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.

Electronically Filed
Dec 03 2018 08:42 a.m.
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 6

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1	3	11/07/2013	Affidavit of Service	JA_0074
1	4	11/12/2013	Affidavit of Service	JA_0076
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1	9	12/27/2013	Affidavit of Service	JA_0108
5	25	09/14/2016	Affidavit of Service	JA_1118
5	26	09/14/2016	Affidavit of Service	JA_1122
5	27	09/14/2016	Affidavit of Service	JA_1126
3	13	01/14/2016	Appendix of Exhibits to Marchai's Motion for Summary Judgment	JA_0544
2	12	01/14/2016	Appendix of Exhibits to Marchia's Motion for Summary Judgment	JA_0272
5	19	02/22/2016	Certificate of Service	JA_1015
1	1	09/30/2013	Complaint	JA_0001
5	20	03/22/2016	Decision and Order	JA_1017
7	38	10/03/2017	Decision and Order	JA_1483
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5	22	03/24/2016	SFR's Notice of Entry of Decision and Order	JA_1071
7	47	4/27/2018	SFR's Notice of Entry of Judgment	JA_1585
4	15	02/04/2016	SFR's Opposition to Marchai's Motion for Summary Judgment	JA_0852
7	44	11/13/2017	SFR's Reply in Support of its Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1569
4	17	02/09/2016	SFR's Reply in Support of Motion for Summary Judgment and Counter-Motions to Strike	JA_0908
6	36	08/21/2017	SFR's Reply in Support of SFR's Motion for Summary Judgment	JA_1434
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Inst #: 201202280000836
Fees: $17.00
N/C Fee: $0.00
02/28/2012 09:07:00 AM
Receipt #: 1079272
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: ANI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. **125-15-811-013** Trustee Sale No. **WR-7119-A**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **$10,625.06** as of **February 14, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Wyeth Ranch Community Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **December 20, 2011** as document number **0001246**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Cristela Perez,** of **Lot 13 Block A**, as per map recorded in Book **112**, Pages **8**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark,** State of Nevada. PROPERTY ADDRESS: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **December 20, 2011**, on behalf of **Wyeth Ranch Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **January 1, 2008** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **February 14, 2012**

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Wyeth Ranch Community Association**

11632

CRISTELA PEREZ
7119 WOLF RIVERS AVE

LAS VEGAS, NV 89131-0139

CRISTELA PEREZ
17450 BURBANK BLVD, #104

ENCINO, CA 91316

CMG MORTGAGE INC.
3160 CROW CANYON ROAD, SUITE 240

SAN RAMON, CA 94583

MERS
PO BOX 2026

FLINT, MI 48501-2026

U.S. BANK, NATIONAL ASSOCIATION N.D.
4325 - 17TH AVENUE S.W.

FARGO, ND 58103

U.S. BANK TRUST COMPANY, N.A.
111 S.W. FIFTH AVENUE, SUITE 3500

PORTLAND, OR 97204

FIRST AMERICAN
1228 EUCLID AVENUE, 4TH FLOOR

CLEVELAND, OH 44115

APACHE ELECTRIC
4300 N. PECOS #25

LAS VEGAS, NV 89115

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE

LAS VEGAS, NV 89101

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Street, Apt. or PO Box No. 7119 WOLF RIVERS AVE
City, State, ZIP+4 LAS VEGAS, NV 89131-0139

7011 2000 0001 1943 2074

PS Form 3800, August 2006 See Reverse for Instructions

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Dated: **February 14, 2012**

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Wyeth Ranch Community Association**

MERS
PO BOX 2026
FLINT, MI 48501-2026

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $ 000.45⁰
0004190236 MAR 05 2012
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ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

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PITNEY BOWES
02 1P $ 000.45⁰
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ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
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APACHE ELECTRIC
4300 N. PECOS #25

LAS VEGAS, NV 89115

A&K000231

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Las Vegas, NV 89147

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CLEVELAND, OH 44115

ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

UNITED STATES POSTAGE
02 1P $
0004190236 M
MAILED FROM ZIP

U.S. BANK TRUST COMPANY, N.A.
111 S.W. FIFTH AVENUE, SUITE 3500

PORTLAND, OR 97204

ELECTRONICALLY SERVED
11/25/2015 05:33:18 PM

LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
Sherry A. Moore, Esq. (NV Bar 11215)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898

Attorney 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 I through X, and ROE CORPORATIONS 1 through 10, inclusive, Defendants.	**CASE NO.:** A-13-689461-C **DEPT. NO.:** XXVI **RESPONSES AND OBJECTIONS OF PLAINTIFF MARCHAI, B.T., TO AMENDED INTERROGATORIES PROPOUNDED BY DEFENDANT SFR INVESTMENTS POOL 1, LLC**
ALL RELATED CLAIMS	

PROPOUNDING PARTY: SFR INVESTMENTS POOL 1, LLC

RESPONDING PARTY: MARCHAI, B.T.

PRELIMINARY STATEMENT

Pursuant to Nevada Rule of Civil Procedure Section 34, Plaintiff Marchai, B.T. ("MARCHAI" or "Responding Party"), responds to the First Set of Interrogatories ("Request"), propounded by SFR Investments Pool 1, LLC ("SFR" or "Propounding Party").

Each response set forth herein, is subject to the stated limitations and to this Preliminary Statement, and is as complete as the information reasonably available to Responding Party as

of the date of these responses. Responding Party's pre-trial discovery, investigation, and analysis are continuing, and Responding Party may learn of additional information subsequent to the date of these responses. The responses set forth herein are subject to being amended with information and documents subsequently discovered, inadvertently omitted, or mistakenly identified in these initial responses. Moreover, as discovery, investigation, and legal research progress, new facts may be discovered and previously known facts may take on new meaning or significance, thereby changing any conclusions, opinions, representations, objections, and/or statements made herein.

All evidentiary objections shall be reserved for the time of trial and no waiver of any objection is to be implied from this Response or any production made pursuant hereto. By this Response and the ensuing production, Responding Party is not making any writing admissible at the time of trial which would otherwise be inadmissible.

To the extent that this Response or any production pursuant hereto might waive, whether implicitly or explicitly, any otherwise assertable objection to discovery, such waiver shall be limited to this Response and to the ensuing production only, and shall not extend to any further requests for production or to any discovery proceedings or to any requests or subpoenas for the production of any such writings at the time of trial.

To the extent that all or any of the requests seek information and/or documents subject to the attorney-client privilege then the Responding Party asserts the attorney-client and/or work product privileges to each of such requests as appropriate and to the extent necessary to avoid a waiver of such privileges.

Responding Party responds to each and every discovery request subject to the foregoing, and each of the foregoing statements and objections are incorporated by reference into each of the following responses.

INTERROGATORY NO. 1:

State the name, address, occupation and relationship to the parties of each individual who provided the factual information needed to answer these interrogatories.

RESPONSE TO INTERROGATORY NO. 1:

Objection. This interrogatory is unreasonably burdensome, oppressive, and overbroad. Without waiving these objections, Peak Loan Servicing, LLC, is the custodian of records for the security instruments that are the subject of the instant action. Peak Loan Servicing, LLC, may be contacted through counsel the Law Offices of Les Zieve.

INTERROGATORY NO. 2:

Do any of your agents, employees, former agents or former employees possession any information, facts, writings or evidence that you intent to rely upon in your defense of this litigation? If so, please identify each and every item of information, fact, writing or evidence specifically and in detail, and in addition, identify the person or persons possessing such information by stating each person's name, address, title, and relationship to the parties herein.

RESPONSE TO INTERROGATORY NO. 2:

Objection. This interrogatory seeks information that is neither admissible nor likely to lead to the discovery of admissible evidence. It also seeks information potentially protected by the attorney-client privilege. It is unreasonably burdensome, oppressive, and overbroad. Without waiving these objections, Peak Loan Servicing, LLC, is the custodian of records for the security instruments that are the subject of the instant action. Peak Loan Servicing, LLC, may be contacted through counsel the Law Offices of Les Zieve.

INTERROGATORY NO. 3:

Did you have notice the Association was enforcing its lien against the Property before the date of the Association foreclosure sale?

RESPONSE TO INTERROGATORY NO. 3:

Objection. This interrogatory seeks information that is a matter of public record and that record speaks for itself. Without waiving said objection, while Responding Party had constructive notice of the foreclosure sale, Responding Party did not have proper notice that the Association was foreclosing on its super-priority portion because said notice did not specify the amount of the super-priority portion of the lien.

INTERROGATORY NO. 4:

If the answer to Interrogatory No. 3 is "yes," for each time you obtained notice the Association was enforcing its lien against the Property, please identify how, when and by what method(s) you obtained notice the Association was enforcing its lien against the Property.

RESPONSE TO INTERROGATORY NO. 4:

Objection. Responding Party objects to this request on the grounds that this request seeks documents that are within the possession, custody and control of requesting party. Responding Party refers Propounding Party to the exhibits attached to its Complaint, the exhibits attached to its 16.1 Initial Disclosures, two sets of Supplemental Disclosures (Wyeth Ranch Community Association and Alessi & Koenig subpoena documents), and its Response to Request for Production No. 1 served contemporaneously herewith.

INTERROGATORY NO. 5:

If your answer to Interrogatory No. 3 is "yes," please describe any action you or your predecessors in interest took relating to the Association lien, if any, after receiving notice that the Association was enforcing its lien against the Property.

RESPONSE TO INTERROGATORY NO. 5:

Due to the HOA's failure to provide proper notice of the super priority amount to either Responding Party or its predecessor in interest, no action could be taken to tender payment of the super-priority portion of the HOA's lien.

INTERROGATORY NO. 6:

If the answer to Interrogatory no. 3 is "no," please describe in detail each and every step of the process you used to determine you did not have notice the Association was enforcing its lien against the Property before the date of the Association foreclosure sale, including what practices, policies and/or procedures upon which you relied during said process.

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RESPONSE TO INTERROGATORY NO. 6:

Objection. This interrogatory is unreasonably burdensome, oppressive, and overbroad. It is also incomprehensible because Responding Party could not have taken any steps to ensure it did not have proper notice of the sale when it did not have such proper notice of that sale in the first place. Without waiving said objections, the public record speaks for itself, as the HOA lien, HOA's Notice of Default, and HOA's Notice of Trustee's Sale all do not specify the super-priority amount of the HOA's lien.

INTERROGATORY NO. 7:

Identify all communications between you and the Association and/or the Association's agents specific to the Property for the time period beginning when the Borrower applied for the loan secured by the Deed of Trust to present.

RESPONSE TO INTERROGATORY NO. 7:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, overbroad, and seeks information that is equally available to the Propounding Party. Without waiving said objection, see Response to Interrogatory No. 4.

INTERROGATORY NO. 8:

Identify any and all communications between you and HUD specific to the First Deed of Trust and/or the underlying promissory note. This interrogatory is limited to time period beginning when the Borrower applied for the loan secured by the First Deed of Trust to present.

RESPONSE TO INTERROGATORY NO. 8:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, overbroad, and seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving said objections, this is not a HUD loan.

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INTERROGATORY NO. 9:

Please identify provisions of any pooling and servicing agreement and/or servicing guidelines applicable to your security interest in the Property that mention or are applicable to associations, association liens or association foreclosures. This interrogatory is limited to time period beginning when the Borrower applied for the loan secured by the First Deed of Trust to present.

RESPONSE TO INTERROGATORY NO. 9:

Objection. This interrogatory seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence, and seeks information that is equally available to the Propounding Party. Without waiving said objections, Responding Party has general servicing guidelines to protect the lien priority status but is unaware of any provision of the pooling and servicing agreement or servicing guidelines that specifically mention HOA liens or foreclosures. Responding Party reserves the right to supplement this response at a later date.

INTERROGATORY NO. 10:

If you allege that this loan is insured by FHA, please describe the terms of the policy, any claim(s) made under the policy and the status of such claim(s).

RESPONSE TO INTERROGATORY NO. 10:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, overbroad, and seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving said objections, this loan is not insured by FHA.

INTERROGATORY NO. 11:

Identify any and all of your practices, policies or procedures applicable to the Property for handling homeowners association liens. This interrogatory is limited to time period beginning when the Borrower applied for the loan secured by the First Deed of Trust to the date of the Association foreclosure sale.

RESPONSE TO INTERROGATORY NO. 11:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, overbroad, and seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving said objections, Responding Party has general practices, policies, and procedures to protect the lien priority status is unaware of any practices, policies or procedures that specifically relate to just HOA liens or foreclosures. Responding Party reserves the right to supplement this response at a later date.

INTERROGATORY NO. 12:

Please provide a detailed list of each and every monetary payment made by you to the Association and/or its agents relating to an Association lien on the Property. For each payment, please include the date of payment, amount of payment, the name and address of the person/entity to whom the payment was made, the method and manner the payment was made, the name of the person who made the payment, and whether the payment was accepted or rejected.

RESPONSE TO INTERROGATORY NO. 12:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, and overbroad. Without waiving these objections, Responding Party was unable to tender any payment to the HOA because it did not receive proper notice of the super-priority portion of the HOA's lien.

INTERROGATORY NO. 13:

For any monetary payment described in Interrogatory No. 12 that you allege was rejected, please describe in detail the facts and circumstances of any such rejection including the date, time, location, manner and individuals involved.

RESPONSE TO INTERROGATORY NO. 13:

See Response to Interrogatory No. 12.

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INTERROGATORY NO. 14:

If you allege that you were unable to estimate the payoff amount or make a payment because of any action by the Association or its agents, please identify all such actions, the date and individuals involved.

RESPONSE TO INTERROGATORY NO. 14:

Responding Party cannot identify such actions by the HOA or its agents because the HOA's failure to provide the super priority payoff amount to Responding Party constitutes a non-action.

INTERROGATORY NO. 15:

Did you at any time attempt to contact the Borrower to obtain consent/authorization to obtain account specific information from the Association or its agents?

RESPONSE TO INTERROGATORY NO. 15:

Objection. This interrogatory seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence, as the HOA is required to provide notice of the super priority amount to Responding Party so it can protect its lien interest irrespective of whether or not Responding Party has obtained consent from the Borrower to obtain account specific information from the HOA. Without waiving said objection, no.

INTERROGATORY NO. 16:

Please describe in detail your alleged interest(s) in the promissory note secured by the First Deed of Trust for the time period beginning when the First Deed of Trust was recorded to present.

RESPONSE TO INTERROGATORY NO. 16:

Responding Party is the holder of the promissory note.

INTERROGATORY NO. 17:

Please describe in detail your alleged interest(s) in the First Deed of Trust for the time period beginning when the First Deed of Trust was recorded to present.

RESPONSE TO INTERROGATORY NO. 17:

Responding Party objects to this request on the grounds that this request seeks documents that are within the possession, custody and control of requesting party. Without waiving said objections, Responding Party was assigned beneficial interest in the Deed of Trust. Responding Party refers Propounding Party to the exhibits attached to its Complaint, the exhibits attached to its 16.1 Initial Disclosures [MBT0047-0051], and its Response to Request for Production No. 1 served contemporaneously herewith.

INTERROGATORY NO. 18:

If you allege you are entitled to enforce the promissory note secured by the First Deed of Trust, please describe the document(s) and/or transaction(s) that provide you authority to enforce the promissory note secured by the First Deed of Trust.

RESPONSE TO INTERROGATORY NO. 18:

Objection. This request seeks documents that are within the possession, custody and control of requesting party. Without waiving said objection, see Response to Interrogatory No. 17.

INTERROGATORY NO. 19:

Please identify any other entity or person of which you are aware that currently claims an interest in the promissory note secured by the First Deed of Trust.

RESPONSE TO INTERROGATORY NO. 19:

None.

INTERROGATORY NO. 20:

Please identify any other entity or person of which you are aware that currently claims an interest in the First Deed of Trust.

RESPONSE TO INTERROGATORY NO. 20:

None.

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INTERROGATORY NO. 21:

Please provide a detailed list of the previous entities/persons of which you aware that claimed an interest in the First Deed of Trust.

RESPONSE TO INTERROGATORY NO. 21:

Objection. Responding Party objects to this request on the grounds that this request seeks documents that are within the possession, custody and control of requesting party, and seeks information that is equally available to the Propounding Party. Without waiving said objections, see Response to No. 17.

INTERROGATORY NO. 22:

Please provide a detailed list of the previous entities/persons that claims an interest in the promissory note secured by the First Deed of Trust.

REPONSE TO INTERROGATORY NO. 22:

See Response to Interrogatory No. 17.

INTERROGATORY NO. 23:

Were you aware before you obtained an interest in the Property that the Property was located within the Association and was subject to the Association's declaration of covenants, conditions and restrictions?

RESPONSE TO INTERROGATORY NO. 23:

Objection. This interrogatory seeks information that is equally available to the Propounding Party. Without waiving said objection, the public record speaks for itself.

INTERROGATORY NO. 24:

When and how did you first become aware that the Borrower was delinquent on the assessments due to the Association?

RESPONSE TO INTERROGATORY NO. 24:

Objection. This interrogatory seeks information that is equally available to the Propounding Party and seeks documents that are within the possession, custody and control of requesting party. Without waiving said objection, see Response to Interrogatory No. 4.

INTERROGATORY NO. 25:

When did the Borrower first become delinquent on payments owed to you pursuant to the First Deed of Trust and underlying promissory note?

RESPONSE TO INTERROGATORY NO. 25:

October 1, 2008.

INTERROGATORY NO. 26:

Identify any communications, including correspondence, with the Borrower mentioning the Association and/or the Borrower's obligation to pay assessments to the Association.

RESPONSE TO INTERROGATORY NO. 26:

Objection. This interrogatory is unreasonably burdensome, oppressive, overbroad, and seeks information that is equally available to the Propounding Party. Without waiving said objection, Responding Party refers Propounding Party to its Response to Request for Production No. 1 served contemporaneously herewith.

INTERROGATORY NO. 27:

Identify any steps you took to ensure the Association received the assessments owed in relation to the Property.

RESPONSE TO INTERROGATORY NO 27:

Objection. This interrogatory seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence, as it is not Responding Party's responsibility to ensure that Borrower makes all payments to the HOA and a lender need only tender payment of the super priority amount after receiving proper notice of same to protect its lien interest. Without waiving said objection, see also Response to Interrogatory No. 5.

INTERROGATORY NO. 28:

Did you ever receive a trustee's sale guarantee or title report that referenced the Association's lien?

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RESPONSE TO INTERROGATORY NO. 28:

Yes. Responding Party refers Propounding Party to its Response to Request for Production No. 1 served contemporaneously herewith.

INTERROGATORY NO. 29:

Did you, in the process of answering these interrogatories, the request for production of documents, and requests for admission served contemporaneously herewith, make a due and diligent search of all related documents, books, reports, memos, photos, writing, and computer records within your possession and control, in order to obtain information with respect to this action? If not, please explain why you have not undertaken such a search.

RESPONSE TO INTERROGATORY 29:

Yes.

INTERROGATORY NO. 30:

To the extent you answered any of the Requests for Admissions served upon you contemporaneously herewith, anything other than an unqualified "Admit" then for each and every such answer, whether you are aware of any information, facts, writings or evidence whatsoever relating to this litigation that either supports or contradicts your answer, and the identity of all persons who have any knowledge or information which either supports or contradicts each of your answers which are not an unqualified admission.

RESPONSE TO INTERROGATORY NO. 30:

Objection. This interrogatory is also unreasonably burdensome, oppressive, and overbroad. Without waiving these objections, Responding Party directs Propounding Party to the documents produced with Plaintiff's responses to request for production of documents, the documents attached as exhibits in Plaintiff's Complaint for judicial foreclosure of deed of trust, and the documents submitted in Plaintiff's initial disclosure of witnesses and documents pursuant to NRCP 16.1. Peak Loan Servicing, LLC, is the custodian of records for the security instruments that are the subject of the instant action. Peak Loan Servicing, LLC, may be contacted through counsel the Law Offices of Les Zieve.

INTERROGATORY NO. 31:

Identify any and all communications between you and FHFA specific to the First Deed of Trust and/or the underlying promissory note. This interrogatory is limited to time period beginning when the Borrower applied for the loan secured by the First Deed of Trust to present.

RESPONSE TO INTERROGATORY NO. 31:

Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome, oppressive, overbroad, and seeks information that is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving said objection, this is not a FHFA loan.

DATED: November 25, 2015

LAW OFFICES OF LES ZIEVE

By: /s/ Sherry A. Moore
Sherry A. Moore, Esq.
Benjamin D. Petiprin, Esq.
Attorneys for Plaintiff,
MARCHAI, B.T.

CERTIFICATE OF SERVICE

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 25th day of November, 2015, service of the **RESPONSES AND OBJECTIONS OF PLAINTIFF MARCHAI, B.T., TO AMENDED INTERROGATORIES PROPOUNDED BY DEFENDANT SFR INVESTMENTS POOL 1, LLC** was made by:

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

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

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

/s/ Jenny Humphrey
Jenny Humphrey, an employee of
Law Offices of Les Zieve

EXHIBIT A-5

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

(2)

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

Miranda Avila
Notary Public State of Florida
My Commission # EE 019063
Expires August 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

EXHIBIT A-6

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: _____ PEREZ JDM *12031213*
M. E. Wileman, Authorized Signator

MIN 100072400325014937
MERS Phone 888-679-6377
NV Clark 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
MY COMMISSION EXPIRES
November 30, 2014

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

EXHIBIT A-7

Inst #: 201307310001002
Fees: $17.00
N/C Fee: $0.00
07/31/2013 09:01:04 AM
Receipt #: 1714716
Requestor:
ALESSI & KOENIG LLC
Recorded By: RNS Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

APN: 125-15-811-013

TSN 11632

NOTICE OF TRUSTEE'S SALE

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

4

NOTICE IS HEREBY GIVEN THAT:

On **August 28, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **December 20, 2011**, as instrument number **0001246**, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139.** The owner of the real property is purported to be: **CRISTELA PEREZ**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$14,090.80.** Payment must be in made in the form of certified funds.

Date: **July 11, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association

CRISTELA PEREZ
PO BOX 750168

LAS VEGAS, NV 89136-0168

CRISTELA PEREZ
7119 WOLF RIVERS AVE

LAS VEGAS, NV 89131-0139

CRISTELA PEREZ
17450 BURBANK BLVD #104

ENCINO, CA 91316-1760

CMG MORTGAGE INC.
3160 CROW CANYON RD

SAN RAMON, CA 94583-1368

MERS, Inc.
PO Box 2026

Flint, MI 48501-2026

US BANK, National Association ND
4325 - 17th Ave SW

FARGO, ND 58103-6200

APACHE ELECTRIC
4300 N PECOS #26

LAS VEGAS, NV 89115-0142

CITY OF LAS VEGAS SEWER
495 S Main St

LAS VEGAS, NV 89101-6318

CitiMortgage, Inc
1000 Technology Drive

O'Fallon, MO 63368-2239

US Bank National Assn, Trustee
Starwich Mortgage Loan Trust
1610 E St Andrews Place Suite B150

Santa Ana, CA 92705-4931

CAMCO
PO Box 12117

Las Vegas, NV 89112-0117

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

LAS VEGAS, NV 89104-4128

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City, State, ZIP+4 SAN RAMON, CA 94583-1368

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PO Box 2026
Street, Apt. No.; or PO Box No.
City, State, ZIP+4 Flint, MI 48501-2026

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4325 - 17th Ave SW
Street, Apt. No.; or PO Box No.
City, State, ZIP+4 FARGO, ND 58103-6200

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LAS VEGAS, NV 89115-0142

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City, State, ZIP+4

CITY OF LAS VEGAS SEWER
495 S Main St
LAS VEGAS, NV 89101-6318

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CitiMortgage, Inc
1000 Technology Drive
O'Fallon, MO 63368-2239

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US Bank National Assn, Trustee
Stanwich Mortgage Loan Trust
1610 E St Andrews Place Suite B150
Santa Ana, CA 92705-4931

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Total Postage & Fees $

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CAMCO
PO Box 12117
Las Vegas, NV 89112-0117

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OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 206
LAS VEGAS, NV 89104-4120

PS Form 3800, August 2006

NOTS MAILINGS

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

APN: 125-15-811-013 TSN 11632

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On August 28, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as instrument number 0001246, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139. The owner of the real property is purported to be: CRISTELA PEREZ

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $14,090.80. Payment must be in made in the form of certified funds.

Date: July 11, 2013

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association

EXHIBIT A-8

Alessi & Koenig, LLC
Order # 11632
TS # 11632

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, James Vignale Sr., state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served **Cristela Perez** with a copy of the Notice of Sale, on 7/31/2013 at approximately 2:36 PM, by:

Attempting to personally serve the person(s) residing at the property, however no one answered the door. I thereafter posted a copy of the Notice of Sale on the property in the manner prescribed pursuant to NRS 116.311635, in a conspicuous place on the property, which is located at:

7119 Wolf Rivers Avenue
Las Vegas NV 89131

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

Dated 7/31/2013

Nevada Legal Support Services LLC

James T. Vignale

James Vignale Sr., R-249802
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 453727 73
COUNTY OF SERVICE: CLARK
SERVER: James Vignale Sr.

Alessi & Koenig, LLC
Order # 11632
TS # 11632

AFFIDAVIT OF POSTING NOTICE OF SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 7/30/2013, I posted a copy of the Notice of Sale pursuant to NRS 116.311635, concerning Sale 11632, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

The purported owner and address of the property contained in the Notice of Sale being:

Cristela Perez, 7119 Wolf Rivers Avenue, Las Vegas NV 89131.

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

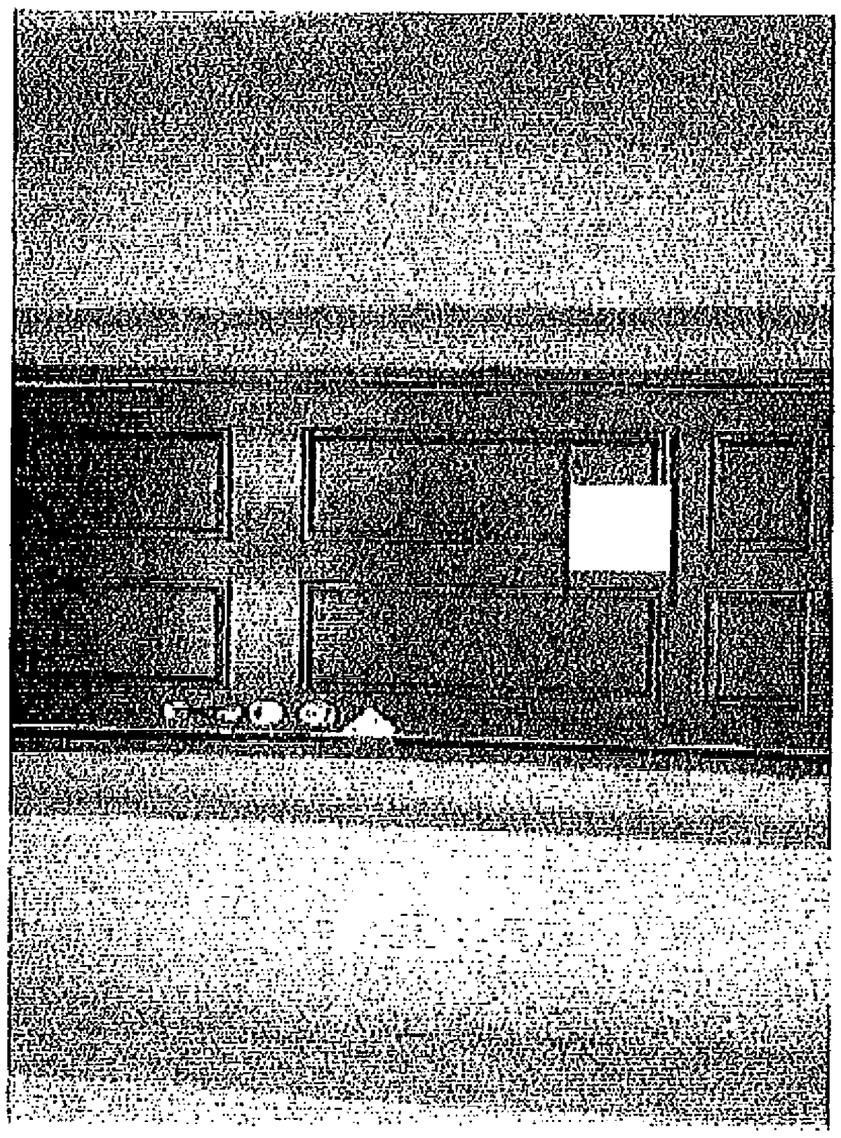
Dated 7/30/2013

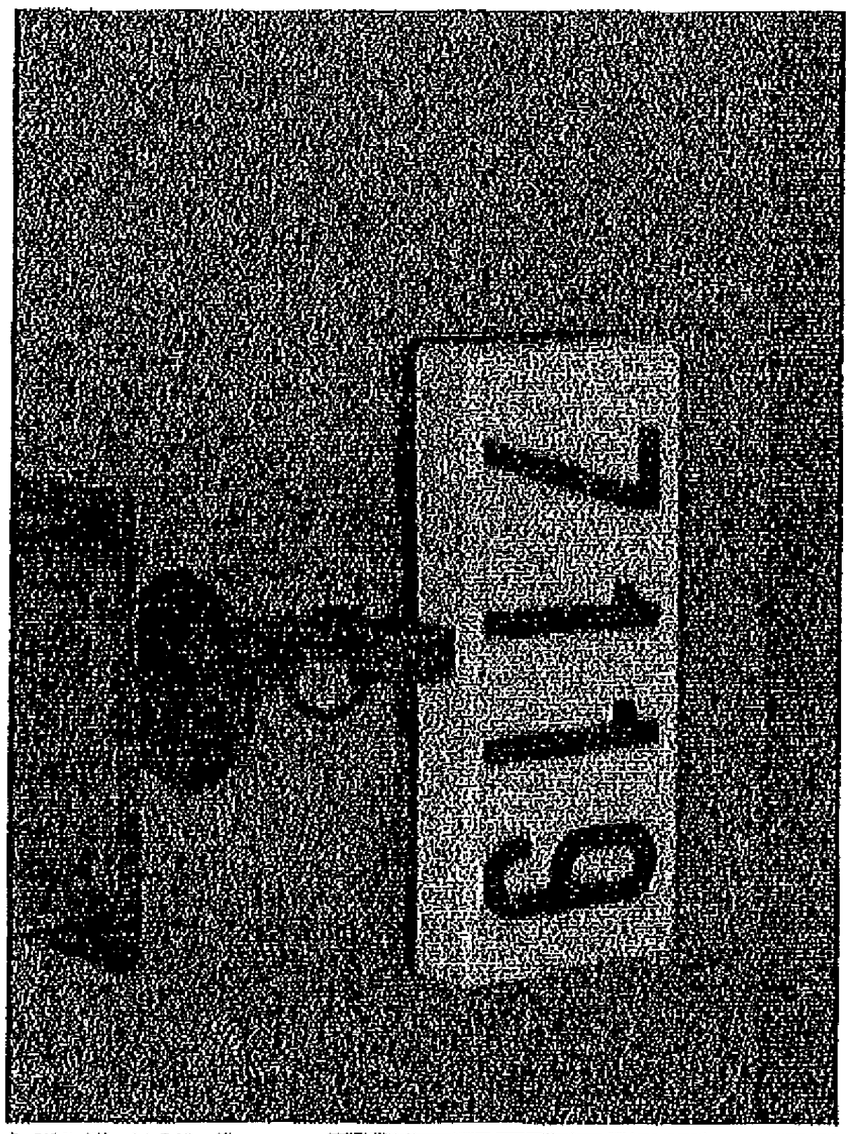
Nevada Legal Support Services LLC

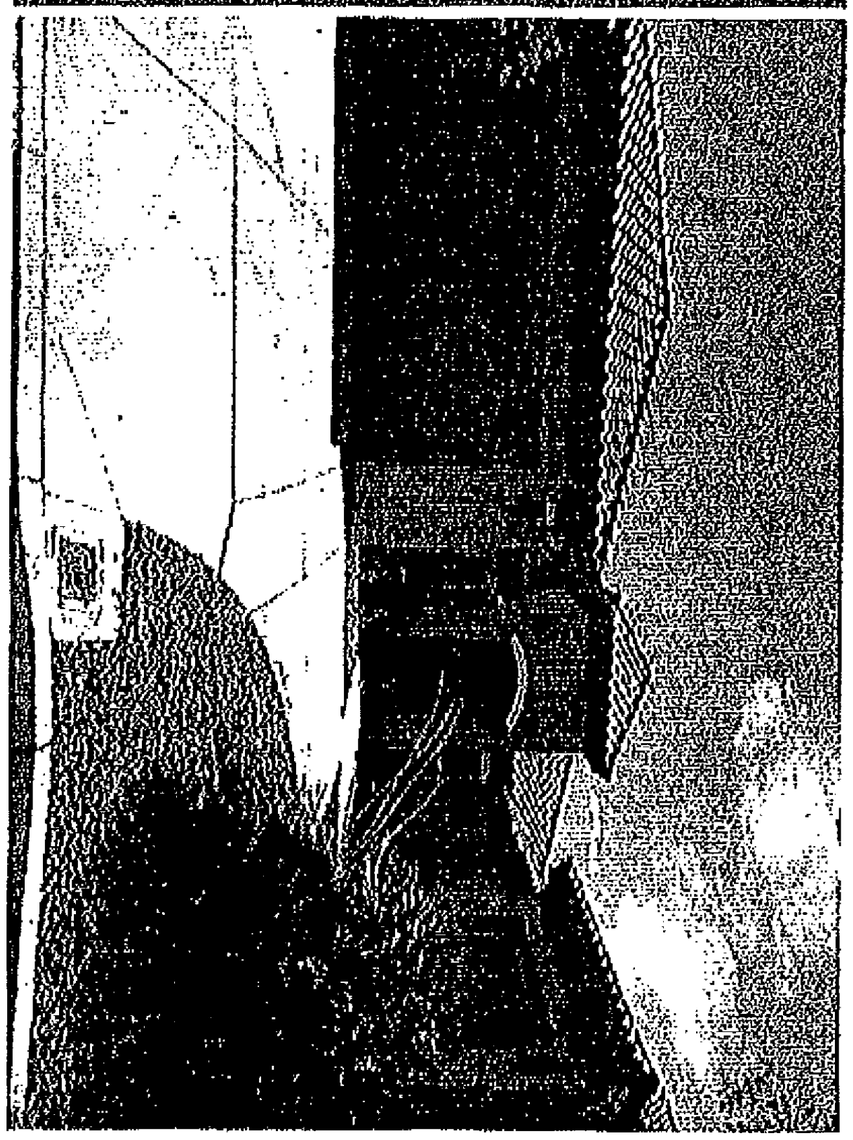
Jessica Pruett

Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 453727 73
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
ALESSI TRUSTEE CORP







Photos taken by: James Vignale Sr. County: CLARK 36
Photo Date: 7/31/2013 Time: 2:36 PM NLN ID# 453727 Page 1 of 1
Primary Borrower: Cristela Perez
Property Address: 7119 Wolf Rivers Avenue, Las Vegas NV 89131

Nevada Legal Support Services LLC
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747 NV. Lic. #1711

Alessi & Koenig, LLC Order # 11632 TS#11632

AFFP
11632

Affidavit of Publication

STATE OF NEVADA)
COUNTY OF CLARK) SS

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Aug 02, 2013
Aug 09, 2013
Aug 16, 2013

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Aug 16, 2013

Rosalie Qualls

NOTICE OF TRUSTEE'S SALE
APN: 125-15-811-013
TSN 11632
WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. NOTICE IS HEREBY GIVEN THAT: On August 28, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 20, 2011, as instrument number 0001246, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor) The street address and other common designation, if any, of the real property described above is purported to be: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139. The owner of the real property is purported to be: CRISTELA PEREZ The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $14,090.80. Payment must be in made in the form of certified funds. Date: July 11, 2013 By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association
Published in Nevada Legal News
August 2, 9, 16, 2013

01104266 00355586 (702)254-9044

ALESSI & KOENIG, LLC
9500 WEST FLAMINGO ROAD #205
LAS VEGAS, NV 89147

EXHIBIT A-9

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-EXLUSIVE EASEMENT FOR INGESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORUTH 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

ANGELICA ROSALES PACHECO
COMM. #1973291
Notary Public - California
Orange County
My Comm. Expires Mar. 26, 2016

EXHIBIT A-10

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)

SUBSCRIBED and SWORN before me AUG 29 2013, Ryan Kerbow

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

(Signature)

MBT0050

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

MBT0051

EXHIBIT A-11

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WYETH RANCH, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WYETH RANCH, a planned community (this "Declaration") is made as of this 1st day of October, 2002, by PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada (the "Declarant").

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

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

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

1.2.7 "Association" means Wyeth Ranch Community Association, a Nevada nonprofit corporation, its successors and assigns.

of the Common Expense Assessment levied against each Unit shall be recalculated based upon a fraction, the numerator of which is one (1) and the denominator of which is the new number of Units then subject to Assessments.

7.7 Rules Regarding Billing and Collection Procedures. Common Expense Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board of Directors. Special Assessments may be collected as specified by the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth in Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment Period, but successor Units' Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Units' Owners.

7.8 Effect of Nonpayment of Assessments: Remedies of the Association.

7.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the maximum rate allowable under Nevada law. In addition, the Board of Directors may establish a late fee to be charged to any Unit's Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

7.8.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit's Owner of the Unit; (iii) all fines levied against the Unit's Owner of the Unit; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit's Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Unit's Owner of a Unit; and (v) any amounts payable to the Association pursuant to Section 5.2 or 5.3 of this Declaration. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien, and no further Recordation of any claim of lien shall be required. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Unit's Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien Recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit's Owner for payment of the delinquent Assessments, together with

MBT0662
JA_1260

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations (collectively, the "Rules"). Except as otherwise provided in this Declaration or under the Act, the Rules may, among other things, restrict and govern the use of any area by any Unit's Owner, by the family of such Unit's Owner, or by any invitee, licensee or lessee of such Unit's Owner.

6.4 Composition of Members. Each Unit's Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Units' Owners. A Unit's Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit's Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit's Owner's ownership ceases for any reason, at which time, such Unit's Owner's membership in the Association shall automatically cease.

6.5 Personal Liability. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

6.7 Voting Rights. Subject to Section 6.8 below, each Unit's Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit's Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit's Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit's Owner was acting with the authority and consent of all other Unit's Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LAWYERS TITLE OF NEVADA
04-04-2002 14:05 PMT
BOOK 20020404 INST NO. 0135
FEE $7.00 RPTT
RESTRICTIONS 00
CONFORMED COPY HAS NOT BEEN COMPARED TO THE ORIGINAL

Exhibit B

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

I, Christopher Hardin, declare as follows:

1. I am over the age of eighteen years old and competent to testify.
2. I am a resident of Clark County, Nevada.
3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.
4. I am the manager of SFR Investments Pool 1, LLC ("SFR").
5. I make this declaration in support of SFR's Motion for Summary Judgment.
6. SFR maintains records related to real property located at as **7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131; Parcel No. 125-15-811-013** ("Property"). As manager of SFR, I am familiar with the type of records maintained by SFR. I have personal knowledge of SFR's procedure for obtaining and keeping these records, which are kept and maintained in the ordinary course of SFR's business.
7. As part of my duties as the manager for SFR, I have attended and bid on real property at multiple public foreclosure auctions held on behalf of homeowners' associations by their agents.
8. Based on NRS 116.3116(2), it was my understanding and belief that the homeowner's association liens being foreclosed upon at the auctions I attended include amounts that were prior to any first security interest recorded on the properties.
9. Typically, prior to attending these auctions, I researched which properties would be available for sale through searches on Foreclosure Radar, Nevada Legal News and Clark County Legal News.
10. Based on a review of SFR's business records, on **August 28, 2013**, I attended a public foreclosure auction of the Property conducted by Alessi & Koenig, ("Alessi") on behalf of Wyeth Ranch Community Association ("the Association").
11. After the auction, SFR received a foreclosure deed. A true and correct copy of the Association foreclosure deed is attached hereto as **Exhibit B-1.**

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

12. Based on a review of SFR's business records, at the publicly noticed auction, I placed the highest bid for $21,000.00, which I paid on behalf of SFR. A true and correct copy of the cashier's check, paid to Alessi, is attached hereto as **Exhibit B-2.**
13. SFR has no reason to doubt the recitals in the foreclosure deed.
14. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale.
15. I never attended a sale where there was only one qualified bidder in attendance.
16. Neither SFR nor I have any relationship with or interest in the Association other than now owning property within the community.
17. Neither SFR nor I have any relationship with or interest in Alessi, outside of SFR's attendance at auctions, bidding and, occasionally purchasing properties at publicly held auctions conducted by Alessi.
18. Based on my research, there was no release of the super-priority portion of the Association's lien recorded against the Property prior to SFR purchasing the Property.
19. Based on my research, there was no lis pendens on the property at the time of the foreclosure.
20. Since the time SFR acquired the property at the Association foreclosure sale, SFR has been paying the homeowner's association assessments.

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

DATED this 21st day of July 2017.

/s/ Christopher Hardin
Christopher Hardin

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Exhibit B-1

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)

SUBSCRIBED and SWORN before me AUG 2 9 2013, Ryan Kerbow

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

(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

Exhibit B-2

usbank

Member FDIC

Official Receipt

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

Checks and other items received for deposit are subject to the terms and conditions of this bank's rules and regulations governing bank accounts, "Customer Agreement," as they may be amended from time to time. All items accepted for deposit are subject to later count and verification.

Enjoy the convenience and safety your U.S. Bank personal or business check card provides.

usbank.com

All of us serving you®

HC 20133 (1/13) 12599971

644 Vincent Drive

00025 08354 0003 08/29/2013 11:42 USB
USB CK M M
153755352843

($324,307.05)

JA_1270

PURPOSE/REMITTER: SFR INVESTMENTS

usbank

CASHIER'S CHECK

No. 8354503893

93-38
929

DATE: AUGUST 29, 2013

PAY ONE HUNDRED TWENTY FOUR THOUSAND THREE HUNDRED SEVEN DOLLARS AND 05 CENTS

CUSTOMER COPY

$ 124,307.05

TO THE ORDER OF: ALESSI KLONIG

Location: 8354 WEST FLAMINGO

U.S. Bank National Association
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

HARLAND CLARKE 20745 (01/13) 13025232

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

TERMS OF THIS MONEY ORDER

PURCHASER'S AGREEMENT:

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

LIMITED RECOURSE:

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

Chris Hrdin

From: George Bates <george@alessikoenig.com>
Sent: Tuesday, June 30, 2015 12:47 PM
To: maximumfinancial@aol.com
Subject: FW: 8/28/2013 Sale

George Bates

Alessi & Koenig, LLC
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147
Ph: 702.222.4033
Fax: 702.222.4043
george@alessikoenig.com

Office Hours are as follows:
Monday - Thursday 8:30 a.m. to 5:00 p.m.
Friday 8:30 a.m. to 2:00 p.m.

Please be advised that Alessi & Koenig, LLC, may be acting as a debt collector attempting to collect a debt and any information you provide will be used for that purpose. If this debt is subject to discharge in an active bankruptcy or has already been discharged in a bankruptcy, this letter is not an attempt to proceed and collect against you individually, but is an attempt to collect on our client's security interest in your property.

CONFIDENTIALITY NOTICE: The information contained in this electronic transmission, is privileged and confidential and is intended only for the recipient(s) named above. If the reader of this message is not the recipient(s) named above, or an authorized agent of such recipient(s) responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this electronic transmission in error. Any review, dissemination, distribution, or copying of this electronic transmission including any attachments is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately. Thank you.

FEDERAL TAX ADVICE DISCLAIMER - We are required by U. S. Treasury Regulations to inform you that, to the extent this message includes any federal tax advice, this message is not intended or written by the sender to be used, and cannot be used, for the purpose of avoiding federal tax penalties.

Please consider the environment before printing this email.

From: George Bates
Sent: Wednesday, August 28, 2013 5:38 PM

To: 'maximumfinancial@aol.com'
Cc: Russell Powers; Tom Bayard
Subject: 8/28/2013 Sale

Chris,

Following are the properties you purchased on August 28, 2013. Please send me your vesting info so I can start preparing your deeds:

Total for payment: $124,307.05

7119 WOLF RIVERS AVE/HO# 11632
Amount: $21,000.00
Tax: $1,568.25
Fee: $17.00

Total: $22,585.25

1126 CATHEDRAL RIDGE ST/HO# 21613
Amount: $14,000.00
Tax: $785.40
Fee: $17.00

Total: $14,802.40

3912 THOMAS PATRICK AVE/HO# 24513
Amount: $10,100.00
Tax: $7379.95
Fee: $17.00

Total: $10,496.95

5324 MUM CT/HO# 33189
Amount: $76,000.00
Tax: $405.45
Fee: $17.00

Total: $76,422.45

George Bates

Alessi & Koenig, LLC
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147
Ph: 702.222.4033
Fax: 702.222.4043
george@alessikoenig.com

Office Hours are as follows:
Monday - Thursday 8:30 a.m. to 5:00 p.m.
Friday 8:30 a.m. to 2:00 p.m.

"Alessi & Koenig LLC, is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose."

TAB 34

Electronically Filed
7/21/2017 3:59 PM
Steven D. Grierson
CLERK OF THE COURT

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
MEGAN H. HUMMEL, ESQ.
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com

Attorneys for Defendant Wyeth Ranch Community Association

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants. AND ALL RELATED CLAIMS	Case No.: A-13-689461-C Dept. No.: VII Consolidated with: A-16-742327-C **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

Defendant, WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C., respectfully submits the following Motion for Summary Judgment pursuant to Nevada Rule of Civil Procedure 56(b) ("Motion").

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Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 – fax (702) 382-1512

This Motion is made and based upon the Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file herein, and any oral argument that may be presented at any hearing on the Motion.

DATED this 21st day of July, 2017.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: /s/ Megan H. Hummel

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
MEGAN H. HUMMEL ESQ.
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant
Wyeth Ranch Community Association

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 – fax (702) 382-1512

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendant, WYETH RANCH COMMUNITY ASSOCIATION's **Motion for Summary Judgment** will come on for hearing before the above-entitled Court on the 29 day of August, 2017 in in Dept. VII at 9 am or as soon thereafter as counsel may be heard.

DATED this 21st day of July, 2017.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: /s/ Megan H. Hummel

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
MEGAN H. HUMMEL ESQ.
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant
Wyeth Ranch Community Association

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(702) 382-1500 – fax (702) 382-1512

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises from a non-judicial foreclosure sale of real property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 ("Property"). The sale occurred on August 28, 2013. At that time, the senior deed of trust securing the Property was assigned to Marchai, B.T. ("Marchai"). Marchai acquired an interest in the Property six months before the sale, but waited until the morning of August 28, 2013 to request a postponement. Further, there is no admissible evidence proving that Marchai made any actual offer to pay any portion of the HOA's lien. Further, at the time Marchai acquired an interest in the Property, foreclosure proceedings had been pending for several years. In fact, the first notice of default and election to sell was recorded in 2009 and several recorded notices were sent by certified mail to Marchai's predecessors.

Notwithstanding the above paragraph, Marchai's lawsuit against the HOA alleges violations of its due process rights under the Fifth and Fourteenth Amendments, claims that the HOA's sale constitutes a regulatory taking, and argues that the HOA's recorded notices were not only statutorily insufficient, but that the original homeowner satisfied the superpriority portion of the HOA's lien. For the reasons outlined below, all of these arguments are without merit and the HOA requests that this Court enter summary judgment in its favor accordingly.

II. STATEMENT OF UNDISPUTED FACTS

On or around October 19, 2005, Cristela Perez ("Borrower") obtained a loan to purchase the Property. See Complaint in Case No. A-16-742327-C, attached hereto as **Exhibit 1** ¶ 7. The loan was secured by a deed of trust with CMG Mortgage named as beneficiary. Id. ¶ 8. The deed of trust was subsequently assigned to CitiMortgage, Inc. and Stanwich Mortgage Loan Trust, Series 2012-6. Id. ¶¶ 22, 24. In March 2013, the deed of trust was assigned to Plaintiff. Id. ¶ 27.

Sometime after purchasing the Property, Borrower defaulted on her quarterly homeowners' assessments. See generally id.; see also Resident Transaction Detail,

attached hereto as **Exhibit 2**. Therefore, on November 5, 2007, the HOA, through Complete Association Management Company ("CAMCO"), recorded a notice of delinquent violation lien. Ex. 1 ¶ 9; see also Notice of Delinquent Violation Lien, attached hereto as **Exhibit 3**. On or around October 8, 2008, the HOA, through Alessi & Koenig LLC ("Alessi") recorded a notice of delinquent assessment lien. Ex. 1 ¶ 11; see also Notice of Delinquent Assessment Lien, attached hereto as **Exhibit 4**. On January 5, 2009, the HOA, through Alessi, recorded a notice of default and election to sell. Ex. 1 ¶ 12; see also Notice of Default and Election to Sell attached hereto as **Exhibit 5**. On January 14, 2010, the HOA, through Alessi, recorded a notice of trustee's sale. Ex. 1 ¶ 13; see also Notice of Trustee's Sale, attached hereto as **Exhibit 6**. The sale was scheduled for February 17, 2010. Id.

On or around February 5, 2010, Borrower and her husband entered into a 12-month payment plan with the HOA and the pending foreclosure sale was postponed. See Account 84081, attached hereto as **Exhibit 7**. Borrower made four payments to the HOA between March 2010 and October 2010, none of which brought her account current. See Ex 2 & 7. Thus, in November 2010, Alessi began preparation to re-notice the sale. Ex. 7. Between November 2010 and March 2011, Borrower made two additional partial payments on her account, but failed to bring her account current. Ex. 2 & 7. On March 9, 2011, the HOA, through Alessi, recorded a rescission of notice of the February 2010 trustee's sale. Ex. 1 ¶ 15. On March 29, 2011, the HOA, through Alessi, recorded a second notice of trustee's sale. Id. ¶ 16; see also Notice of Trustee's Sale attached hereto as **Exhibit 8**. The second sale was scheduled for May 8, 2011. Id. Copies of the notice were sent by certified mail to CMG Mortgage, Inc.. See Certified Mailing Receipts, attached hereto as **Exhibit 9**.

On April 7, 2011, Alessi received a letter of hardship from Borrower and agreed, once again, to postpone the sale. See Ex. 7. Borrower entered into a ten-month payment plan to bring her assessments current. Ex. 2 & 7. By September 2011, Borrower had once again breached her payment plan. Id. Therefore, on December 20,

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Las Vegas, Nevada 89144
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2011, the HOA, through Alessi, recorded a second notice of delinquent assessment lien. Ex. 1 ¶ 19, see also Notice of Delinquent Assessment (Lien), attached hereto as **Exhibit 10**.

On February 28, 2012, the HOA, through Alessi, recorded a second notice of default and election to sell. Ex. 1 ¶ 20, see also Notice of Default and Election to Sell, attached hereto as **Exhibit 11**. Copies of the notice were sent by certified mail to CMG Mortgage, Inc. See Certified Mailing Receipts, attached hereto as **Exhibit 12**. On March 8, 2012, Borrower's husband contacted Alessi and requested another payment plan. See email correspondence, attached collectively hereto as **Exhibit 13**. Although Borrower made two payments to Alessi between March 2012 and July 2012, she failed to bring her account current. See Ex. 2 & 7. Therefore, on October 31, 2012, the HOA, through Alessi, recorded a third notice of trustee's sale. Ex. 1 ¶ 25; see also Notice of Trustee's Sale, attached hereto as **Exhibit 14**. The sale was scheduled for November 28, 2012. Id. Copies of the notice were sent certified mail to CMG Mortgage, Inc. and CitiMortgage, Inc. See Mailing Receipts, attached hereto as **Exhibit 15**. In response to the third notice of sale, Borrower sent correspondence to the HOA requesting another payment plan. See correspondence attached hereto as **Exhibit 16**. The sale was postponed accordingly. See Ex. 7.

On March 26, 2013, the HOA, through Alessi, received notification that Borrower filed for Chapter 7 bankruptcy. Ex. 7. On July 31, 2013, the HOA, through Alessi, recorded a fourth notice of trustee's sale. Ex. 1 ¶ 28; see also Notice of Trustee's Sale, attached hereto as **Exhibit 17**. The sale was scheduled for August 28, 2013. Id. On August 28, 2013, Alessi emailed the HOA's community management company, advising that "the mortgage company is asking for an extension so they can get it paid off" and requesting permission to postpone the sale. See email correspondence, attached hereto as **Exhibit 18**.

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The HOA declined to postpone the sale. Id. That same day, the HOA, through Alessi, sold the Property to SFR Investment Pool 1 LLC ("SFR") for $21,000. Ex. 1 ¶ 30. A trustee's deed upon sale was recorded in SFR's favor in September 2013. See Trustee's Deed Upon Sale, attached hereto as **Exhibit 19**.

III. STANDARD OF REVIEW

"The purpose of summary judgment is to pierce the pleading and to assess the proof in order to see whether there is a genuine need for trial." Matushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show [] that there are no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also Celotex v. Catrett, 477 U.S. 317, 330 (1986); Boland v. Nevada Rock & Sand Co., 111 Nev. 608, 610, 894 P.2d 988 (1995).

To survive a motion for summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleadings," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), nor may it "simply show there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., 475 U.S. at 586. It is the nonmoving party's burden to "come forward with specific facts showing that there is a **genuine** issue for trial." Id. at 587 (emphasis added); see also Wood v. Safeway, Inc., 121 Nev. 724 (2005), citing Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82 (2002).

An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury to return a verdict for the nonmoving party. Anderson, 477 U.S. at 248 (1986). Further, a dispute will only preclude the entry of summary judgment if it could affect the outcome of the suit under governing law. Id. "The amount of evidence necessary to raise a genuine issue of material fact is enough to require a judge or jury to resolve the parties' differing versions of the truth at trial." Id. at 249. In evaluating a summary judgment ion, a court views all facts and draws all inferences in a light most favorable

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to the nonmoving party. Kaiser Cement Corp. v. Fischbach & Moore, Inc., 793 F.2d 100, 1103 (9th Cir. 1986).

IV. LEGAL ARGUMENT

A. The HOA is Entitled to Summary Judgment on Marchai's First and Third Claim for Relief Because the Nevada Supreme Court Has Determined that a Non-Judicial Foreclosure Under NRS Chapter 116 Does Not Constitute a Regulatory Taking.

Marchai's contention that the foreclosure sale effected a regulatory taking under the Fifth Amendment is without merit. The Fifth Amendment prohibits the taking of "private property ... for public use, without just compensation." Washington Legal Found. v. Legal Found. of Washington, 271 F.3d 838, 851 (9th Cir. 2001). To prevail on an argument that a non-judicial foreclosure constitutes a "taking," a party must establish that "the interest at issue was [its] private property," and "that it was taken without just compensation." Id. Further, a takings claim must involve a state actor. See generally Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186-87, 105 S.Ct. 3108, 3116-17, 87 L.Ed. 2d 126 (1985); Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 322 (2002); First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty., Cal., 482 U.S. 304, 319 (1987).

The Nevada Supreme Court addressed whether the enactment of NRS Chapter 116 effectuated an unconstitutional government taking in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 388 P.3d 970, 975 (Nev., 2017). In addition to the factors described above, the Court considered the following factors: (1) the regulation's economic impact on the property owner; (2) the regulation's interference with investment-backed expectations; and (3) the character of the government action." Id., citing McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 663, 137 P.3d 110, 1121-22 (2006). Because the foreclosure statutes do not have an economic impact on the first security interest holder, do not interfere with any legitimate investment-backed expectation (in large part because lenders were on notice

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of the statute since 1991), and do not constitute a state invasion of any property interest, it held that the extinguishment of a subordinate deed of trust through a non-judicial foreclosure did *not* constitute a governmental taking. Id. The HOA requests that summary judgment be entered in its favor on this issue accordingly. The HOA further requests that summary judgment be entered in its favor on Marchai's third claim for relief to the extent it relies on a purported regulatory taking. See Ex. 1 ¶ 69(b).

B. The HOA is Entitled to Summary Judgment on Marchai's Second and Third Claim for Relief Because the Nevada Supreme Court Has Determined that the Due Process Clauses of the Nevada Constitution and the United States Constitution Are Not Implicated in an HOA Foreclosure Under NRS Chapter 116.

When a state statute is challenged on federal constitutional grounds, the United States Supreme Court and the state's highest court share ultimate responsibility for resolving the issue." Michael C. Dorf, Facial Challenges to State and Federal Statutes, 46 Stan. L. Rev. 235 (1994). "The highest court of the state interprets the statute, and the United States Supreme Court rules on the constitutionality of that interpretation." Id.

When the state's highest court has ruled on the statute at issue, but the Supreme Court has not, **the state's construction of the statute is binding on federal courts until the Supreme Court directs otherwise**. Id., fn. 219, citing Lockhart v. Fretwell, 113 S.Ct. 838, 846, 506 U.S. 364, 376 (U.S.Ark.,1993) ("...neither federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation."); N.Y. v. Ferber, 458 U.S. 747, 769, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982), fn. 24 ("Here, of course, we are dealing with a state statute on direct review of a state-court decision that has construed the statute. Such a construction is binding on us."); Olympic Sports Prod., Inc. v. Universal Athletic Sales Co., 760 F.2d 910, 912–13 (9th Cir. 1985), citing Aydin Corp v. Loral Corp., 718 F.2d 897, 904 (9th Cir. 1983) ("Although we are not bound by the district court's construction of state law, we are bound to follow the decisions of a state's highest court in interpreting that state's law.")

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By binding federal courts to the decision of a state's highest court, disgruntled litigants are prevented from forum-shopping and all parties are ensured that the result of litigation brought in federal court is not materially different than the same suit in state court. See generally Hanna v. Plumer, 380 U.S. 460, 467, 85 S. Ct. 1136, 1141, 14 L. Ed. 2d 8 (1965) ("The Erie rule is rooted in part in a realization that it would be unfair for the character of result of a litigation materially to differ because the suit had been brought in a federal court.")

Here, the Nevada Supreme Court has already determined that the "Due Process Clauses of the United States and Nevada Constitutions are not implicated in an HOA's nonjudicial foreclosure of a superpriority lien." Saticoy Bay, 388 P.3d at 975. In reaching this conclusion, the Court recognized that "nonjudicial foreclosure statutes do not involve significant state action so as to implicate due process." Id. at 973 (internal quotations omitted). It also rejected any argument that the Nevada Legislature could be "charged with deprivation because it enacted [the statute]," id. at 973, finding that "mere enactment ... does not implicate due process absent some additional showing that the state compelled the HOA to foreclose on its lien, or that the state was involved with the sale." Id. at 974. In a footnote to the opinion, the Supreme Court acknowledged the Ninth Circuit's contradictory decision in Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1161 (C.A.9 (Nev.), 2016), but stated that "for the aforementioned reasons, [it] decline[d] to follow its holding." Id. fn. 5.[1]

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[1] Because the Supreme Court determined that there was no state actor, it was deemed unnecessary to "determine whether NRS 116.3116, et. seq., incorporates the notice requirements set forth in NRS 107.090." In light of the allegations set forth in the second amended complaint, however, it is worth noting that NRS Chapter 116, as enacted at the time of the foreclosure sale in this matter, "provided specific timing and notice requirements." Las Vegas Dev. Grp., LLC v. Yfantis, No. 215CV01127APGCWH, 2016 WL 1248693, at *4 (D. Nev. Mar. 24, 2016) (internal quotations and citations omitted). These notice requirements included the incorporation of NRS § 107.090, which required that HOAs and their trustees provide the notice of default and notice of sale to "[e]ach and every person who has recorded a request for a copy of the notice; and (b) [e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust." Id., citing Nev. Rev. Stat. § 107.090(3) and (4).

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In the absence of any direction from the Supreme Court of the United States, which recently denied review of the petition for writ of certiorari that had been pending in Bourne Valley, the Nevada Supreme Court's holding in Saticoy Bay is binding on this Court. To find otherwise would only invite financial institutions like Marchai to file lawsuits in federal court merely to avoid an adverse, but controlling, state court decision. For all of these reasons, the HOA requests that summary judgment be entered its favor on Marchai's second claim for relief. The HOA further requests that summary judgment be entered in its favor on Marchai's third claim for relief, to the extent it relies on purported violations of the Fifth and Fourteenth Amendments. See Ex. 1 ¶ 69(a) and (c).

C. The HOA is Entitled to Summary Judgment on Marchai's Third and Fourth Claims for Relief Because (1) The Recorded Notices Complied with NRS 116; (2) There is No Requirement of Commercial Reasonableness in NRS Chapter 116; and (3) Borrower Had Not Paid off the Lien Prior to the Sale.

i. Notices

In addition to the alleged statutory deficiencies discussed above, Marchai claims that the recorded notices were statutorily non-compliant because they failed to: (1) describe the "deficiency in payment;" (2) identify the superpriority portion of the HOA's lien; (3) identify the amount of fees, interest, fines, and collection costs; (4) notify the public that the foreclosure would extinguish Marchai's interest in the Property; and (5) identify whether it intended to foreclose on the super or sub priority portion of its lien. See Ex. 1 ¶¶ 36, 37, 38, 39, 40. These arguments are without merit.

During the time period in which the notices in this matter were recorded, NRS 116 did not require the notices to identify the superpriority portion of the lien, but only (1) a description of the deficiency in payment and (2) the amount necessary to satisfy the lien. See generally Nev. Rev. Stat. § 116.31162(1)(b)(1) ("...the notice of delinquent assessment must also comply with the following: (1) describe the deficiency in payment."); Nev. Rev. Stat. § 116.311635(3) ("Any copy of the notice of sale required to be served pursuant to this section must include: (a) The amount necessary to satisfy the

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lien as of the date of the proposed sale."). There was also no statutory requirement for the HOA to identify the amount of fees and costs, the effect of its foreclosure on existing security interests, or whether the foreclosure was based on the superpriority or subpriority portion of the lien.

The 2015 Legislature substantially revised NRS 116, see 2015 Nev. Stat., Ch. 266 and some of those revisions could give rise to Marchai's allegations. The current version of the statute, however, is not controlling here. The version that applies is the version that was in effect at the time of the events giving rise to this action. See generally Sandpointe Apts. v. Eighth Jud. Dist. Ct., 313 P.3d 849, 853 (Nev.,2013) ("Substantive statutes are presumed to only operate prospectively, unless it is clear that the drafters intended the statute to be applied retroactively."); see also Landgraf v. USI Film Products, 114 S.Ct. 1483, 1487, 511 U.S. 244, 245 (U.S.Tex.,1994) ("The presumption against statutory retroactivity is founded upon elementary considerations of fairness dictating that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.")

Finally, the recorded notices of default and election to sell adequately described the deficiency in payment as required by section 116.31162(1)(b)(1). Each notice listed not only the total amount due and owing on the lien, but also details regarding the breach which gave rise to the lien. Specifically, the notice recorded on January 5, 2009 indicates that the amount due includes "homeowners assessments ... plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs." See Ex. 4. Similarly, the notice recorded on February 28, 2012 states that the lien includes "homeowners assessments due from January 1, 2008 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs." See Ex. 8. These details are more than sufficient to put Borrower and any other interested party on notice of the categories comprising the total amount due on the lien.

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ii. Commercial Reasonableness

In Nevada, there is no commercial reasonableness requirement in a foreclosure sale conducted under NRS Chapter 116. In fact, in Shadow Wood HOA v. N.Y. Bancorp., the Nevada Supreme Court affirmed that "courts retain the power, in an appropriate case, to set aside a defective foreclosure sale on equitable grounds." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111-12 (2016). Notwithstanding this general statement, the Court recognized that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made." Id., quoting Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963). Specifically, the Court stated as follows:

> As discussed above, demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing **of fraud, unfairness, or oppression**.

Id., citing Long v. Towne, 98 Nev. 11, 639 P.2d 528. 530 (emphasis added). The Court went on to analyze respondent N.Y. Cmty. Bancorp.'s ("NYCB") claims under this standard, finding (1) that NYCB failed to prove the foreclosure sale price was grossly inadequate as a matter of law, and (2) that NYCB's own inaction during foreclosure proceedings weighed against any evidence of oppression and unfairness on the appellant HOA's behalf. Id. at 1112–14.

Marchai failed to produce any evidence of oppression and unfairness sufficient to justify setting aside the foreclosure sale. Although it contends that it offered to pay the lien, the email correspondence in Alessi's collection file shows only that Marchai and/or its loan servicer requested that the sale postponed so it could pay "it" off. There was no actual offer, conditional or otherwise, to pay any amount due and owing to the HOA.

Additionally, any purported unfairness on the HOA's part "must be weighed against [Marchai's] (in)action" during the months leading up to the sale. Shadow Wood HOA, 132 Nev. Adv. Op. at 8. Marchai's predecessors had actual notice that the HOA intended to foreclose on the Property. In fact, between Borrower's multiple payment

plans and the two recorded notices of default and elections to sell, Marchai's predecessors had about six years to negotiate payment of the lien, bid on the Property, or enjoin the sale. Further, at the time Marchai acquired an interest in the Property, all foreclosure documents, including the foreclosure deed were available for public review. Its decision to acquire an interest in a Property with a potentially clouded title is a burden that should not be born by the HOA.

iii. Payment of the Lien

Marchai's complaint asserts that Borrower satisfied the superpriority portion of the HOA's lien prior to the foreclosure sale and consequently "to the extent SFR acquired any interest in the property, it did so subject to Marchai's deed of trust." Ex. 1 ¶ 48. This argument presumes that Borrower was only required to pay nine months of assessments to bring her account current. This is simply untrue. Under Article 7 of the CC&Rs as well as the provisions of NRS 116, Borrower was required to pay all of her quarterly assessments. See Nev. Rev. Stat. § 116.41095; see also SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 422 (Nev.,2014)("Relatedly, after the first deed of trust loses its security in the property pursuant to the association's foreclosure of its superpriority lien, the former homeowner generally will be liable for the amount still owed on the debt.") Although she made several partial payments to Alessi between 2006 and 2012, the aggregate of which may have equated nine months of assessments, she never managed to bring her account current. See Ex. 2 & 7. Only by zeroing her balance (or perhaps by complying with the terms of her payment plans) could Borrower have stopped the foreclosure sale from moving forward. The HOA had a right to recover every dollar of past due assessments from Borrower regardless of the priority of its lien over Marchai's deed of trust.

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D. The HOA is Entitled to Summary Judgment on Marchai's Fifth Claim for Relief Because the HOA Did Not Disrupt Marchai's Contract with Borrower.

To establish tortious or intentional interference with contract, a plaintiff must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage. Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989), citing Ramona Manor Convalescent Hosp. v. Care Ent., 177 Cal. App.3d 1120, 225 Cal. Rptr. 120, 124 (1986).

The crux of a claim for intentional interference with contract is "whether Plaintiff has proved intentional acts *by Defendant* intended or designed to disrupt Plaintiff's contractual relations..." J.J. Indus., LLC v. Bennett, 119 Nev. 269, 275, 71 P.3d 1264, 1268 (2003). Mere knowledge of a contract is insufficient to establish that a defendant intended to disrupt the relationship, particularly when "[defendant's] conduct is not criminal or fraudulent" and there are "[no] other aggravating circumstances." Id., citing Nat. Right to Life P.A. Com., 741 F. Supp. 807, 814 (D. Nev. 1990). A plaintiff must prove that a defendant had a "specific motive or purpose to injure by his interference." Id.; see also Ramona Manor Convalescent Hosp., 177 Cal. at 1130 ("The essential thing is the purpose to cause the result. If the actor does not have this purpose, his conduct does not subject him to liability under this rule ...")

Here, Marchai can only establish the first two requisite elements of its third claim for relief. Namely, that it had a valid and existing contract with Borrower and that the HOA knew of its interest in the Property at the time of the sale. It has not, however, produced any evidence which would establish that the HOA had a **specific motive** to induce Borrower to breach her contract. In the absence of a specific motive, the HOA cannot be held liable for Marchai's damages, even if "an actual breach resulted from [its] lawful and proper acts." Charles C. Chapman Building Co. v. California Mart, 2 Cal. App. 3d 846 (Cal Ct. App. 1969).

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In fact, Borrower's breach of contract occurred *before* the HOA even initiated foreclosure proceedings. It was Borrower's failure to pay her homeowners' assessments and continued inability to comply with her payment plans which gave rise to this entire action. Thus, while the foreclosure had the *unintended* effect of extinguishing Marchai's security interest, it was not designed to interrupt the contractual relationship between Marchai and Borrower. Borrower disrupted that relationship all on her own by failing to pay her homeowners assessments and by failing to discharge a lien which could attain priority over the Deed of Trust. For these reasons, the HOA is entitled to summary judgment on Marchai's fifth claim for relief.

V. CONCLUSION

Based on the foregoing arguments, the HOA respectfully requests that summary judgment be entered in its favor on all claims for relief set forth in Marchai's complaint.

DATED this 21st day of July, 2017.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: /s/ Megan H. Hummel

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CERTIFICATE OF SERVICE

I certify that on the 21st day of July, 2017, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

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EXHIBIT 1

EXHIBIT 1

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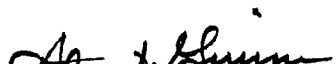

CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; WYETH RANCH COMMUNITY ASSOCIATION, a Nevada non-profit corporation; ALESSI & KOENIG, LLC, a Nevada limited liability company; DOES 1 through 10, inclusive, and ROES 1 through 10, inclusive. Defendants.	Case No.: A-16-742327-C Dept. No. XXXI **EXEMPT FROM ARBITRATION: ACTION CONCERNING TITLE TO REAL ESTATE**

COMPLAINT

Marchai, B.T., a Nevada business trust, alleges as follows:

1. Marchai is a Nevada business trust 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. The property is commonly known as 7119 Wolf

Rivers Avenue, Las Vegas, Nevada 89131, Clark County Assessor's Parcel Number 125-15-811-013.

3. Marchai is informed and believes that SFR Investments Pool 1, LLC is a Nevada limited liability company, which has an interest in the property by reason of the recording of a trustee's deed upon sale and is the record owner of the property.

4. Marchai is informed and believes that Wyeth Ranch Community Association is a Nevada non-profit corporation doing business in Clark County, Nevada.

5. Marchai is informed and believes that Alessi & Koenig, LLC is a Nevada limited liability company doing business in Clark County, Nevada.

6. Marchai is unaware of the true names and capacities of individual defendants sued herein as DOES 1 through 10, inclusive, and corporations, partnerships, or other business entities sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Marchai is informed and believes that defendants named herein as DOES 1 through 10 and ROES 1 through 10 have, or may claim to have, some right, title, or interest in and to the property, the exact nature of which is unknown to Marchai and Marchai will seek leave to amend this complaint to allege their true names and capacities when and as ascertained, and will further ask leave to join said defendants in these proceedings.

7. On or about October 19, 2005, for valuable consideration, Cristela Perez made, executed, and delivered to CMG Mortgage, Inc. that certain InterestFirst Adjustable Rate Note dated October 19, 2005 evidencing a loan to Perez in the original principal amount of $442,000.00.

8. To secure payment of the principal sum and interest provided in the note, as part of the same transaction, Perez executed and delivered to CMG Mortgage, as beneficiary, a Deed of Trust dated October 19, 2005. The Deed of Trust

was recorded in book number 20051109 as instrument number 0001385 in the Official Records of the Clark County Recorder's Office on November 9, 2005.

9. On November 5, 2007, Complete Association Management Company recorded on behalf of Wyeth Ranch a Notice of Delinquent Violation Lien as Document No. 20071105-0000341 in which Wyeth Ranch claimed a lien for unpaid violations in the amount of $1,400.00.

10. Marchai is informed and believes that Perez failed to timely pay Wyeth Ranch association dues on January 1, April 1, or July 1, 2008.

11. On October 8, 2008, the Clark County Recorder recorded a Notice of Delinquent Assessment (Lien) as Document No. 200810080003311, which Alessi & Koenig executed as agent for Wyeth Ranch. According to the notice, as of September 30, 2008, Perez owed Wyeth Ranch $1,425.17.

12. On January 5, 2009, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 20090105-0002988 a Notice of Default and Election to Sell Under Homeowners Association Lien. According to the notice of default, as of December 17, 2008, Perez owed Wyeth Ranch $3,096.46.

13. On January 14, 2010, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201001140002589 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $6,964.25 in unpaid assessments. The notice set a sale for February 17, 2010.

14. Marchai is informed and believes that between February 2010 and March 2011, Perez paid Wyeth Ranch $2,005.00 in association dues.

15. On March 9, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201103090001741 a Rescission of Notice Trustee's Sale, in which Wyeth Ranch rescinded the January 14, 2010, notice of sale.

16. On March 29, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201103290002937 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $7,306.62 in unpaid assessments. The notice set a sale for May 8, 2011.

17. Marchai is informed and believes that on August 4, 2011, Perez paid Wyeth Ranch another $165.00.

18. Marchai is informed and believes that on October 1, 2011, Perez defaulted under the terms of her loan from CMG Mortgage in that Perez failed to make the regular monthly installment payment on that date in the approximate amount of $2,657.39, and all subsequent payments.

19. On December 20, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201112200001246 a Notice of Delinquent Assessment (Lien). According to the notice, Perez owed Wyeth Ranch $9,296.56.

20. On February 28, 2012, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201202280000836 a Notice of Default and Election to Sell Under Homeowners Association Lien. According to the notice of default, Perez owed Wyeth Ranch $10,625.06 in unpaid assessments.

21. Marchai is informed and believes that between March and May 2012, Perez paid Wyeth Ranch another $595.00.

22. On June 5, 2012, a Corporate Assignment of Deed of Trust was recorded with the Clark County Recorder as Document 201206050003133 that evidences an assignment of the deed of trust from CMG Mortgage, Inc. to CitiMortgage, Inc.

23. Marchai is informed and believes that on July 26, 2012, Perez made a $165.00 payment to Wyeth Ranch.

24. On July 26, 2012, an Assignment of Mortgage was recorded with the Clark County Recorder as Document 201207260002017 that evidences an assignment of the deed of trust from CitiMortgage to U.S. Bank, N.A. as Trustee for the Stanwich Mortgage Loan Trust, Series 2012-6.

25. On October 31, 2012, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201210310000686 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $11,656.07. The notice set a sale for November 28, 2012.

26. Marchai is informed and believes that on November 13, 2012, Perez made a $300.00 payment to Wyeth Ranch.

27. On March 12, 2013, U.S. Bank, as trustee of the Stanwich Trust, assigned the deed of trust to Marchai.

28. On July 31, 2013, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document 201307310001002 another Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $14,090.80. The notice set a sale for August 28, 2013.

29. On August 12, 2013, an Assignment of Deed of Trust was recorded with the Clark County Recorder as Document No. 201308120002562 that evidences the assignment of the deed of trust from U.S. Bank, as trustee of the Stanwich Trust, to Marchai.

30. On September 9, 2013, the Clark County Recorder recorded a Trustee's Deed Upon Sale as Document No. 201309090001816 that Alessi & Koenig executed. According to the trustee's deed, SFR acquired Alessi & Koenig's "right, title, and interest" in the property for $21,000.00 at a sale conducted on August 28, 2013.

31. Alessi & Koenig and Wyeth Ranch wrongfully foreclosed against the property in reliance upon NRS §§ 116.3116 *et seq.* (the "Statute").

32. The purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to constitute a valid encumbrance against the property.

33. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of Wyeth Ranch's lien as required by the Supreme Court in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), given that the Statute on its face violated Marchai's rights to due process secured by the United States and Nevada Constitutions.

34. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of Wyeth Ranch's notice of default.

35. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of the notice of sale.

36. Alessi & Koenig and Wyeth Ranch failed to identify any superpriority amount claimed by Wyeth Ranch and failed to describe the "deficiency in payment" required by NRS § 116.31162(1)(b)(1) in the notice of default.

37. Alessi & Koenig and Wyeth Ranch failed to provide notice of any purported superpriority lien amount or the consequences for the failure to pay any purported superpriority lien amount.

38. Alessi & Koenig and Wyeth Ranch failed to identify the amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

39. Alessi & Koenig and Wyeth Ranch failed to identify if Wyeth Ranch intended to foreclose upon the superpriority portion of its lien, if any, or on the sub-priority portion of its lien.

40. Alessi & Koenig and Wyeth Ranch failed to specify in any of the recorded documents that Wyeth Ranch's foreclosure would extinguish Marchai's interest in the property.

41. Alessi & Koenig and Wyeth Ranch failed to market, sell, or auction the property for in a commercially reasonable manner.

42. SFR purports to have purchased the property at the August 28, 2013, foreclosure sale for $21,000.00.

43. The property has an approximate fair market value well in excess of the $21,000.00 purchase price.

44. The sale and purchase of the property was unconscionable and commercially unreasonable.

45. Neither Alessi & Koenig, nor Wyeth Ranch, nor the Statute gave fair notice to Marchai that the nonjudicial foreclosure of Wyeth Ranch's lien could extinguish Marchai's interest in the property as required by the Due Process clauses of both the United States Constitution and the Constitution of the State of Nevada.

46. To date, the note remains unpaid, and no document has been recorded on the property expressly releasing Marchai's deed of trust.

47. SFR had actual or record notice of Marchai's interest in the property.

48. At the time of Wyeth Ranch's foreclosure, Perez had paid more than nine months of association dues following Wyeth Ranch's "institution of an action to enforce the lien," which satisfied any superpriority portion of Wyeth Ranch's lien. Thus, to the extent SFR acquired any interest in the property, it did so subject to Marchai's deed of trust.

49. At the time of Wyeth Ranch's foreclosure, Wyeth Ranch's lien, or a portion thereof, including the superpriority portion, had expired. Thus, to the extent SFR acquired anything it acquired the property subject to Marchai's deed of trust.

First Claim for Relief
(Declaratory Relief Under Amendment V to the United States Constitution—Takings Clause—Against SFR, Wyeth Ranch, and Alessi & Koenig)

50. Marchai repeats and realleges each of the paragraphs set forth above.

51. The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the property without just

compensation, in violation of the Fifth Amendment to the United States Constitution.

52. An actual and justiciable controversy exists between Marchai and SFR, Wyeth Ranch, and Alessi & Koenig regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

53. Without declaratory relief, an interpretation of the Statute and an interpretation of the constitutional validity of the Statute, Marchai's rights and secured interest in the property will be adversely affected.

54. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to be a valid encumbrance against the property.

55. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because the foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the Property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

56. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

57. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Second Claim for Relief
(Declaratory Relief under the Due Process Clauses of the United States and Nevada Constitutions—Against SFR, Wyeth Ranch, and Alessi & Koenig)

58. Marchai repeats and realleges each of the paragraphs set forth above.

59. The Statute on its face violates Marchai's constitutional rights, in particular those rights to due process secured by both the United States and Nevada Constitutions and is thus void and unenforceable.

60. Any purported notice provided was inadequate, insufficient, and in violation of Marchai's rights to due process as it failed to provide fair notice as required by the due process clauses of both the United States and Nevada Constitutions.

61. An actual and justiciable controversy exists between Marchai and SFR, Alessi & Koenig, and Wyeth Ranch regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

62. Without declaratory relief, an interpretation of the Statute, and an interpretation of the constitutional validity of the Statute, Marchai's rights and secured interest in the property will be adversely affected.

63. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to be a valid encumbrance against the Property.

64. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because the Statute on its face violates Marchai's due process under both the United States and Nevada Constitutions.

65. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

66. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Third Claim for Relief
(Wrongful Foreclosure—Against SFR, Wyeth Ranch, and Alessi & Koenig)

67. Marchai repeats and realleges each of the paragraphs set forth above.

68. SFR wrongfully purported to purchase Marchai's property in violation of the Statute and common law.

69. The foreclosure sale was wrongful because the foreclosure itself was contrary to law, in that:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to due process under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the property without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to due process under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.

70. SFR is not a bona fide purchaser of the Property.

71. SFR's $21,000.00 purchase price for the property was unconscionable.

72. The sale and purchase of the property was not commercially reasonable.

73. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust, which continues as a valid encumbrance against the property.

74. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR is not a bona fide purchaser of the property.

75. Based upon the foregoing, Marchai requests an order setting aside the purported foreclosure sale as void because SFR's $21,000.00 purchase price for the property was not commercially reasonable.

76. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's $21,000.00 purchase price for the property was unconscionable.

77. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

78. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Fourth Claim for Relief
(Violation of NRS § 116.1113 *et seq.*—Against Wyeth Ranch and Alessi & Koenig)

79. Marchai repeats and realleges each of the paragraphs set forth above.

80. Wyeth Ranch and Alessi & Koenig wrongfully foreclosed upon the property in violation of the Statute.

81. Given the above-enumerated violations of the Statute, Marchai asserts that Wyeth Ranch's purported sale of the property be voided and set aside and requests any and all damages flowing from these violations.

Fifth Claim for Relief
(Intentional Interference with Contractual Relations against SFR, Wyeth Ranch, and Alessi & Koenig)

82. Marchai repeats and realleges each of the paragraphs set forth above.

83. Marchai had a valid contract with Perez as evidenced by the note and deed of trust, which included as part of the benefit of the bargain a first priority secured interest in the property.

84. SFR, Wyeth Ranch, and Alessi & Koenig knew or should have known of the contract between Marchai and Perez.

85. SFR, Wyeth Ranch, and Alessi & Koenig knowingly interfered with the contract between Marchai and Perez by failing to market, sell, or auction the property for a commercially reasonable or fair market value, thus evidencing intent to harm Marchai.

86. SFR knowingly interfered with the contract between Marchai and Perez by wrongfully obtaining possession of the property for an unconscionable and commercially unreasonable amount, thus evidencing intent to harm Marchai.

87. SFR knowingly interfered with the contract between Marchai and Perez by wrongfully obtaining possession of the property and attempting to extinguish Marchai's security interest in the Property.

88. SFR, Wyeth Ranch, and Alessi & Koenig all lacked justification for these interferences, because of the many infirmities described within this amended complaint, including:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to due process under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the Property without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to due process under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.

89. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

90. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Sixth Claim for Relief
(Quiet Title—Against SFR, Wyeth Ranch, and Alessi & Koenig)

91. Marchai repeats and realleges each of the paragraphs set forth above.

92. For all of the independent reasons cited above in Claims 2 through 6, Wyeth Ranch's sale did not extinguish Marchai's senior deed of trust.

93. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust, which continues as a valid encumbrance against the Property.

94. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR is not a bona fide purchaser of the Property.

95. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order setting aside Wyeth Ranch's sale as void because SFR's payment of $21,000.00 as a purchase price for the property was not commercially reasonable and the sale was not conducted in a commercially reasonable manner.

96. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's $21,000.00 purchase price for the property was unconscionable.

97. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

98. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

99. Accordingly, Marchai requests that title be quieted in its name and its deed of trust continue as a valid encumbrance against the Property.

PRAYER FOR RELIEF

WHEREFORE, Marchai prays for relief as follows:

A. For a declaration by the Court that Marchai holds a valid interest in the property under the note and deed of trust, and that SFR acquired the property subject to Marchai's interest;

B. That title in the Property be quieted in Marchai;

C. That Wyeth Ranch's purported foreclosure sale be declared void and set aside;

D. For judgment in an amount proven at trial in excess of $10,000.00;

E. For an award of interest, costs, and attorneys' fees; and

F. For any further relief the Court deems just and proper.

DATED this 25th day of August 2016.

DAVID J. MERRILL, P.C.

By:

DAVID J. MERRILL
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorneys for MARCHAI, B.T.

EXHIBIT 2

EXHIBIT 2

Resident Transaction Detail

Active Flag Yes
Void Flag No

WYETH RANCH CA

Account #: 84081 Property Address: 7119 WOLF RIVERS AVE

Code	Date	Amount	Balance	Check#	Memo
MA	7/1/2006	420.00	420.00		
PMT	7/5/2006	-420.00	0.00	1954	070506.usb
MA	10/1/2006	420.00	420.00		
PMT	10/4/2006	-420.00	0.00	1932	100406.USB
MA	1/1/2007	420.00	420.00		
PMT	1/4/2007	-420.00	0.00	1983	010407.usb
MA	4/1/2007	420.00	420.00		
PMT	5/4/2007	-420.00	0.00	2003	
MA	7/1/2007	420.00	420.00		
PMT	7/16/2007	-420.00	0.00	2009	071607.usb
MA	10/1/2007	420.00	420.00		
PMT	10/11/2007	-420.00	0.00	2022	101107.usb
MA	1/1/2008	420.00	420.00		MA
LF	1/30/2008	6.30	426.30		Late Fee Processed
LF	1/30/2008	75.00	501.30		Late Fee Processed
LF	2/29/2008	6.30	507.60		Late Fee Processed
LF	3/30/2008	6.30	513.90		Late Fee Processed
MA	4/1/2008	420.00	933.90		MA
PMT	4/16/2008	-507.60	426.30	0000000	041608cc.usb
MA	7/1/2008	420.00	846.30		MA
LF	7/30/2008	11.29	857.59		Late Fee Processed
LF	7/30/2008	75.00	932.59		Late Fee Processed
Intent	8/13/2008	50.00	982.59		INTENT TO LIEN
LF	8/30/2008	11.29	993.88		Late Fee Processed
LF	9/30/2008	11.29	1,005.17		Late Fee Processed
MA	10/1/2008	420.00	1,425.17		MA
LF	10/30/2008	17.59	1,442.76		Late Fee Processed
LF	10/30/2008	75.00	1,517.76		Late Fee Processed
LF	11/30/2008	17.59	1,535.35		Late Fee Processed
LF	12/30/2008	17.59	1,552.94		Late Fee Processed
MA	1/1/2009	420.00	1,972.94		MA
LF	1/30/2009	23.89	1,996.83		Late Fee Processed
LF	1/30/2009	75.00	2,071.83		Late Fee Processed
LF	3/30/2009	23.89	2,095.72		Late Fee Processed
MA	4/1/2009	37.50	2,133.22		MA
MA	4/1/2009	457.50	2,590.72		MA
LF	4/30/2009	31.31	2,622.03		Late Fee Processed
LF	4/30/2009	75.00	2,697.03		Late Fee Processed
LF	5/30/2009	31.31	2,728.34		Late Fee Processed
LF	6/30/2009	31.31	2,759.65		Late Fee Processed

Resident Transaction Detail

Active Flag Yes
Void Flag No

WYETH RANCH CA

MA	7/1/2009	457.50	3,217.15		MA
LF	7/30/2009	38.17	3,255.32		Late Fee Processed
LF	7/30/2009	75.00	3,330.32		Late Fee Processed
LF	8/30/2009	38.17	3,368.49		Late Fee Processed
LF	9/30/2009	38.17	3,406.66		Late Fee Processed
MA	10/1/2009	457.50	3,864.16		MA
LF	10/30/2009	13.21	3,877.37		Late Fee Processed
LF	10/30/2009	75.00	3,952.37		Late Fee Processed
LF	11/30/2009	13.21	3,965.58		Late Fee Processed
LF	12/30/2009	13.21	3,978.79		Late Fee Processed
MA	1/1/2010	478.50	4,457.29		MA
Late Fee	1/30/2010	15.32	4,472.61		Late Fee Processed
Late Fee	1/30/2010	75.00	4,547.61		Late Fee Processed
Late Fee	2/28/2010	15.32	4,562.93		Late Fee Processed
Payment	3/2/2010	-590.40	3,972.53	29219	ALESSI PARTIAL
Late Fee	3/30/2010	12.72	3,985.25		Late Fee Processed
Assessment	4/1/2010	478.50	4,463.75		Assessment
Late Fee	4/30/2010	14.82	4,478.57		Late Fee Processed
Late Fee	4/30/2010	75.00	4,553.57		Late Fee Processed
Late Fee	5/30/2010	14.82	4,568.39		Late Fee Processed
Payment	6/8/2010	-204.60	4,363.79	34364	ALESSI PARTIAL
Late Fee	6/30/2010	13.92	4,377.71		Late Fee Processed
Assessment	7/1/2010	478.50	4,856.21		Assessment
Late Fee	7/30/2010	75.00	4,931.21		Late Fee Processed
Late Fee	7/31/2010	16.03	4,947.24		Late Fee Processed
Payment	8/20/2010	-172.75	4,774.49	39462	ALESSI PARTIAL
Late Fee	8/31/2010	15.27	4,789.76		Late Fee Processed
Assessment	10/1/2010	478.50	5,268.26		Assessment
Payment	10/15/2010	-152.02	5,116.24	42378	ALESSI PARTIAL
Late Fee	11/30/2010	22.51	5,138.75		
Payment	12/16/2010	-126.18	5,012.57	45555	ALESSI PARTIAL
Late Fee	12/31/2010	22.06	5,034.63		
Assessment	1/1/2011	448.50	5,483.13		Assessment
Late Fee	1/30/2011	75.00	5,558.13		
Late Fee	1/31/2011	24.46	5,582.59		
Payment	3/22/2011	-119.52	5,463.07	49869	ALESSI PARTIAL
Late Fee	3/31/2011	24.04	5,487.11		
Assessment	4/1/2011	448.50	5,935.61		Assessment
Late Fee	4/30/2011	26.12	5,961.73		
Late Fee	4/30/2011	75.00	6,036.73		
Late Fee	5/31/2011	26.01	6,062.74		
Payment	6/16/2011	-124.32	5,938.42	54338	ALESSI PARTIAL
Late Fee	6/30/2011	26.13	5,964.55		

Resident Transaction Detail

Active Flag Yes
Void Flag No

WYETH RANCH CA

Assessment	7/1/2011	448.50	6,413.05		Assessment
Late Fee	7/30/2011	75.00	6,488.05		
Late Fee	7/31/2011	28.55	6,516.60		
Payment	8/18/2011	-127.71	6,388.89	58125	ALESSI-PARTIAL
Late Fee	8/31/2011	28.11	6,417.00		
Late Fee	9/30/2011	28.23	6,445.23		
Assessment	10/1/2011	448.50	6,893.73		Assessment
Late Fee	10/30/2011	75.00	6,968.73		
Late Fee	10/31/2011	30.33	6,999.06		
Late Fee	12/31/2011	30.80	7,029.86		
Assessment	1/1/2012	448.50	7,478.36		Assessment
Late Fee	1/30/2012	75.00	7,553.36		
Late Fee	1/31/2012	32.90	7,586.26		
Late Fee	2/29/2012	33.38	7,619.64		
Late Fee	3/31/2012	33.53	7,653.17		
Assessment	4/1/2012	448.50	8,101.67		Assessment
Payment	4/3/2012	-212.70	7,888.97	68594	Alessi - partial
Late Fee	4/30/2012	34.71	7,923.68		
Late Fee	4/30/2012	75.00	7,998.68		
Payment	5/23/2012	-209.16	7,789.52	71472	Alessi - Partial
Late Fee	5/31/2012	34.27	7,823.79		
Late Fee	6/30/2012	34.42	7,858.21		
Assessment	7/1/2012	448.50	8,306.71		Assessment
Late Fee	7/30/2012	75.00	8,381.71		
Late Fee	7/31/2012	36.55	8,418.26		
Payment	8/27/2012	-121.28	8,296.98	74283	Alessi - Partial
Late Fee	8/31/2012	36.51	8,333.49		
Late Fee	9/30/2012	36.67	8,370.16		
Assessment	10/1/2012	448.50	8,818.66		Assessment
Late Fee	10/30/2012	75.00	8,893.66		
Late Fee	10/31/2012	38.80	8,932.46		
Late Fee	11/30/2012	39.30	8,971.76		
Payment	12/14/2012	-221.10	8,750.66	77960	Alessi - Partial
Late Fee	12/31/2012	38.50	8,789.16		
Assessment	1/1/2013	510.00	9,299.16		Assessment
Late Fee	1/30/2013	75.00	9,374.16		
Late Fee	1/31/2013	40.92	9,415.08		
Late Fee	2/28/2013	41.43	9,456.51		
Late Fee	3/31/2013	41.61	9,498.12		
Assessment	4/1/2013	510.00	10,008.12		Assessment
Late Fee	4/30/2013	44.04	10,052.16		
Late Fee	4/30/2013	75.00	10,127.16		
Late Fee	5/31/2013	44.56	10,171.72		

Resident Transaction Detail

Active Flag Yes
Void Flag No

WYETH RANCH CA

Late Fee	6/30/2013	44.76	10,216.48		
Assessment	7/1/2013	510.00	10,726.48		Assessment
Late Fee	7/30/2013	75.00	10,801.48		
Late Fee	7/31/2013	47.20	10,848.68		
NRS-Late Fees	10/1/2013	-169.56	10,679.12		
Payment	10/1/2013	-10,679.12	0.00	90252	Alessi - Final

Count: 1

Total Units: 1

EXHIBIT 3

EXHIBIT 3

20071105-0000341

Fee: $15.00
N/C Fee: $0.00

11/05/2007 08:55:28
T20070194744
Requestor:
COMPLETE ASSOCIATION MANAGEMENT COMP

Debbie Conway JYB
Clark County Recorder Pgs: 2

Return to:
Attn: Kelly Mitchell
WYETH RANCH HOA
PO Box 12117
Las Vegas, NV 89112

APN # 125-15-811-013

NOTICE OF DELINQUENT VIOLATION LIEN

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

Association Claimant: WYETH RANCH HOA
Declarations of CC&Rs recorded 11/17/04 Instrument No: 0000736, Book No.: 20041117, Page No:__ County of CLARK, and any and all amendments or annexations of record thereto.

The description of the common interest development unit against which this notice is being recorded is as follows: Legal Unit No.: 7119 WOLF RIVERS AVE WYETH RANCH UNIT 2 PLAT BOOK 112 PAGE 8 LOT 13 BLOCK A

The reputed owner is: CRISTELA PEREZ

Common address: 7119 WOLF RIVERS AVE, LAS VEGAS NV 89131

Owner's mailing address is: SAME

DELINQUENCY

Total Amount due as of 10/25/07	$1400.00

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

The acting agency for enforcement on this lien is:

COMPLETE ASSOCIATION MANAGEMENT COMPANY (CAMCO)
PO BOX 12117
LAS VEGAS NV 89112
(702) 531-3382

DATED: 10/25/07

WYETH RANCH HOA

Kelly Mitchell

KELLY A. MITCHELL, Operations Manager

STATE OF NEVADA
COUNTY OF CLARK

On 10/25/07 before me, the undersigned, a Notary Public in and for said county, personally appeared, KELLY A. MITCHELL personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within Instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

DIANE NESS, Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DIANE J. NESS
No: 97-4003-1
My Appointment Expires Oct. 16, 2009

EXHIBIT 4

EXHIBIT 4

20081008-0003311

Fee: $14.00
N/C Fee: $0.00
10/08/2008 11:58:33
T20080238105
Requestor:
JUNES LEGAL SERVICES
Debbie Conway SCA
Clark County Recorder Pgs: 1

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
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) recorded on **Pending**, as Instrument No: **pending**, of the official records of **Clark** County, Nevada, **Wyeth Ranch HOA** 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: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**

The total amount due through today's date is: **$1,425.17**. Of this total amount **$370.00** represent Collection and/or Attorney fees and **$50.00** represent collection costs, late fees, service charges and interest. 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: **September 30, 2008**

By: _____
Kristy Diaz – Trustee Sale Officer
Alessi & Koenig, LLC on behalf of **Wyeth Ranch**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me September 30, 2008

(Seal) ROBERT M. ALESSI
Notary Public State of Nevada
No. 06-108264-1
My appt. exp. Aug. 24, 2010

(Signature) _____
NOTARY PUBLIC

EXHIBIT 5

EXHIBIT 5

Receipt/Conformed Copy

Requestor:
JUNES LEGAL SERVICES
01/05/2009 11:54:35 T20090001999
Book/Instr: 20090105-0002988
Default Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

WWW.ALESSIKOENIG.COM

A.P.N. 125-15-811-013

Trustee Sale No. WR-7119-A

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is **$3,096.46** as of **12/17/2008** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Wyeth Ranch**, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **October 8, 2008** as document number **20081008-03311**, of Official Records in the County of **Clark**, State of Nevada.
Owner(s): **Cristela Perez**

Of **Lot 13 Block A**, as per map recorded in Book **112**, Pages **8**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of **Clark,** State of Nevada.

PROPERTY ADDRESS: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**
If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **October 8, 2008**, executed by **Wyeth Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.
Dated: **December 17, 2008**

Thessa Elpidio, Alessi & Koenig, LLC on behalf of **Wyeth Ranch**.

EXHIBIT 6

EXHIBIT 6

Inst #: 201001140002589
Fees: $14.00
N/C Fee: $0.00
01/14/2010 12:04:56 PM
Receipt #: 195186
Requestor:
JUNES LEGAL SERVICES
Recorded By: SCA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 100
Las Vegas, NV 89147
Phone: 702-222-4033

APN: **125-15-811-013**

Title No. TSN **WR-7119-A** Space above for Recorder's Use

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:
On **February 17, 2010**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **October 8, 2008**, as instrument number **20081008-03311**, of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: **4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.**

The street address and other common designation, if any, of the real property described above is purported to be: **7119 Wolf Rivers Ave, Las Vegas, NV 89131.** The owner of the real property is purported to be: **Cristela Perez**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$6,964.25.** Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: **December 18, 2009**

By: Branko Jeftic on behalf of Wyeth Ranch

EXHIBIT 7

EXHIBIT 7

DAVID ALESSI*

ROBERT KOENIG**

* Admitted in CA

** Admitted in CA, NV CO

*** Admitted in NV

Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

STEVEN T. LOIZZI, JR.***

HUONG LAM**
(of counsel)

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

Wyeth Ranch Community Association

CRISTELA PEREZ

7119 WOLF RIVERS AVE
LAS VEGAS NV 89131-0139
Account #: 84081

July 31, 2015	Cut check to Clark County District Court for $1,472.35
July 31, 2015	Paid In Full through 8/31/2013
July 31, 2015	Paid In Full through 8/31/2013
July 4, 2015	Order Granting Motion to Interplead entered: $1,472.35 to be deposited with the Court.
May 17, 2015	Drafted Motion to Interplead Excess Proceeds.
April 15, 2015	Paid In Full through 8/31/2013
November 21, 2014	Paid In Full through 8/31/2013
September 26, 2014	Paid In Full through 8/31/2013
June 13, 2014	Paid In Full through 8/31/2013
January 14, 2014	Paid In Full through 8/31/2013
October 24, 2013	Complaint in Interpleader filed Case No.: A-13-690586-C
October 8, 2013	Received Lis Pendens, Clark Co. Dist, Ct. case no A689461. Complaint is for Judicial Foreclosure; does not name HOA.
September 27, 2013	Complain In Interpleader in Process
September 4, 2013	Paid In Full through 8/31/2013
September 3, 2013	Paid In Full through 8/31/2013
September 3, 2013	Cut check to CAMCO for $435.00
September 3, 2013	Cut check to Wyeth Ranch Community Association for $10,679.12
August 29, 2013	Payment in full received in the amount of $22,585.25. 10 day waiting period for funds to clear initiated.
August 28, 2013	Sold to 3rd Party at Sale
August 26, 2013	HOA sale set for 8/28/2013
July 29, 2013	Notice of Trustee Sale mailed regular and certified
July 15, 2013	Publication Date down processed for posting and publishing of Trustee Sale
July 11, 2013	HOA sale set for 8/28/2013
July 10, 2013	Review file for Notice of Trustee Sale

DAVID ALESSI*

ROBERT KOENIG**

* Admitted in CA

** Admitted in CA, NV CO

*** Admitted in NV

A Multi-Jurisdictional Law Firm

Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

STEVEN T. LOIZZI, JR.***

HUONG LAM**
(of counsel)

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

Wyeth Ranch Community Association

June 28, 2013	Bankruptcy Dismissed, case closed, collections re-initiated
April 29, 2013	HO filed bk ch.7 on 3/26/13; Sketal filing done, all schedules have not been filed; case maybe dismissed for failure to file schedules.
March 27, 2013	Sale Cancelled
March 26, 2013	Bankruptcy correspondence received
March 26, 2013	Chapter 7 Bankruptcy filed.
March 22, 2013	Status check for Senior Default and Bankruptcy, no current records
February 20, 2013	3rd postponement of HOA sale. New sale date 3/27/2013
February 19, 2013	Status check for Senior Default and Bankruptcy, no current records
January 16, 2013	2nd postponement of HOA sale. New sale date 02.20.2013.
January 15, 2013	Follow up with Management Company/HOA regarding payment plan. AK awaiting response
January 7, 2013	Received an updated accounting ledger from the Management Company
December 27, 2012	Requested updated ledger from management company
December 11, 2012	Cut progress payment check to Wyeth Ranch Community Association for $221.10
November 27, 2012	Partial payment received. 10 day waiting period for funds to clear initiated.
November 27, 2012	1st postponement of HOA sale. New sale date 01.16.2013.
November 20, 2012	1st postponement of HOA sale. Payment forthcoming
November 8, 2012	HOA sale set for 11.28.2012.
October 25, 2012	Notice of Trustee Sale mailings sent via certified mail
October 17, 2012	Publication Date Down processed for posting and publishing of Trustee Sale
October 10, 2012	HOA sale set for 11.28.2012.
August 19, 2012	Cut progress payment check to Wyeth Ranch Community Association for $121.28
August 16, 2012	Review file for Notice of Trustee Sale
July 28, 2012	Partial payment received. 10 day waiting period for funds to clear initiated.
July 17, 2012	Review file for Notice of Trustee Sale
June 29, 2012	Pre-Notice of Trustee Sale sent to homeowner
May 18, 2012	Notice of Default and Election to Sell (30) day waiting period expires 6-5-12
May 14, 2012	Cut progress payment check to Wyeth Ranch Community Association for $209.16
May 8, 2012	Partial payment received. 10 day waiting period for funds to clear initiated.
April 18, 2012	Notice of Default and Election to Sell (90) day waiting period expires 6-5-12
March 23, 2012	Cut progress payment check to Wyeth Ranch Community Association for $212.70

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(of counsel)

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

Wyeth Ranch Community Association

March 19, 2012	Partial payment received. 10 day waiting period for funds to clear initiated.
March 5, 2012	10 Day Notice of Default Mailings sent via certified mail, (90) day waiting period initiated
February 24, 2012	TRI Report complete, Waiting for Recorded Notice of Default
February 24, 2012	TRI Data Received
February 15, 2012	TRI Data Ordered
February 8, 2012	Notice of Default Drafted and sent for TRI Report
January 25, 2012	Pre-Notice of Default sent to homeowner via regular mail
November 29, 2011	Lien recordation sent via regular and certified mail per statute
November 16, 2011	Review file for Notice of Trustee Sale
September 30, 2011	Payment Plan Breach letter sent via regular mail
August 13, 2011	Cut progress payment check to Wyeth Ranch for $127.71
August 6, 2011	Partial payment received. 10 day waiting period for funds to clear initiated.
July 26, 2011	3rd postponement of HOA sale. New sale date 08.24.2011.
June 7, 2011	Cut progress payment check to Wyeth Ranch for $124.32
May 25, 2011	Partial payment received. 10 day waiting period for funds to clear initiated.
May 9, 2011	2nd postponement of HOA sale. New sale date 07.27.2011.
April 30, 2011	Homeowner entered into (10) month payment plan
April 13, 2011	1st postponement of HOA sale. New sale date 05.18.2011.
April 7, 2011	Hardship letter sent to Board
April 4, 2011	Notice of Trustee Sale mailings sent via certified mail
March 15, 2011	Cut progress payment check to Wyeth Ranch for $119.52
March 11, 2011	Partial payment received. 10 day waiting period for funds to clear initiated.
March 8, 2011	HOA sale set for 05.08.2011.
March 8, 2011	RESCISSION OF NOTICE OF TRUSTEE'S SALE sent for recording.
March 8, 2011	Authorization to conduct HOA sale sent to management/board via email
February 9, 2011	No contact from Property Owner
January 10, 2011	Review file for Notice of Trustee Sale
December 5, 2010	Cut progress payment check to Wyeth Ranch for $126.18
November 30, 2010	Partial payment received. 10 day waiting period for funds to clear initiated.
November 29, 2010	Review file for Notice of Trustee Sale
November 8, 2010	Payment Plan Breach letter sent via regular mail

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ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

Wyeth Ranch Community Association

October 9, 2010	Cut progress payment check to Wyeth Ranch for $152.02
September 29, 2010	Partial payment received. 10 day waiting period for funds to clear initiated.
September 7, 2010	Contacted Management for status of payment plan
August 11, 2010	Cut progress payment check to Wyeth Ranch for $172.75
August 6, 2010	Payment Plan sent to Board for approval
August 4, 2010	Partial payment received. 10 day waiting period for funds to clear initiated.
July 27, 2010	Homeowner to ask Board to reduce Fines
July 12, 2010	Pre-Notice of Trustee Sale sent to homeowner
July 2, 2010	Payment Plan Breach letter sent via regular mail
May 20, 2010	Cut progress payment check to Wyeth Ranch for $204.60
May 11, 2010	Partial payment received. 10 day waiting period for funds to clear initiated.
April 12, 2010	Followed up with homeowner regarding payment plan
March 22, 2010	12 Month Payment Plan signed and approved
March 22, 2010	Emailed 12 Month Paymet Plan to Homeowner via email
March 11, 2010	12 month payment plan drafted and sent to management for board approval
March 9, 2010	Received an updated accounting ledger from the Management Company
February 23, 2010	Cut progress payment check to Wyeth Ranch for $590.40
February 18, 2010	Partial payment received. 10 day waiting period for funds to clear initiated.
February 16, 2010	1st postponement of HOA sale. New sale date 03.24.2010.
February 12, 2010	Payment Plan to be Drafted
February 10, 2010	Spoke with homeowner, payment forthcoming
February 5, 2010	Requested to be put on to a 12 month payment plan
February 5, 2010	Contacted by homeowner payment forthcoming to stop sale
February 3, 2010	Breakdown/Demand Letter sent to homeowner
February 3, 2010	Received an updated accounting ledger from the Management Company
January 25, 2010	Notice of Trustee Sale mailings sent via certified mail
January 4, 2010	No contact from Property Owner
December 18, 2009	Received Signed Authorization.
December 18, 2009	HOA sale set for 02.17.2010.
December 11, 2009	No contact from Property Owner
November 6, 2009	Review file for Notice of Trustee Sale

DAVID ALESSI*

ROBERT KOENIG**

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** Admitted in CA, NV CO

*** Admitted in NV

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(of counsel)

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

Wyeth Ranch Community Association

November 6, 2009	No contact from Property Owner
October 23, 2009	Authorization to conduct HOA sale sent to management/board via email
October 7, 2009	No contact from Property Owner
October 7, 2009	Authorization to conduct HOA sale sent to management/board via email
September 25, 2009	Sale postponed, Review file for Notice of Trustee Sale
August 29, 2009	HOA sale postponed to 10/28/2009
August 8, 2009	Received an updated accounting ledger from the Management Company
August 3, 2009	HOA sale set for 9/23/2009
June 22, 2009	Sale postponed
June 4, 2009	HOA Sale set for 7/22/2009
May 25, 2009	No contact from Property Owner
April 23, 2009	No contact from Property Owner
April 23, 2009	Review file for Notice of Trustee Sale
March 25, 2009	Dispute Letter never received from Homeowner, AK to proceed with Collection Acitvity
February 27, 2009	No contact from Property Owner
February 12, 2009	Homeowner will forward dispute letter
February 12, 2009	Spoke with homeowner, disputes debt
January 7, 2009	10 Day Notice of Default Mailings sent via certified mail, (90) day waiting period initiated
January 5, 2009	Notice of Default recorded and sent for 10-Day mailings
December 24, 2008	Title Research Report, Waiting for Recorded Notice of Default
December 17, 2008	Notice of Default Drafted and sent for Title Research Report
December 10, 2008	No contact from Property Owner
November 10, 2008	Pre-Notice of Default
October 31, 2008	No contact from Property Owner
September 30, 2008	Lien recordation sent via regular and certified mail

EXHIBIT 8

EXHIBIT 8

Inst #: 201103290002937
Fees: $14.00
N/C Fee: $0.00
03/29/2011 09:54:46 AM
Receipt #: 720970
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: AEA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 100
Las Vegas, NV 89147
Phone: 702-222-4033

APN: **125-15-811-013** TSN **WR-7119-A**

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:
On **May 8, 2011**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **October 8, 2008**, as instrument number **03311**, of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: **4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.**

The street address and other common designation, if any, of the real property described above is purported to be: **7119 Wolf Rivers Ave, Las Vegas, NV 89131.** The owner of the real property is purported to be: **Cristela Perez**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$7,306.62.** Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: **March 8, 2011**

By: Branko Jeftic on behalf of Wyeth Ranch

EXHIBIT 9

EXHIBIT 9

PEREZ CRISTELA

7119 WOLF RIVERS AVE
LAS VEGAS NV 89131-0139

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE.
LAS VEGAS, NV 89101
PARCEL #12515-811-013

Attn: Kelly Mitchell
WYETH RANCH HOA
P.O. BOX 12117
Las Vegas, NV 89112

COMPLETE ASSOCIATION
MANAGEMENT COMPANY (CAMCO)
PO BOX 12117
LAS VEGAS, NV 89112

Apache Electric
4300 N. Pecos # 25
Las Vegas, Nevada 89115

First American
1228 Euclid Avenue, 4th Floor
Cleviland, OH 44115

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

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

CMG MORTGAGE, INC.
3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CALIFORNIA 94583
Loan No: 32501493
MIN 1000724-0032501493-7

MERS
P.O. BOX 2026
FLINT, MI 48501-2026

COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. BOX 10423
VAN NUYS, CA 91410-0423

JOHN SHOLTZ / T. BONHAM
COUNTRYWIDE HOME LOANS, INC.
2275 CORPORATE CENTER #200
HENDERSON, NV 89074
MIN 1000157-0003937863-9

CTC FORECLOSURE SERVICES CORP.
400 COUNTRYWIDE WAY, MSN SV-88
SIMI VALLEY, CA 93065
MIN 1000157-0003937863-9

MORTGAGE ELECTRONIC
REGISTRATION SERVICES
P.O. BOX 2026
FLINT, MI 48501-2026
MIN 1000157-0003937863-9

COUNTRYWIDE HOME LOANS, INC.
4500 Park Grendada
Calabasas, CA 91302-1813
MIN 1000157-0003937863-9

CRISTELA PEREZ
17450 BURBANK BLVD #104
ENCINO, CA 91316

COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. BOX 10423
VAN NUYS, CA 91410-0423
MIN 1000157-0003937862-1

COUNTRYWIDE HOME LOANS, INC.
2275 CORPORATE CENTER # 200
HENDERSON, NV 89074
MIN 1000157-0003937862-1

COUNTRYWIDE HOME LOANS, INC.
4500 Park Granada
Calabasas, Ca 91302-1613
MIN 1000157-0003937862-1

CTC FORECLOSURE SERVICES CORP.
400 COUNTRYWIDE WAY, MSNSV-88
SIMI VALLEY, CA 93065
MIN 1000157-0003937862-1

OMBUDSMANS OFFICE
2S1 E. SAHARA AVE #20S
LAS VEGAS, NV 89104
RE:GORDON MILDEN

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First American
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115

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Attn: Kelly Mitchell
WYETH RANCH HOA
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Las Vegas, NV 89112

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3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CALIFORNIA 94583
Loan No: 32501493
MIN 1000724-0032501493-7

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COMPLETE ASSOCIATION
MANAGEMENT COMPANY (CAMCO)
PO BOX 12117
LAS VEGAS, NV 89112

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PARCEL #12515-811-013

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Restricted Delivery Fee (Endorsement Required)
Total

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City, State

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

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Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees

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Street, Apt. or PO Box
City, State

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

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4500 Park Granada
Calabasas, Ca 91302-1613
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4325 17th Avenue S.W.
Fargo, ND 58103

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To COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. BOX 10423
VAN NUYS, CA 91410-0423

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Las Vegas, Nevada 89115

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To CTC FORECLOSURE SERVICES CORP.
400 COUNTRYWIDE WAY, MSN SV-88
SIMI VALLEY, CA 93065
MIN 1000157-0003937863-9

PS Form 3800, August 2006 See Reverse for Instructions

WY000551

EXHIBIT 10

EXHIBIT 10

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) GINA GARCIA
Notary Public State of Nevada
No. 11-4750-1
My Appt. Exp. March 30, 2015

(Signature)
NOTARY PUBLIC

EXHIBIT 11

EXHIBIT 11

Inst #: 201202280000836
Fees: $17.00
N/C Fee: $0.00
02/28/2012 09:07:00 AM
Receipt #: 1079272
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: ANI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. **125-15-811-013**

Trustee Sale No. **WR-7119-A**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **$10,625.06** as of **February 14, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Wyeth Ranch Community Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **December 20, 2011** as document number **0001246**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Cristela Perez**, of **Lot 13 Block A**, as per map recorded in Book **112**, Pages **8**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **7119 Wolf Rivers Ave, Las Vegas, NV 89131**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **December 20, 2011**, on behalf of **Wyeth Ranch Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **January 1, 2008** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **February 14, 2012**

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Wyeth Ranch Community Association**

EXHIBIT 12

EXHIBIT 12

11632

CRISTELA PEREZ
7119 WOLF RIVERS AVE

LAS VEGAS, NV 89131-0139

CRISTELA PEREZ
17450 BURBANK BLVD, #104

ENCINO, CA 91316

CMG MORTGAGE INC.
3160 CROW CANYON ROAD, SUITE 240

SAN RAMON, CA 94583

MERS
PO BOX 2026

FLINT, MI 48501-2026

U.S. BANK, NATIONAL ASSOCIATION N.D.
4325 - 17TH AVENUE S.W.

FARGO, ND 58103

U.S. BANK TRUST COMPANY, N.A.
111 S.W. FIFTH AVENUE, SUITE 3500

PORTLAND, OR 97204

FIRST AMERICAN
1228 EUCLID AVENUE, 4TH FLOOR

CLEVELAND, OH 44115

APACHE ELECTRIC
4300 N. PECOS #25

LAS VEGAS, NV 89115

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE

LAS VEGAS, NV 89101

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Sent To CRISTELA PEREZ
Street, Apt. or PO Box No. 7119 WOLF RIVERS AVE
City, State, ZIP+4 LAS VEGAS, NV 89131-0139

N. FLAMINGO ROAD 89147 MAR 2012 Postmark Here

PS Form 3800, August 2006 See Reverse for Instructions

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Street, Apt. or PO Box No. 17450 BURBANK BLVD, #104
City, State, ZIP+4 ENCINO, CA 91316

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PS Form 3800, August 2006 See Reverse for Instructions

WY000687

EXHIBIT 13

EXHIBIT 13

Brittney O'Connor

From: Brittney O'Connor
Sent: Friday, March 09, 2012 9:02 AM
To: 'robert_d_rose@yahoo.com'
Subject: RE: 7119 Wolf Rivers

Hello CRISTELA,
Unfortunately your account is in collections with Alessi & Koenig & has been since 9/17/2012. Any payment arrangements would have to be made through their company. Here is the number to contact them: 702.222.4033.

Thank you,

Brittney O'Connor
Accounting Clerk
CAMCO
2009 CAI Management Company of the Year
702-531-3382 - Office
702-531-3392 - Fax
www.camconevada.com

From: Sandy Slay
Sent: Friday, March 09, 2012 8:38 AM
To: Brittney O'Connor
Subject: FW: 7119 Wolf Rivers

Please see below

Sandy Slay
Community Assistant to
Michelle Jardel, Supervisory Community Manager
michelle.jardel@camconevada.com
2009 Management Company of the year
P O Box 12117, Las Vegas, NV 89112
(702) 531-3382 Office
(702) 531-3392 Fax
www.camconevada.com

From: Robert Rose [mailto:robert_d_rose@yahoo.com]
Sent: Thursday, March 08, 2012 9:50 PM
To: Michele Badgwell
Subject: 7119 Wolf Rivers

Michele,

We received word that the house has been set up for foreclosure. Is this true?

My wife lost her job in December; I am having spine surgery next Thursday from a work related major accident. This will be my 2nd major surgery in 3 years.

Since 2007 when the economy fell apart we have been constantly behind, I know. We tried to work with A&K but even though we were paying we were getting further and further in debt...we had medical bills etc to pay and we just recently paid off a rather large one so if we really struggle we can have a enough to cover the $160 monthly bill for the HOA.

I am going to be laid up for at least 5 months after next week; I can send you 2 months of the $160 in advance if we can just hold it together a little longer. I should be getting a settlement of some sort for this injury and we would be glad to cover our HOA's fees out of it should that be what is most appropriate. Until then we should be able to pay the regular fees monthly so we don't get further in arrears.

Thanks for your consideration

Rdr

Dawn Alexander

From: Naomi Eden <naomi@alessikoenig.com>
Sent: Tuesday, October 30, 2012 3:06 PM
To: Brittney O'Connor
Subject: FW: Paperwork for HOA
Attachments: For HOA.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: QUESTION!

Hi ☺

Please see the below offer from the homeowner and let me know what the Board says when you get a chance?

Thanks!

From: Robert Rose [mailto:robert_d_rose@yahoo.com]
Sent: Monday, October 29, 2012 11:24 AM
To: Naomi Eden
Subject: Paperwork for HOA

Naomi,

Atttached is evidence of my workers comp case that started August 2011 as well as my only and first paycheck for my light duty assignment which just started. (see year to date amount). I had spine surgery and am just now able to work again.

We will be able to pay the agreed 300 per month the last week of every month starting this week if you reply that this is acceptable and there will be no impending trustee sale.

Please respond this is agreeable and we will be in to make the payment by the 31st.

Sent from Yahoo! Mail on Android

From: Robert Rose <robert_d_rose@yahoo.com>;
To: r2epsm2@gmail.com <r2epsm2@gmail.com>;
Subject: HOA
Sent: Mon, Oct 29, 2012 4:32:12 PM

EXHIBIT 14

EXHIBIT 14

Inst #: 201210310000686
Fees: $17.00
N/C Fee: $0.00
10/31/2012 08:04:08 AM
Receipt #: 1364092
Requestor:
ALESSI & KOENIG LLC
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

APN: **125-15-811-013** TSN **WR-7119-A**

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On **November 28, 2012**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **December 20, 2011**, as instrument number **0001246**, of the official records of **Clark** County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **7119 Wolf Rivers Ave, Las Vegas, NV 89131.** The owner of the real property is purported to be: **Cristela Perez**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay tbe remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$11,656.07.** Payment must be in made in the form of certified funds.

Date: **October 10, 2012**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association

EXHIBIT 15

EXHIBIT 15

CRISTELA PEREZ
7119 WOLF RIVERS AVE

LAS VEGAS, NV 89131-0139

CRISTELA PEREZ
17450 BURBANK BLVD, #104

ENCINO, CA 91316

CMG MORTGAGE INC.
3160 CROW CANYON ROAD, SUITE 240

SAN RAMON, CA 94583

MERS
PO BOX 2026

FLINT, MI 48501-2026

U.S. BANK, NATIONAL ASSOCIATION N.D.
4325 - 17TH AVENUE S.W.

FARGO, ND 58103

U.S. BANK TRUST COMPANY, N.A.
111 S.W. FIFTH AVENUE,,SUITE 3500

PORTLAND, OR 97204

FIRST AMERICAN
1228 EUCLID AVENUE, 4TH FLOOR

CLEVELAND, OH 44115

APACHE ELECTRIC
4300 N. PECOS #25

LAS VEGAS, NV 89115

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE

LAS VEGAS, NV 89101

CitiMortgage, Inc
2100 Alt. 19 North

Palm Harbor, FL 34683

CitiMortgage, Inc
1000 Technology Drive

O'Fallon, MO 63368

M. E. Wileman
2860 Exchange Blvd, #100

Southlake, TX 76092

CitiMortgage, Inc.
4050 Regent Blvd

Irving, TX 75063

U.S. Bank National Assn, Trustee for Stanwi
1610 E. St. Andrews Place, Suite B150

Santa Ana, CA 92705

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

LAS VEGAS, NV 89104

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CMG MORTGAGE INC.
3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CA 94583

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4325 - 17TH AVENUE S.W.
FARGO, ND 58103

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U.S. BANK TRUST COMPANY, N.A.
111 S.W. FIFTH AVENUE, SUITE 3500
PORTLAND, OR 97204

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400 E. STEWART AVE
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2100 Alt. 19 North
Palm Harbor, FL 34683

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CitiMortgage, Inc
1000 Technology Drive
O'Fallon, MO 63368

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M. E. Wileman
2860 Exchange Blvd, #100
Southlake, TX 76092

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CitiMortgage, Inc.
4050 Regent Blvd
Irving, TX 75063

PS Form 3800, August 2006 See Reverse for Instructions

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Street, Apt. No. or PO Box No.
City, State, ZIP

U.S. Bank National Assn. Trustee for Stanwi
1610 E. St. Andrews Place, Suite B150
Santa Ana, CA 92705

PS Form 3800, August 2006 See Reverse for Instructions

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

WESTRIDGE STA LAS VEGAS
OCT 25 2012
USPS

Postmark Here

Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 205
LAS VEGAS, NV 89104

PS Form 3800, August 2006 See Reverse for Instructions

7012 2210 0001 3294 2130

NOTS MAILINGS

WY000694

EXHIBIT 16

EXHIBIT 16

October 31, 2012

To whom it may concern,

I am writing this letter to update you as to the status of my husbands and my situation and our intention and renewed ability to reinstitute a payment arrangement with the Wyeth Ranch HOA.

As my husband has said, he has just started back to work on a limited, part time basis since the evidenced injury he sustained while working last fall. He had spine surgery but has now been released to begin work again. I have not worked since December of 2011 and, although it has been a struggle, with the limited amount my husband received from workers comp we managed to stay afloat barely. Now that he is getting back to work we are looking forward to returning to increased income and very much would like to get back on track with our Home Owners Association.

Also, due to the restrictions imposed upon him by the neurosurgeon – no bending, lifting more then 10-15 lbs, no pulling, no pushing, no crawling, no kneeling etc…he has fallen behind in some of his normal duties around our home and with the decrease in cash flow, it was impossible to hire the necessary help. But as stated before, we are optimistic now as he seems to be doing much better physically which will allow him to get back to a normal work routine and normal income.

As he stated in his email we are happy to start making $300.00 per month payments on the first of the month starting now in November and to continue the first of every month continuously. If the HOA is agreeable to this and willing to cease the trustee sale please respond and let us know as soon as possible so that we may make our payment.

We look forward to your response.

Sincerely,

Cristela Perez
7119 Wolf Rivers Ave

EXHIBIT 17

EXHIBIT 17

Inst #: 201307310001002
Fees: $17.00
N/C Fee: $0.00
07/31/2013 09:01:04 AM
Receipt #: 1714716
Requestor:
ALESSI & KOENIG LLC
Recorded By: RNS Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

APN: **125-15-811-013** TSN **11632**

NOTICE OF TRUSTEE'S SALE

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

4

NOTICE IS HEREBY GIVEN THAT:

On **August 28, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **December 20, 2011**, as instrument number **0001246**, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139.** The owner of the real property is purported to be: **CRISTELA PEREZ**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$14,090.80.** Payment must be in made in the form of certified funds.

Date: **July 11, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Wyeth Ranch Community Association

EXHIBIT 18

EXHIBIT 18

Brittney O'Connor

From: Samantha Michaels
Sent: Wednesday, August 28, 2013 9:18 AM
To: Brittney O'Connor; Michele Weaver
Subject: RE: 7119 Wolf Rivers – Wyeth Ranch
Importance: High

Hi Brittney.

Michele just received confirmation that they do NOT want to postpone.

From: Brittney O'Connor
Sent: Wednesday, August 28, 2013 9:07 AM
To: Michele Weaver; Samantha Michaels
Subject: FW: 7119 Wolf Rivers

Hello,

This property has a sale date set for TODAY at 10 am. There are 3 postponements remaining. Unless otherwise directed by the board we will use all postponements then go to sale on the 3rd date set. Please advise. The mortgage company would like an extension so they can pay off the account.

Thank you,

Brittney O'Connor
Accounting Clerk
CAMCO
2009 CAI Management Company of the Year
702-531-3382 - Office
702-531-3392 - Fax
www.camconevada.com

From: Naomi Eden [mailto:naomi@alessikoenig.com]
Sent: Wednesday, August 28, 2013 9:01 AM
To: Brittney O'Connor
Subject: RE: 7119 Wolf Rivers

Three more left.

From: Brittney O'Connor [mailto:Brittney.oconnor@camconevada.com]
Sent: Wednesday, August 28, 2013 8:59 AM

To: Naomi Eden
Subject: RE: 7119 Wolf Rivers

Naomi,

How many postponements are there?

Brittney O'Connor
Accounting Clerk
CAMCO
2009 CAI Management Company of the Year
702-531-3382 - Office
702-531-3392 - Fax
www.camconevada.com

From: Naomi Eden [mailto:naomi@alessikoenig.com]
Sent: Wednesday, August 28, 2013 8:49 AM
To: Brittney O'Connor; Yvette Sauceda
Subject: 7119 Wolf Rivers

Good morning,

This one is set for sale today. The mortgage company is asking for an extension so they can get it paid off. Is it ok to postpone?

Thanks,

Naomi Eden, J.D.

Alessi & Koenig, LLC
www.alessikoenig.com

Our office closes at 2 pm on Fridays.

Las Vegas Office
9500 W. Flamingo Road, Suite. 205
Las Vegas, NV 89147
Telephone: (702) 222-4033
Facsimile: (702) 222-4043

Reno Office
1135 Terminal Way, Suite 106A
Reno, NV 89502
Telephone: (775) 626-2323
Facsimile: (775) 222-4043

Los Angeles Office
28914 Roadside Dr., Suite. F-4
Agoura Hills, CA 91301
Telephone: (818) 735-9600
Facsimile: (818) 735-0096

Please be advised that Alessi & Koenig, LLC, may be acting as a debt collector attempting to collect a debt and any information you provide will be used for that purpose.

CONFIDENTIALITY NOTICE: The information contained in this electronic transmission, is privileged and confidential and is intended only for the recipient(s) named above. If the reader of this message is not the recipient(s) named above, or an authorized agent of such recipient(s) responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this electronic transmission in error. Any review, dissemination, distribution, or copying of this electronic transmission including any attachments is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately. Thank you.

FEDERAL TAX ADVICE DISCLAIMER - We are required by U. S. Treasury Regulations to inform you that, to the extent this message includes any federal tax advice, this message is not intended or written by the sender to be used, and cannot be used, for the purpose of avoiding federal tax penalties.

EXHIBIT 19

EXHIBIT 19

Inst #: 201309090001816
Fees: $17.00 N/C Fee: $0.00
RPTT: $1568.25 Ex: #
09/09/2013 10:59:56 AM
Receipt #: 1783390
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)

SUBSCRIBED and SWORN before me AUG 2 9 2013, Ryan Kerbow

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

(Signature)

TAB 35

Electronically Filed
8/14/2017 9:26 PM
Steven D. Grierson
CLERK OF THE COURT

OMSJ
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants.	Case No.: A-13-689461-C Dept. No. VII Consolidated with: A-16-742327-C
AND ALL RELATED CLAIMS AND ACTIONS	

Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC and Wyeth Ranch Community Association's Motions for Summary Judgment

Date of Hearing: August 29, 2017
Time of Hearing: 9:00 a.m.

INTRODUCTION

Although SFR Investments Pool 1, LLC and Wyeth Community Association's motions for summary judgment raise multiples issues, there are three issues on which this Court should focus:

1. Payment of the superpriority portion of the lien. Under Nevada law, an association's lien has superpriority and subpriority portions. If the superpriority portion is satisfied, an association's foreclosure does not extinguish a

first deed of trust. Here, the homeowner, Cristela Perez, paid $3,230 after Wyeth instituted an action to enforce its lien. Do Perez's payments create a genuine issue of material fact that prevent this Court from granting summary judgment?

2. Commercial reasonableness. Under Nevada law, this Court retains jurisdiction to set aside a foreclosure that garners a grossly inadequate price and is tainted by fraud, oppression, or unfairness. Here, SFR paid a mere 5.8% of the fair market value of the home. In addition, Marchai, B.T. had no notice of the sale, Marchai's servicer learned of the sale less than twenty-four hours before the sale, Wyeth refused to postpone the sale even though Marchai's servicer offered to satisfy the lien, Wyeth's foreclosure did not comply with the statute, Wyeth littered the record with multiple notices spanning a five-year period, and Perez paid $3,230 after Wyeth instituted an action to enforce its lien. Do genuine issues of material fact concerning the fairness of the sale prevent this Court from granting summary judgment?

3. Bona fide purchaser. Under Nevada law, SFR bears the burden of establishing that it had no notice of Marchai's prior interest in the property. Here, the five-year history of Wyeth's foreclosure suggests payment by Perez of the superpriority portion of the lien. Do genuine issues of material fact preclude this Court from concluding that SFR is a bona fide purchaser?

In 2016, this Court previously confronted each of these issues in response to Marchai and SFR's competing motions for summary judgment. After extensive briefing and a lengthy hearing, this Court issued a 24-page Decision and Order, in which it concluded that genuine issues of material fact prevent this Court from deciding whether: (1) Perez's payments satisfied the superpriority portion of the lien; (2) the sale was unfair; or (3) SFR was a bona fide purchaser. Neither SFR nor Wyeth have provided this Court with any previously undisclosed evidence or new Nevada law that should disturb this Court's prior ruling. Hence this Court should deny the motions.

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STATEMENT OF UNDISPUTED FACTS

A. In 2004, Perez purchased property in Las Vegas.

In July 2004, Perez purchased the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 for $457,545.00.[1] The property is located in the Wyeth Ranch community.[2] To purchase the property, Perez entered into two loans with Countrywide Home Loans, Inc.—one for $366,000.00 and a second for $68,631.00—which Countrywide secured through the recording of two deeds of trust.[3]

In October 2005, Perez refinanced her loans by entering into a promissory note with CMG Mortgage, Inc. in the amount of $442,000.00.[4] CMG Mortgage secured the note by recording a deed of trust against the property.[5] Because CMG Mortgage's loan satisfied the prior loans, Countrywide reconveyed its deeds of trust.[6]

In January 2006, Perez obtained a home equity line of credit from U.S. Bank, N.A.[7] U.S. Bank secured its loan by also recording a deed of trust against the property.[8]

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[1] See Decl. of David J. Merrill ¶¶ 2–6, attached to the App. of Exs. to Marchai, B.T.'s Mot. for Summ. J. as Ex. 1 (Jan. 14, 2016); Aff. of David Alessi as Custodian of Records for Alessi & 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.

[2] *See id.*

[3] *See* Deed of Trust (July 15, 2004), attached to the App. as Ex. 2-B; Deed of Trust at 1–3 (July 21, 2004), attached to the App. as Ex. 2-C.

[4] *See* Decl. of Chaim Freeman ¶ 2, attached to the App. as Ex. 3; *see also* InterestFirst Adjustable Rate Note (Oct. 19, 2005), attached to the App. as Ex. 3-A.

[5] Deed of Trust (Nov. 9, 2005), attached to the App. as Ex. 2-D.

[6] *See* Merrill Decl. ¶¶ 7–8; *see also* Substitutions of Trustee & Full Reconveyances, attached to the App. as Exs. 1-A & 1-B.

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

[8] *See id.*

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B. In September 2008, Wyeth instituted an action to enforce its lien because Perez didn't pay her assessments.

Wyeth collected dues on the first day of each quarter.[9] In 2008, its dues were $420.00 per quarter.[10] Perez didn't timely pay dues to Wyeth on January 1 or April 1.[11] But on April 16, Perez made a $507.60 payment.[12] That payment satisfied the January 2008 dues, plus the January and February late fees.[13] But Perez then failed to make the July payment.[14] Hence on September 30, 2008, Alessi & Koenig, LLC, an agent Wyeth hired to collect assessments, instituted an action to enforce Wyeth's lien by sending Perez a notice of lien.[15] According to the notice, Perez owed $1,425.17.[16] Alessi recorded the notice on October 8, 2008.[17]

Because Perez was not current on her assessments, in January 2009, Alessi recorded a notice of default.[18] According to the notice, Perez owed $3,096.46.[19] Alessi mailed the notice by certified mail to Perez, CMG Mortgage, and others.[20]

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[9] *See* Wyeth Ranch Homeowners Ass'n Statement to Cristela Perez (Sept. 17, 2008), attached to the App. as Ex. 2-E.

[10] *See id.*

[11] *See id.*

[12] *See* Resident Transaction Detail (Apr. 9, 2013), attached to the App. as Ex. 2-F.

[13] *See id.*

[14] *See* App. at Ex. 2-E.

[15] *See* Notice of Delinquent Assessment Lien (Sept. 30, 2008), attached to the App. as Ex. 2-G.

[16] *See id.*

[17] *See* Merrill Decl. ¶ 9; *see also* Notice of Delinquent Assessment (Lien), attached to the App. as Ex. 1-C.

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

[19] *See id.*

[20] *See* Certified Mail Receipts (Jan. 7, 2009), attached to the App. as Ex. 2-I.

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Finally, in January 2010, Alessi recorded a notice of sale. According to the notice, Perez owed $6,964.25.[21] Alessi mailed the notice by certified mail to Perez, CMG Mortgage, the Ombudsman, and others.[22]

C. After it instituted an action to enforce its lien, Wyeth accepted payments from Perez.

Despite instituting foreclosure proceedings in 2008, by January 2010 Wyeth had still not foreclosed. Instead, Wyeth accepted payments from Perez. For example, in February 2010, Alessi sent a demand to Perez and her husband, Robert Rose, in which Alessi claimed that Perez owed Wyeth $6,977.61.[23] In response, Rose paid $900.00.[24]

Following its receipt of the payment, in April 2010, Alessi sent Perez a letter proposing a payment plan.[25] The payment plan required Perez to pay $690.78 per month from April 2010 through December 2010.[26] Perez did not make the payments proposed by the plan. But she did continue to make payments. For example, in May 2010, Perez made a $300.00 payment to Wyeth for past due assessments.[27]

Despite its receipt of the payments, in July 2010, Wyeth continued with its foreclosure. Alessi sent Perez a letter that demanded $19,0721.21 from Perez.[28] In response, Perez made another $805.00 in assessment payments between August

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[21] *See id.*

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

[23] *See* Facsimile Cover Letter from Alessi to Rose & Perez (Feb. 3, 2010), attached to the App. as Ex. 2-L.

[24] *See* MoneyGram Money Order from Rose to Alessi (Feb. 12, 2010), attached to the App. as Ex. 2-M.

[25] *See* letter from Alessi to Perez (Apr. 13, 2010), attached to the App. as Ex. 2-N.

[26] *See id.*

[27] *See* Western Union Money Order (May 11, 2010), attached to the App. as Ex. 2-O.

[28] *See id.*

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2010 and March 2011. In August 2010, Perez paid $250.00.[29] Perez followed that payment with a $220.00 payment in September.[30] In November, Perez paid $175.00.[31] Finally, in March 2011, Perez paid $160.00.[32]

In March 2011, Alessi rescinded the January 14 notice of sale.[33] But that same month, Alessi recorded another notice of sale based upon the January 2009 notice of default.[34] Alessi mailed the notice by certified mail to Perez, CMG Mortgage, the Ombudsman and others.[35]

In July 2011, Alessi sent Perez a letter claiming that she breached her payment plan obligations and that Alessi would continue the foreclosure.[36] In response to the letter, Perez paid Wyeth $165.00.[37]

On October 1, 2011, Perez defaulted under the terms of her loan from CMG Mortgage.[38]

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[29] *See* Check No. 3395 from Perez to Alessi (Aug. 2, 2010), attached to the App. as Ex. 2-Q.

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

[31] *See* Western Union Money Order from Perez to Alessi (Nov. 30, 2010), attached to the App. as Ex. 2-S.

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

[33] *See* Merrill Decl. ¶ 13; *see also* Rescission of Notice of Trustee's Sale (Mar. 9, 2011), attached to the App. as Ex. 1-D.

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

[35] Certified Mail Receipts (Apr. 4, 2011), attached to the App. as Ex. 2-U.

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

[37] *See* Personal Money Order from Perez to Alessi (Aug. 4, 2011), attached to the App. as Ex. 2-W.

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

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D. In 2011, Wyeth recorded new notices (without rescinding any prior notices), but continued to accept payments from Perez.

In November 2011, Alessi sent Perez a letter by first class mail to the property, to which Alessi attached a second notice of lien.[39] Alessi sent that same letter to Perez at the property by certified mail.[40] But Alessi did not send the letter to Perez's mailing address as it had done with the prior notices.[41] The notice claims a total amount due of $9,296.56.[42] On December 20, 2011, Alessi recorded the notice, but did not release or rescind the notice of lien it recorded in 2008.[43]

In January 2012, Alessi mailed Perez a letter demanding that Perez pay Wyeth $9,865.06 in past due assessments.[44]

On February 28, 2012, Alessi recorded a second notice of default, but didn't release or rescind the notice it recorded in January 2009.[45] According to the notice Perez owed $10,625.06 in unpaid assessments.[46] The notice states that Perez first defaulted on her obligations to Wyeth in January 2008.[47] Alessi mailed the notice by certified mail to both the property and Perez's mailing address, but Alessi provided no evidence that it mailed the notice to CMG Mortgage.[48] In addition, it appears

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[39] *See* Lien Letter from Alessi to Perez (Nov. 29, 2011), attached to the App. as Ex. 2-X.

[40] *See id.*

[41] *Compare* App. at Ex. 2-X *with* App. at Ex. 2-U.

[42] *See* App. at Ex. 2-X.

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

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

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

[46] *See id.*

[47] *See id.*

[48] *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.

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that Alessi served only Perez by certified mail.[49] In response to the notice, in March 2012, Perez paid $300.00.[50] In May 2012, Rose paid $295.00.[51]

E. In May 2012, CMG Mortgage assigned its interest in its deed of trust to CitiMortgage and endorsed the note.

On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the nominee for CMG Mortgage, assigned CMG Mortgage's deed of trust to CitiMortgage, Inc.[52] CMG Mortgage also endorsed the note payable to the order of CitiMortgage.[53] On June 5, 2012, CitiMortgage recorded a Corporate Assignment of Deed of Trust.[54]

F. In July 2012, Wyeth continued its foreclosure, and Perez continued to make payments.

In July 2012, Alessi sent Perez a letter demanding $11,371.07.[55] Alessi claims that it sent the letter pursuant to the notice of lien recorded in December 2011, and the notice of default recorded nearly three years earlier in January 2009.[56] In response to the notice, in July 2012, Perez paid $165.00.[57]

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[49] *See id.*

[50] *See* Personal Money Order (Mar. 19, 2012), attached to the App. as Ex. 2-CC.

[51] *See* Personal Money Order (May 7, 2012), attached to the App. as Ex. 2-DD.

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

[53] *See* App. at Ex. 3-A.

[54] *See* App. at Ex. 3-C.

[55] *See* Pre-Notice of Trustee Sale Notification (July 18, 2012), attached to the App. as Ex. 2-EE.

[56] *See id.*

[57] *See* Western Union Money Order from Perez & Rose to Alessi (July 26, 2012), attached to the App. as Ex. 2-FF.

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G. In July 2012, CitiMortgage assigned its interest in the deed of trust, and endorsed the note, to U.S. Bank.

In July 2012, CitiMortgage assigned the deed of trust that it obtained from CMG Mortgage to U.S. Bank, as trustee for Stanwich Mortgage Loan Trust, Series 2012-6.[58] CitiMortgage also signed an allonge, endorsing the note payable to U.S. Bank.[59] On July 26, 2012, U.S. Bank recorded the assignment.[60]

In October 2012, Carrington Mortgage Services, U.S. Bank's loan servicer, sent Perez a Notice of Intent to Foreclose.[61] According to the notice, Perez defaulted on the loan on October 1, 2011 and owed U.S. Bank $36,281.60.[62]

H. In October 2012, Alessi recorded yet another notice of sale.

In October 2012, Alessi prepared yet another notice of sale.[63] According to the notice, Perez owed $11,656.07.[64] Alessi served Perez with the notice by posting a copy on the property.[65] Alessi also posted the notice for twenty consecutive days at three public places in the county, but failed to state the date on which he made the posting.[66] Alessi mailed the notice by certified mail to Perez at the property and her mailing address, and to U.S. Bank and the Ombudsman.[67] But Alessi did not send the notice by first class mail.[68] Finally, on October 31, 2012, Alessi recorded the

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[58] *See* Assignment of Mortgage (July 26, 2012), attached to the App. as Ex. 2-GG.

[59] *See* App. at Ex. 3-A.

[60] *See* App. at Ex. 2-GG.

[61] *See* App. at Ex. 3-E.

[62] *See id.*

[63] *See* Notice of Trustee's Sale (Oct. 10, 2012), attached to the App. as Ex. 2-HH.

[64] *See id.*

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

[66] *See id.*

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

[68] *See id.*

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notice, but did not rescind the notice of sale it recorded on March 29, 2011.[69] In response to the notice, Perez made a $300.00 payment.[70]

I. In March 2013, U.S. Bank assigned its interest in the deed of trust to Marchai, but did not send the servicing file until July.

On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to Marchai, B.T., a Nevada business trust.[71] Contemporaneously with the assignment, U.S. Bank executed an allonge endorsing the note to Marchai.[72] Even though Marchai acquired its interest in the note and deed of trust in March 2013, U.S. Bank did not transfer the servicing information for the loan to Marchai's loan servicer until July 2013.[73] During this time U.S. Bank did not inform Marchai of Wyeth's lien or its efforts to foreclose upon that lien.[74]

J. In July 2013, Alessi recorded *yet another* notice of sale.

In July 2013, Alessi executed yet another notice of sale.[75] The notice claimed that Perez owed $14,090.80 in unpaid assessments.[76] Alessi served the notice by certified mail upon Perez at the property and her mailing addresses and upon the Ombudsman, but did not serve anyone by first class mail.[77] Alessi did not serve

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

[70] *See* Check No. 2166 from Perez to Alessi (Nov. 13, 2012), attached to the App. as Ex. 2-LL.

[71] *See* Freeman Decl. ¶¶ 1, 6; *see also* Assignment of Deed of Trust (Aug. 12, 2013), attached to the App. as Ex. 3-F.

[72] *See* App. at Ex. 3-A.

[73] *See* Decl. of Scott Sawyer ¶ 2, attached as Ex. 1 to Marchai, B.T.'s Opp'n to SFR Invs. Pool 1, LLC's Mot. for Summ. J. (Feb. 3, 2016).

[74] *See id.*

[75] *See* Notice of Trustee's Sale (July 11, 2013), attached to the App. as Ex. 5-C.

[76] *See id.*

[77] *See* Notice of Trustee's Sale Mailings (July 29, 2013), attached to the App. as Ex. 2-MM.

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Marchai.[78] Nevada Legal Support Services, LLC posted the notice at three different public places in the county.[79] It also posted a copy of the notice on the property.[80] That same day, Alessi recorded the notice, but didn't rescind the notice recorded in October 2012.[81] Nevada Legal News published the notice on August 2, 9, and 16.[82]

K. Marchai's servicer learned of the foreclosure the day before the sale and asked for a postponement, which Wyeth denied.

Because of U.S. Bank's delay in sending the servicing file, the assignment of the deed of trust from U.S. Bank to Marchai was not recorded until August 12, 2013; two weeks before Wyeth's foreclosure.[83] Marchai had no knowledge of Wyeth's lien or foreclosure.[84] Instead, Peak Loan Servicing, Marchai's servicer, learned of the sale late in the afternoon on August 27, less than twenty-four hours before the sale.[85] Upon learning of the sale, Peak contacted Alessi and asked for a postponement so that it could pay the lien.[86]

On the morning of the sale, Alessi sent an e-mail to Brittney O'Connor, the accounting clerk at Complete Association Management Company, who manages Wyeth's accounts, in which she notes that "[t]he mortgage company is asking for an

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[78] *See id.*

[79] *See* Aff. of Posting Notice of Sale (July 30, 2013), attached to the App. as Ex. 2-NN.

[80] *See* Aff. of Service (July 31, 2013), attached to the App. as Ex. 2-OO.

[81] *See* Notice of Trustee's Sale (July 31, 2013), attached to the App. as Ex. 2-PP.

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

[83] *See* App. at Ex. 3-F.

[84] *See* Decl. of Chaim Freeman ¶ 2, attached as Ex. 2 to Marchai's Opp'n to SFR's Mot. for Summ. J.

[85] *See* Sawyer Decl. ¶ 4.

[86] *See* Sawyer Decl. ¶ 5.

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extension so they can get it paid off."[87] Alessi asked O'Connor if it could postpone the sale.[88] O'Connor responded by asking how many oral postponements Wyeth could make.[89] Alessi advised O'Connor that Wyeth still had three postponements left.[90]

O'Connor then sent an e-mail to her manager, in which she communicated that Wyeth had a sale set for 10:00 am, that Wyeth could still postpone the sale three times, and that "[t]he mortgage company would like an extension so they can pay off the account."[91] In her e-mail, O'Connor recognized the reasonableness of Marchai's request as she expressly noted that she "will use all postponements then go to sale on the 3rd sale date set," "[u]nless otherwise directed by the board."[92] According to the last e-mail in the chain, Camco "received confirmation" that Wyeth did "NOT want to postpone."[93] Thus, Wyeth refused to postpone the sale so that Marchai could pay off the account. Alessi proceeded with the foreclosure. With mere hours (or minutes) remaining before the sale, there was not much Marchai could do.

L. On August 28, 2013, Alessi conducted the sale.

On August 28, 2013, Alessi conducted a sale.[94] At the sale, SFR submitted the winning bid of $21,000.[95] According to Alessi, Perez owed $14,677.80 in assessments

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[87] *See* Decl. of David J. Merrill ¶¶ 4–5, attached as Ex. 3 to Marchai's Opp'n to SFR's Mot. for Summ. J.; *see also* email from Eden to O'Connor (Aug. 28, 2013), attached as Ex. 3-A to Marchai's Opp'n to SFR's Mot. for Summ. J.

[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

[92] *See id.*

[93] *See id.* (emphasis in the original).

[94] *See* Trustee's Deed Upon Sale (Sept. 9, 2013), attached to the App. as Ex. 2-RR.

[95] *See id.*

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at the time of the foreclosure.[96] On the day of the sale, the property had a fair market value of $360,000.[97] Hence SFR bid a mere 5.8% of the fair market value of the property.[98]

Despite conducting the sale on August 28, SFR did not pay for the property until the next day.[99]

STATEMENT OF DISPUTED FACTS

In their motions, SFR and Wyeth make representations that certain "facts" are undisputed.[100] Despite their representations, the following "facts" that SFR and Wyeth present as "undisputed" are very much in dispute:

1. SFR improperly refers to Marchai as the Bank.

In the motion, SFR refers to Marchai as the Bank.[101] Marchai is not a *bank*. Instead, it is a Nevada business trust.[102] Thus, to categorize Marchai as a bank is misleading and untrue.

2. SFR claims that the July 2013 notice of sale "was mailed to all requisite parties, including the Bank."

In its motion, SFR asserts that the notice of sale "was mailed to all requisite parties, including the Bank."[103] Again, SFR's representation is false. The certified mail receipts produced by Alessi on which SFR relies show *no* mailing to Marchai.[104]

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96 *See id.*

97 *See* Decl. of David J. Merrill ¶ 2, attached as Ex. 1; *see also* Marchai, B.T.'s Initial Expert Disclosure (Apr. 25, 2017), attached as Ex. 1-A.

98 *Compare id. with* App. at Ex. 2-RR.

99 *See* Ex. B-2 to SFR Invs. Pool 1, LLC's Mot. for Summ. J. (July 21, 2017).

100 *See id.* at 4:3–6:16; Def. Wyeth Ranch Cmty. Ass'ns Mot. for Summ. J. at 4:20–7:4 (July 21, 2017).

101 *See, e.g.*, SFR's Mot. at 5:5–6.

102 *See* Freeman Decl. ¶ 1.

103 *See* SFR's Mot. at 5:5–6.

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3. SFR and Wyeth incorrectly imply that SFR paid for the property at the sale.

In its motion, SFR states that SFR placed the highest bid at the sale and "paid this amount."[105] Again, SFR states that its "manager showed up at the publicly advertised sale, was the highest bidder at an auction with multiple bidders, and *paid $21,000.00* on behalf of SFR."[106] Likewise, Wyeth states that on August 28, 2013 the association sold the property to SFR for $21,000.[107] SFR and Wyeth's representations are misleading. Although SFR may have attended the sale and submitted the highest bid, the evidence demonstrates that SFR didn't submit a cash bid. Instead, Alessi allowed SFR to submit payment the day after the sale. The cashier's check SFR admits that it used to pay for the property is dated August 29, 2013.[108] The sale occurred on August 28.[109] Hence any representation that SFR attended the sale on August 28, submitted the highest cash bid, and paid for the property is false.

4. Wyeth's statement that Perez defaulted in her assessment payments in 2007 is false.

Wyeth's motion claims that after purchasing the property Perez "defaulted on her quarterly homeowners' assessments."[110] Wyeth then claims that because Perez defaulted on her assessments, Wyeth recorded a "notice of delinquent violation lien" in November 2007.[111] Wyeth recorded the November 2007 notice because of

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[104] *See id.* at Ex. A-7.

[105] *See id.* at 5:17.

[106] *See id.* at 5:18–19 (emphasis added).

[107] *See* Wyeth's Mot. at 7:1–2.

[108] *See* SFR's Mot. at Ex. B-2.

[109] *See* App. at Ex. 2-RR.

[110] *See* Wyeth's Mot. at 4:27–28.

[111] *See id.* at 5:1–3.

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violations, not failure to pay assessments.[112] The undisputed facts show that Perez did not default in her assessments until January 2008.[113]

ARGUMENT

A. Standards for a motion for summary judgment.

The standard for summary judgment is well-established. "Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law."[114] "When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party."[115]

B. Neither SFR nor Wyeth are entitled to summary judgment because genuine issues of material fact exist concerning whether Perez satisfied the superpriority portion of Wyeth's lien.

In *SFR Investments Pool 1 v. U.S. Bank, N.A.*, the Nevada Supreme Court concluded that the superpriority portion of an association's lien consists "of the *last nine months* of unpaid HOA dues."[116] The court didn't say that the superpriority portion of the lien consists of *any* nine months of HOA dues, but specified that it is the "*last* nine months."[117]

But the court's opinion left open the question of the last nine months from when? NRS 116 and *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.* answer the question. NRS 116 limits the superpriority portion of an association's lien to the "9 months immediately preceding institution of an action

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[112] *See id.* at Ex. 3.

[113] *See id.* at Ex. 2.

[114] *C. Nicholas Pereos, Ltd. v. Bank of Am., N.A.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015).

[115] *Id.*

[116] 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014) (emphasis added).

[117] *Id.* (emphasis added).

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to enforce the lien."[118] An association institutes an action to enforce the lien through the service of a notice of delinquent assessment.[119] The superpriority portion of the lien does not include collection fees, late fees, interest, or foreclosure costs.[120] Thus, the superpriority portion of an association's lien includes no more than the delinquent association dues incurred for the nine months before the association serves the notice of delinquent assessment.[121]

Here, Wyeth served the notice of delinquent assessment on September 30, 2008. Perez had only two quarterly charges for association dues immediately preceding September 30, 2008: April 1 and July 1. Therefore, the past due quarterly assessments from July 1 and April 1 are the only ones entitled to superpriority treatment.[122] Those charges total $840; $420 per quarter. But after Wyeth instituted an action to enforce its lien, Perez paid Wyeth $3,230. Hence if the $3,230 is applied to the superpriority portion of the lien, Perez satisfied the lien and SFR took subject to Marchai's deed of trust.

Wyeth argues that Perez was responsible for the entire amount of Wyeth's lien and Wyeth could foreclose unless Perez paid every dollar.[123] But Wyeth misses the point. Of course Wyeth is entitled to pursue Perez for the full payment of its lien. But only a limited portion of the lien has priority over a first deed of trust. Wyeth does not argue, nor does it provide any authority to suggest, that a

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[118] NRS § 116.3116(2).

[119] *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226, 231 (2017).

[120] *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 70 (2016).

[121] *See* NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. Adv. Op. 3, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. Adv. Op. 35, 373 P.3d at 70.

[122] *See* NRS § 116.3116(2); *SFR Invs. Pool 1, LLC*, 130 Nev. Adv. Op. 75, 334 P.3d at 411; *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. Adv. Op. 3, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. Adv. Op. 35, 373 P.3d at 70.

[123] *See* Wyeth's Mot. at 14:7–24.

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homeowner cannot pay the superpriority portion of the lien without satisfying the entire lien.[124] Thus, the issue is not whether Perez paid the entire amount of the lien, but whether Perez's payments satisfied the superpriority portion of the lien.

In its Decision and Order, this Court previously concluded that genuine issues of material fact precluded summary judgment concerning the application of Perez's payments.[125] Specifically, the Court concluded that Perez may have intended for her payments to satisfy the superpriority portion of the lien, but SFR may be able to prove otherwise.[126] Neither SFR nor Wyeth have provided this Court with any new facts or law that calls this Court's prior ruling into doubt. Thus, this Court should deny the motions.

C. Genuine issues of material fact preclude this Court from determining the reasonableness of Wyeth's foreclosure.

The Court should deny SFR and Wyeth's motions for summary judgment because genuine issues of material fact preclude this Court from concluding that Wyeth's sale was reasonable. First, SFR paid a grossly inadequate price as a matter of law; a mere 5.8% of the fair market value of the property. Second, the sale is characterized by unfairness.

1. *SFR's purchase price—a mere 5.8% of the fair market value of the property—is grossly inadequate as a matter of law.*

Nevada law requires that association foreclosure sales be commercially reasonable.[127] A sale price of less than 20% of fair market value of a property is grossly inadequate as a matter of law.[128] In *Unruh v. Streight*, the Nevada Supreme Court defined fair market value as "the price which a purchaser, willing but not

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[124] *See id.*

[125] *See* Decision & Order at 19:22–21:19 (Mar. 22, 2016).

[126] *See id.* at 21:6–16.

[127] *See Golden v. Tomiyasu*, 79 Nev. 503, 514–15, 387 P.2d 989, 994–95 (1963).

[128] *Shadow Wood Homeowners Ass'n*, 132 Nev. Adv. Op. 5, 366 P.3d at 1112–13.

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obliged to buy, would pay an owner *willing but not obliged to sell*, taking into consideration all the uses to which the property is adapted and might in reason be applied."[129] The fair market value of property is different from the "forced sale" value which is achieved through foreclosure.[130]

Here, the $21,000 SFR paid for the property was grossly inadequate because it represented a mere 5.8% of $360,000, the fair market value at the time of the sale. Thus, SFR paid a grossly inadequate price for the property as a matter of law.[131]

2. ***A grossly inadequate sales price coupled with a slight showing of unfairness or irregularity, is sufficient grounds to set aside an association's foreclosure.***

Once the Court determines that the association garnered a grossly inadequate sales price, it may then determine whether the sale was accompanied by fraud, oppression, or unfairness.[132] Where the price inadequacy "is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought."[133] In other words, if great inadequacy exists, "slight circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient to justify setting it aside."[134] Here, genuine issues of material fact preclude this Court from entering summary judgment because the evidence suggests unfairness in the sale for several reasons.

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[129] *Unruh v. Streight*, 96 Nev. 684, 686, 615 P.2d 247, 249 (1980) (emphasis added).

[130] Restatement (Third) of Property § 8.3 cmt. b.

[131] *See Shadow Wood Homeowners Ass'n*, 132 Nev. Adv. Op. 5, 366 P.3d at 1112–13.

[132] *See Zyzzx2 v. Dizon*, No. 2:13-CV-1307-JCM-(PAL), 2016 WL 1181666 (D. Nev. Mar. 25, 2016).

[133] *Golden*, 79 Nev. at 515, 387 P.2d at 995 (internal citations omitted).

[134] *Zyzzx2*, at *4 (citing *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907)).

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First, Marchai's lack of notice of the sale renders the sale unfair. The Nevada Supreme Court's opinion in *The Bank of New York Mellon v. Fort Apache Homes, Inc.* is instructive.[135] In *Fort Apache*, the district court concluded that the recitals in the foreclosure deed were "conclusive proof" that the association's sale extinguished the lender's deed of trust.[136] The Nevada Supreme Court reversed.[137] The court concluded that the district court's decision conflicted with *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*[138] In addition, the court concluded that because the undisputed evidence demonstrated that the lender was not mailed the notice of sale, "summary judgment was improper because this evidence could be sufficient to establish that the HOA foreclosure was affected by 'fraud, unfairness, or oppression' so as to potentially justify setting aside the sale."[139] That is precisely the issue here. The undisputed record demonstrates that Alessi did not mail Marchai the notice of sale. Hence summary judgment is inappropriate as this evidence alone may be sufficient to establish unfairness.[140]

Second, Wyeth's refusal to accept Marchai's reasonable request to postpone the sale to allow Marchai to pay the lien renders the sale unfair. Although Marchai acquired the note in March 2013, Marchai's loan servicer did not receive the transfer of the servicing loan from the prior servicer until July 2013. Hence the assignment of the deed of trust was not recorded until August 13, after the notice of sale recorded, and a little more than two weeks before Wyeth conducted the sale. Marchai did not learn of the sale until after it occurred. And Marchai's servicer did

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135 No. 69584, 2017 WL 1397375 (Nev. Apr. 14, 2017).

136 *Id.* at *1.

137 *Id.*

138 *Id.*

139 *Id.*

140 *See id.*

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not learn of the sale until the afternoon before the sale. Once it learned of the sale, Marchai's servicer immediately contacted Alessi and asked for a postponement so that it could pay the lien. Alessi recognized the reasonableness of this request by agreeing to postpone the sale unless Wyeth decided otherwise. Unfortunately, on the morning of the sale, Wyeth refused Marchai's reasonable request. Wyeth's refusal gave Marchai no time to tender the funds to pay the lien, to attend the sale, or to petition a court for relief. Hence summary judgment is inappropriate as the facts support a finding of unfairness.[141]

Third, the sale was unreasonable because Wyeth did not sell the property in accordance with the terms of the statute. Specifically, the statute requires that "*[o]n the day of the sale* . . . the person conducting the sale may sell the unit at public auction to *the highest cash bidder*."[142] The statute does not allow an association to sell the property in exchange for a promise to pay in the future.[143] Yet that is what happened here. Wyeth conducted the auction on August 28, 2013. But SFR did not have a check cut and tendered to Alessi until August 29. Refusing to require payment by "the highest cash bidder" "on the day of the sale" is simply inconsistent with the statue and unfair.[144]

Fourth, Alessi recorded multiple notices of delinquent assessment, notices of default, and notices of sale without rescinding any prior notices, which causes confusion in the record. For example, Alessi recorded a notice of lien in October 2008, a notice of default in January 2009, and a notice sale in January 2010. Alessi rescinded *only* the January 14, 2010 notice of sale, which it improperly identified in the notice of rescission as the January 11, 2010 notice of sale. Then, in March 2011,

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141 *See Zyzzx2*, at *4.

142 NRS § 116.31164.

143 *See id.*

144 *See id.*

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Alessi recorded another notice of sale, which it based upon the January 2009 notice of default. Alessi left the other notices as a matter of record, but in December 2011 recorded a *second* notice of lien. Again, in February 2012, Alessi recorded a *second* notice of default. This new notice of default still claims that it is based upon the default in assessments due in January 2008. In October 2012, Alessi recorded yet *another* notice of sale without rescinding the prior notice. But Alessi did not foreclose based upon this new notice of sale. Instead, in July 2013, Alessi recorded *yet another* notice of sale. Essentially, Alessi littered the record with multiple confusing recordings.

Fifth, allowing the foreclosure sale to extinguish Marchai's deed of trust is unfair to Perez. Perez paid $3,230 in dues after Wyeth instituted an action to enforce its lien. But if this Court concluded that these payments did not satisfy the superpriority portion of the lien, the Court is subjecting Perez to judgment for the full unpaid amount of the note.

In its Decision and Order, this Court previously concluded that genuine issues of material fact preclude the entry of summary judgment concerning the commercial reasonableness of the sale.[145] Neither the law nor the facts have changed to deviate this Court from its prior ruling. Hence this Court should deny the motions.

D. Genuine issues of material fact prevent this Court from deciding that SFR is a bona fide purchaser for value.

SFR bears the burden of proof to establish that no genuine issues of material fact exist that permit this Court to enter summary judgment on its claim for quiet title.[146] Likewise, SFR bears the burden of demonstrating that it is a bona fide

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[145] *See* Decision & Order at 23:15–23.

[146] *See Shadow Wood Homeowners Ass'n*, 132 Nev. Adv. Op. 5, 366 P.3d at 1112 (citing *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)).

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purchaser for value.[147] "A subsequent purchaser is bona fide under common-law principles if it takes the property 'for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry."[148] Here, SFR cannot satisfy its burden as a matter of law because it had at least inquiry notice that Perez may have paid the superpriority portion of the lien and the equities weigh in favor of Marchai.

Wyeth started the process to enforce its lien when it served a notice of lien in September 2008. Wyeth continued the foreclosure process by recording a notice of default in January 2009, and finally when it recorded the notice of sale in January 2010. But Wyeth abruptly stopped its foreclosure. In December 2011, nearly two years later, Alessi recorded a second notice of lien, a second notice of default, and a few more notices of sale. All of these documents are a matter of record in the property's title. Thus, SFR had at least inquiry notice that Wyeth either received some payment by Perez that could have satisfied (and did satisfy) the superpriority portion of the lien. Because SFR had at least inquiry notice that Wyeth foreclosed upon the subpriority portion of the association's lien, SFR cannot satisfy its burden of demonstrating it is a bona fide purchaser.[149]

In its Decision and Order, this Court already ruled that genuine issues of material fact preclude this Court from concluding that SFR is a bona fide purchaser.[150] Specifically, this Court concluded that the five-year history of the foreclosure that resulted in multiple notices of delinquency, default, and sale

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[147] *Bailey v. Butner*, 64 Nev. 1, 7, 176 P.2d 226, 229 (1947).

[148] *Shadow Wood Homeowners Ass'n*, 132 Nev. Adv. Op. 5, 366 P.3d at 1115 (quoting *Bailey*, 64 Nev. at 19, 176 P.2d at 234).

[149] *See id.*

[150] *See* Decision & Order at 23:24–24:10.

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creates a genuine issue of material fact "on whether a reasonable person would be put on notice."[151] Hence this Court should, once again, deny summary judgment.

E. To preserve its constitutional arguments, Marchai incorporates the arguments presented in its prior motion for summary judgment.

Both SFR and Wyeth moved for summary judgment on Marchai's due process and takings claims.[152] Marchai previously briefed these issues extensively.[153] In the Decision and Order, this Court already considered and denied Marchai's constitutional claims.[154] Since this Court issued its prior decision, the Ninth Circuit in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.* concluded that NRS "116.3116's 'opt-in' notice scheme facially violated mortgage lenders' constitutional due process rights."[155] But Marchai acknowledges the recent opinion from the Nevada Supreme Court in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, which holds that NRS 116.3116 does not violate due process.[156] To preserve its argument that NRS 116 is facially unconstitutional, Marchai respectfully reasserts that the *Bourne Valley* decision is important authority for this Court to consider in adjudicating Marchai's claims under the United States Constitution. In addition, Marchai incorporates its prior arguments and briefing on the constitutional issues solely to preserve them for any future appeal.

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[151] *See id.* at 24:3–7.

[152] *See* SFR's Mot. at 10:23–11:17; Wyeth's Mot. at 8:4–11:9.

[153] *See* Marchai, B.T.'s Mot. for Summ. J. at 30–63 (Jan. 14, 2016); Marchai, B.T.'s Reply in Supp. of Mot. for Summ. J. at 13:1–19:16 (Feb. 8, 2016).

[154] *See* Decision & Order at 7:21–18:7.

[155] 832 F.3d 1154, 1160 (9th Cir. 2016).

[156] 133 Nev. Adv. Op. 5, 388 P.3d 970 (2017).

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F. The Nevada Supreme Court's opinion in *Shadow Wood Homeowners Association v. New York Community Bancorp* dispenses with SFR and Wyeth's arguments that Marchai cannot challenge the foreclosure.

In its motion, SFR argues that Marchai cannot challenge the foreclosure or its process. First, SFR claims that it took without equity or right of redemption in Marchai.[157] Second, SFR argues that the deed recitals are conclusive and Marchai can offer no evidence to dispute the deed's representations.[158] The Nevada Supreme Court disagrees. In *Shadow Wood Homeowners Association v. New York Community Bancorp*, the court expressly held that the deed of trust recitals are not conclusive and that this Court retains equitable jurisdiction to set aside an association's foreclosure.[159] In *The Bank of New York Mellon v. Fort Apache Homes, Inc.*, the Court reiterated its holding in *Shadow Wood*.[160] In *Fort Apache*, "the district court determined that the recitals in respondent's deed were conclusive proof that the HOA foreclosure sale extinguished appellant's deed of trust."[161] But the Nevada Supreme Court concluded that such a "determination is inconsistent with our opinion in *Shadow Wood* . . ., which held that courts retain equitable authority to set aside a foreclosure sale."[162] Hence SFR's argument conflicts with Nevada law.

G. SFR and Wyeth's assertion that Wyeth complied with the law in the conduct of the foreclosure is false.

SFR and Wyeth both contend that Wyeth complied with the law when conducting the foreclosure.[163] Their arguments lack merit. The Nevada Supreme Court expressly concluded that "NRS 116.3116(2) gives an HOA a true superpriority

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[157] *See* SFR's Mot. at 7:16–8:12.

[158] *See id.* at 8:13–17.

[159] 132 Nev. Adv. Op. 5, 366 P.3d at 1112–16.

[160] No. 69584, 2017 WL 1397375 (Nev. Apr. 14, 2017).

[161] *Id.* at *1.

[162] *Id.*

[163] *See* SFR's Mot. at 8:18–10:16; Wyeth's Mot. at 11:14–12:26.

lien, *proper foreclosure of which* will extinguish a first deed of trust."[164] Here, Wyeth did not properly foreclose.

First, despite having two additional mailing addresses for Perez, Alessi mailed the notice of lien to only the property. But NRS 116.31162 required Alessi to mail the notice to the property and to the unit owners' address.[165]

Second, although Alessi mailed the notice of default 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, then failing to mail the notice to CMG Mortgage and failing to mail the notice by certified mail rendered the foreclosure improper.[166]

Third, although Alessi served the notice of sale by certified mail, including upon the Ombudsman, Alessi failed to serve the notice by first-class mail as required by statute.[167] However, courts recognize a distinction between service by first class mail and service by certified mail, return receipt requested.[168] For example, in *In re Frazier* the Court concluded that certified mail, return receipt requested did not comply with a rule that required service by first class mail.[169]

Although this Court previously concluded that these defects in the sale do not, on their own, rise to the level of rendering the sale void, the Court did conclude that these facts may weigh into whether the sale was commercially reasonable.[170] Hence, SFR and Wyeth's arguments must fail.

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[164] *SFR Invs. Pool 1*, 130 Nev. Adv. Op. 30, 334 P.3d at 419.

[165] *See* NRS § 116.31162(1)(a) (2011).

[166] *See* NRS § 107.090 (2011).

[167] *See* NRS § 116.311635(1)(b) (2011).

[168] *See In re Frazier*, 394 B.R. 399, 400 (Bankr. E.D. Va. 2008).

[169] *See id.*

[170] *See* Decision & Order at 23:18–20.

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H. Genuine issues of material fact preclude this Court from granting summary judgment on Marchai's claim for intentional interference with contractual relations.

To establish a claim for intentional interference with contract, Marchai must show a valid and existing contract, SFR and Wyeth's knowledge of the contract, intentional acts intended or designed to disrupt the contractual relationship, actual disruption of the contract, and resulting damage.[171] Neither SFR nor Wyeth can dispute that Marchai has a valid contract with Perez, they knew of the contract, the contract was disrupted by Wyeth's foreclosure, and that Marchai suffered damage.[172] Instead, SFR and Wyeth argue that Marchai has no evidence that they intended to interfere with this contract.[173] However, at a minimum, SFR and Wyeth's arguments create a genuine issue of material fact.

SFR and Wyeth argue that Marchai has no evidence that they intended to disrupt the contract between Marchai and Perez. But their motives and intent are issues of fact. Marchai has presented evidence that Perez satisfied the superpriority portion of the lien. Wyeth and SFR knew (or should have known) that Perez satisfied the superpriority portion of the lien. Yet Wyeth proceeded with the foreclosure (despite Marchai's reasonable request for a brief postponement). If Wyeth intended to foreclose upon the superpriority portion of the lien despite knowing that it was satisfied provides evidence of intent to interfere with Marchai's contract. Because this Court must view the evidence in a light most favorable to Marchai, this Court must deny SFR and Wyeth's motion for summary judgment.[174]

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[171] *JJ. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

[172] *See id.*

[173] *See* SFR's Mot. at 12:2–28; Wyeth's Mot. at 15:1–16:9.

[174] *See Anderson v. Mandalay Corp.*, 131 Nev. Adv. Op. 82, 358 P.3d 242, 245 (2015) (quoting *Wood*, 121 Nev. at 729, 121 P.3d at 1029).

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CONCLUSION

In its Decision and Order, this Court previously denied, in part, Marchai and SFR's competing motions for summary judgment. This Court concluded that genuine issues of material fact precluded summary judgment on three issues: (1) whether Perez satisfied the superpriority portion of Wyeth's lien by paying $3,230 after Wyeth instituted an action to enforce its lien; (2) whether Wyeth's sale was commercially reasonable; and (3) whether SFR was a bona fide purchaser. Neither SFR nor Wyeth Ranch have presented this Court with any new facts or law that call into question this Court's prior decision. And no such new facts or law exist. Hence this Court should deny the motions.

DATED this 14th day of August 2017.

David J. Merrill, P.C.

By: _____
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2017, a copy of the foregoing Marchai, B.T.'s Opposition to SFR Investments Pool 1, LLC and Wyeth Ranch Community Association's Motions for Summary Judgment was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

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An employee of David J. Merrill, P.C.

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EXHIBIT 1

DECLARATION OF DAVID J. MERRILL

I, David J. Merrill, declare as follows:

1. I am shareholder of David J. Merrill, P.C., attorney of record for Marchai, B.T. in *Marchai, B.T. v. Perez*, Case No. A-13-689461-C, which is pending in the Eighth Judicial District Court, Clark County, Nevada. I have made this declaration in support of Marchai, B.T.'s Opposition to SFR Investments Pool, LLC and Wyeth Ranch Community Association's Motions for Summary Judgment. I have personal knowledge of and am competent to testify to the facts contained in this declaration.

2. On April 25, 2017, Marchai served Marchai, B.T.'s Initial Expert Disclosure. I have attached a true and correct copy of the disclosure as Exhibit A.

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

EXECUTED on this 14th day of August 2017 in Henderson, Nevada.

DAVID J. MERRILL

EXHIBIT 1-A

IED
DAVID J. MERRILL
Nevada Bar No. 6060
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
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Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, vs. CRISTELA PEREZ, an individual; *et al.* Defendants.	Case No.: A-13-689461-C Dept. No. VII Consolidated with: A-16-742327-C
AND ALL RELATED CLAIMS AND ACTIONS	

MARCHAI, B.T.'s INITIAL EXPERT DISCLOSURE

In accordance with N.R.C.P. 16.1(a)(2), Marchai, B.T. discloses the following persons who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305:

1. R. Scott Dugan
   R. Scott Dugan Appraisal Company, Inc.
   8930 West Tropicana Avenue, Suite 1
   Las Vegas, Nevada 89147
   (702) 876-2000

Scott Dugan is a Certified SRA General Appraiser and owner of R. Scott Dugan Appraisal Company, Inc. Mr. Dugan will testify as to his opinions regarding

the market value of the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 as of August 28, 2013. A copy of Mr. Dugan's Appraisal of Real Property, which contains a complete statement of all opinions the witness will express and the basis and reasons therefore, is attached as Exhibit A. The Appraisal of Real Property also sets forth the data and other information considered by Mr. Dugan in forming his opinions, and the exhibits he will use to summarize or support his opinions.

Attached as Exhibit B is a copy of Mr. Dugan's curriculum vitae, which lists his qualifications. Attached as Exhibit C is a list of cases in which Mr. Dugan has testified as an expert at trial or by deposition within the preceding four years. Mr. Dugan charged $750.00 for the appraisal. Mr. Dugan's fee schedule for testifying at depositions or at trial is attached as Exhibit D. Mr. Dugan has not authored any publications within the preceding ten years.

DATED this 25th day of April 2017.

DAVID J. MERRILL, P.C.

By: _____
DAVID J. MERRILL
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April 2017, a copy of the foregoing Marchai, B.T.'s Initial Expert Disclosure was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

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Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com

An employee of David J. Merrill, P.C.

EXHIBIT A

APPRAISAL OF REAL PROPERTY

LOCATED AT

7119 Wolf Rivers Avenue
Las Vegas, NV 89131
Wyeth Ranch - Unit 2 Plat Book 112 Page 8 Lot 13 Block A

FOR

David J Merrill, P.C.
10161 Park Run Drive, Ste 150
Las Vegas, NV 89145

AS OF

August 28, 2013

BY

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000

April 14, 2017

David J Merrill, P.C.
10161 Park Run Drive, Ste 150
Las Vegas, NV 89145

Re: Property: 7119 Wolf Rivers Avenue
Las Vegas, NV 89131
Borrower: N/A
File No.: 7119 Wolf Rivers Ave

Opinion of Value: $ 360,000
Effective Date: August 28, 2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average to good condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2017
appraisals@rsdugan.com

Client	David J Merrill, P.C.					File No.	7119 Wolf Rivers Ave
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

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RESIDENTIAL APPRAISAL REPORT

File No.: 7119 Wolf Rivers Ave

SUBJECT

Property Address: 7119 Wolf Rivers Avenue | City: Las Vegas | State: NV | Zip Code: 89131
County: Clark | Legal Description: Wyeth Ranch - Unit 2 Plat Book 112 Page 8 Lot 13 Block A
Assessor's Parcel #: 125-15-811-013
Tax Year: 2013 | R.E. Taxes: $ N/A | Special Assessments: $ 0 | Borrower (if applicable): N/A
Current Owner of Record: Cristela Perez | Occupant: ☒ Owner ☐ Tenant ☐ Vacant | ☐ Manufactured Housing
Project Type: ☒ PUD ☐ Condominium ☐ Cooperative ☐ Other (describe) | HOA: $ 150 ☐ per year ☒ per month
Market Area Name: Wyeth Ranch - Northwest Las Vegas | Map Reference: 13-B6 | Census Tract: 33.21

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☒ Market Value (as defined), or ☐ other type of value (describe)
This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date) ☒ Retrospective ☐ Prospective
Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach (See Reconciliation Comments and Scope of Work)
Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)
Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.
Intended User(s) (by name or type): David J Merrill, P.C. and/or legal professionals associated with this case.
Client: David J Merrill, P.C. | Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145
Appraiser: R. Scott Dugan, SRA | Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147

MARKET AREA DESCRIPTION

Location:	☐ Urban	☒ Suburban	☐ Rural
Built up:	☒ Over 75%	☐ 25-75%	☐ Under 25%
Growth rate:	☐ Rapid	☐ Stable	☒ Slow
Property values:	☒ Increasing	☐ Stable	☐ Declining
Demand/supply:	☐ Shortage	☒ In Balance	☐ Over Supply
Marketing time:	☒ Under 3 Mos.	☐ 3-6 Mos.	☐ Over 6 Mos.

Predominant Occupancy: ☒ Owner ☐ Tenant ☒ Vacant (0-5%) ☐ Vacant (>5%)

One-Unit Housing	PRICE $(000)	AGE (yrs)
Low	100	5
High	500	20
Pred	200	15

Present Land Use	
One-Unit	80 %
2-4 Unit	0 %
Multi-Unit	5 %
Comm'l	5 %
Vacant	10 %

Change in Land Use: ☒ Not Likely ☐ Likely * ☐ In Process * * To:

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Grand Teton Drive - N, Jones Boulevard - E, I-215 - S, and I-95 - W. The gated project of Wyeth Ranch is located in northwest Las Vegas. There are a variety of residential tract housing with supporting services in the immediate area. The subject is located within 2 to 4 +/- miles of major hotel, office, retail, medical facilities, which includes Tule Springs Regional Park, Aliante Hotel & Casino, Silverton Golf Club, Centennial Hills Park, Centennial Hills Town Center North (office / retail / major medical facilities), and 10 to 13 +/- miles NW of the Las Vegas CBD and Resort Corridor (key employment centers) with good freeway and major street access. Current market conditions show increasing prices in this segment. Refer to the attached market condition trends, etc.

SITE DESCRIPTION

Dimensions: 66 x 147 x 217 x 207 | Site Area: .51 Acre (22,216 Sq Ft)
Zoning Classification: R-PD2 | Description: Residential Planned Development District (2 units per acre)
Zoning Compliance: ☒ Legal ☐ Legal nonconforming (grandfathered) ☐ Illegal ☐ No zoning
Are CC&Rs applicable? ☒ Yes ☐ No ☐ Unknown | Have the documents been reviewed? ☐ Yes ☒ No | Ground Rent (if applicable) $ N/A/
Highest & Best Use as improved: ☒ Present use, or ☐ Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.
Actual Use as of Effective Date: Single Family Residential | Use as appraised in this report: Single Family Residential
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.

Utilities	Public	Other	Provider/Description
Electricity	☒	☐	NV Energy
Gas	☒	☐	SW Gas
Water	☒	☐	LLVWD
Sanitary Sewer	☒	☐	Clark County
Storm Sewer	☒	☐	Clark County

Off-site Improvements	Type	Public	Private
Street	Asphalt	☐	☒
Curb/Gutter	Concrete	☐	☒
Sidewalk	None	☐	☐
Street Lights	Electric	☐	☒
Alley	None	☐	☐

Topography	Built Up Pad
Size	Larger Than Typical
Shape	Irregular/Radius
Drainage	Appears Adequate
View	Residential

Other site elements: ☒ Inside Lot ☐ Corner Lot ☐ Cul de Sac ☒ Underground Utilities ☐ Other (describe)
FEMA Spec'l Flood Hazard Area ☐ Yes ☒ No | FEMA Flood Zone X | FEMA Map # 32003C1745E | FEMA Map Date 09/27/2002
Site Comments: The subject's rear property line backs to Elkhorn Road, which may be considered a less desirable location by some potential buyers. The subject has a large site, which effectively acts a buffer between the subject and any noise evidenced from traffic (not considered negative).

DESCRIPTION OF THE IMPROVEMENTS

General Description	
# of Units	One ☐ Acc.Unit
# of Stories	One
Type	☒ Det. ☐ Att. ☐
Design (Style)	Ranch/1-Story
	☒ Existing ☐ Proposed ☐ Und.Cons.
Actual Age (Yrs.)	9
Effective Age (Yrs.)	9

Exterior Description	
Foundation	Concrete
Exterior Walls	Stucco
Roof Surface	Tile
Gutters & Dwnspts.	None
Window Type	Insulated
Storm/Screens	None

Foundation	
Slab	Concrete
Crawl Space	None
Basement	None
Sump Pump	☐ None
Dampness	☐ None
Settlement	None
Infestation	None

Basement	☒ None
Area Sq. Ft.	
% Finished	
Ceiling	
Walls	
Floor	
Outside Entry	

Heating	Yes
Type	FWA
Fuel	Gas
Cooling	Yes
Central	Yes
Other	None

Interior Description	
Floors	Exterior Only
Walls	Exterior Only
Trim/Finish	Exterior Only
Bath Floor	Exterior Only
Bath Wainscot	Exterior Only
Doors	Exterior Only

Appliances	
Refrigerator	☐
Range/Oven	☒
Disposal	☒
Dishwasher	☒
Fan/Hood	☒
Microwave	☒
Washer/Dryer	☐

Attic ☐ None	
Stairs	☐
Drop Stair	☐
Scuttle	☒
Doorway	☐
Floor	☐
Heated	☐
Finished	☐

Amenities			
Fireplace(s) #	0	Woodstove(s) #	
Patio	Yes		
Deck	None		
Porch	Yes		
Fence	Yes		
Pool	Yes		
Spa	Yes		

Car Storage ☐ None	
Garage	# of cars (7 Tot.)
Attach.	4 Tandem
Detach.	
Blt.-In	
Carport	
Driveway	3
Surface	Concrete

Finished area **above** grade contains: 9 Rooms 4 Bedrooms 3 Bath(s) 3,000 Square Feet of Gross Living Area Above Grade
Additional features: The property is assumed to have standard features and amenities for this submarket.
Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in average to good condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum average to good, with condition rating based on subject being located in a project where the homes are generally well maintained. 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the addendum - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.

GP RESIDENTIAL
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RESIDENTIAL APPRAISAL REPORT

File No.: 7119 Wolf Rivers Ave

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): GLVAR MLS & Clark County Public Records

1st Prior Subject Sale/Transfer	Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.
Date:	
Price:	
Source(s):	
2nd Prior Subject Sale/Transfer	
Date:	
Price:	
Source(s):	

SALES COMPARISON APPROACH

SALES COMPARISON APPROACH TO VALUE (if developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	7119 Wolf Rivers Avenue Las Vegas, NV 89131	7301 Sandy Plains Avenue Las Vegas, NV 89131		6478 Red Garnet Court Las Vegas, NV 89131		7251 Brook Crest Avenue Las Vegas, NV 89131	
Proximity to Subject		0.41 miles NW		0.88 miles E		0.29 miles NW	
Sale Price	$		$ 363,000		$ 385,000		$ 315,000
Sale Price/GLA	$ /sq.ft.	$ 120.44 /sq.ft.		$ 128.33 /sq.ft.		$ 103.45 /sq.ft.	
Data Source(s)	MLS-Pub Records	MLS-Public Records / DOM 5		MLS-Public Records / DOM 12		MLS-Public Records / DOM 33	
Verification Source(s)	Public Records	201307230:3295		201307050:2315		201302210:2559	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		Traditional CONV $0		Traditional CASH $0		Traditional CONV $0	
Date of Sale/Time		07/23/2013		07/05/2013		02/21/2013	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Wyeth Ranch/Gtd	Saltcreek/Gtd		Elkhorn Est/Gtd		Saltcreek/Gtd	
Site	22,216 SF/Radius	19,602 SF/Interior		19,166 SF/CDS		15,246 SF/Interior	+20,910
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/1-Story	Ranch/1-Story		Ranch/1-Story		Ranch/1-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	9	13		8		12	
Condition	Average-Good	Good	-15,000	Very Good	-30,000	Good	-15,000
Above Grade Room Count (Total / Bdrms / Baths)	9 / 4 / 3	9 / 4 / 3.5		7 / 3 / 3		8 / 4 / 2.5	
Gross Living Area	3,000 sq.ft.	3,014 sq.ft.		3,000 sq.ft.		3,045 sq.ft.	
Basement & Finished	None	Casita 240 SF		None		None	
Rooms Below Grade	None	Included in GLA		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	4 Car Gar Tandem	3 Car Garage	+5,000	3 Car Garage	+5,000	3 Garage, Portico	
Porch/Patio/Deck	LS PrtRear,C/Patio	LS,C/Patio,Ctyd		LS,Lg C/Patio		LS,C/Patio	
Swim Features	Pool/Spa	None	+25,000	Pool/Spa		None	+22,000
Onsites/Upgrades	Average	Better	-15,000	Average		Average	
Contract Date	N/A	05/01/2013		06/19/2013		01/22/2013	+11,000
Rent/GRM	N/A	N/A		N/A		N/A	
Net Adjustment (Total)		☐ + ☐ -	$	☐ + ☒ -	$ -25,000	☒ + ☐ -	$ 38,910
Adjusted Sale Price of Comparables			$ 363,000		$ 360,000		$ 353,910

Summary of Sales Comparison Approach **The comparables in this report range in gross living area (GLA) from 3,000 to 3,306 square feet, with one located in the subject project and others in nearby competitive projects.**

The comparables required adjustments (rounded, unless otherwise indicated) for variations in the following: site at $3 per square foot (if well undersized); good and very good condition at $5 and $10 per square foot of gross living area (GLA), respectively; GLA at $50 per square foot; garage at $5,000 per bay, with portico feature offsetting 4th garage bay in subject; pool/spa at 7% of sale price, where the typical range is between 6% and 10%; and better onsites/upgrades at $5 per square of GLA, where one comparable had waterscapes, custom flooring and cabinets, custom interior and/or exterior paint, intercom, upgraded ceiling fans, granite, stone, etc. Unless recent transactions, comparables were adjusted for time at 1/2% percent per month of sale price from the date of contract, to reflect changes in market conditions over this period of time. This generally is considered consistent with price changes in this market segment. Cross comparison of the data did not support adjustments for minor variations site, GLA, age, bath, bedroom, etc. While these variations were noted, in most cases a consistent value difference indication between the sales could not be isolated.

Minor value features, i.e., fireplaces, storage sheds, etc., and or external factors lacking adjustment support, may not have been noted in the grid. If present, such value features in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion.

In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at $360,000. The package price per square foot of $120 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from $100 to $128. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. The adjusted range of comparable pricing brackets and supports the value conclusion. The subject's central tendency is $360,000 (rounded) and is considered reasonable in support of the final conclusion of value.

Indicated Value by Sales Comparison Approach $ 360,000

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RESIDENTIAL APPRAISAL REPORT

File No.: 7119 Wolf Rivers Ave

COST APPROACH

COST APPROACH TO VALUE (if developed) ☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): Not developed.

ESTIMATED ☐ REPRODUCTION OR ☐ REPLACEMENT COST NEW

Source of cost data:

Quality rating from cost service: Effective date of cost data:

Comments on Cost Approach (gross living area calculations, depreciation, etc.):

The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.

Estimated Remaining Economic Life (if required): N/A Years

OPINION OF SITE VALUE			=$
DWELLING	Sq.Ft. @ $		=$
	Sq.Ft. @ $		=$
	Sq.Ft. @ $		=$
	Sq.Ft. @ $		=$
	Sq.Ft. @ $		=$
			=$
Garage/Carport	Sq.Ft. @ $		=$
Total Estimate of Cost-New			=$
Less Physical	Functional	External	
Depreciation			=$( )
Depreciated Cost of Improvements			=$
"As-is" Value of Site Improvements			=$
			=$
			=$
INDICATED VALUE BY COST APPROACH			=$

INCOME APPROACH

INCOME APPROACH TO VALUE (if developed) ☒ The Income Approach was not developed for this appraisal.

Estimated Monthly Market Rent $ 2,275 X Gross Rent Multiplier N/A = $ N/A **Indicated Value by Income Approach**

Summary of Income Approach (including support for market rent and GRM): Market data supports monthly rent levels that range from $2,050 to $2,450 for similar homes. Given the assumed average to good condition of the subject and other variables, a mid range rent estimate of $2,275 is considered reasonable. The income approach was not developed due to lack of GRMs, where larger area properties like the subject are not typically used as rentals.

PUD

PROJECT INFORMATION FOR PUDs (if applicable) ☒ The Subject is part of a Planned Unit Development.

Legal Name of Project: Wyeth Ranch

Describe common elements and recreational facilities: Gated entry, private streets, perimeter fencing, park, basketball court, walking trail, and enforcement of CC&R's.

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ 360,000 **Cost Approach (if developed) $** N/A **Income Approach (if developed) $** N/A

Final Reconciliation The cost and income approaches were not developed for the reasons stated. The value opinion is based upon sales comparison approach. The opinion considers a 30 to 90 day (each) marketing and exposure period. The potential range of value was from about $354,000 to $365,000 with a central tendency of $360,000. The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average to good condition and professionally marketed under normal terms.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, ☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.

☒ This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.

Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: $ 360,000 , as of: August 28, 2013 , which is the effective date of this appraisal.
If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.

ATTACHMENTS

A true and complete copy of this report contains 22 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:

☒ Letter of Transmittal	☒ Explanatory Comments	☒ Photos	☐	☐
☒ Extraordinary Assumptions	☒ Market Conditions/Graph(s)	☒ Clarification of SOW	☐	☐
☒ Additional Sales	☒ Map, Plat, Sketch Addenda	☒ GP-Res CertsAddenda	☐	☐

SIGNATURES

Client Contact: David J Merrill, P.C. Client Name: David J Merrill, P.C.

E-Mail: david@djmerrillpc.com Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145

APPRAISER

Appraiser Name: R. Scott Dugan, SRA

Company: R. Scott Dugan Appraisal Company, Inc.

Phone: 702-876-2000 Fax: 702-253-1888

E-Mail: appraisals@rsdugan.com

Date of Report (Signature): April 14, 2017

License or Certification #: A.0000166-CG State: NV

Designation: SRA

Expiration Date of License or Certification: 05/31/2017

Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None

Date of Inspection: April 06, 2017

SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)

Supervisory or Co-Appraiser Name:

Company:

Phone: Fax:

E-Mail:

Date of Report (Signature):

License or Certification #: State:

Designation:

Expiration Date of License or Certification:

Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None

Date of Inspection:

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ADDITIONAL COMPARABLE SALES

File No.: 7119 Wolf Rivers Ave

SALES COMPARISON APPROACH

FEATURE	SUBJECT	COMPARABLE SALE # 4		COMPARABLE SALE # 5		COMPARABLE SALE # 6	
Address	7119 Wolf Rivers Avenue Las Vegas, NV 89131	7351 Real Quiet Drive Las Vegas, NV 89131		7220 Shallowford Avenue Las Vegas, NV 89131		7084 Spring Beauty Avenue Las Vegas, NV 89131	
Proximity to Subject		0.70 miles NW		0.47 miles N		0.22 miles NE	
Sale Price	$		$ 330,000		$ 340,000		$ 329,900
Sale Price/GLA	$ /sq.ft.	$ 100.33 /sq.ft.		$ 111.66 /sq.ft.		$ 99.79 /sq.ft.	
Data Source(s)	MLS-Pub Records	MLS-Public Records / DOM 93		MLS-Public Records / DOM 22		**MLS-Files-Pub Records/DOM 5**	
Verification Source(s)	Public Records	201301140:3599		201301070:2397		201301040:3238	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		Traditional CASH $0		Traditional CASH $0		Traditional CONV $800	-800
Date of Sale/Time		01/14/2013		01/07/2013		01/04/2013	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Wyeth Ranch/Gtd	Tenaya Farms/Gtd		Saltcreek/Gtd		Wyeth Ranch/Gtd	
Site	22,216 SF/Radius	13,939 SF/Interior	+24,831	14,810 SF/Interior	+22,218	13,068 SF/Interior	+27,444
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/1-Story	Ranch/1-Story		Ranch/1-Story		Ranch/1-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	9	9		12		8	
Condition	Average-Good	Good	-16,500	Good	-15,000	Very Good	-33,000
Above Grade Room Count (Total / Bdrms / Baths)	9 / 4 / 3	8 / 3 / 2.5		8 / 4 / 2.5		9 / 4 / 3.5	
Gross Living Area	3,000 sq.ft.	3,289 sq.ft.	-14,500	3,045 sq.ft.		3,306 sq.ft.	-15,300
Basement & Finished	None	None		None		None	
Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	4 Car Gar Tandem	3 Car Garage	+5,000	3 Garage, Portico		2 Car Garage	+10,000
Porch/Patio/Deck	LS PrtRear,C/Patio	LS,C/Patio		LS,C/Patio		LS No R,C/P,Ctyd	
Swim Features	Pool/Spa	None	+23,000	Pool/Spa		None	+26,400
Onsites/Upgrades	Average	Average		Average		Average	
Contract Date	N/A	12/14/2012	+13,200	12/06/2012	+13,600	11/20/2012	+14,800
Rent/GRM	N/A	N/A		$2,600/130.76		N/A	
Net Adjustment (Total)		☒ + ☐ -	$ 35,031	☒ + ☐ -	$ 20,818	☒ + ☐ -	$ 29,544
Adjusted Sale Price of Comparables			$ 365,031		$ 360,818		$ 359,444

Summary of Sales Comparison Approach **In review of available data, the appraiser was able to determine that there was no special financing or other considerations.**

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Supplemental Addendum File No. 7119 Wolf Rivers Ave

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

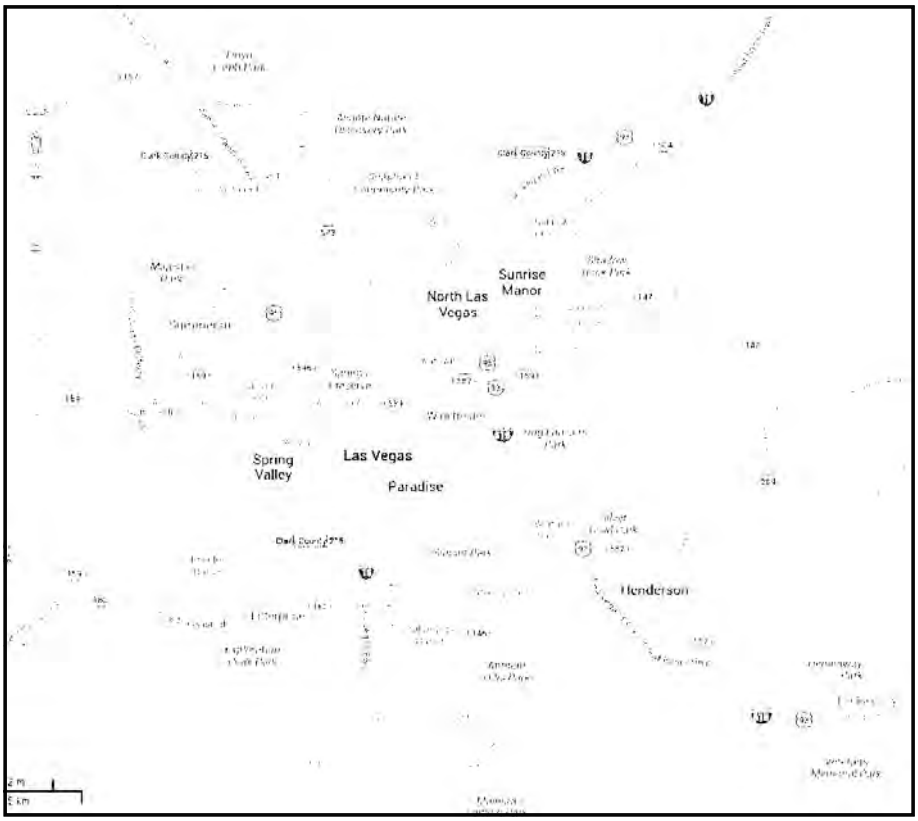
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, August 28, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on April 6, 2017.

General Area Overview

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

Key Factors influencing Housing Market Trends in the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

LAS VEGAS VALLEY MARKET OVERVIEW - June 2013

	2008	2009	2010	2011	2012	2013-YTD
Job Growth - Annual	12,300	-38,051	-10,384	-8,179	27,009	17,200
SFR Median Sale Price	$222,500	$140,000	$135,347	$124,750	$132,393	$164,000
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.37
PI with 80% LTV - No MI	$1,071	$602	$565	$470	$502	$652
PI with 95% LTV-with MI	$1,398	$794	$744	$628	$671	$871
3 BR Metro Avg. Apt Rent	$1,105	$1,014	$977	$964	$934	$946
Metro SFR Median Rent	$1,250	$1,195	$1,113	$1,115	$1,095	$1,098
GLVAR MLS SFR Annual Activity - 2013 is YTD through June						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	20,041
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	3,828
Sales	24,924	38,127	34,434	38,153	36,609	16,975
List to Sale Ratio	41%	67%	61%	69%	91%	85%
Med List Price (Annual & YTD)	$189,500	$149,900	$135,000	$128,500	$145,000	$169,000
Med Sale Price (Annual)	$222,500	$140,000	$135,347	$124,750	$132,393	$164,000
Average DOM	68	61	64	72	69	56
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Mar 114.61

Recent Trends: There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

2010: The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

2011: There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

2012: Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

2013: Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market

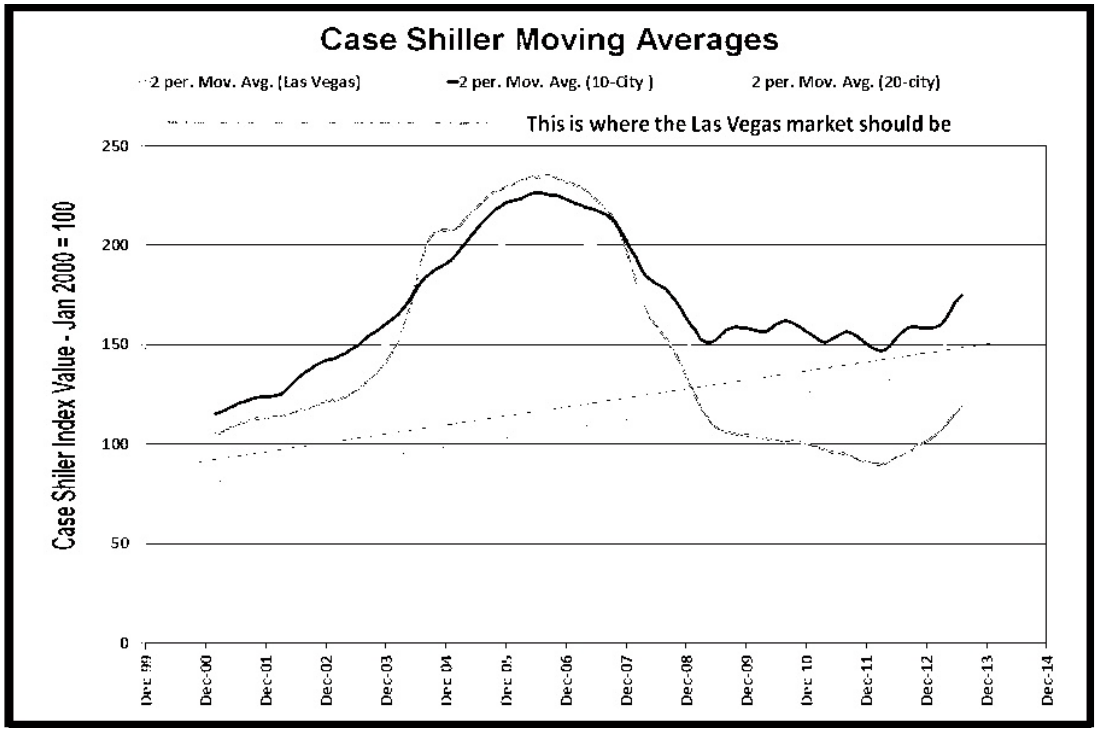
Observations and Conclusions: Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

Economic correction of prices requires a significant increase in employment. You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Rentals are up 20% over 2011 and 34% over 2010. Employment is improving, but lagging behind other areas. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.

Case Shiller - Market Conditions

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

The Case Shiller Index - compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas still is well below the 10 City and 20 City averages. Effectively, the housing market in Las Vegas remains well below where it should be if the housing market did not spin out of control in the mid 2000's. What we are seeing (current market conditions), is the market's attempt to correct. The dashed line projects where the Las Vegas market should be with the gap shown, indicating significant underpriced housing compared to other markets. Investors have dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas "economically under-valued". The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could by an "unoccupiable REO" for $100,000, invest an additional $25,000 in to it for repairs and sell it for $150,000, all within 90 days and make a $25,000 profit.

While $25,000 does not sound like much of a return for the risk, bear in mind that this is $25,000 over 90 days. Annualized, the $25,000 becomes $100,000 or an 80% annual return, which is a far better return than bank rates or anything else. This is why the majority of sales in many markets (including Las Vegas) have been "all cash". With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

Measuring and Reporting Market Conditions

Our job is to identify the risk and place it into context of the market. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) single family housing provides greater utility than apartments; and 4) future supply is being held off the market.

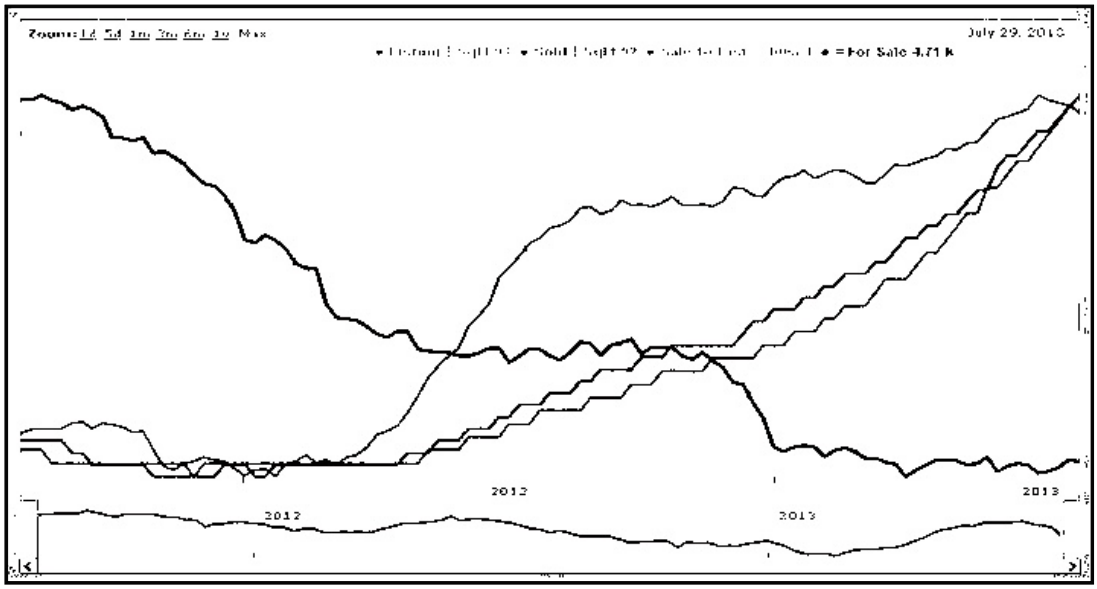
Effectively, it is the perfect storm. This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index.

The market is not in balance and therefore, this is combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria upon which this value opinion is based. The client, intended user or anyone relying upon the value opinion should consider these factors and take appropriate steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence market value are supply and demand, interest rates and jobs. There is a difference between market value (the most probable price) and investment value (driven by return on equity). Investors are dominant in this market area and have significant effect on the current market trends and "market prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

Redfin - Las Vegas Market Overview - Market Conditions

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



Market Conditions

Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2011, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment.

For example, if the median price of a home is $200,000, the monthly payment at 3.5% over 30 years at a loan to value of 80% is only $718 (PI). This could be a very attractive payment when you consider that an apartment in that same area may be renting for $1,000. If there is a severe shortage of homes for sale in a neighborhood and the seller increases the asking price from $200,000 to $220,000, the payment on that same property only increases from $718 to $790 or about 10%. This is still well below the rent for the smaller apartment and generally, well within the buyer's affordability range.

While the under-supply can be real, or artificially created (lenders holding onto REO inventory), this is occurring in the market. In many valley market areas, we are seeing multiple offers on listings and homes selling for 10% or more over list price. This was an isolated event, but now is a market trend.

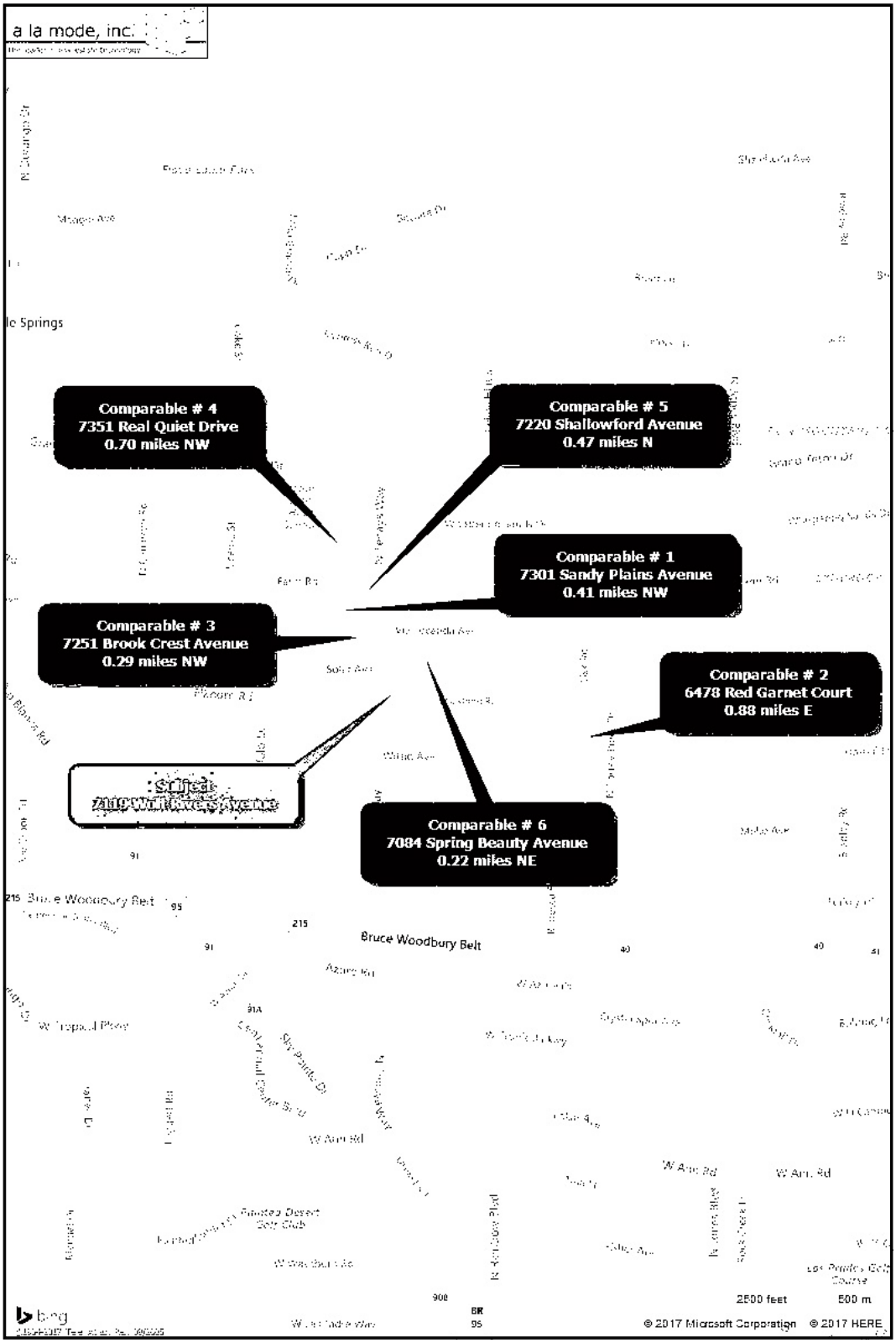
Shown below are declining supply and increasing prices. We cannot project the sustainability of a market shift, only evidence an imbalance to support a market conditions adjustment at this point in time.

Nevada Housing Market Outlook - CBER UNLV

The most recent data suggest that we are in the early stages of a housing market recovery in Nevada. The real estate market has a substantial overhang of residential and commercial property. In the residential market, little of that supply is on the market. The result has been gains in residential real estate prices. With the overhang only likely to be dribbled on the market at a slow rate, residential housing prices can be expected to continue rising. Affordable housing remains a positive, as increased population will foster growth in Nevada's economy.

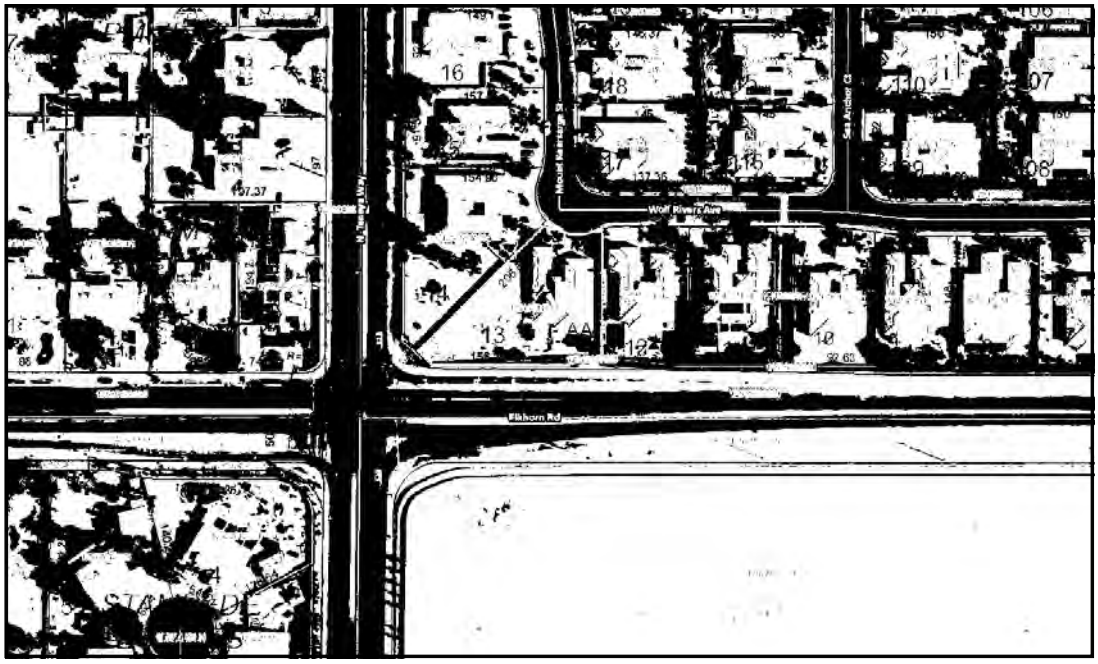
Location Map

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						



Plat Map

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						



Building Sketch

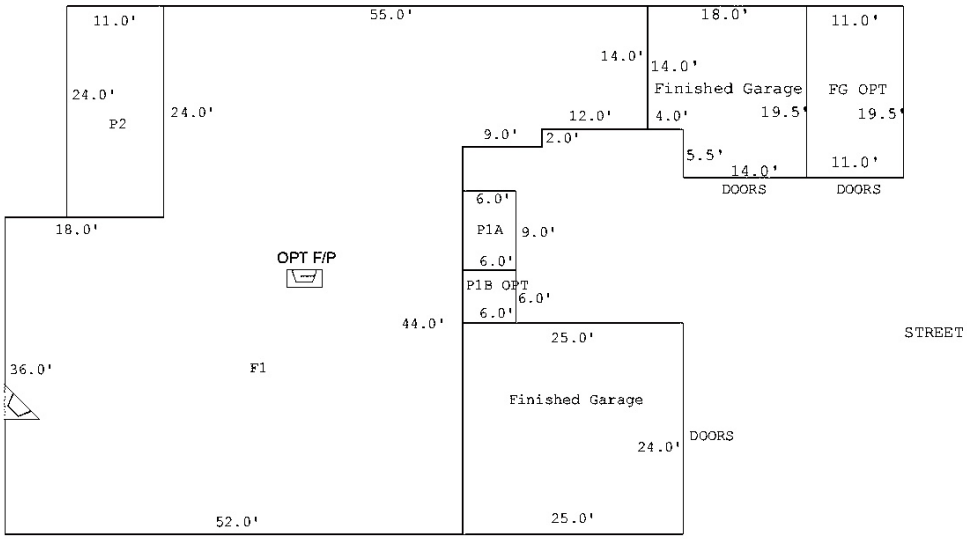
SKETCH/AREA TABLE ADDENDUM

S:\M\125\15\WYETHRCH\3005A.AX2 APN 125-15-810

SUBJECT

Address		
Date 06-2003	N/A	LC#
Subj/Project WYETH RANCH		
Model PLAN 3005	N/A PULTE HOMES	
Drawn by # 617		

IMPROVEMENTS SKETCH



Comments: This is for Tax Assessment Purposes Only

AREA CALCULATIONS

Scale: 1" = 12'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	F1	1.00	3000.00	266.0	3000.00
FG	Finished Garage	1.00	600.00	98.0	
	Finished Garage	1.00	329.00	75.0	
	FG OPT	1.00	214.50	61.0	1143.50
P1	P1A	1.00	54.00	30.0	
	P1B OPT	1.00	36.00	24.0	90.00
P2	P2	1.00	264.00	70.0	264.00

Net LIVABLE Area (rounded w/ factors) 3000

COMMENTS

3 BATHS
STANDARD LAUNDRY SINK
STANDARD REAR PATIO
STANDARD FIREPLACE
STANDARD MICROWAVE
STANDARD TILE/CARPET
OPT 4 CAR GARAGE

FIXTURES

13 FIXTURES
1 FIXTURE

Clark County Assessor APEX SOFTWARE 800-858-9958 Apx8100-w Apex v5

Subject Photo Page

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

Subject Front

7119 Wolf Rivers Avenue

Sales Price	
Gross Living Area	3,000
Total Rooms	9
Total Bedrooms	4
Total Bathrooms	3
Location	Wyeth Ranch/Gtd
View	Residential
Site	22,216 SF/Radius
Quality	Stucco
Age	9

Subject Street

Backs Elkhorn Road

Comparable Photo Page

Client	David J Merrill, P.C.				
Property Address	7119 Wolf Rivers Avenue				
City	Las Vegas	County Clark	State NV	Zip Code 89131	
Owner	Cristela Perez				

Comparable 1

7301 Sandy Plains Avenue

Prox. to Subject	0.41 miles NW
Sales Price	363,000
Gross Living Area	3,014
Total Rooms	9
Total Bedrooms	4
Total Bathrooms	3.5
Location	Saltcreek/Gtd
View	Residential
Site	19,602 SF/Interior
Quality	Stucco
Age	13

Comparable 2

6478 Red Garnet Court

Prox. to Subject	0.88 miles E
Sales Price	385,000
Gross Living Area	3,000
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	3
Location	Elkhorn Est/Gtd
View	Residential
Site	19,166 SF/CDS
Quality	Stucco
Age	8

Comparable 3

7251 Brook Crest Avenue

Prox. to Subject	0.29 miles NW
Sales Price	315,000
Gross Living Area	3,045
Total Rooms	8
Total Bedrooms	4
Total Bathrooms	2.5
Location	Saltcreek/Gtd
View	Residential
Site	15,246 SF/Interior
Quality	Stucco
Age	12

Comparable Photo Page

Client	David J Merrill, P.C.				
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Owner	Cristela Perez				

Comparable 4

7351 Real Quiet Drive

Prox. to Subject	0.70 miles NW
Sales Price	330,000
Gross Living Area	3,289
Total Rooms	8
Total Bedrooms	3
Total Bathrooms	2.5
Location	Tenaya Farms/Gtd
View	Residential
Site	13,939 SF/Interior
Quality	Stucco
Age	9

Comparable 5

7220 Shallowford Avenue

Prox. to Subject	0.47 miles N
Sales Price	340,000
Gross Living Area	3,045
Total Rooms	8
Total Bedrooms	4
Total Bathrooms	2.5
Location	Saltcreek/Gtd
View	Residential
Site	14,810 SF/Interior
Quality	Stucco
Age	12

Comparable 6

7084 Spring Beauty Avenue

Prox. to Subject	0.22 miles NE
Sales Price	329,900
Gross Living Area	3,306
Total Rooms	9
Total Bedrooms	4
Total Bathrooms	3.5
Location	Wyeth Ranch/Gtd
View	Residential
Site	13,068 SF/Interior
Quality	Stucco
Age	8

Clarification of Scope of Work

File No. 7119 Wolf Rivers Ave

Client	David J Merrill, P.C.						
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89131
Owner	Cristela Perez						

CLARIFICATION OF SCOPE OF WORK (Rev. 02/08/2017)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once

Clarification of Scope of Work

File No. 7119 Wolf Rivers Ave

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distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

Repairs or Deterioration: Deficiency and **livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel

Clarification of Scope of Work

File No. 7119 Wolf Rivers Ave

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adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 7119 Wolf Rivers Ave

Property Address: 7119 Wolf Rivers Avenue	City: Las Vegas	State: NV	Zip Code: 89131
Client: David J Merrill, P.C.	Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145		
Appraiser: R. Scott Dugan, SRA	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

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Certifications

File No.: 7119 Wolf Rivers Ave

Property Address: 7119 Wolf Rivers Avenue City: Las Vegas State: NV Zip Code: 89131
Client: David J Merrill, P.C. Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145
Appraiser: R. Scott Dugan, SRA Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:
— The statements of fact contained in this report are true and correct.
— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
— My engagement in this assignment was not contingent upon developing or reporting predetermined results.
— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.

Definition of Market Value: (X) Market Value ( ) Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

SIGNATURES

Client Contact: David J Merrill, P.C. Client Name: David J Merrill, P.C.
E-Mail: david@djmerrillpc.com Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145

APPRAISER	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)
Appraiser Name: R. Scott Dugan, SRA	Supervisory or Co-Appraiser Name:
Company: R. Scott Dugan Appraisal Company, Inc.	Company:
Phone: 702-876-2000 Fax: 702-253-1888	Phone: Fax:
E-Mail: appraisals@rsdugan.com	E-Mail:
Date Report Signed: April 14, 2017	Date Report Signed:
License or Certification #: A.0000166-CG State: NV	License or Certification #: State:
Designation: SRA	Designation:
Expiration Date of License or Certification: 05/31/2017	Expiration Date of License or Certification:
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None	Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection: April 06, 2017	Date of Inspection:

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EXHIBIT B

R. Scott Dugan, SRA

GENERAL APPRAISAL EXPERIENCE:

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

SPECIALIZED VALUATION EXPERIENCE:

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

TYPES OF PROPERTIES:

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

LICENSING:
Licensed in the State of Nevada, Certified General Appraiser-License #A.0000166-CG

PROFESSIONAL DESIGNATION:
SRA Member - Appraisal Institute - 1989 to Present

EDUCATION:
Bachelor of Science in Business Administration - Finance, University of Nevada
High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

REALTOR ASSOCIATIONS:
Appraiser Member - National Association of Realtors - 1992 to Present
Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

MEMBERSHIPS:

Employee Relocation Council, Appraiser Member – 1990 to 2013
Member of the Clark County Board of Equalization - 1994 to Present (Current Vice Chair)
Relocation Appraisers & Consultants Member - 1995 to Present

REFERENCES:

Cheryl Moss, SVP – Chief Appraiser
Bank of Nevada
2700 W. Sahara Avenue
Las Vegas, NV 89102
702-252-6366

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First Security Bank
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Las Vegas, NV 89129
702-853-0950

Dan Schwartz, VP
City National Bank
555 S. Flower St, 10th Floor
Los Angeles, CA 90071
213-673-9283

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Timothy R. Morse & Associates
801 S. Rancho Drive, Ste. B-1
Las Vegas, NV 89106
702-386-0068 X21

Glenn Anderson, MAI, SRPA
Glenn Anderson
1601 S. Rainbow Boulevard, Ste. 230
Las Vegas, NV 89146
702-307-0888

Sandy Boatwright, Branch Manager
I Mortgage
2855 St. Rose Parkway, Ste. 110
Henderson, NV 89052
702-575-6413

Jim Goodrich, MAI, SRA, CCIM
Goodrich Realty Consulting, LLC
2570 Eldorado Pkwy, Ste. 110
McKinney, TX 75070
972-529-2828

Rick Piette, Owner
Premier Mortgage Lending Group
8689 W. Sahara Ave, Ste. 100
Las Vegas, NV 89117
702-485-6600

OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- 2016-2017 National USPAP Update – January 2016
- A.I. Business Practices & Ethics Course – September 2015
- A.I. Las Vegas Market Symposium 2014 – November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines – June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases – June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work – May 2014
- 2014 National USPAP Update Course – January 2014
- Las Vegas Market Symposium 2013 – November 2013
- Do's and Don't's of Litigation Support – October 2013
- Appraising the Appraisal: Appraisal Review-Residential – April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation – February 2013
- Complex Litigation Appraisal Case Studies – January 2013
- Seller Concessions in Market Value Appraisals – November 2012
- National USPAP Update Course – May 2012
- Valuation of Basements – March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines – December 2011
- Las Vegas Market Symposium 2011 – October 2011
- The Uniform Appraisal Dataset from FNMA and FMAC –July 2011
- Tools, Techniques & Opportunities for Residential Appraising – November 2010
- Business Practice and Ethics –September 2010
- Appraisal Curriculum Overview Residential –September 2010
- Nevada Commission of Appraisers Hearing – June 2010
- Inspecting the Residential Green or High Performance House – January 2010
- ENERGY STAR and the Appraisal Process – January 2010
- 2009 National USPAP Update Course – January 2010
- A.I. Committee CE Credit – Chapter Level – December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar –March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure – October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering – March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR – October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's in Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005
- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers -September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002
- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999

- FHA and the Appraisal Process - July 1999
- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals – December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop – July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options – July/August 1994
- Appraisal Review - Residential properties – July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process – July 1993
- Current Standards of Professional Appraisal Practice Issues-July 1993
- Americans With Disabilities Act (ADA)- July 1993
- The New Uniform Residential Appraisal Report- September 1993
- Intern Appraiser and the Law -February 1993
- Appraisal Reporting of Complex Residential Properties – December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones -July 1992
- Employee or Independent Contractor- The Impact of an IRS Audit on an Appraiser-July 1992
- Landfills and Their Effect Upon Value- August 1991
- Subdivision Analysis- August 1991
- Real Estate Law for Real Estate Appraisers- August 1991
- Technical Inspection of Real Estate August 1991
- Relocation Appraisal Seminar- August 1991
- Practical Approach: The New Small Residential Income Property Guidelines – July 1990
- Extraction of Market Data on Residential Properties- August 1990
- Residential Appraisal Report from the User's Perspective- August 1990
- Legislative Update Panel-August 1990
- Relocation Appraising in the 90's PHH Home Equity – September 1990
- Nevada Real Estate Appraisal Statute October 1990
- Professional Practice and Real Estate Appraisal Law- October 1990
- Exam Preparation Seminar for Appraiser - General Certification – October 1990

ERC NATIONAL RELOCATION CONFERENCE:

- ERC – RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- “Force of Excellence" – November 1995
- Western Appraiser Regional Seminar "Leaders in Change" -September 19

CLIENTS: Banks and Mortgage Companies:

- AAA Mortgage
- Allegiance Relocation Services
- AMC Links
- Appraisal Logistics
- Appraisals2U
- Axia Home Loans
- Bank New York Mellon
- Bank of Las Vegas
- Bank of Nevada
- Bank of New York
- Boulder Dam Credit Union
- Broad Street Nationwide Valuations
- Capital One Bank
- Chase Bank
- Citibank
- Citicorp Mortgage, Inc.
- City National Bank
- Clark County Public Guardians Office
- Coester Appraisal Management Co.
- Deutsche Bank
- ENG Lending
- Sirva Relocation
- Federal National Mortgage Association
- First Republic Bank
- First Security Bank of Nevada
- Guarantee Bank
- Guaranteed Rate
- Home Base Mortgage
- HomeBridge Financial Services, Inc.
- Imortgage
- Irwin Union Bank and Trust Company
- J.P. Morgan
- Kinecta Federal Credit Union
- Leader One Financial
- Lender X
- Meadows Bank

- Mutual of Omaha Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Premier Mortgage Lending Group
- Prudential Relocation
- Real Valuation Services
- Reichert Workforce Mobility
- Rels Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Royal Business Bank
- RPM Mortgage
- Settlement One
- SIRVA Relocation
- Solution Star
- South Pacific Financial
- Stars Valuations Services
- The Home Lending Group
- Trimavin Appraisal Management Co.
- United States Appraisals
- US Bank
- Veteran's Administration
- Wells Fargo Bank

Attorneys / Others:

- Abrams, Jennifer
- Akerman, LLP
- Alverson, Taylor, Mortenson-Judd Balmer
- Americana Nevada Company
- Anderson, McPharlin & Conners
- Barney, Anthony
- Barranco & Kircher
- Black & Lobello
- Bourassa Law Group
- Boyce & Gianni
- Bradley Arant Boult Cummings
- Bremer Whyte Brown & O'Meara
- Brooks Hubley
- Cooper Castle
- Delanoy, Schuetz & Mcgaha
- Dickerson Law Group
- Drizin, Lee A
- Ecker Law Group
- Fennemore Craig
- Fine, Fran (Broker)
- Gerrard Cox Larsen
- Goodrich, Jim (Valuation Consulting)
- Hansen, Randon
- Holland & Hart LLP
- Hoskin, Hughes and Pifer
- Jensen, Rob (Broker)
- Jolley Urga Wirth Woodbury & Standish
- Kainen Law Group
- Kelleher & Kelleher
- Kerr, Preston Sterling
- Kolesar & Leatham
- Leavitt, Andrew
- Lee & Russell
- Lee, Hernandez, Kelsey, & Brooks
- Love, Tom (Broker)
- Mazur Brooks
- Menninger, Carol
- Miller & Wright Rawlings, Olsen, Cannon, Gormley & Desruisseaux
- Mullin Hoard Brown
- Shapiro, Florence (Broker)
- Shea & Carlyon
- Wilson Elser Moskowitz Edleman & Diker
- Wolfe & Wyman
- Wright Finlay & Zak
- Woodbury & Standish

(Rev. January 25, 2016)

EXHIBIT C

ATTORNEY WORKLOAD REPORT

Subject Address	Name	Purpose	Attorney or Client	Court Date	Case No.
Lots 1, 3, 4 & 5 Ghost Dance	Town & Country vs Goddard	Court Testimony	Holland & Hart LLP	12/20/10	
2966/2970 San Lorenzo	Bank of Nevada	Deposition/Crt Testimony	Lionel, Sawyer & Collins	1/6/11	120-201-0059
5025 Kell Lane	OneCap Mortgage	District Court Appearance	Reade & Associates	1/25/11	
2966/2970 San Lorenzo	Bank of Nevada	Federal Court Testimony	Lionel, Sawyer & Collins	1/28/11	120-201-0059
940 N Sloan Lane #105	Bank of Nevada	Court Testimony/Settled	Mazur & Associates	3/3/11	
Platinum	Platinum Condo Dev	Litigation/Deposition	Foley & Lardner LLP	7/4/11	209CV00671PMPGWF
4945 Ghost Dance Circle	Goddard	Federal Court Testimony	Town & Country Bank	9/8/11	2:09CV00686RLHLRL
2132 Country Cove	Bank of Nevada vs King	District Court Testimony	Gerrard & Cox	10/6/11	A627640
14480 Roundabout Circle	Shavitz vs Jacobs Construction	District Court Deposition	Schofield Miller Law Firm	12/5/11	A-09-592088-D
39 Quail Hollow Drive	Limpscomb vs Smith	Depo/Court Testimony	Silvermanm Decaria & Kattelman	1/8/12	D-11-444324-D
645 Sari Drive	M&I vs. Long	Court Testimony	Cooper Castle Law Firm	1/13/12	A-11-65-203-C
7811 Dana Point Court	BofNV vs Troncosco	Court Testimony	Mazur & Brooks	9/24/12	A647414
2139 Wilbanks Circle	BofNV vs Deevers	Court Testimony	Mazur & Brooks	10/4/12	A-12-655231-C
22 Sawgrass Court	Provident vs Levy	Deposition	Cooper Castle Law Firm	10/5/12	A-09-601666-C
23 Mallard Creek Trail	Goldstein/Irsfeld	Deposition	The Bourassa Law Group	11/30/12	A617125
8031 Springbuck Court	BofNV vs Townsend	Deficiency Hearing	Michael Marcellette	4/2/13	A-12-671738-C
49 Hawk Ridge Drive	BofNV vs Barry	Deficiency Hearing	Michael Marcellette	5/7/13	A-126555559-C
1500 Windhaven	FDIC	Deposition	Kolesar & Leatham	7/23/13	8408-2
32 Via Vasari	Deutsche Bank	Litigation	Blut Law Group	Current	A-11-651083-C
8623 Fire Mountain	Bank of Nevada	Deficiency Hearing	Mazur & Brooks	7/31/13	A-11-642953-C
1157 Via Casa Palmero	FDIC vs Rekis	Deposition	Kolesar & Leatham	8/29/13	2:12-cv-02061-GMN
51 Agate Ave #303	Giuliano vs Giuliano	Court Testimony	Zashin & Rich	10/9/13	DR12343002
FDIC Reviews	FDIC vs Core Logic	Deposition	Mullin Hoard Brown	12/10/13	8:11-cv-00704-DOC-AN
53 Hawk Ridge Drive	D&J Family Trst vs Palm Canyon	Deposition	Bourassa Law Group	12/17/13	A646373
FDIC Reviews	FDIC vs LSI Appraisal LLC	Deposition	K&L Gates LLP	1/8/14	SACV11-706 DOC(Anx)
8 Rue Mediterra Drive	RBM Constuction vs Rosenaur	Deposition	Bremer, Whyte, Brown & O'meara	1/15/14	09-A595366
2621 Dandelion Street	Puckett vs Bank of Nevada	Court Testimony	Michael Marcellette	2/13/14	A-13-677331-C
3180 Darby Gardens Court	Everflow	Court Testimony	Lionel, Sawyer & Collins	3/4/14	A-11-652597-B
4381 W Flamingo Rd #39301	Royal Business Bank vs Lin	Court Testimony	Compton Law	3/26/14	A-14-694431
7229 Mira Vista Street	Anthony Savino	Court Testimony	McDonald Law Offices	6/12/14	A-13-674390-C
1147 Evening Canyon Ave	Ana Thompson	Court Testimony	Brooks Hubley LLP	9/26/14	A-13-17461
4381 W Flamingo Rd #18321	Palms Place vs Lue Garlick	Deficiency Hearing	Brownstein Hyatt Farber Schreck	11/4/14	A-14-697506-B
6583 Mermaid Cr.	McGee vs. Citi Mortgage	Deposition	Wolfe & Wyman	11/24/14	2:12-CV-02025JCMPAL
3048 Palatine Terrace Ave	Jayna Shreck	Deficiency Hearing	Mazur & Brooks	12/18/14	A-13-687732-C
590 Lairmont Place	Rosenberg vs. Bank of America	Deposition	Kemp Jones	3/17/15	A-13-689113-C
7616 Lillywood Ave	Bank of NV vs. Dryden	Court Testimony	Mazur & Brooks	3/24/15	A-14-710293-C
6024 Rabbit Track St	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	6/1/15	A-14-698511-C
1354 Manorwood St	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	6/1/15	A-14-694435-C
10365 Morning Sorrow	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	6/2/15	A-14-696561-C
8014 Brighton Summit	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	6/16/15	A-14-698568-C
1521 Hollow Tree Dr	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	7/2/15	A-14-698102-C
7912 Dappled Light	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	7/2/15	A-13-684630-C
10125 Somerdale Ct	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	8/17/15	A-13-686512-C
4962 Perrone Avenue	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	8/17/15	A-13-680704-C
7400 Brittlethorne Ave	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	8/17/15	2:14-cv-02080-RFB-GWF
4525 Dean Martin Dr #3008	Bofa c/o Bradley Arant Cummings	Deposition	Accurity Valuation	8/17/15	A-14-701585-C
32 Benevolo Dr	Morabito vs. Pardee Homes	Deposistion	Koeller, Nebecker, Carlson & Hauck	9/2/15	A-13-688285

55 Pheasant Ridge Dr	Veronica Chew v PV Hazell	Court Testimony	Kelleher & Kelleher	10/19/15	D-14-506515
8175 Arville Street #380	City National vs. Steven Graner	Court Testimony	HDW Attorneys at Law	3/22/16	A-15-725190-C
9172 W Viking Rd	Gary L Stevens vs. Sharen Stevens	Court Testimony	Kelleher & Kelleher	3/23/16	D-14-504559-D
145 E Harmon Ave #3619 & #3621	Banc of California v. Melbrod	Court Testimony	LeClairRyan	3/30/16	A-15-719718-C
6222 Heather Creek Place	SFR v. Green Tree, et al	Court Testimony	Akerman LLP	5/16/16	A-14-695002-C
6250 W Flamingo Road #15	Poshbaby LLC v. Elsinore III LLC	Court Testimony	Snell & Wilmer LLP	5/17/16	A-14-699435-C
6809 Cobre Azul Ave #201	RJRN, LLC v. Nationstar Mortgage, LLC, BoA	Deposition	Akerman LLP	7/26/16	A-14-706671-C
4962 Perrone Avenue	SFR Investments v. Ditech Financial	Court Testimony	Snell & Wilmer LLP	7/28/16	A-13-680704-C
3952 Stormy Weather Lane	Southern Capital Preservation v. GSAA Home Equity Trs.	Court Testimonty	Akerman LLP	9/29/16	A-14-698864-C
7604 Brisa Del Mar Avenue	Christiana Trust v. SFR investments	Deposition	Akerman LLP	2/1/17	2:16-cv-01226-JCM-GWF
1450 San Juan Hills Drive #203	Kenneth Renfroe v. Bank of New York Mellon, et al	Court Testimony	Akerman LLP	2/14/17	A-14-699490-C
1637 Bent Arrow Drive	Saticoy Bay LLC Series 1637 Bent Arrow v. Bank of New York Mellon	Court Testimony	Wright, Finlay & Zak	2/22/17	A-14-704418-C
821 Peachy Canyon Circle #204	Platinum Realty & Holdings v. Nationstar et al. Heather Dowers	Court Testimony	Akerman LLP	2/28/17	A-14-693956-C
5246 Ferrell Street	LN Management LLC v. Carmen and Jesus Calleros, BoFA	Court Testimony	Akerman LLP	3/27/17	A-13-691319-C

EXHIBIT D

Expert Disclosure Requirements

R. Scott Dugan, SRA

R. Scott Dugan Appraisal Co, Inc.

Nevada Certified General Appraiser A.0000166-CG

702-876-2000

Compensation for Assignment and Court Testimony:

R. Scott Dugan, SRA, charged a total of $750 to prepare an appraisal report for the subject matter of this assignment.

R. Scott Dugan, SRA, is charging $500 per hour for non-testimony and testimony time. Non-testimony time is billed for research, consultation, meetings, field inspections, travel time, analysis, deposition, and court preparation.

Publications:

None

Summary of Recent Testimony in Court and Depositions:

Court Testimony: See attached sheet.

Deposition Testimony: See attached sheet.

TAB 36

Electronically Filed
8/21/2017 9:07 PM
Steven D. Grierson
CLERK OF THE COURT

RIS
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Attorneys for SFR Investments Pool 1, LLC

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

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 Consolidated with: A-16-742327-C Dept. No. VII **REPLY IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC's MOTION FOR SUMMARY JUDGMENT**
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 submits its Reply in Support of its Motion for Summary Judgment This Reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court may entertain. This Reply is also based on SFR's Motion for Summary Judgment ("SFR's MSJ"), and SFR's Prior Opposition

("SFR's Opp.") to MARCHAI B.T., a Bank Trust, ("Marchai" or the "Bank")[1], Motion for Summary Judgment ("Marchai's MSJ"), which are incorporated fully herein by reference.[2]

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nothing in the Bank's Opposition to SFR's Motion for Summary Judgment ("Bank's Opp.") provides a reason against granting summary judgment in favor of SFR. Particularly, the Bank has failed to effectively dispute the statutory conclusive effect of the deed recitals as to (1) default; (2) mailing of the notice of delinquent assessment; (3) recording of the notice of default and notice of sale; (4) elapsing of 90 days; and (5) giving notice of sale. Similarly, the Bank has not meet its burden to overcome the presumptive validity of the deed established in Breliant v. Preferred Equities Corp., 112 Nev. 663, 670, 918 P.2d 314, 319 (1996). Specifically, despite the Bank's contention otherwise, the evidence clearly shows that the Bank was mailed the notice of sale as required by law. Even more, the Bank was undeniably aware of the Association's intent to proceed to sale, as the Bank admits to receiving the Notice of Default and Election to Sell Under Homeowners Association Lien in the instant case and Marachi specifically admits that its servicer knew about the sale and even contacted the Association, through its agent, Alessi & Koenig, LLC ("Alessi") before the sale.

Any additional arguments made by the Bank to dispute the validity of the sale similarly fail to provide a justification against granting SFR's Motion for Summary Judgment. To start, the Bank's contentions regarding commercial reasonableness lack merit since price alone is **never** enough, and there is no evidence of fraud, unfairness, or oppression which **brought about or accounted for** the price paid by SFR.

Moreover, while the Bank has failed to present any evidence of a pre-sale dispute sufficient to trigger a potential bona fide purchaser ("BFP") defense by SFR, even if it had, the Bank has presented no justifiable basis to preclude SFR's status as a BFP. Also, although an equitable remedy

[1] Herein, "the Bank" refers to Marchai, B.T., a Nevada Business Trust and any predecessors or successors in interest to the Deed of Trust, as well as any agents acting on behalf of these entities, including but not limited to servicers, trustees and nominee beneficiaries.

[2] SFR hereby incorporates by reference its prior Opposition to the Bank's Motion For Summary Judgment filed on February 4, 2016, as though fully set forth therein, and also incorporates by reference SFR's Motion for Summary Judgment filed July 21, 2017, as though fully set forth herein.

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is not available to the Bank, even if it were, the equities tip greatly in favor of SFR, an innocent purchaser.

Finally, NRS 116's foreclosure provisions do not involve a state actor or violate the Takings Clause of the United States and Nevada Constitution. This decision was reached in a 5-0 decision by the Nevada Supreme Court. Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 133 Nev. ___, 388 P.3d 970, 975 (2017).

II. STATEMENT OF DISPUTED AND UNDISPUTED FACTS

SFR fully incorporates herein its Statement of Undisputed Facts from SFR's MSJ. See SFR's MSJ, at 4:3-6:16. Additionally, SFR incorporates herein its Response to Statement of Undisputed Facts from SFR's Prior Opp. See SFR's Prior Opp., at 4:12-5:16.

III. ARGUMENT

A. The Prior Homeowner's Payment to the Association Does Not Satisfy the Superpriority Portion of the Association Lien.

The Bank erroneously concludes that payment by the prior homeowner, Cristela Perez ("Perez") constitutes satisfaction of the superpriority portion of the Association's lien. Apparently, the Bank expects everyone to protect it from its own failures. However, under NRS 116.31166(1), the holder of a deed of trust may pay off the superpriority portion of an HOA lien to prevent the foreclosure sale from extinguishing that security interest. See Nev. Rev. Stat. § 116.31166(1); see also SFR Investments, 334 P.3d at 414 ("But as a junior lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss of its security ...."); see also, e.g., *7912* Limbwood Ct. Trust v. Wells Fargo Bank, N.A., et al., 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013) ("If junior lienholders want to avoid this result, they readily can preserve their security interests by buying out the senior lienholder's interest." (citing Carillo v. Valley Bank of Nev., 734 P.2d 724, 725 (Nev. 1987); Keever v. Nicholas Beers Co., 611 P.2d 1079, 1083 (Nev. 1980))). As such, the statute confers the ability to pay only the superpriority portion of the lien **to the deed of trust holder**. Here, the payments made by Perez were not on behalf of the Bank, at the Bank's request, nor for the purposes of protecting the Bank's rights. The payments were to protect Perez, and no one else.

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Any attempt by the Bank to differentiate between superpriority and subpriority portions of the Association's lien in the context of a payment made by a homeowner is simply misleading, as Perez owed the entire amount of the delinquency and failed to satisfy the entire lien. The superpriority portion of the Association's lien is an amount equal to **up to** nine months of budgeted assessments (plus possibly collection fees and costs). In that regard, the superpriority amount is not an accounting line item that once paid, is paid for all purposes. Nothing in NRS Chapter 116 suggests it is the first nine months or any particular set of nine months of periodic assessments. Even if Perez' payments could satisfy the superpriority portion, the Bank provided no evidence as to how Perez' payments were applied to the account. Coupled with the unsettled issue of whether fees and costs of collection must be paid,[3] the Bank cannot rely on the prior homeowner's partial payments toward the lien as satisfaction of the Bank's obligation.

Furthermore, pursuant to NRS 106.220, any changes in lien priority must be recorded. Because any purported payment of the superpriority portion of the lien changes the priority of the Association's lien versus the deed of trust, it is required to be recorded. NRS 106.220 states in relevant part, "[a]ny instrument by which any…lien upon…real property is subordinated or waived as to priority, must…be recorded…" NRS 106.220 further states, "[t]he instrument is not enforceable… unless it is recorded." Here, the Bank argues that Perez' payments cured the superpriority portion of the Association's lien. Accepting, for the sake of argument, this is true, then under NRS 106.220, this payment would be an interest in property that subordinated the Association's lien, and therefore Nevada law requires that it be recorded. Failure to record makes it unenforceable against third parties like SFR. It is undisputed that the Bank failed to record any document regarding purported payments of the superpriority portion of the Association's lien. As such, any payment, even if valid, is void against SFR.

[3] Ikon did not limit the amount necessary for a bank to obtain a release of the superpriority portion of an association lien during an NRS 116 foreclosure. Instead, that case dealt exclusively with the amount remaining as super priority after a bank concludes its own foreclosure sale. Horizons at Seven Hills v. Ikon Holdings, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 (2016). See also footnote 4, indicating "When an HOA forecloses on a property, the pre-2015 amendments of NRS 116.31164(3)(c) and NRS 116.3116(8) allowed for the recoupment of fees and costs. However, because [the Association] did not foreclose on the property, NRS 116.31164(3)(c) and NRS 116.3116(8) are not implicated in this decision." Id. at 69. See also, "The question of whether and, if so, to what extent costs and fees are recoverable in the context of an HOA superpriority lien is open, particularly as to foreclosures that pre-date the 2015 amendments to NRS Chapter 116." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1113 (2016).

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Additionally, under Nevada law, every interest in property must be recorded. NRS 111.315 states in relevant part, "…every instrument of writing…whereby any real property may be affected…shall be recorded." NRS 111.325 further provides that failure to record such conveyance "shall be void as against any subsequent purchaser, in good faith and for valuable consideration…" NRS 111.001 broadly defines "conveyance" as "**every instrument in writing**, except a last will and testament, **whatever may be its form**, and by whatever name it may be known in law, by which any estate or interest in lands is **created, alienated, assigned or surrendered**." (emphasis added)

There can be no doubt that a payment, which discharges the superpriority portion of the Association's lien, constitutes an instrument or conveyance that affects the property, as noted in the Restatement.[4] The Bank having failed to record its attempted payment means the attempt has no validity against SFR. Therefore, any payments made by Perez, even if said payments constituted a satisfaction of the Bank's obligation to pay the superpriority portion, said payments must be recorded to have any effect or enforceability against SFR. Based on the above, it is irrelevant that Perez made partial payments toward the delinquency, as the entire delinquency was never fully alleviated and said payments do not serve to protect the Bank by satisfying the superpriority portion. Furthermore, the policy behind and spirit of NRS Chapter 116 supports that only the secured interest holder can protect the DOT, otherwise a borrower has no incentive to pay beyond the superpriority portion. If the borrower was allowed to only satisfy the superpriority portion, the Association would be stripped of

[4] See, Restatement (Third) of Property: Mortgages § 6.4 cmt. (g). Per the Restatement, if a junior interest holder pays the senior lien, that debt is assigned to the payor under the doctrine of subrogation and is added to the junior lienholders. *See* Restatement § 6.4 cmt. (g)("[R]edemption by a person not primarily responsible for payment of the debt does not extinguish the [lien], but rather **assigns** both the [lien] and the debt to the payor by operation of law under the doctrine of subrogation[.]")(emphasis added). Per the Restatement § 6.4 cmt. (f), "[t]he junior interest-holder who redeems is not entitled to a document of discharge, but rather an *assignment* of the [lien]." Id. (emphasis added). See also, Black's Law Dictionary 971 (6th ed. 1990) Per Black's, "release" is defined as, "Liberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced. 2. The relinquishment or concession of a right, title or claim. 3. A written discharge, acquaintance, or receipt; specifically a writing - either under seal or supported by sufficient consideration. 4. A written authorization or permission for publication. 5. The act of conveying an estate or right to another, or of legally disposing of it. 6. A deed or document effecting a conveyance. 7. The action of freeing of the fact of being freed from restraint or confinement. 8. A document giving formal discharge from custody."

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all reasonable ability to effectively enforce its lien, because buyers at a sale would be taking subject to the first deed of trust, and the Bank would be unfairly protected, despite its complete inaction.

B. Deed Recitals Are Conclusive But This Court Retains the Ability to Craft an Equitable Remedy if Appropriate.

No one can deny that the plain language of NRS 116.31166(1) states as follows:

> 1. The recitals in a deed made pursuant to NRS 116.31164 of:
> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
> (b) The elapsing of the 90 days; and
> (c) The giving of notice of sale,
> **are conclusive proof of the matters recited**.

NRS 116.3116(1). (emphasis added).

The Nevada Supreme Court found that despite NRS 116.3116(1)'s conclusive nature, that the Court still has the power to craft an equitable remedy where appropriate. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1110–11 (2016)("History and basic rules of statutory interpretation confirm our view that courts retain the power to grant equitable relief from a defective foreclosure sale when appropriate despite NRS 116.31166."). Thus, the conclusive nature of the recitals remain.[5] SFR can rely on the recitals as conclusive proof of default and the mailing and recording of the notice of default and election to sell and the notice of sale.

Thus, if the Bank is allowed to make an equitable challenge at all, it is the Bank that must prove these conclusive recitals false. Stated differently, at the very least, NRS 116.31166(1) has shifted the burden to the Bank to disprove that the matters recited pursuant to NRS 116.31166(1) did not take place.[6] The Bank has not met this burden.

The statute setting forth the requirements for providing a copy of the notice of sale applicable during the relevant time period reads as follows:

>>>

>>>

[5] There is no legal or factual support for the Bank's contention that the recitals were insufficient. The recitals in the Foreclosure Deed stated in clear and adequate detail that the Association's agent complied with each of the items provided for in NRS 116.31166.

[6] It should be noted that SFR's undisputed facts in SFR's MSJ provides substantial evidence relating to the default of the borrower and the recording, mailing, posting and publishing of all appropriate notices, making the recitals a redundancy.

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NRS 116.311635 Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.

1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

… (b) Mail, on or before the date of first publication or posting, a copy of the notice by first class mail to:
(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;
(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and
(3) The Ombudsman.

NRS 116.311635.

The Bank's misunderstanding of the requirements of Nevada Law with regard to mailing the notice of sale notwithstanding, the Notice of Trustee's Sale in the instant matter was provided as required under NRS 116. The Bank contends that the Association did not properly serve the notice of sale because there was no mailing to Marchai. See Bank's Opp., 13:16-18. In doing so, the Bank distorts the evidence provided in this matter and misrepresents the mailing requirements under NRS 116. First, and most importantly, the evidence shows that the notice of sale was mailed to the Bank.[7] Marchai does not dispute that the notice of sale was sent via certified mail to the recorded interest holders; but rather complains that it was not sent to Marchai. This Court has already recognized that the law requires the foreclosing Association to provide notice to mortgage holders that have timely recorded interests, and Marchai did NOT have a recorded interest at the time the relevant Notice of Sale was mailed. See Decision & Order entered March 22, 2016 ("Order"), at 19:12-14. This Court further acknowledged that U.S. Bank, the mortgage holder with a recorded alleged interest at the time, did receive the notice of trustee's sale mailed on July 29, 2013. Id. at 19:15-16.

The Bank further opines that the relevant notices were sent via certified mail to the record interest holders at the time; but they were not sent via first class mail, though the Bank has provided no actual evidence to dispute they were sent by regular mail as well. The Bank cites to a non-binding lower level bankruptcy case for the proposition that service by certified mail cannot comply with a statute or rule that requires service by first-class mail. See Bank's Opp., 25:14-17. Aside from the non-

[7] See SFR's MSJ, Ex. A-4, A-7

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binding, non-authoritative nature of the case cited by the Bank, In re Frazier[8], the facts of that case are very specific and make the instant matter entirely distinguishable. Not to mention, there is another similar case, In re Ted A. Petras Furs, Inc.[9], that makes the exact opposite ruling, finding that use of certified mail for service of process does not violate Rule 7004(b). The Court there specifically concluded as follows:

> Plaintiff took it upon himself to go beyond the standards required by Rule 7004(b) and serve by certified mail. This Court refuses to penalize Plaintiff for taking this extra step by dismissing these adversary proceedings when the only substantial difference between certified and first class mail is the requirement of a signature indicating successful delivery.

In re Ted A. Petras Furs, Inc., 172 B.R. at 176.

USPS Certified Mail is First-Class Mail and considered Special Service mail that receives higher delivery service priority. Essentially, Certified Mail/Certified Mail-Return Receipt Requested are extra services added to First-Class mail to enhance the service, security and convenience.[10] This fact is reinforced in the In re Frazier[11]. In the Frazier case, a summons and complaint were mailed by certified mail. The mail was returned unclaimed and the bank sought a default judgment when the debtors failed to respond to the summons and complaint. This was an adversary complaint being served on individual debtors. The Court was concerned with the fact certified mail requires the affirmative act of signing for the received documents, a fact that could create a problem if the person to whom the mail is sent is not home. The consequence of the unclaimed certified mail under those facts provides a likelihood that the non-receiving party would never know what was transpiring. Id. at 400.

In the present case, these concerns are non-existent. As to not being available to receive the certified mail, logically there is little to no possibility of a business like the Bank not being available during business hours to receive the certified mail. As to the Bank potentially not having knowledge of what was transpiring here, aside from the fact that the Bank is sent more than one notice, in the instant case, this Court has already acknowledged the Bank's receipt of the pertinent notices. The

[8] 394 B.R. 399, 400 (Bankr. E.D. Va. 2008).

[9] 172 B.R. 170 (Bankr. E.D.N.Y 1994).

[10] See https://www.usps.com/ship/first-class-mail.htm for a complete explanation of First-Class Mail and Insurance and Extra Services Details.

[11] See In re Frazier, 394 B.R. at 400.

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bottom line – the Bank has not met the burden necessary to overcome the conclusive and presumptive effect of the deed.

Second, NRS 47.250(18)(c) establishes a disputable presumption that "the ordinary course of business has been followed." David Alessi has regularly testified that it was the policy and procedure of Alessi & Koenig to send the notice of sale via regular first-class mail and certified mail/return receipt requested.[12] Nothing has been provided to dispute the presumption that the regular policy and procedure was not followed during this foreclosure process. Third, standard practice in the industry was to send the Notice of Sale via regular first-class mail and via certified mail, return receipt requested. The Bank has provided no reason to assume the mailings were not sent in that manner here. Outrageously, Bank is making this argument despite the fact that Marchai's predecessor in interest admitted receipt and Marchai concedes its servicer was aware of the scheduled Association foreclosure sale before it occurred. More importantly, regardless of whether the notices were sent via first class mail or not, this Court has decided it is not an issue that warrants reversing a sale, deciding as follows:

> "Based on the language in Shadow Wood and the Court's equitable powers, the Court is not persuaded that sending notices via certified mail as opposed to first class mail would justify setting aside a foreclosure sale or its effect if the parties actually received notice in a timely manner. Absent some further showing that notice was not actually received, recitals in the foreclosure deed are sufficient to establish that the HOA complied with NRS Chapter 116."

Order, at 19:5-11.

C. The Foreclosure Deed and Sale are Presumed Valid

Foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18); see also Breliant, 112 Nev. at 670, 918 P.2d at 319. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." Yeager, 897 P.2d at 1095 (citing Vancheri, 777 P.2d at 368.) "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." Id. (citing NRS 47.180.).

To overcome the presumption of validity, the Bank must have pled and proven a claim for

[12] See July 27, 2016 Deposition Excerpt of 30(b)(6) Representative for Alessi & Koenig, LLC, at 26:5-11, attached hereto as **Exhibit A**.

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fraud with particularity, or alleged some fraud, unfairness or oppression that is not overshadowed by its own bad acts. Shadow Wood, 366 P.3d at 1112. However, the Bank would have to prove that the recitals were incorrect to advance its arguments, and it cannot since the evidence reflects that the Bank was mailed the Notice of Default and the Notice of Sale and receipt is undisputable. Simply put, the Bank has not produced any admissible evidence to prove such an allegation that would allow the sale to be set aside.

Regardless of the above, while the presumption of a regular and proper sale is rebuttable, the presumption is **conclusive as to a bona fide purchaser**. See Moeller v. Lien, 25 Cal.App.4th 822, 831-832, 30 Cal.Rptr.2d 777, 783 (1994) (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). This conclusive presumption is key because it "precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor[,]" and even where "the sale price was only 25 percent of the value of the property ..." Moeller, 25 Cal.App.4th at 831-833, 30 Cal.Rptr.2d at 783. In addition, while here SFR is a bona fide purchaser for value, under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh'g (Jan. 31, 2001)(holding that no limitation of bona fide purchaser can be read into a statute providing a conclusive presumption). For these reasons, summary judgment against the Bank and in favor of SFR is appropriate.

D. The Bank is Not Entitled to an Equitable Remedy as the Bank's Potential Remedy is For Money Damages.

To the extent the foreclosure is somehow deemed wrongful, the Bank's remedy is against the parties who harmed it, in lieu of displacing an innocent third-party purchaser.

A Bank's right to recover money damages from a wrongful association foreclosure is consistent with this Court's precedent in Swartz v. Adams after it found that a homeowner was denied the constitutionally required notice of the foreclosure of its home. Swartz stated that:

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> Since the execution sales were conducted so as to deny the owners of the property due process of law, the ideal remedy would be to return that property to the former owner pending constitutionally sufficient proceedings. Unfortunately, this may no longer be done without injury to innocent third parties who are bona fide purchasers of the property. However, Violet has also sought compensatory relief in her complaint. We therefore reverse and remand the case to the court below for appropriate proceedings consistent with this opinion.

93 Nev. 240, 245–46, 563 P.2d 74, 77 (1977).

This is also consistent with the Restatement's commentary regarding those non-judicial foreclosure jurisdictions where price alone is not enough to set aside a sale: any wronged junior lienholder must seek a remedy from someone other than the purchaser. See Restatement (Third) Property: Mortgages, §8.3, Comment *b*.

Other courts have consistently found that a BFP is protected even in cases where the conduct is as extreme as the wrongful rejection of tender. Moeller v. Lien, 25 Cal. App. 4th 822, 831–32, 30 Cal.Rptr.2d 777, 783 (1994) ("[t]he conclusive presumption precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor"); see also Melendrez, 26 Cal.Rptr.3d at 431-432 ("courts have sustained a number of foreclosure sale challenges where the actions have been brought before the transfer of the transfer of the trustee's deed to the buyer[]" but not after delivery of the trustee's deed) (internal citations omitted)).

Given that the Bank simply has a collateral interest in the property, a remedy for monetary damages is a perfect substitute. Munger v. Moore, 11 Cal. App. 3d 1, 7, 89 Cal. Rptr. 323 (Ct. App. 1970)("a trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained where there has been an illegal, fraudulent or willfully oppressive sale of property under a power of sale contained in a mortgage or deed of trust") (citing Davenport v. Vaughn, 193 N.C. 646 [137 S.E. 714, 716]); Sandler v. Green, 287 Mass. 404 [192 N.E. 39, 40]; Edwards v. Smith (Mo.) 322 S.W.2d 770, 776; Dugan v. Manchester Federal Sav. & Loan Assn., 92 N.H. 44 [23 A.2d 873, 876]; Harper v. Interstate Brewery Co., 168 Ore. 26 [120 P.2d 757, 764]; Black v. Burd (Tex. Civ. App.) 255 S.W.2d 553, 556; Holman v. Ryon (D.C. App.) 56 F.2d 307, 310-311; Royall v. Yudelevit, 268 F.2d 577, 580 [106 App. D.C. 1].

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Allowing the Bank to seek monetary damages against a foreclosing agent or an association inherently keeps the liability on the parties who the Bank alleges created the problems with the foreclosure. In contrast, forcing a BFP to lose its ownership interest in the property due to actions not known by the BFP, only punishes the BFP. Moreover, by protecting a BFP in this regard, and holding the others who allegedly harmed the Bank accountable, this also affords an adequate remedy to the complaining party.

When evaluating Shadow Wood, it is important to remember that Shadow Wood dealt with a dispute as to a bank who held legal title and a subsequent NRS 116 purchaser. Id. at 1107-08. Thus, the Nevada Supreme Court has never held that a party with only a security interest in a property is entitled to an equitable remedy. Similarly, "[a] plea to quiet title does not require any particular elements, but 'each party must plead and prove his or her own claim to the property in question" and a "plaintiff's right to relief, therefore, depends on superiority of title.'" Chapman v. Deutsche Bank Nat'l Trust Co., 129 Nev. Adv. Op. 34, 302 P.3d 1103, 1106 (2013). Thus, the Bank's argument that it brought an NRS 40.010 claim does not necessarily entitle it to an equitable decision; it must first establish its own interest in the property. If its interest in the property can be resolved by the court of law, then a remedy in equity is inappropriate.

Here, as in Swartz, the Bank would not be prevented from seeking monetary damages from the Association and/or its foreclosure agent, should it be able to prove any wrongdoing. Thus, the proper remedy is for compensatory damages and not the overturning of a foreclosure sale. Any other result would cause prejudice to SFR, an innocent third party purchaser. Ultimately, if this Court wants to protect the foreclosure process through the NRS 116 statutory schemes and create accountability on the proper parties while protecting BFPs, it can easily do so by requiring the Bank, a lien holder, to seek compensatory damages from the foreclosing association, should it prove a sale irregularity.

E. SFR is a Bona Fide Purchaser.

Contrary to the Bank's assertion otherwise, it is the Bank, and not SFR, who has the burden to disprove SFR's BFP status. SFR has actual title to the property pursuant to NRS 116.31164(3)(a). The Bank is seeking equitable "title" or "interest" in trying to keep its lien in place. And while SFR disagrees that the Bank is entitled to equity, where a party is claiming equitable title, the burden is on

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the party claiming such equity to allege and prove that the person holding legal title is not a bona fide purchaser. See First Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal.App.4th 1433, 71 Cal.Rptr.2d 295 (Cal.Ct.App. 1998). Thus, it is up to the Bank to demonstrate SFR, as the third-party purchaser, was not a BFP. The Bank failed to provide any evidence to refute SFR's BFP status.

A purchaser is a bona fide purchaser ("BFP") if the purchase of real property "was made in good faith, for a valuable consideration; and that the conveyance of the legal title was received before notice of any equities of the prior grantee." Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). A "purchaser for value" is one who has given "valuable consideration" as opposed to receiving the property as a gift. Id. at 187, 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971) ("A specific finding of what the consideration was may be implied from the record."). Even if a purchaser may purchase a property for lower than the property's value on the open market, the fact that SFR paid "valuable consideration" is undisputed. Shadow Wood, 366 P.3d at 1115 (citing Fair v. Howard, 6 Nev. 304, 308 (1871) ("the question is not whether the consideration is adequate, but whether it is valuable"); see also Poole v. Watts, 139 Wash, App. 1018 (2007)(unpublished disposition) (stating that the fact that the foreclosure sale purchaser purchased the property for a "low price" did not in itself put the purchaser on notice that anything was amiss with the sale).

In the present case, SFR paid valuable consideration for the Property at the foreclosure sale. This is undisputed as SFR paid $21,000.00 for the property. Moreover, at the time of the sale, SFR had no notice of any equities of the prior grantee where the public records showed only that (1) a deed of trust was recorded after the Association perfected its lien by recording its declaration of CC&Rs, (2) there was a delinquency by the homeowner, which resulted in the Association instituting foreclosure proceedings; and, after complying with NRS Chapter 116, selling the Property at a public auction.

The Bank has alleged that SFR had "at least inquiry notice" of the prior homeowner's partial payments and therefore cannot dempostrate that it is a bona fide purchaser. However, the Bank provides no explanation as to how such knowledge would diminish SFR's bona fide purchaser status. The only thing made clear from the subsequently recorded notices is the fact that a delinquincy remained on the account, despite any partial payments having been made by the prior homeowner. The "five-year history of the foreclosure that resulted in multiple notices of delinquency, default, and

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sale" the Bank focuses on to support its position only really served to put the potential purchaser on notice that the delinquency STILL exitsed and the Association was properly proceeding to forelcosure on the entirety of the lien; information further reinforced by the fact that nothing had been recorded to indicate even an attempt by the Bank to satisfy the superpriority portion of the Association's lien. SFR's knowledge of additional recorded notices would only have informed SFR that the lien had not been paid—nothing that defeats SFR's BFP status.

In regard to SFR's experience with association foreclosure sales, while SFR has purchased multiple properties at association foreclosure sales, this does not disqualify SFR from being a BFP. See, e.g., Melendrez v. D&I Investment, Inc., 127 Cal.App.4th 1238, 1252-1253, 26 Cal.Rptr.3d 413, 425-426 (2005) ("we see no reasoned basis for a blanket rule that would preclude a buyer from being a BFP simply because he or she has experience in foreclosure sales"). In order for a duty of inquiry to arise something must trigger that duty. In Allison Steel Manufacturing Co. v. Bentonite, Inc., 86 Nev. 494, 499, 471 P.2d 666, 699 (1970), the court found that a duty of inquiry arose because "[a]t the time appellant's judgment lien attached on May 26, 1964, the two IRS liens were already of record giving it constructive notice." The court also stated:

> Had appellant purchased the Henderson land at the Sheriff's sale after instead of before the IRS tax liens were released, a different result would prevail. The failure of Moore to have recorded his certificate of sale from IRS would have left the Henderson land free of any recorded notice of prior lien.

86 Nev. at 500, 471 P.2d at 670.

The court, therefore, recognized that the claimed prior lien must be reflected in the public record before a duty of inquiry arises.

Here, any problems with the foreclosure must be considered in light of SFR being a BFP. If this Court were to weigh equities, which it should not, it "must consider the entirety of the circumstances that bear upon the equities." Shadow Wood, 366 P.3d at 1114. These would include not only any irregularities in the sale process by the Association or Association's agents, but the actions or (in)actions by the Bank, as well as SFR's BFP status. Id. As the Shadow Wood court noted, "[c]onsideration of harm to potentially innocent third parties is especially pertinent here where [the Bank] did not use the legal remedies available to it to prevent the property from being sold to a third

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party. ..." Id. at 1115, n.7. Between the date the first notice of delinquent assessment (lien) was recorded and the date of the foreclosure sale, Marchai and/or its predecessors in interest never recorded a lis pendens or other document alleging any problems with the foreclosure process or the foreclosure sale. See SFR's MSJ, Exhibit B at ¶¶ 18, 19. The Bank did not (1) actually pay or attempt to pay the lien, (2) attend the sale, or (3) seek judicial intervention to enjoin the sale—all of this despite having received notice of the sale and despite Marchai admittedly having knowledge of the scheduled auction before it occurred, albeit through its servicer. See SFR's MSJ, Ex. A-4, A-7; see also, Bank's Opp., 11:5-13. As already recognized by this Court, any failure of Marchai to have directly received notice "can be attributed to its own actions and the actions of U.S. Bank. The Association mailed notices to all parties that it could have known had an interest in the property." The Bank knew that without taking action to stop the sale, the Association's foreclosure would extinguish all junior interests in the Property. By allowing the sale to go forward, the Bank must have intended this consequence. NRS 47.250(2).

On the other hand, SFR merely attended a publicly noticed, publicly held foreclosure sale, and placed the winning bid at the auction. The Bank is seeking yet another bailout for its poor business decisions.

F. The Foreclosure Process was Commercially Reasonable; Price Alone is Never Enough to Set Aside the Sale.

As a preliminary matter, NRS §116.31164, §116.31166 nor its surrounding provisions contain a requirement that the sale be "commercially reasonable."[13] This is because the standard for commercially reasonable sales arises from the Uniform Commercial Code, Article 9 (secured transactions), adopted in Chapter 104 of the Nevada Revised Statutes. See NRS 104.9101; see also Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 98, 560 P.2d 917, 919-920 (1977). The factors to determine if a sale is held in a commercially reasonable manner under the Article 9 include the method, manner, time, place, and terms. Id. This is logical under Article 9 because the secured goods can range from perishables to durables and what is commercially reasonable for one transaction may not be for another. Here, however, the method, manner, time, place and terms are designated by statute. The

[13] See Pro-Max, 117 Nev. at 95, 16 P.3d at 1077 ("where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.")

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Supreme Court conducted a full analysis of the statutes prescribing the method, manner, time, place and terms under which an association lien may be foreclosed, from NRS 116.3162-116.31168.[14] See SFR, at 411-412, 416 (2014) (describing the "specific aspect of the non-judicial foreclosure process NRS 116.31162 authorizes for HOA liens."). Thus, the Legislature has already determined what constitutes a commercially reasonable sale under NRS 116.

To the extent this Court engages in any analysis of the commercial reasonableness of the foreclosure sale, the following must be considered. When evaluating the commercial reasonableness of a sale, this Court has been instructed that an allegation of inadequate sales price alone is insufficient to set aside a foreclosure sale: "there must also be a showing of fraud, unfairness, or oppression." Shadow Wood, 366 P.3d at 1105, (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see Golden, 79 Nev. at 504, 514, 387 P.2d at 995 (adopting the California rule that "inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price"** (internal citations omitted) (emphasis added); see also Centeno v. JP Morgan Chase Bank, N.A., Nevada Supreme Ct. Case No. 67365 (unpublished Order Vacating and Remanding) (Nev. Mar. 18, 2016) (reaffirmance of the holding in Shadow Wood).[15] In fact, in adopting the California rule in Golden, the Nevada Supreme Court expressly rejected an inference that a sale could be set aside merely because the price was so low as to "shock the conscience," which is often used synonymously with "grossly inadequate." Golden, 79 Nev. at 510-511, 387 P.2d at 993-994; see Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, Case No. 70553, 2017 WL 1423938 at *2 n.3 (Nev.Ct.App. April 17, 2017)(unpublished order of affirmance)

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[14] References to NRS 116.3116-116.31168 are to the statutes as they existed at the time of the Association foreclosure in this case.

[15] Available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567, as Doc. 16-08672.

In that case, the price paid at the homeowners association's auction was $5,950.00. While the district court did not establish a value for the property, on appeal the Bank argued that that the deed of trust secured a loan for $160,001.00 and the property later reverted to the Bank at its own auction for $145,550.00. (See Case No. 67365, Response to Appellant's Pro se Appeal Statement, filed Feb. 17, 2016, available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567, as Doc. 16-04982. . . .

Thus, the price paid at the association's foreclosure sale in Centeno was approximately 4% of the credit bid by the Bank at its subsequent auction.

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("Sale price alone, however, is *never* enough to demonstrate that the sale was commercially unreasonable; . . .") (emphasis in original)(citing Shadow Wood, 366 p.3d at 1112; Long, 98 Nev. at 13, 639 P.2d at 530; and Golden, 79 Nev. at 514, 387 P.2d at 995)).

As will be shown below, not only can SFR show that the sale price itself was commercially reasonable, but there is no evidence of fraud, unfairness or oppression that accounted for or brought about an "inadequate" sales price. Golden, 79 Nev. at 504, 514, 387 P.2d at 995.

1. The Price Paid at Auction was not "Grossly Inadequate.".

The price paid by SFR was adequate. When purchasing a property at a forced sale, fair market value has no applicability to this situation. BFP, 511 U.S. at 545. Any evaluation that does not consider the entirety of a property's circumstances, including the fact that it was sold at an association non-judicial foreclosure sale, cannot shed light on the proper disposition value of a property.

In BFP, the United States Supreme Court was analyzing whether the price received at a mortgage foreclosure sale was less than "reasonably equivalent value" under the bankruptcy code. Similar to the arguments made by the Bank in this case, the Chapter 11 debtor in BFP argued that because the property sold for a fraction of its fair market value, the price paid was not reasonable. The Court held that "a 'reasonably equivalent value" for foreclosed real property is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with." BFP, 511 U.S. at 545. The Court explained that in a forced sale situation, "fair market value cannot—or at least cannot always—be the benchmark[]' used to determine reasonably equivalent value. Id. at 537. This is so because the market conditions that generally lead to "fair market value" do not exist in the forced sale context, where sales take place with significant restrictions:

> [M]arket value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very antithesis of forced-sale value. 'The market value of ... a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would 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)).

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The Court recognized that property sold in a forced-sale context i.e. a foreclosure, "is simply worth less [because] [n]o one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques." Id. at 539. As the Court further noted,

> **Unlike** most other legal restrictions, however, foreclosure has the effect of completely redefining the market in which the property is offered for sale; normal free-market rules of exchange are replaced by the far more restrictive rules 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.

Id. at 548-549 (emphasis in original).[16] Therefore, according to the United States Supreme Court, the only legitimate evidence of the property's value at the time it is sold is the foreclosure sale price itself. Id.

While the BFP holding related to a mortgage foreclosure sale, other Courts have extended the BFP analysis to tax-default sales of real property with adherence to requirements of state law where the statutes include requirements for public noticing of the auction and provisions for competitive bidding. See In re Tracht Gut, LLC, 836 F.3d 1146, 1152-1155 (9th Cir. 2016)(extending BFP analysis to California tax sales because they afford the same procedural safeguards as a mortgage foreclosure sale); T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int'l Ltd. Co., 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, however, the analysis still aptly explains how market value cannot be compared to a forced sale transaction. As set forth above, an NRS 116 sale is no different than the sales described in these cases: the statutes define the method, manner, time, place, and terms of how to conduct the sale, including public notice and competitive bidding or auction procedures. See NRS 116.311635; NRS 116.31164.

The Bank's argument that the Association foreclosure sale was commercially unreasonable due to the discrepancy between the sale price and the Bank' appraised value of the property ignores

[16] Courts have extended the BFP analysis to tax-defaulted sales of real property with adherence to requirements of state law, where such statutes included public noticing or advertising of the sale and competitive bidding or auction procedures. See In re Tracht Gut, LLC, 836 F.3d 1146, 1152-1154 (9th Cir. 2016)(extending BFP analysis to California tax sales because they afford the same procedural safeguards as a mortgage foreclosure sale).; T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int'l Ltd. Co, 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, however, the analysis still aptly explains how market value cannot be compared to a forced sale transaction.

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the material facts affecting the specific market at that time, including the split in the courts as to the interpretation of NRS 116.3116(2), and the potential that lenders would later attempt to challenge title despite the language of NRS 116.3116(2). In light of these potential risks, one could expect that the price the highest bidder was willing to pay would not equal a property's assessed value. This is consistent with how this Court has looked at commercial reasonableness of association foreclosure sales. The commercial reasonableness here must be assessed as of the time the sale occurred. See SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A., No. A-13-682296-C, 205 WL 4501851 at *11 (Bell, J., Eighth Jud. Dis. Ct., Nev. July 21, 2015) (order on motions for summary judgment and to dismiss). The nature of the litigation taking place at the time, challenging the meaning of NRS 116.3116, and the resulting inability to obtain title insurance, "drove the purchase prices of HOA foreclosed homes far lower than 'fair market value.'" Id. Thus, the price paid may be considered reasonable. See id.

Nonetheless, as stated in Long, mere inadequacy of price is insufficient to set aside a foreclosure sale without a showing of fraud, unfairness, or oppression. Long, 98 Nev. at 13, 639 P.2d at 530. The Bank has failed to provide any evidence of fraud, unfairness, or oppression. Therefore, the price paid was reasonable and the sale may not be set aside. Any analysis that does not take into account that this was forced sale cannot accurately depict the value of the property.

Here, NRS 116 ensures public notice and contains provisions for competitive bidding. NRS 116 requires that a notice of default be mailed to all interested parties and subordinate claims holders.[17] After 90 days of the recording of the notice of default, the notice of sale must be mailed to all interested parties and subordinate claims holders.[18] Additionally, NRS 116 requires that the Notice of Sale must be posted in a public place as well as be published in a newspaper of general circulation for three consecutive weeks, at least once a week.[19] Also, NRS 116 requires that the sale takes place in the County in which the property is situated.[20]As a result, all subordinate interest holders, as well as the

[17] NRS 116.31163; NRS 116.31168.

[18] NRS 116.311635(1)(b)(1); NRS 116.311635(1)(b)(3).

[19] NRS 116.311635(c)

[20] NRS 116.31164

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public as a whole, were made aware of an NRS 116 auction. These noticing and foreclosure provisions ensured the auction was publically noticed and would create competitive bidding.

In this instance, the Association did everything required of it under the law to foreclose on its lien including meeting all the requirements of NRS 116. The foreclosure was properly noticed including the recording and mailing of all applicable notices.[21] Additionally, the auction was publically held[22] and SFR placed the winning bid at auction.[23]

While the Bank may complain about the total amount received during the auction, the market conditions that existed (largely created by the Bank) significantly lowered the value of the property. As stated in BFP, "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself." BFP, 511 U.S. at 549. But given that this was a public auction if the Bank disagreed with the collective public's valuation of the property it should have bought the property at the auction itself. However, it cannot be contested that the amount paid by SFR was commercially reasonable given that the Association foreclosure complied with all requirements of NRS 116 and that this auction was a public auction open to all entities, including the Bank.

Notwithstanding the above, because the Bank has failed to demonstrate any evidence of fraud, unfairness or oppression, the actual value of the Property is not material. See Oller v. Sonoma County Land Title Co., 290 p.2d 880, 882 (Cal.Ct.App. 1955) ("Since inadequacy of price is not alone ground for setting aside the sale, the failure of the court to find upon the value is immaterial.").

2. The Bank Has Not Presented Evidence of Fraud, Unfairness or Oppression that Brought About an "Inadequate" Sale Price.

Even if this Court were to conclude that the price was "inadequate", the Bank nonetheless has failed to show that any fraud, unfairness or oppression brought about or accounted for the allegedly "inadequate" price. Golden, 79 Nev. at 504, 514, 387 P.2d at 995. Put simply, commercial reasonableness deals with looking at whether there was **conduct in the sale process that led to the low price**, not simply comparing price to value. See Iama Corp. v. Wham, 99 Nev. 730, 735-738, 669

[21] See proofs of mailing and receipt of Notice of Default and Election to Sell Under Homeowners Association Lien and Notice of Sale, SFR's MSJ, Ex. 1-H and 1-K.

[22] See SFR's MSJ, at Ex. 2-B.

[23] Id.

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P.2d 1076, 1079 (1983) (must look to the sale process, i.e., "whether proper notice was given, whether the bidding was competitive, and whether the sale was conducted pursuant to ... normal procedures") (emphasis added).

In Oller v. Sonoma County Land Title Co., from which Golden adopted the California rule, the court noted that even where the plaintiffs argued the price paid at auction was "grossly inadequate," unless there was evidence of fraud, unfairness or oppression in the sale process which accounted for the price, a court need not even determine the value of the property:

> "Since inadequacy of price is not alone ground for setting aside the sale, the failure of the court to find upon the value of the property is immaterial." Necessarily, therefore, since the record discloses no irregularity in the foreclosure sale nor any unfairness on the party of the trustee or injury to the plaintiffs by any wrongful act of the trustee . . . the alleged inadequacy in the selling price, if any, could not have resulted from any irregularity in the conduct of the sale or unfairness on the part of the trustee.

290 P.2d 880, 882 (Cal.Ct.App. 1955) (internal citation omitted).

Here, there is no admissible evidence of fraud, oppression or unfairness that brought about any inadequacy in price. The Association's sale was publicly noticed, as required by statute; multiple bidders attended the auction, and it is undisputed that neither the homeowner nor the Bank paid an amount necessary to cure the lien before the sale. As thoroughly analyzed above, the Bank's interpretation that the prior homeowner's partial payments throughout the foreclosure process served to satisfy the superpriority portion of the Association's lien, thereby protecting the Bank's interest, is entirely unsupported by law.

Just as the Bank's contention that the prior homeowner's partial payment satisfied the superpriority portion of the Association's lien is flawed, the remaining allegations of "slight unfairness or irregularity" asserted by the bank to evidence commercial unreasonableness are equally defective. First, as established by this Court and corroborated herein, notice of the sale was proper. Marchai improperly concludes that it was not properly noticed because Marchai was not directly mailed the notice of sale; this despite the fact that Marchai did not have a recorded interest at the time of mailing nor did he record any sort of request for notice or provide evidence of such a request. The fact is, as this Court has already determined, Marchai's predecessor in interest was properly mailed, and received, the Notice of Trustee's Sale. Accordingly, Marchai's claim that its "lack of notice of the sale

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renders the sale unfair" has no basis in fact and should be disregarded. Besides, even allowing for the possibility that the Bank did not actually receive a notice, this in no way evidences the existence of fraud, oppression and/or unfairness that brought about an alleged inadequacy in price. Bottom line, even if compliance with mailings were actually in question, SFR had no knowledge of any alleged deficiency, so this certainly **could not have accounted for or brought about the price paid** by SFR.

Similarly, the argument that the Association's "refusal to accept Marchai's reasonable request to postpone the sale to allow Marchai to pay the lien renders the sale unfair" is not only unsupported by admissible evidence, but it misrepresents a legal obligation that does not exist. Specifically, Marchai did not cite to, nor does there exist, any law/regulation/code/rule that requires the Association to postpone a sale for a party with an alleged interest in the Property to make arrangements to make a payment. The record does not reflect that any obstacles existed prohibiting Marchai from making a payment before the sale was finalized, attending the sale or petitioning the Court for relief. Marchai simply alleges that it wanted more time to possibly take one of those actions, but was not provided the additional time. Given the Association was under no obligation to do so, this cannot possibly be considered a deficiency in the sale—more importantly, it certainly cannot be considered a deficiency that brought about the alleged inadequacy in price.

Finally, as to the supposed improper bid for the property on credit, there is absolutely no legal or factual support for this allegation. There is no requirement in the law that payment be made the day of the sale. NRS 116.31164, which governs the procedure for conducting a sale, provided at the time of this sale:

> 1. The sale must be conducted in the county in which the common-interest community or part of it is situated …
> 2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.
> 3. After the sale, the person conducting the sale shall:
> (a) Make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit … ***;***

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The Bank incorrectly concludes that there is a requirement that the winning bidder pay for the Property immediately following the auction. From that, the Bank apparently presumes that since actual payment was not made on the date of this sale, SFR bid for the property on credit rather than presenting certified funds at the time of sale. The Bank further implies that paying on a date different that the date of the sale presupposes that the purchaser did not have the funds readily available at the time of sale. Of course, all of this is inferred with absolutely no evidence to support such inferences. First, nothing in the statute sets forth a requirement that actual payment be made on the date of the sale and/or at the time of the sale. The statute only states that sale may be made to the "highest cash bidder". The Bank has supplied no evidence to support a contention that SFR was not qualified to bid at the auction. It is important to reiterate here that opinions and arguments of counsel are no substitute for evidence and the Bank has nothing other than his own conjecture here that this sale occurred in any manner other than that required under NRS 116.31164. Simply put, this hypothetical sale "in exchange for a promise to pay in the future" received by SFR is simply fantasy dredged up by the Bank to create a "factual" issue that does not actual exist.

In any case, even if a defect existed, the fact remains that **SFR had no knowledge of any alleged deficiency, so this certainly could not have accounted for or brought about the price paid** by SFR. No equitable remedy should be fashioned where it would be unjust to an innocent third party. Shadow Wood, 366 P.3d at 1115.

Here, the Association complied with the notice requirements of NRS 116; the sale was publicly noticed; the sale was held in a public place; multiple bidders attended the sale and it is undisputed that neither the homeowner nor the Bank paid an amount necessary to cure the lien before the sale.[24] In effect, there is no fraud, oppression or unfairness which accounted for and brought about the price paid by SFR. Golden, 387 P.2d at 995. Viewing the transaction as a whole, the sale was commercially reasonable and the Bank's argument fails.

G. The Deed to SFR Fully Conveyed Ownership of the Property to SFR.

The Bank lacks any legal support for its proposition that the Trustee's Deed Upon Sale did not

[24] See SFR's MSJ, 5:3-6:9

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convey any interest to SFR. The Bank's interpretation is improper and contrary to Nevada law. NRS 116.31166(1) is clear as to the title conveyed to SFR: "**[e]very sale** of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner…" NRS 116.31166(3). By virtue of the fact that Alessi & Koenig, LLC, acting as foreclosure agent for the Association, was conducting a sale of a unit pursuant to NRS 116, the sale of the Property at the public auction conveyed the title of the prior homeowner.

H. The Bank's Constitutional Challenges Fail Under *Saticoy Bay*.

The Bank has acknowledged the Nevada Supreme Court's decision in Saticoy Bay[25], but insist that it needs to "preserve" its arguments that NRS 116 is facially unconstitutional. See Bank's Opp., at 23:3-18. In maintaining its argument, the Bank "reasserts" that the Ninth Circuit Bourne Valley[26] Opinion is "important authority" for this Court to consider in adjudicating the Bank's claims under the United States Constitution. See Bank's Opp., at 23:13-17. However, in a 5-0 decision, as binding law in Nevada state courts, the Saticoy Bay Court held that the NRS 116 foreclosure provisions do not involve a state actor.[27] Further, Saticoy Bay acknowledged that the Ninth Circuit found in Bourne Valley that the NRS 116 foreclosure provisions did involve a state actor, but specifically rejected such analysis. Saticoy Bay, 970 P. 3d at 972 fn.3. Without a state actor, there cannot be a violation of due process. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n., 531 U.S. 288 (2001). As such, the Bank's argument that NRS 116 violates due process fails.

In the same decision, this Court found that NRS 116's foreclosure provisions are not in violation of the Takings Clause of the United States Constitution or the Nevada Constitution. Saticoy Bay, 970 P.3d 974-75. Specifically, the Nevada Supreme Court found that the Bank's property was not subject to an actual physical taking or that NRS 116 amounted to a regulatory taking. For these reasons, the Bank's arguments involving the constitutionality of NRS 116 are meritless.

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[25] Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 133 Nev. ___, 388 P.3d 970 (2017).

[26] Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F. 3d 1154, 1160 (9th Cir. 2016).

[27] Saticoy Bay is binding law in Nevada state courts and a full discussion of statutory interpretation is not needed at this time. However, if the Supreme Court disagrees with this Court's analysis in *Saticoy Bay* and holds that due process is implicated, then SFR reserves its rights to move to supplement its briefing on the issue of the construction of the statute.

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