relied on what had long been the law in Nevada
8 regarding forced sales under a deed of trust, citing with favor Golden v. Tomiyasu, 79 Nev. 503,
9 504 (Nev. 1964): “mere inadequacy of price, without proof of some element of fraud, unfairness
10 or oppression as accounts for and brings about the inadequacy of price is not sufficient to support
11 a judgment setting aside the sale.” Long, 98 Nev. at 13, 639 p.2d at 530; see Bourne Valley, 80
12 F.Supp. at 1136. The Golden Court explained examples of irregularities, such as

13 [S]everal lots have been sold in bulk where they could have been sold separately,
14 or sold in such manner that their full value could not be realized; if bidders have
15 been kept away; if any undue advantage has been taken to the prejudice of the
16 owner of the property; or he has been lulled into a false security; or if the sale has
17 been collusively or in any other manner conducted for the benefit of the purchaser,
18 *and* the property has been sold at a greatly inadequate price...

17 Golden, at 516.

18 The Nevada Supreme Court upheld this ruling in Lowden Investment Company v. General
19 Electric Credit Company, 103 Nev. 374, 741 P.2d 806 (1987). There, when upholding a district
20 court judge’s finding that a sale of a jet was commercially reasonable, the Court noted that the
21 record showed that “GECC advertised the sale in ten different publications...[t]he advertising
22 complied with the provisions of Section 0504(3), which require public notice...[t]welve registered
23 bidders attended the auction.” Id. at 377. As evidenced by both the Golden Court and Lowden
24 Court, Nevada law is clear: commercial reasonableness is not judged by the price paid, but by the
25 sale process, and if the sale process was fair and not fraudulent, price alone will never be sufficient
26 to unwind a sale.

27 In the present case, there is absolutely no evidence that any irregularities in the sale process
28 brought about the SFR bid. Instead, the Association complied with all of Nevada’s foreclosure

1 laws under NRS 116.31162 through NRS 116.31168. The Association's sale was publically
2 noticed, as required by statute. Multiple bidders attended the auction. Finally, neither the
3 homeowner nor MARCHAI paid the full amount to cure the lien before the sale. Here, viewing
4 the transaction as a whole, the sale was commercially reasonable, and as a matter of law, the Bank
5 cannot rely on SFR's bid as evidence that it was not.

6 Undoubtedly, MARCHAI will attempt to argue that the sale could not possibly be
7 reasonable in light of the discrepancy between the price paid by SFR and the market value of the
8 Property. However, as stated above, price alone is never enough. Furthermore, market value has
9 no applicability to a forced sale situation. Bourne Valley, 80 F.Supp.3d at at 1136; BFP v.
10 Resolution Trust Corporation, 512 U.S. 1247, 114 S.Ct. 1757 (1994).

11 As the Bourne Valley Court recognized, when assessing commercial reasonableness of an
12 association sale, the material facts affecting the specific market at that time must be considered,
13 including the split in the courts as to the interpretation of NRS 116.3116(2), and whether there was
14 evidence of fraud, oppression or unfairness:

15
16 The commercial reasonableness here must be assessed as of the time the sale
17 occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially
18 unreasonable due to the discrepancy between the sale price and the assessed value
19 of the property ignores the practical reality that confronted the purchaser at the sale.
20 Before the Nevada Supreme Court issued SFR Investments, purchasing property at
21 an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit.
22 Nevada state trial courts and decisions from the United States District Court for the
23 District of Nevada were divided on the issue of whether HOA liens are true priority
24 liens such that their foreclosure extinguishes the first deed of trust on the property.
25 SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale
26 risked purchasing merely a possessory interest in the property subject to the first
27 deed of trust. This risk is illustrated by the fact that title insurance companies
28 refused to issue title insurance policies on titles received from foreclosures of HOA
super priority liens absent a court order quieting title. (Mot. to Remand to State
Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy
between the purchase price a buyer would be willing to pay and the assessed value
of the property is to be expected.

25 Bourne Valley, 80 F.Supp.3d at 1136.

26 Likewise, in BFP, the United States Supreme Court was analyzing whether the price
27 received at a mortgage foreclosure sale was less than "reasonably equivalent value" under the
28 bankruptcy code. Just like CitiMortgage in this case, the Chapter 11 debtor argued that because

1 the property sold for a fraction of its fair market value, the price paid was not reasonable. The
2 Court held that “a ‘reasonably equivalent value’ for foreclosed real property is the price in fact
3 received at the foreclosure sale, so long as all the requirements of the State’s foreclosure law have
4 been complied with.” BFP, 511 U.S. at 545. The Court explained that in a forced sale situation,
5 “fair market value cannot—or at least cannot always—be the benchmark[]’ used to determine
6 reasonably equivalent value. Id. at 537. This is so because the market conditions that generally
7 lead to “fair market value” do not exist in the forced sale context, where sales take place with
8 significant restrictions:

9 [M]arket value, as it is commonly understood, has no applicability in the forced-
10 sale context; indeed, it is the very *antithesis* of forced-sale value. ‘The market value
11 of ... a piece of property is the price which it might be expected to bring if offered
12 for sale in a fair market; not the price which might be obtained on a sale at public
13 auction or a sale forced by the necessities of the owner, but such a price as would
14 be fixed by negotiation and mutual agreement, after ample time to find a purchaser,
as between a vendor who is willing (but not compelled) to sell and a purchaser who
desires to buy but is not compelled to take the particular ... piece of property.’ In
short, ‘fair market value’ presumes market conditions that, by definition, simply do
not obtain in the context of a forced sale.

Id. at 537-538, quoting Black's Law Dictionary 971 (6th ed. 1990).

15 The Court recognized that property sold in a forced-sale context i.e. a foreclosure, “is
16 simply worth less [because] [n]o one would pay as much to own such property as he would pay to
17 own real estate that could be sold at leisure and pursuant to normal marketing techniques.” Id. at
18 539. As the Court further noted,

19 **Unlike** most other legal restrictions, however, foreclosure has the effect of
20 completely redefining the market in which the property is offered for sale; normal
21 free-market rules of exchange are replaced by the far more restrictive rules
22 governing forced sales. Given this altered reality, and the concomitant inutility of
the normal tool for determining what property is worth (fair market value), the only
legitimate evidence of the property's value at the time it is sold is the foreclosure-
sale price itself.

23 Id. at 548-549 (emphasis in original).

24 While the BFP analysis related to a mortgage foreclosure sale, other Courts have extended
25 the BFP analysis to tax-defaulted sales of real property with adherence to requirements of state
26 law. See In re Tracht Gut, LLC, 503 B.R. 804, 815-818 (9th Cir. B.A.P. 2014); T.F. Stone v. Harper,
27 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int’l Ltd. Co., 252 F.3d 1146 (10th Cir.
28 2001). Regardless of the type of sale, however, the analysis still aptly explains how market value

1 cannot be compared to a forced sale transaction.

2 Judge Bell, ruling in favor of SFR on a motion for summary judgment, summed this
3 concept up nicely,

4 It is also worth noting that the commercial reasonableness of the HOA foreclosure
5 sale must be assessed at the time the sale occurred. The sale here took place prior
6 to the Nevada Supreme Court issuing SFR v. U.S. Bank. Prior to SFR v. U.S. Bank,
7 purchasing property at an HOA foreclosure sale was likened to purchasing a
8 lawsuit. Because Nevada's state and federal courts were divided on the issue of
9 whether HOA liens were true priority liens, purchasers risked buying homes subject
10 to a lender's first deed of trust. The concerns raised by the unsteady foundation of
11 the law, coupled with the fact that title insurance was nearly impossible to obtain
12 on HOA foreclosed properties, drove the purchase prices of HOA foreclosed homes
13 far lower than 'fair market value.' The HOA foreclosure sale of the [subject]
14 property was no different in that sense. Thus, the low price paid may have in fact
15 been the reasonable price considering the questionable nature of the interest
16 purchased.

17 SFR Investments Pool 1, LLC v. Wells Fargo, Case No. A-13-682296-C, 2015 WL 4501851 *11
18 (Nev. Dist. Ct. July 21, 2015) (Trial Order). The Ninth Circuit Court of Appeals similarly rejected
19 arguments by lenders that motions to dismiss could be affirmed on the basis of commercial
20 unreasonableness, because "'inadequacy of price, however gross, is not in itself a sufficient
21 ground' for setting aside a sale without 'proof of some element of fraud, unfairness or oppression'"
22 causing the low price, which the bank had not identified. LVDG Series 125 v. Welles, No. 14-
23 15859 at ¶ 3 (Memorandum order of reversal and remand) (9th Cir. Aug. 27, 2015)²⁷ (quoting
24 Brunzell v. Woodbury, 85 Nev. 29, 32, 449 P.2d 158, 159 (1969) (internal citations omitted); see
25 also, Kal-Mor-USA, LLC v. Bank of America, N.A., No. 13-16591 at ¶ 2 (Memorandum order of
26 reversal and remand) (9th Cir. August 27, 2015)²⁸ (same).

27 In the present case, MARCHAI wants to compare market value to the winning SFR bid
28 value at a foreclosure auction, when the two have no bearing on one another and cannot be
29 compared. The BFP Court clearly explained how market value has no applicability to a forced sale
30 transaction. Additionally, both Judge Pro and Judge Bell clearly explained why the price paid at

²⁷ Available at <http://cdn.ca9.uscourts.gov/datastore/memoranda/2015/08/27/14-15859.pdf>

²⁸ Available at <http://cdn.ca9.uscourts.gov/datastore/memoranda/2015/08/27/13-16591.pdf>

1 an Association foreclosure sale is reasonable, even though it was below market value, when the
2 context of the sale is considered. Accordingly, Nevada law requires something more than mere
3 inadequacy of price to find a sale commercially unreasonable and void the sale. As such, summary
4 judgment in favor of SFR is warranted.

5 **F. SFR is Entitled to Summary Judgment on its Counterclaims for Quiet Title**
6 **and Permanent Injunction Because Extinguishment is Not Unfair or**
7 **Oppressive.**

8 Even if MARCHAI were to seek equitable relief, they would not come to court with clean
9 hands—they have not done equity. Transaero Land & Dev. Co. v. Land Title Co. of Nev., Inc.,
10 108 Nev. 997, 1001, 842 P.2d 716 (1992). The analysis of circumstances surrounding the
11 foreclosure sale to determine if they were unfair or oppressive, requires the Court to also consider
12 MARCHAI’s action, or in this case, inaction. It is not unfair or oppressive for MARCHAI to lose
13 its security interest if it had left the procedures to protect itself untouched. As the Nevada Supreme
14 Court explained in SFR, MARCHAI could have paid the lien before the Association sale. “The
15 inequity [the Bank] decries is thus of its own making.” SFR, 334 P.3d at 414. Not only could
16 MARCHAI have paid the lien before the sale, it could have filed a lis pendens or instituted some
17 action against the Association to challenge the sale. Instead, MARCHAI did nothing with respect
18 to the sale. As such, it is not unfair or oppressive to require MARCHAI to suffer the loss when it
19 could have taken any number of actions to protect itself before the gavel dropped.

20 Even if the result seems harsh, this Court should not disregard the plain language of NRS
21 116.3116. See In re Fountainbleu Las Vegas Holdings, 128 Nev. ___, ___, 289 P.3d 1199, 1212,
22 (2012) (“We have recognized that...equitable principles will not justify a court’s disregard of
23 statutory requirements.”). “When a statute is clear, unambiguous, not in conflict with other statutes
24 and is constitutional, the judicial branch may not refuse to enforce the statute on public policy
25 grounds. That decision is within the sole purview of the legislative branch.” Id. The Association’s
26 lien here is not unlike the mechanics’ lien in Fountainbleu. Both are given priority over mortgages,
27 and both are typically small in value when compared to the subordinate mortgages. There is no
28

1 question that a mechanic's lien, if property foreclosed, extinguishes mortgages.²⁹ There is also no
2 question that if this result is somehow inequitable it cannot be set aside. Id. Based on this, SFR is
3 entitled to summary judgment.

4
5 **CONCLUSION**

6 Based on the above, the Court should enter summary judgment in favor of SFR, stating
7 that SFR is the title holder of the Property and that MARCHAI's deed of trust was extinguished
8 when the Association foreclosed its lien containing super priority amounts.

9 DATED January 14, 2016.

KIM GILBERT EBRON

10 /s/ Jacqueline A. Gilbert
11 JACQUELINE A. GILBERT, ESQ.
12 Nevada Bar No. 10580
13 7625 Dean Martin Drive, Suite 110
14 Las Vegas, Nevada 89139
15 *Attorneys for SFR Investments Pool 1, LLC*

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27 ²⁹ Banks have argued that mechanics' liens must be judicially foreclosed. That is true. However,
28 the Legislature knew how to provide explicit procedures for foreclosing liens and, in the case of
association liens, determined that it would allow non-judicial foreclosure, protecting all junior
interests through the noticing requirements of NRS 107.090 as adopted in NRS 116.31168.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January 2016, pursuant to NCRP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **PLAINTIFF's MOTION FOR SUMMARY JUDGMENT**, to the following parties:

Select All		Select None
David J. Merrill P.C.		
Name	Email	Select
David J. Merrill	david@dimerrillpc.com	<input checked="" type="checkbox"/>

/s/ Alan G. Harvey
An employee of Kim Gilbert Ebron

EXHIBIT A

**DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR
INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, formerly Howard Kim & Associates, admitted to practice law in the State of Nevada.
2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.
3. I make this declaration in support of SFR's Motion for Summary Judgment.
4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.
5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case.
6. In connection with this litigation, I reviewed the Clark County Recorder's website for records relating to **7119 Wolf Rivers Avenue, Las Vegas Nevada 89131; Parcel No. 125-15-811-013** (the "Property"), as well as copies of the relevant recorded documents my office obtained by downloading the recorded documents from the Clark County Records website.
7. Upon information and belief, attached hereto as **Exhibit A-1** is a true and correct copy of the Grant, Bargain, Sale Deed.
8. Attached hereto as **Exhibit A-2** is a true and correct copy of the First Deed of Trust as received from MARCHAI, B.T. in Plaintiff's Initial Disclosures.
9. Upon information and belief, attached hereto as **Exhibit A-3** is a true and correct copy of the Notice of Delinquent Assessment Lien.
10. Upon information and belief, attached hereto as **Exhibit A-4** is a true and correct

copy of the Association's Notice of Default and Election to Sell Under Homeowners Association Lien.

11. Upon information and belief, attached hereto as **Exhibit A-5** is a true and correct copy of the Assignment of the First Deed of Trust to CitiMortgage, Inc.
12. Attached hereto as **Exhibit A-6** is a true and correct copy of the Assignment of the First Deed of Trust to U.S. Bank, N.A., as received from MARCHAI, B.T. in Plaintiff's Initial Disclosures.
13. Upon information and belief, attached hereto as **Exhibit A-7** is a true and correct copy of the 2012 Association Notice of Trustee Sale.
14. Upon information and belief, attached hereto as **Exhibit A-8** is a true and correct copy of the 2013 Association Notice of Trustee Sale.
15. Attached hereto as **Exhibit A-9** is a true and correct copy of the Assignment of the First Deed of Trust to MARCHAI, B.T., as received from MARCHAI, B.T. in Plaintiff's Initial Disclosures.
16. Attached hereto as **Exhibit A-10** is a true and correct copy of the Association Trustee's Foreclosure Deed, as received from MARCHAI, B.T. in Plaintiff's Initial Disclosures.
17. Attached hereto as **Exhibit A-11** are true and correct copies of the Proof of Mailings of Notice of Default as produced by the Alessi & Koenig, LLC, in response to subpoena.

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

Dated this 14th day of January, 2016.

/s/ Jacqueline A. Gilbert
Jacqueline A. Gilbert

EXHIBIT A-1



20040721-0003728

Fee: \$17.00 RPT: \$2,335.80
07/21/2004 13:47:29 T20040064542
Req. LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs. 4

Assessor's Parcel Number: 125-15-811-013
Escrow Number: 04011017GR

Affix R. P. T. T. \$2,315.40
Recording Requested by:
Lawyers Title of Nevada, Inc.
Please mail tax statements to:
After Recording, mail to:
Cristela Perez
7119 Wolf Rivers Avenue
Las Vegas, NV 89131

The area to the right is provided for the recorder's office

GRANT, BARGAIN, SALE DEED

For a valuable consideration, receipt of which is hereby acknowledged, PN II, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada do(es) hereby Grant, Bargain, Sell and Convey to

CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

the following described real property situate in the City of Las Vegas County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE COMPLETE LEGAL DESCRIPTION

SUBJECT TO:

1. Taxes for the fiscal year 20 04-2005.
2. Rights of way, reservations, restrictions, easements and conditions of record.

Together with all tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues profits thereof.

Dated this 19th day of July, 2004.

PN H, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada

Roberta Leonard
Roberta Leonard Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On July 19, 2004 personally appeared
before me, a Notary Public, Roberta Leonard Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that she executed the instrument.

D. Bergman
(NOTARY PUBLIC)

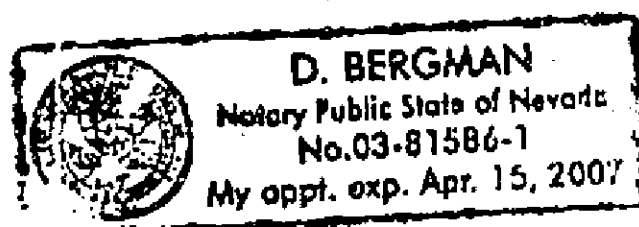


EXHIBIT "A"

PARCEL I.

Lot Thirteen (13) in Block "A" of WYETH RANCH - UNIT 2, on file in Book 112 of Plats, Page 9, in the Office of the County Recorder of Clark County, Nevada.

PARCEL II:

A non-exclusive easement for ingress, egress, use and enjoyment of the Common Lots as shown on the above map, and as set forth in the Declaration of Covenants, Conditions and Restrictions recorded October 4, 2002 in Book 20021004 as Document No. 01353, and as the same may be amended from time to time.

STATE OF NEVADA
DECLARATION OF VALUE FORM 10

1. Assessor Parcel Number(s)

a) 125-15-811-013

b)

c)

d)

2. Type of Property:

a) ☐ Vacant Land

c) ☐ Condo/Townhouse

e) ☐ Apartment Building

g) ☐ Agricultural

i) ☐ Other

b) ☒ Single Family Residence

d) ☐ 2-4 Plex

f) ☐ Commercial/Industrial

h) ☐ Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

Real Property Transfer Tax Due

\$457,540.00

\$0.00

\$457,540.00

\$2319.40

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: Roberta Leonard, Lawful Agent for PN II, Inc.

Capacity agent

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: PN II Inc, a Nevada Corp

Address: 1635 Village Center Cir. #250

City: Las Vegas

State: NV

Zip: 89134

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Cristela Perez

Address: 7119 Wolf Rivers

City: Las Vegas

State: NV Zip: 89131

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

Print Name: Lawyers Title of Nevada, Inc.

Address: 1645 Village Center Cir. #291

City: Las Vegas

State: NV

Zip: 89134

Escrow #: GR

Escrow #: Jane Grey/ Maria Rampa

AN ADDITIONAL RECORDING FEE OF \$1.00 WILL APPLY FOR EACH DECLARATION OF VALUE FORM PRESENTED TO CLARK COUNTY, EFFECTIVE JUNE 1, 2004.

EXHIBIT A-2

20051109-0001385

Assessor's Parcel Number: 125-15-811-013
When recorded mail to:
CMG MORTGAGE, INC.
3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CALIFORNIA 94583
Loan No.: 32501493

Fee: \$38.00
N/C Fee: \$0.00

11/09/2005 09:44:04
T20050204478

Requestor:
FIDELITY NATIONAL TITLE

Frances Deane KGP
Clark County Recorder Pgs: 22

Mail Tax Statements to:
CRISTELA PEREZ *tno*
7119 WOLF RIVERS AVENUE
LAS VEGAS, NEVADA 89131
Prepared By:

Recording Requested By:

31

22

62902864 [Space Above This Line For Recording Data]

DEED OF TRUST

MIN 1000724-0032501493-7
MERS TELEPHONE: (888) 679-6377

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.

(A) "Security Instrument" means this document, which is dated October 19, 2005, together with all Riders to this document.

(B) "Borrower" is CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY. Borrower is the trustor under this Security Instrument.

(C) "Lender" is CMG MORTGAGE, INC.. Lender is a corporation organized and existing under the laws of the State of CALIFORNIA. Lender's address is 3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583.

(D) "Trustee" is FIDELITY NATIONAL TITLE AGENCY OF NEVADA.

(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

NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS
Form 3029 1/01

Page 1 of 18

Initials: DF

nvcmerid



32501493



DEED

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 **October 19, 2005**. The Note states that Borrower owes Lender **Four Hundred Forty Two Thousand And 00/100 Dollars (U.S. \$ 442,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 1, 2035**.

(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 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

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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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of **CLARK** [Name of Recording Jurisdiction]:

LOT 13 IN BLOCK A OF WYETH RANCH- UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. A NON- EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FOURTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Parcel ID Number: **125-15-811-013**

LF MQ 
7119 WOOL RIVERS AVENUE

LAS VEGAS [City], Nevada **89131** [Zip Code] ("Property Address");


which currently has the address of
[Street]

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

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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

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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 for 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

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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.

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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)

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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

NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS
Form 3029 1/01

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Initials: 

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. \$ 4,420.00.

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.

Witnesses:

_____		(Seal)
	CRISTELA PEREZ	-Borrower

_____	_____	(Seal)
		-Borrower

_____	_____	(Seal)
		-Borrower

_____	_____	(Seal)
		-Borrower

STATE OF NEVADA

COUNTY OF Clark

This instrument was acknowledged before me on 10.20.05 by
CRISTELA PEREZ

Mary Quackenbush

My Commission Expires: 05.31.09



NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS
Form 3029 1/01

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Initials: CP

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this **19th** day of **October, 2005**, 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 Fixed/Adjustable Rate Note (the "Note") to **CMG MORTGAGE, INC.** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

LF mo
7119 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **5.000%**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the **FIRST** day of **November, 2010**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

MULTISTATE FIXED/ADJUSTABLE RATE RIDER – WSJ One-Year LIBOR – Single Family – Fannie Mae Uniform Instrument

Form 3187 6/01

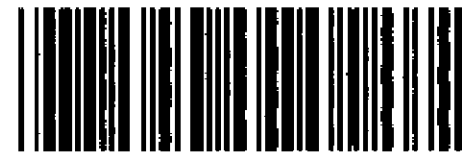
(Page 1 of 4)

Initials: mo

usc3187



32501493



RIDER

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each 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.

(C) Calculation of Changes Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One-Fourth** percentage points (2.250%) 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%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be 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 also may 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 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 Fixed/Adjustable Rate Rider.

 (Seal)
CRISTELA PEREZ -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

EXHIBIT A-3

Inst #: 201112200001246
Fees: \$17.00
N/C Fee: \$0.00
12/20/2011 09:12:32 AM
Receipt #: 1012628
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MJM Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-15-811-013

Trustee Sale # **WR-7119-A**

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Wyeth Ranch Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **7119 Wolf Rivers Ave , Las Vegas, NV 89131** and more particularly legally described as: **Lot 13 Block A Book 112 Page 8** in the County of **Clark**.

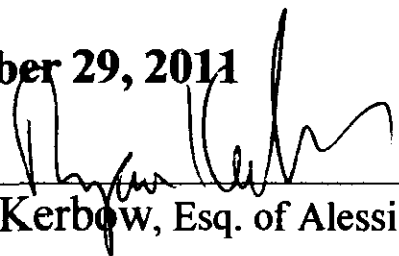
The owner(s) of record as reflected on the public record as of today's date is (are): **Cristela Perez**

The mailing address(es) is: **P.O. Box 750158, Las Vegas, NV 89136**

The total amount due through today's date is: **\$9,296.56**. Of this total amount **\$9,559.06** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$450.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **November 29, 2011**

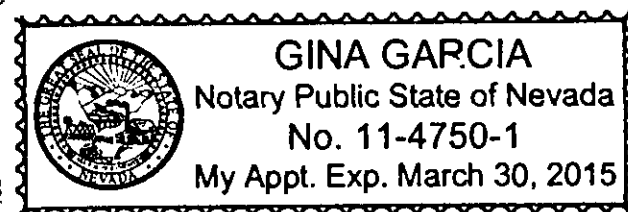
By:


Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Wyeth Ranch Community Association**

State of Nevada
County of Clark

SUBSCRIBED and SWORN before me **November 29, 2011**

(Seal)



(Signature)


NOTARY PUBLIC