

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND JUDGMENT**

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER  
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION  
and NEVADA ASSOCIATION SERVICES,  
INC.

Cross-Defendants.

This matter came before the court on February 12, 2018 for bench trial. Michael F. Bohn, Esq. appeared for Plaintiff/Counter-Defendant 7510 Perla Del Mar Avenue Trust (**Plaintiff**) and Darren T. Brenner, Esq. and Karen A. Whelan, Esq. appeared for Defendant/Counterclaimant Bank of America, N.A. (**BANA**). The court having reviewed the paper and pleadings on file, heard the testimony of the witnesses, considered evidence, and hearing the argument counsel, entered findings of fact, conclusions of law, and judgment.

1 The Court now enters the following Amended Findings, Conclusions, and Judgment.

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

4 1. This matter involves a dispute over title to a property known commonly as  
5 7510 Perla Del Mar Avenue, Las Vegas, Nevada (the **Property**). **Stipulated Fact No. 1.**

6 2. Dominic Nolan, the former owner of the Property, purchased the property  
7 located at 97510 Perla Del Mar Ave., Las Vegas, Nevada in 2010. **Stipulated Fact No.**  
8 **1; Trial Exhibit 3.**

9 3. The Property is located within the Mandolin Phase 3 at Mountain's Edge  
10 (**HOA**) planned unit development and is subject to the HOA's CC&Rs, recorded on  
11 September 14, 2006 and June 26, 2007, Instrument Nos. 20060914-0001790 and  
12 20070626-0003072. (**CC&Rs**). **Stipulated Fact No. 2; Trial Exhibits 34 and 35.**

13 4. The property is also located within the Mountain's Edge Master Association  
14 planned unit development and is encumbered by the CC&Rs of the Master Association.  
15 **Stipulated Fact No. 3.**

16 5. On December 9, 2010, the former owner entered into a senior deed of trust  
17 with KBA Mortgage, LLC (the **Deed of Trust**) for the Property. The original value of the  
18 Deed of Trust was \$164,032.00. **Trial Exhibit 3.**

19 6. The Deed of Trust was recorded on December 10, 2010 as Instrument No.  
20 20101210-00002325 **Stipulated Fact No. 5; Trial Exhibit 3.**

21 7. The Deed of Trust includes a Planned Unit Development Rider (**PUD Rider**).  
22 The PUD Rider, Section F, provides: "If the Borrower does not pay PUD dues and  
23 assessments when due, then Lender may pay them." **Trial Exhibit 3.**

24  
25 ***The Mortgage Savings Clause and Provisions of the CC&Rs Applicable to Deeds of Trust***  
26  
27  
28

1           8. Section 9 of the Deed of Trust, Protection of Lender's Interest in the Property  
2 and Rights Under this Security Instrument, provides that the Lender may pay "any sums  
3 secured by a lien which has priority over" the Deed of Trust. **Trial Exhibit 3.**

4           9. Section 2.5.3 of the CC&Rs states:

5           Except to the extent permitted under the Act (NRS 116.3116[2]), a lien under  
6 this Section is prior to all other liens and encumbrances on a Unit except: (1)  
7 liens and encumbrances recorded before the recordation of this Declaration; (2)  
8 a first Security Interest on the Unit recorded before the date on which the  
assessment sought to be enforced became delinquent; and (3) liens for real  
estate taxes and other governmental assessments or charges against the Unit.

9 **Trial Exhibit 34 at Bate number BANA/Nolan-01-000157**

10          10. Section 6.2.3 of the CC&Rs also states:

11          Notice of Actions: The Association shall give prompt written notice to each  
12 Eligible Mortgagee and Eligible Insurer of:...

13               (b) Any delinquency in the payment of Common Expense Assessments  
14 owed by a Unit Owner which remains uncured for a period of sixty (60) days  
15 and whose Unit is subject to a first Security Interest held, insured or  
guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable.

16 ***Id.* at Bate number BANA/Nolan-01-000203.**

17          11. 6.2.6 of the CC&Rs also states:

18          The Association must maintain current copies of the Declaration, Bylaws,  
19 Rules, the Association's articles of incorporation, books, records, and financial  
20 statements of the Association. The Association shall permit any Eligible  
mortgagee or Eligible Insurer, or other first mortgagee if Unites, to inspect the  
books and records of the Association during normal business hours.

21 ***Id.* at Bate number BANA/Nolan-01-000206.**

22          12. Section 6.3.11 of the CC&Rs provides:

23          Any breach or amendment of this Declaration shall not affect or impair the lien  
24 or charge of any Security Interest made in good faith and for value on any Unit  
25 (or any Improvements respectively thereon); provided, however, that any  
subsequent Unit Owner of such property shall be bound hereby whether such  
26 Unit Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.

27 ***Id.* at Bate number BANA/Nolan-01-000208.**

1           13     Section 6.2.8 of the CC&Rs provides:

2           The provisions of this Section are for the benefit of Eligible Mortgagees and  
3           Eligible Insurers and their successors and may be enforced by any of them by  
4           any available means, at law or in equity.

5           ***Id* at Bate number BANA/Nolan-01-000206.**

6           14.     The deed of trust identifies Mortgage Electronic Registration Systems, Inc.  
7           (MERS) as the initial deed of trust beneficiary. **Stipulated Fact No. 6; Trial Exhibit**  
8           **3.**

9           15.     If there had been no Mortgage Savings Clause in the CC&Rs, BANA would  
10           not have issued a VA loan on the property. **TT 202:1-23.**

11           16.     MERS assigned the deed of trust to BANA, successor by merger to BAC  
12           Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP via an assignment  
13           of deed of trust dated January 3, 2012 and recorded with the Clark County Recorder on  
14           January 6, 2012, as Instrument No. 201201060000225. **Stipulated Fact No. 23; Trial**  
15           **Exhibit 5.**

16           ***The HOA's Foreclosure Sale and BANA's Tender Efforts***

17           17.     On January 4, 2012, Nevada Association Services (NAS), on behalf of the  
18           HOA, recorded a Lien for Delinquent Assessments against the Property as Instrument No.  
19           201201040001123 **Stipulated Fact No. 11; Trial Exhibit 4.**

20           18.     A copy of the Lien for Delinquent Assessments was not provided to BANA.  
21           **TT at 66:13-23.** Further, the Lien for Delinquent Assessments did not identify a super-  
22           priority portion of the lien or identify information from which it could be extrapolated. *Id;*  
23           *see also* **TT 69:5-23.**

24           19.     On February 27, 2012, NAS, on behalf of the HOA, recorded a Notice of  
25           Default and Election to Sell Under Homeowners Association Lien, as Instrument No.  
26           201202270002448. **Stipulated Fact No. 12; Trial Exhibit 6.** Again, the Notice of Default  
27           did not identify the super-priority portion of the lien or provide information from which it  
28           could be extrapolated. **TT at 70:8-71:4.**



1           20.     On March 7, 2012, after recording the Notice of Default and Election to Sell,  
2 NAS, on behalf of the HOA, mailed the notice of default to the former owner, BANA,  
3 MERS, and other interested parties via certified mail. **Stipulated Fact 13; Trial Exhibit 37**  
4 **– Bates number BANA/Nolan-01-000287 - 289.**

5           21.     Prior to the HOA foreclosure sale, on March 16, 2012, the law firm of Miles,  
6 Bauer, Bergstrom & Winters, LLP, acting as counsel for MERS as nominee for Bank of  
7 America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to  
8 NAS regarding payment of the super-priority lien, the terms of which included a request for  
9 identification of the super-priority portion measure at a maximum of nine months of unpaid  
10 assessments, and offer to pay that amount upon proof of the same. **Stipulated Fact No. 17;**  
11 **Trial Exhibit 20.** The letter was authored by attorney Rock Jung. **TT 135:2-11; Trial**  
12 **Exhibit 32.** The letter was similar to thousands of requests sent by Miles Bauer during this  
13 time period to NAS. **TT 125:14-25, 164:13-21.**

14           22.     The March 16, 2012 letter sent by Miles Bauer was received by NAS. **TT**  
15 **117:1-5 and 118:1-22. Stipulated Fact No. 18.**

16           23.     NAS did not respond based on its claim that doing so would violate the  
17 FDCPA. **TT 137:18-139:10; Stipulated Fact No. 18.**

18           24.     The parties stipulated the letter was received by NAS. At trial, plaintiff  
19 attempted to withdraw the stipulation because the letter was not in NAS's file. However,  
20 testimony by Chris Yergensen, NAS's former in-house counsel, established that it was not  
21 uncommon for letters sent by Miles Bauer to never make it to the file. **TT 164:22-165:24.**  
22 Mr. Yergensen explained: "typically with the Miles Bauer letters, and as I have testified  
23 before, because of the routine nature, I just think that, to some degree, some of the  
24 employees at NAS got a little bit lazy. I mean it was the same form letter every time. So  
25 you see occasionally that the letter didn't make it particularly to the collection file because it  
26 just feel on deaf ears".

27           25.     Prior to the time this letter was sent, it was NAS's practice to respond to Miles  
28

1 Bauer by providing a ledger that described and provided an itemization of the components of  
2 the lien. **TT 125:8-19, 174:3-9.** NAS was not compensated for this service. **TT 176:3-178-**  
3 **1.** Mr. Yergensen explained that NAS ceased this practice at some point in 2012 because of  
4 the FDCPA. NAS started providing ledgers again in our around July of 2013 based on a  
5 change in state law. **TT 174:3-175:3.** When NAS started providing ledgers again in 2013,  
6 it began charging \$150 for this service based on a statute it believed authorized it to do so.  
7 **TT 175:11-16.**

8 26. Miles Bauer's request for a ledger in this matter fell within the period of time  
9 NAS was not providing ledgers or any response to Miles Bauer's requests. Mr. Yergensen  
10 acknowledged that NAS was aware it was taking a risk in making the business decision to  
11 refuse to respond to Miles Bauer during this period. **TT 166:10-167:5, 175:4-16.**

12 27. As explained by Mr. Jung and, when Miles Bauer did not receive a response to  
13 their request for payoff, they would search their data base to determine if another property  
14 within the association had previously been collected on, and if there was a ledger in that file  
15 they could use to attempt to determine the super-priority payoff amount. **TT 126:13-20.**  
16 Miles Bauer did not have such a ledger in this instance.

17 28. This court is satisfied that Miles Bauer would have issued a payment of at least  
18 the super-priority component of the lien if NAS had responded with this information or if  
19 Miles Bauer otherwise had the information reasonably available from another source.<sup>1</sup> Even  
20 if Miles Bauer had been able to determine the precise amount of the super-priority, NAS's  
21 policy was to reject these payments unless they were for the full amount of the lien. Miles  
22 Bauer's practice was to send a check by runner to deliver payment. NAS's practice was to  
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24 <sup>1</sup> The typical Miles Bauer tender process was demonstrated through Miles Bauer's efforts to pay the Mountains Edge  
25 Master Association on the super-priority portion of its lien. On September 10, 2012, BANA, through its counsel at  
26 Miles Bauer, sent a letter to the Master Association offering to pay the sum of nine months of common assessments pre-  
27 dating the former owner's default, requesting proof of that amount, and requesting information regarding the Master  
28 Association's proposed sale of the property. **Stipulated Fact 19; Trial Exhibit 22.** On October 4, 2012, Miles Bauer,  
by hand delivery, sent a check for \$932.83, representing 9 months of unpaid assessments, and a voluntary payment of  
collection costs/fees, to the Master Association. **Trial Exhibits 24, 25, and 26.**

1 have its receptionist reject the payment at the door unless it was for the full amount of the  
2 lien. The receptionist would not consult NAS's management, legal department, or  
3 collections staff before rejecting. **TT 172:3-173:18.**

4 29. NAS, on November 15, 2012, NAS, on behalf of the HOA, recorded a Notice  
5 of Foreclosure Sale against the Property, as Instrument No. 201211150002280. The notice  
6 set a sale for December 14, 2012. **Stipulated Fact No. 23; Trial Exhibit 9.**

7 30. On November 13, 2012, NAS, on behalf of the HOA, mailed the Notice of  
8 Foreclosure Sale to the former owner, BANA, and other interested parties. **Stipulated Fact**  
9 **No. 24; Trial Exhibit 37 Bates number BANA/Nolan-01-000357 - 362**

10 31. NAS, on behalf of the HOA, posted the Notice of Foreclosure Sale on the  
11 Property and in three places throughout the county in November 15, 2012. **Stipulated Fact**  
12 **No. 25; Trial Exhibit 52.**

13 32. The Master Association provided a statement of account showing the total  
14 amount the former owner owed the Master Association through September 20, 2012 in  
15 response to Miles Bauer's letter. **Trial Exhibit 23.**

16 33. Miles Bauer, on BANA's behalf, delivered a check in the amount of \$932.83  
17 to the Master Association, c/o Silver State, on or about October 4, 2012. This apparently  
18 included \$225 representing nine months' worth of unpaid assessments, plus a payment of  
19 collection costs and fees.

20 34. NAS, on behalf of the HOA, published the Notice of Foreclosure Sale in  
21 Nevada Legal News on three dates (November 21, 2012, November 30, 2012 and December  
22 7, 2012. **Stipulated Fact No. 26; Trial Exhibit 53.**

23 35. On February 1, 2013, Plaintiff appeared at the public auction and acquired the  
24 property at the HOA foreclosure sale with a bid of \$14,600, as evidenced by the foreclosure  
25 deed recorded on February 7, 2013. **Stipulated Facts No. 27 and 28; Trial Exhibit 10.**  
26 NAS issued a deed upon sale, which was recorded on February 7, 2013. **Trial Exhibit 10.**

27 36. BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a  
28

1 Countrywide Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage,  
2 LLC, via an assignment of the deed of trust recorded with the Clark County Recorder on  
3 July 10, 2013, as Instrument No. 201307100000782. **Stipulated Fact No. 23; Trial Exhibit**  
4 **11.**

5 37. BANA retained expert appraiser Matthew Lubawy to perform a retroactive  
6 Fair Market Value Appraisal of the property at the time of the February 1, 2013 HOA sale,  
7 as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement  
8 (third) of Property § 8.3. BANA's expert is qualified to render an opinion regarding the Fair  
9 Market Value of the Property on February 1, 2013. As stated in Mr. Lubawy's expert report,  
10 the Fair Market Value at the time of the HOA sale was \$158,500. **Stipulated Fact No. 31;**  
11 **Trial Exhibit 33.**

12 38. NAS routinely rejected attempts to pay superpriority liens, even after  
13 reinstating the practice of providing payoff demands for which they charged \$150.00. **TT**  
14 **136:9-18; 145:9-146:4.**

15 39. The owner of the subject property is 7510 Perla Del Mar Avenue Trust. Eddie  
16 Haddad, who is a sophisticated real estate investor who holds a Nevada Real Estate Broker's  
17 license and established the trust, has over 20 years of experience in real estate. He owns and  
18 operates Great Bridge Properties, which is a real estate brokerage. He also owns a real estate  
19 management company called Resources Management Group, LLC. Resources Management  
20 Group is the company Mr. Haddad uses to manage many of his real estate acquisitions,  
21 including the subject property. He is the *de facto* manager of the 7510 Perla Del Mar Avenue  
22 Trust. **TT 8:25-10:3**

23 40. Eddie Haddad attended and bid at hundreds of HOA foreclosure sales every  
24 year. **TT 12:14-19.** Through that process, he has acquired hundreds of properties at  
25 foreclosure sales over the years. **TT 12:20-22.**

26 **CONCLUSIONS OF LAW**

1           1.       "A quiet title action . . . is the proper method by which to adjudicate disputed  
2 ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044,  
3 1046 (2008). "An action may be brought by any person against another who claims an estate  
4 or interest in real property, adverse to him, for the purpose of determining such adverse  
5 claim." NRS 40.010.

6           2.       Here, Plaintiff seeks to quiet title in its name and extinguish the Deed of Trust  
7 as a result of the HOA foreclosure sale. The court finds the sale did not extinguish the Deed  
8 of Trust because: (1) the superpriority portion of the lien was tendered prior to the sale; and  
9 (2) the equities balance in favor of BANA.

10 ***I.     BANA's Offer Redeemed the Super-Priority As a Matter of Law.***

11           3.       NRS116.3116 provides in part:

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

16 *(emphasis added)*

17           4.       The only portion of the HOA's lien that is prior to the first deed of trust's  
18 interest is that amount for up to nine months of assessments only. *Horizons at Seven Hills*  
19 *Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016).

20           5.       In *SFR Investments*, the Nevada Supreme Court held that a first deed of trust  
21 holder's pre-foreclosure tender prevents the first deed of trust from being extinguished. 334  
22 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off  
23 the [HOA] lien to avert loss of its security[.]").

24           6.       The HOA's foreclosure begins at the recording of the notice of delinquent  
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,*  
26 *N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 \_\_ (2017). *See also Property Plus*  
27

1 *Investments, LLC v. Mortgage Electronic Registration Systems Inc., et al.*, 133 Nev. Ad. Op.  
2 62\_\_ (September 2017).

3 7. The parties stipulated that prior to the HOA foreclosure sale, Miles Bauer, on  
4 behalf of the beneficiary of the first deed of trust, requested the lien balance from NAS. NAS  
5 stipulated that it received this letter, but it did not respond to Miles Bauer's letter based upon  
6 its claim that doing so would violate the FDCPA.

7 8. BANA's offer to pay coupled with NAS's refusal to accept, acknowledge, or  
8 even respond, was sufficient to redeem the seniority for the first deed of trust. As a matter of  
9 law, tender is complete when "the money is offered to a creditor who is entitled to receive  
10 it." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added); *see*  
11 *also Fresk v. Kramer*, 99 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am.  
12 Jur. 2d Tender § 22 (2014). Money need not actually change hands. "[W]hen a party, able  
13 and willing to do so, offers to pay another a sum of money and is told that it will not be  
14 accepted, the offer is a tender without the money being produced." *Guthrie v. Curnutt*, 417  
15 F.2d 764, 765-766 (10th Cir. 1969); *accord Ebert v. Western States Refining Co.*, 75 Nev.  
16 217, 221-222, 337 P.2d 1075, 1077 (1959) (Tender of rent sufficient where offered by tenant  
17 and refused by landlord).

18 9. Bank of America, through its counsel Miles Bauer, offered to pay the super-  
19 priority  
20 portion of the lien. Miles Bauer was ready, willing, and able to provide payment for a super-  
21 priority tender. Based on the testimony of Rock Jung and Jessica Woodbridge, Miles Bauer  
22 was hired by BANA to do just that. The testimony evidences that Miles Bauer was hired to  
23 pay the super-priority portion of the lien or more, and it would have done so, as it did  
24 hundreds of times, if information was provided from NAS as requested. In addition to  
25 providing thousands of similar tender payments, Miles Bauer provided an (over)payment of  
26 tender to the Master Association. Having demonstrated they were ready, willing and able to  
27 pay when the Master Association provided Miles Bauer the information they needed to do  
28

1 so, it is evident that had NAS provided what was requested, Miles Bauer would have issued  
2 a check to Mandolin as well. This court concludes that Miles Bauer was ready, willing and  
3 able to pay the superpriority portion of the lien as well as additional fees and costs. The  
4 testimony from Chris Yergensen and Susan Moses at trial corroborated this conclusion.  
5 NAS knew that the only proof of an accounting needed to obtain a super-priority check was  
6 an itemized letter, and it knew that Miles Bauer would send such a check if it had that  
7 information. There was no evidence or argument at trial to suggest a contrary conclusion.<sup>2</sup>

8 10. As a matter of law, the FDCPA only prohibits third-party communications  
9 made “in connection with the collection of a debt.” 15 U.S.C. § 1692c(b). A communication  
10 is made in connection with the collection of a debt only if the “animating purpose of the  
11 communication [is] to induce payment by the debtor.” *McIvor v. Credit Control Services,*  
12 *Inc.*, 773 F.3d 909, 914 (8th Cir. 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266  
13 (3d Cir. 2013); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011);  
14 *Gburek v. Litton Loan Servicing*, 614 F.3d 380, 382 (7th Cir.2010). Foreclosing on a lien is  
15 not a “debt collection” as defined by the FDCPA, and is thus outside the statute’s purview.  
16 *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App’x. 476, 480 (9th Cir. 2001); *Warren v.*  
17 *Countrywide Home Loans, Inc.*, 342 Fed. App’x 458, 460 (11th Cir. 2009) (explaining that  
18 “the plain language of the FDCPA supports” the conclusion that “foreclosing on a security  
19 interest is not debt collection activity”); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700  
20 (6th Cir. 2003); *Nadalin v. Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir.  
21 1999). NAS’s refusal to respond on the basis of the FDCPA was unreasonable for multiple  
22 reasons.. It was just an excuse to be able to go forward with the foreclosure sale. The court  
23

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24 <sup>2</sup> In fact, BANA’s offer was in excess of the actual super-priority lien in this case. “[T]he superpriority lien ...is limited  
25 to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Horizon at*  
26 *Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at \*6  
27 (emphasis added). The HOA’s foreclosure begins at the recording of the notice of delinquent assessment lien. *Saticoy*  
28 *Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (2017).NAS agreed there  
were only five months’ worth of assessments prior to the NOL (and the homeowner satisfied all but \$39.10 of the super-  
priority).

1 does not accept NAS's position that the HOA was prohibited from disclosing information  
2 about the super-priority component of the lien, if any, under the FDCPA. First, the entirety  
3 of the lien was already a matter of public record. Second, NAS, itself, had a practice of  
4 disclosing, at no cost, what it believed to be the super-priority component up to at least 2012.  
5 Third, even if the FDCPA would otherwise prevent disclosure of information that is already  
6 a matter of public record, the CC&Rs expressly set forth BANA's right to obtain this  
7 information. The CC&Rs are a covenant that ran with the land, and operate as Nolan's  
8 consent. Nevada's Supreme Court defines CC&Rs in both contractual and real property  
9 terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P. 3d 1155, 1160-1161 (Nev. 2007)  
10 (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a  
11 benefit of rights to the property owner, *superseded on other grounds* 125 Nev. 397, 215 P.3d  
12 27 (2009). NAS was, therefore, obligated to provide the requested information to Miles  
13 Bauer.

14 11. NAS' refusal to accept the offer to pay the super-priority or otherwise provide  
15 an account ledger to Miles Bauer cannot form a basis to defeat the tender. "[A]ny  
16 affirmative tender of performance is excused when performance has in effect been prevented  
17 by the other party... It is a principle of fundamental justice that if a promisor is himself the  
18 cause of the failure of performance, either of an obligation due him or of a condition upon  
19 which his own liability depends, he cannot take advantage of the failure." 15 Williston, A  
20 Treatise on the Law of Contracts, § 47:4 (4th ed. 2017).

21 12. Even if super-priority notice had been provided, the super-priority and  
22 anything less than payment in full would have been rejected, as stated in the testimony of  
23 Moses and Yergensen. "A tender is not necessary where the declarations of the offeree are  
24 such as to indicate that the actual offer of money will be rejected; the law does not require a  
25 man to do a vain and fruitless thing; a strict and formal tender is not necessary where it  
26  
27  
28



1 appears that if it had been made it would have been refused.” *Enfield v. Huffman Motor Co.*,  
2 117 Cal. App. 2d 800, 807 (1953).

3 13. Consequently, the bank’s tender offer through Miles Bauer was all that the  
4 bank needed to do to protect its interest in the property. Alternatively, the Court concludes  
5 that payment of the super-priority would have been futile because that payment would have  
6 been rejected. Therefore, as a matter of law, BANA’s first deed of trust was not  
7 extinguished by the subject foreclosure sale.

8 14. Even if Miles Bauer had learned the amount of the superpriority component—  
9 either from NAS or through an archived ledger from Mandolin — actual payment of the  
10 superpriority amount would have been futile. The evidence established that NAS had an  
11 ordinary course of business of rejecting payments from Miles Bauer if the payments were  
12 only for the superpriority component.

13 15. Based upon the foregoing, and good cause appearing, the Court hereby finds  
14 and concludes that because of the bank’s tender of the super-priority portion of the HOA’s  
15 lien, the bank preserved its interest in the subject property, and the HOA foreclosed on only  
16 the sub-priority portion of its lien.

17 16. The Court further finds that Plaintiff’s status as a bona fide purchaser is moot  
18 by virtue of the superpriority component having been extinguished by the Miles Bauer  
19 rejected tender.

## 20 ***II. Equitable Balancing***

21 17. In addition to defenses available at law, the court possesses the equitable  
22 power to determine whether an HOA sale extinguished a deed of trust. *Nationstar*  
23 *Mortgage, LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91  
24 (Nov. 22, 2017); *Shadow Wood Homeowners Ass’n v. New York Cmty. Bancorp, Inc.*, 132  
25 Nev. Adv. Op. 5, 366 P.3d 1105, (2016). Recently in *Shadow Canyon*, the Court explained  
26 that while price alone is not sufficient to invalidated a sale, when the sale price is palpably  
27 and greatly inadequate, coupled with unfairness, fraud, oppression or irregularity, the sale  
28

1 may be set aside. Only slight evidence of unfairness is needed to set aside the foreclosure  
2 sale. *See Shadow Canyon*, 405 P.3d at 649

3 18. The parties stipulated that on February 1, 2013, Plaintiff purchased the subject  
4 property at the HOA foreclosure sale with a bid of \$14,600.00. BANA's expert appraiser  
5 determined the fair market value (FMV) of the property at the time of the February 1, 2013  
6 HOA sale, to be \$158,500.00. The purchase price was less than 9% of the FMV. The point  
7 of the *Restatement (Third) of Real Property: Mortgages* §8.3 (1997) approach analyzed by  
8 *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
9 P.3d 1105, 1114 (2016) is to compare the fair market value of the property versus what it  
10 actually sold for at the foreclosure sale, and if the foreclosure sale price is less than 20% of  
11 the fair market value, then that fact can render the price to be "palpably and greatly  
12 inadequate" which, in conjunction with other circumstances that reflect fraud, unfairness, or  
13 oppression, can support setting aside the sale. *See Shadow Canyon*, 405 P.3d at 649

14 19. The price contemplated by this test is not the amount that a reasonable  
15 purchaser at a foreclosure sale would have paid. Under *Shadow Wood*, the Fair Market  
16 Value standard is defined as a sale which is not the fair "forced sale" value of the real estate,  
17 but the price which would result from negotiation and mutual agreement, after ample time to  
18 find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser  
19 who is willing to buy, but not compelled to take a particular piece of real estate. *Restatement*  
20 *(Third) of Prop.: Mortgages* § 8.3 cmt. b (1997). *See also Shadow Wood Homeowners Ass'n*  
21 *v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

22 20. Although this Court does not agree, the binding Nevada Supreme Court  
23 precedent in *Shadow Wood*, indicates that Fair Market Value does not consider whether the  
24 price of \$14,600 was "fair" in comparison to other HOA foreclosure sales. The Fair Market  
25 Value standard contemplates what the property would have sold for outside of the forced  
26 sale setting. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev.  
27 Adv. Op. 5, 366 P.3d 1105, (2016). Even so, the Court only sets aside a foreclosure sale if  
28

1 the fraud, oppression, or unfairness “causes” the low price. In this case, this Court is not  
2 convinced that the low price resulted from any fraud, oppression, or unfairness, and  
3 consequently, the foreclosure sale will not be set aside or considered a “wrongful  
4 foreclosure.”

5 21. In considering whether Plaintiff was a bona fide purchaser for value (**BFP**), the  
6 Court is not convinced that this analysis is appropriate when dealing with a forced or  
7 distressed sale such as an HOA foreclosure sale.

8 22. Generally, a BFP analysis is appropriate when dealing with UCC issues, and  
9 the sale of goods on the open market. The Nevada Supreme Court has indicated, however,  
10 that consideration of a purchaser’s BFP status may be appropriate for cases such as this. The  
11 Court has recently indicated that a subsequent purchaser is bona fide under common-law  
12 principles if it takes the property for a valuable consideration and without notice of the prior  
13 equity, and without notice of facts which upon diligent inquiry would be indicated and from  
14 which notice would be imputed to him, if he failed to make such inquiry. *Shadow Wood* at  
15 1115, citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947); *Moore v.*  
16 *DeBernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923).

17 23. Mr. Haddad, who testified for the Plaintiff trust, has been a real estate investor  
18 for more than 20 years. Mr. Haddad, and Plaintiff, admitted that prior to purchasing the  
19 property, they knew that the Deed of Trust had been recorded against the property. The  
20 Planned Unit Development Rider to this Deed of Trust placed them on record notice that “If  
21 Borrower does not pay assessments when due, the lender may pay them.” Mr. Haddad  
22 conceded that he made no inquiry as to whether there was a payment on the super-priority  
23 portion of the lien, or attempted payment on the super-priority portion of the lien, of any  
24 party, including NAS, the HOA, Bank of America, or any other individual or entity. When  
25 Mr. Haddad decided to purchase the property despite there being a recorded deed of trust  
26  
27  
28

1 against it, without inquiring whether there had been an attempt to pay the superpriority  
2 portion of the lien, he took the risk that the deed may be encumbered by a first deed of trust.

3 24. The recorded notice of sale, as well as the published notice in the Nevada  
4 Legal news, both indicated that the sale was made without warranty.

5 25. The purchaser at an HOA foreclosure sale can only obtain what the seller has  
6 to give. There is no warranty or guaranty, and consequently, whatever the seller had is the  
7 most that Plaintiff could acquire. Since the superpriority amount was tendered, and this  
8 Court finds that such tender protected BANA's security interest in the property, Plaintiff  
9 obtained only the title or interest in the property that was available for sale.

10 26. Based upon the facts and circumstances as set forth herein, and in the  
11 pleadings, the Court concludes that the only interest the HOA had to convey was the  
12 subpriority portion of their lien. The Plaintiff's took interest in the property, is subject to  
13 BANA's deed of trust.

#### 14 JUDGMENT

15 The Court having made its Findings of Fact and Conclusions of Law,

16 **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the  
17 sub-priority portion of its lien; and

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the super-  
19 priority portion of the HOA's lien was discharged and extinguished prior to the HOA  
20 foreclosures sale as a result of the tender by the bank; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Plaintiff 7510  
22 Perla Del Mar Ave. Trust purchased an interest in the Property, located at 7510 Perla Del  
23 Mar Avenue, Las Vegas, Nevada subject to BANA's deed of trust, which remains a first  
24 position lien against the Property; and

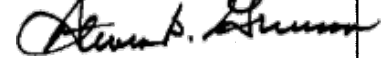
25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed  
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property  
27 and is superior to the interest conveyed in the Foreclosure Deed; and  
28

**IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims not specifically mentioned, including all claims in Plaintiff's Complaint, are mooted by the findings above and thereby dismissed with prejudice; and

**IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice directed thereto.

DATED 21 March, 2018.

~~DISTRICT COURT JUDGE~~



**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**NOTICE OF ENTRY OF ORDER:  
AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND JUDGMENT**

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER  
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION  
and NEVADA ASSOCIATION SERVICES,  
INC.

Cross-Defendants.

You are hereby notified that this Court entered an Amended Findings of Fact, Conclusions of Law, and Judgment, a copy of which is attached hereto.

DATED this 20<sup>th</sup> day of March 2018.

  
JERRY A. WISE  
DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ariel.stern@akerman.com

akermanlas@akerman.com

elizabeth.streible@akerman.com

office@bohnlawfirm.com

mbohn@bohnlawfirm.com

rebekkah.bodoff@akerman.com

karen.whelan@akerman.com



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Tatyana Ristic, JEA

*Steven D. Grierson*

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND JUDGMENT**

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER  
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION  
and NEVADA ASSOCIATION SERVICES,  
INC.

Cross-Defendants.

This matter came before the court on February 12, 2018 for bench trial. Michael F. Bohn, Esq. appeared for Plaintiff/Counter-Defendant 7510 Perla Del Mar Avenue Trust (**Plaintiff**) and Darren T. Brenner, Esq. and Karen A. Whelan, Esq. appeared for Defendant/Counterclaimant Bank of America, N.A. (**BANA**). The court having reviewed the paper and pleadings on file, heard the testimony of the witnesses, considered evidence, and hearing the argument counsel, entered findings of fact, conclusions of law, and judgment.



1 The Court now enters the following Amended Findings, Conclusions, and Judgment.

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

4 1. This matter involves a dispute over title to a property known commonly as  
5 7510 Perla Del Mar Avenue, Las Vegas, Nevada (the **Property**). **Stipulated Fact No. 1.**

6 2. Dominic Nolan, the former owner of the Property, purchased the property  
7 located at 97510 Perla Del Mar Ave., Las Vegas, Nevada in 2010. **Stipulated Fact No.**  
8 **1; Trial Exhibit 3.**

9 3. The Property is located within the Mandolin Phase 3 at Mountain's Edge  
10 (HOA) planned unit development and is subject to the HOA's CC&Rs, recorded on  
11 September 14, 2006 and June 26, 2007, Instrument Nos. 20060914-0001790 and  
12 20070626-0003072. (CC&Rs). **Stipulated Fact No. 2; Trial Exhibits 34 and 35.**

13 4. The property is also located within the Mountain's Edge Master Association  
14 planned unit development and is encumbered by the CC&Rs of the Master Association.  
15 **Stipulated Fact No. 3.**

16 5. On December 9, 2010, the former owner entered into a senior deed of trust  
17 with KBA Mortgage, LLC (the **Deed of Trust**) for the Property. The original value of the  
18 Deed of Trust was \$164,032.00. **Trial Exhibit 3.**

19 6. The Deed of Trust was recorded on December 10, 2010 as Instrument No.  
20 20101210-00002325 **Stipulated Fact No. 5; Trial Exhibit 3.**

21 7. The Deed of Trust includes a Planned Unit Development Rider (**PUD Rider**).  
22 The PUD Rider, Section F, provides: "If the Borrower does not pay PUD dues and  
23 assessments when due, then Lender may pay them." **Trial Exhibit 3.**

24  
25 ***The Mortgage Savings Clause and Provisions of the CC&Rs Applicable to Deeds of Trust***  
26  
27  
28

1           8. Section 9 of the Deed of Trust, Protection of Lender's Interest in the Property  
2 and Rights Under this Security Instrument, provides that the Lender may pay "any sums  
3 secured by a lien which has priority over" the Deed of Trust. **Trial Exhibit 3.**

4           9. Section 2.5.3 of the CC&Rs states:

5           Except to the extent permitted under the Act (NRS 116.3116[2]), a lien under  
6 this Section is prior to all other liens and encumbrances on a Unit except: (1)  
7 liens and encumbrances recorded before the recordation of this Declaration; (2)  
8 a first Security Interest on the Unit recorded before the date on which the  
assessment sought to be enforced became delinquent; and (3) liens for real  
estate taxes and other governmental assessments or charges against the Unit.

9           **Trial Exhibit 34 at Bate number BANA/Nolan-01-000157**

10          10. Section 6.2.3 of the CC&Rs also states:

11          Notice of Actions: The Association shall give prompt written notice to each  
12 Eligible Mortgagee and Eligible Insurer of:...

13               (b) Any delinquency in the payment of Common Expense Assessments  
14 owed by a Unit Owner which remains uncured for a period of sixty (60) days  
15 and whose Unit is subject to a first Security Interest held, insured or  
guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable.

16          ***Id.* at Bate number BANA/Nolan-01-000203.**

17          11. 6.2.6 of the CC&Rs also states:

18          The Association must maintain current copies of the Declaration, Bylaws,  
19 Rules, the Association's articles of incorporation, books, records, and financial  
20 statements of the Association. The Association shall permit any Eligible  
mortgagee or Eligible Insurer, or other first mortgagee if Unites, to inspect the  
books and records of the Association during normal business hours.

21          ***Id.* at Bate number BANA/Nolan-01-000206.**

22          12. Section 6.3.11 of the CC&Rs provides:

23          Any breach or amendment of this Declaration shall not affect or impair the lien  
24 or charge of any Security Interest made in good faith and for value on any Unit  
25 (or any Improvements respectively thereon); provided, however, that any  
subsequent Unit Owner of such property shall be bound hereby whether such  
26 Unit Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.

27          ***Id.* at Bate number BANA/Nolan-01-000208.**

1           13     Section 6.2.8 of the CC&Rs provides:

2           The provisions of this Section are for the benefit of Eligible Mortgagees and  
3           Eligible Insurers and their successors and may be enforced by any of them by  
4           any available means, at law or in equity.

4           ***Id* at Bate number BANA/Nolan-01-000206.**

5           14.     The deed of trust identifies Mortgage Electronic Registration Systems, Inc.  
6           (MERS) as the initial deed of trust beneficiary. **Stipulated Fact No. 6; Trial Exhibit**  
7           **3.**

8           15.     If there had been no Mortgage Savings Clause in the CC&Rs, BANA would  
9           not have issued a VA loan on the property. **TT 202:1-23.**

10          16.     MERS assigned the deed of trust to BANA, successor by merger to BAC  
11          Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP via an assignment  
12          of deed of trust dated January 3, 2012 and recorded with the Clark County Recorder on  
13          January 6, 2012, as Instrument No. 201201060000225. **Stipulated Fact No. 23; Trial**  
14          **Exhibit 5.**

15          ***The HOA's Foreclosure Sale and BANA's Tender Efforts***

16          17.     On January 4, 2012, Nevada Association Services (NAS), on behalf of the  
17          HOA, recorded a Lien for Delinquent Assessments against the Property as Instrument No.  
18          201201040001123 **Stipulated Fact No. 11; Trial Exhibit 4.**

19          18.     A copy of the Lien for Delinquent Assessments was not provided to BANA.  
20          **TT at 66:13-23.** Further, the Lien for Delinquent Assessments did not identify a super-  
21          priority portion of the lien or identify information from which it could be extrapolated. *Id*;  
22          see also **TT 69:5-23.**

23          19.     On February 27, 2012, NAS, on behalf of the HOA, recorded a Notice of  
24          Default and Election to Sell Under Homeowners Association Lien, as Instrument No.  
25          201202270002448. **Stipulated Fact No. 12; Trial Exhibit 6.** Again, the Notice of Default  
26          did not identify the super-priority portion of the lien or provide information from which it  
27          could be extrapolated. **TT at 70:8-71:4.**

1           20. On March 7, 2012, after recording the Notice of Default and Election to Sell,  
2 NAS, on behalf of the HOA, mailed the notice of default to the former owner, BANA,  
3 MERS, and other interested parties via certified mail. **Stipulated Fact 13; Trial Exhibit 37**  
4 **– Bates number BANA/Nolan-01-000287 - 289.**

5           21. Prior to the HOA foreclosure sale, on March 16, 2012, the law firm of Miles,  
6 Bauer, Bergstrom & Winters, LLP, acting as counsel for MERS as nominee for Bank of  
7 America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to  
8 NAS regarding payment of the super-priority lien, the terms of which included a request for  
9 identification of the super-priority portion measure at a maximum of nine months of unpaid  
10 assessments, and offer to pay that amount upon proof of the same. **Stipulated Fact No. 17;**  
11 **Trial Exhibit 20.** The letter was authored by attorney Rock Jung. **TT 135:2-11; Trial**  
12 **Exhibit 32.** The letter was similar to thousands of requests sent by Miles Bauer during this  
13 time period to NAS. **TT 125:14-25, 164:13-21.**

14           22. The March 16, 2012 letter sent by Miles Bauer was received by NAS. **TT**  
15 **117:1-5 and 118:1-22. Stipulated Fact No. 18.**

16           23. NAS did not respond based on its claim that doing so would violate the  
17 FDCPA. **TT 137:18-139:10; Stipulated Fact No. 18.**

18           24. The parties stipulated the letter was received by NAS. At trial, plaintiff  
19 attempted to withdraw the stipulation because the letter was not in NAS's file. However,  
20 testimony by Chris Yergensen, NAS's former in-house counsel, established that it was not  
21 uncommon for letters sent by Miles Bauer to never make it to the file. **TT 164:22-165:24.**  
22 Mr. Yergensen explained: "typically with the Miles Bauer letters, and as I have testified  
23 before, because of the routine nature, I just think that, to some degree, some of the  
24 employees at NAS got a little bit lazy. I mean it was the same form letter every time. So  
25 you see occasionally that the letter didn't make it particularly to the collection file because it  
26 just feel on deaf ears".

27           25. Prior to the time this letter was sent, it was NAS's practice to respond to Miles  
28

1 Bauer by providing a ledger that described and provided an itemization of the components of  
2 the lien. **TT 125:8-19, 174:3-9.** NAS was not compensated for this service. **TT 176:3-178-**  
3 **1.** Mr. Yergensen explained that NAS ceased this practice at some point in 2012 because of  
4 the FDCPA. NAS started providing ledgers again in our around July of 2013 based on a  
5 change in state law. **TT 174:3-175:3.** When NAS started providing ledgers again in 2013,  
6 it began charging \$150 for this service based on a statute it believed authorized it to do so.  
7 **TT 175:11-16.**

8 26. Miles Bauer's request for a ledger in this matter fell within the period of time  
9 NAS was not providing ledgers or any response to Miles Bauer's requests. Mr. Yergensen  
10 acknowledged that NAS was aware it was taking a risk in making the business decision to  
11 refuse to respond to Miles Bauer during this period. **TT 166:10-167:5, 175:4-16.**

12 27. As explained by Mr. Jung and, when Miles Bauer did not receive a response to  
13 their request for payoff, they would search their data base to determine if another property  
14 within the association had previously been collected on, and if there was a ledger in that file  
15 they could use to attempt to determine the super-priority payoff amount. **TT 126:13-20.**  
16 Miles Bauer did not have such a ledger in this instance.

17 28. This court is satisfied that Miles Bauer would have issued a payment of at least  
18 the super-priority component of the lien if NAS had responded with this information or if  
19 Miles Bauer otherwise had the information reasonably available from another source.<sup>1</sup> Even  
20 if Miles Bauer had been able to determine the precise amount of the super-priority, NAS's  
21 policy was to reject these payments unless they were for the full amount of the lien. Miles  
22 Bauer's practice was to send a check by runner to deliver payment. NAS's practice was to  
23

---

24 <sup>1</sup> The typical Miles Bauer tender process was demonstrated through Miles Bauer's efforts to pay the Mountains Edge  
25 Master Association on the super-priority portion of its lien. On September 10, 2012, BANA, through its counsel at  
26 Miles Bauer, sent a letter to the Master Association offering to pay the sum of nine months of common assessments pre-  
27 dating the former owner's default, requesting proof of that amount, and requesting information regarding the Master  
28 Association's proposed sale of the property. **Stipulated Fact 19; Trial Exhibit 22.** On October 4, 2012, Miles Bauer,  
by hand delivery, sent a check for \$932.83, representing 9 months of unpaid assessments, and a voluntary payment of  
collection costs/fees, to the Master Association. **Trial Exhibits 24, 25, and 26.**

1 have its receptionist reject the payment at the door unless it was for the full amount of the  
2 lien. The receptionist would not consult NAS's management, legal department, or  
3 collections staff before rejecting. **TT 172:3-173:18.**

4 29. NAS, on November 15, 2012, NAS, on behalf of the HOA, recorded a Notice  
5 of Foreclosure Sale against the Property, as Instrument No. 201211150002280. The notice  
6 set a sale for December 14, 2012. **Stipulated Fact No. 23; Trial Exhibit 9.**

7 30. On November 13, 2012, NAS, on behalf of the HOA, mailed the Notice of  
8 Foreclosure Sale to the former owner, BANA, and other interested parties. **Stipulated Fact**  
9 **No. 24; Trial Exhibit 37 Bates number BANA/Nolan-01-000357 - 362**

10 31. NAS, on behalf of the HOA, posted the Notice of Foreclosure Sale on the  
11 Property and in three places throughout the county in November 15, 2012. **Stipulated Fact**  
12 **No. 25; Trial Exhibit 52.**

13 32. The Master Association provided a statement of account showing the total  
14 amount the former owner owed the Master Association through September 20, 2012 in  
15 response to Miles Bauer's letter. **Trial Exhibit 23.**

16 33. Miles Bauer, on BANA's behalf, delivered a check in the amount of \$932.83  
17 to the Master Association, c/o Silver State, on or about October 4, 2012. This apparently  
18 included \$225 representing nine months' worth of unpaid assessments, plus a payment of  
19 collection costs and fees.

20 34. NAS, on behalf of the HOA, published the Notice of Foreclosure Sale in  
21 Nevada Legal News on three dates (November 21, 2012, November 30, 2012 and December  
22 7, 2012. **Stipulated Fact No. 26; Trial Exhibit 53.**

23 35. On February 1, 2013, Plaintiff appeared at the public auction and acquired the  
24 property at the HOA foreclosure sale with a bid of \$14,600, as evidenced by the foreclosure  
25 deed recorded on February 7, 2013. **Stipulated Facts No. 27 and 28; Trial Exhibit 10.**  
26 NAS issued a deed upon sale, which was recorded on February 7, 2013. **Trial Exhibit 10.**

27 36. BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a  
28

1 Countrywide Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage,  
2 LLC, via an assignment of the deed of trust recorded with the Clark County Recorder on  
3 July 10, 2013, as Instrument No. 201307100000782. **Stipulated Fact No. 23; Trial Exhibit**  
4 **11.**

5 37. BANA retained expert appraiser Matthew Lubawy to perform a retroactive  
6 Fair Market Value Appraisal of the property at the time of the February 1, 2013 HOA sale,  
7 as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement  
8 (third) of Property § 8.3. BANA's expert is qualified to render an opinion regarding the Fair  
9 Market Value of the Property on February 1, 2013. As stated in Mr. Lubawy's expert report,  
10 the Fair Market Value at the time of the HOA sale was \$158,500. **Stipulated Fact No. 31;**  
11 **Trial Exhibit 33.**

12 38. NAS routinely rejected attempts to pay superpriority liens, even after  
13 reinstating the practice of providing payoff demands for which they charged \$150.00. **TT**  
14 **136:9-18; 145:9-146:4.**

15 39. The owner of the subject property is 7510 Perla Del Mar Avenue Trust. Eddie  
16 Haddad, who is a sophisticated real estate investor who holds a Nevada Real Estate Broker's  
17 license and established the trust, has over 20 years of experience in real estate. He owns and  
18 operates Great Bridge Properties, which is a real estate brokerage. He also owns a real estate  
19 management company called Resources Management Group, LLC. Resources Management  
20 Group is the company Mr. Haddad uses to manage many of his real estate acquisitions,  
21 including the subject property. He is the *de facto* manager of the 7510 Perla Del Mar Avenue  
22 Trust. **TT 8:25-10:3**

23 40. Eddie Haddad attended and bid at hundreds of HOA foreclosure sales every  
24 year. **TT 12:14-19.** Through that process, he has acquired hundreds of properties at  
25 foreclosure sales over the years. **TT 12:20-22.**

26 **CONCLUSIONS OF LAW**  
27  
28

1           1.       "A quiet title action . . . is the proper method by which to adjudicate disputed  
2 ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044,  
3 1046 (2008). "An action may be brought by any person against another who claims an estate  
4 or interest in real property, adverse to him, for the purpose of determining such adverse  
5 claim." NRS 40.010.

6           2.       Here, Plaintiff seeks to quiet title in its name and extinguish the Deed of Trust  
7 as a result of the HOA foreclosure sale. The court finds the sale did not extinguish the Deed  
8 of Trust because: (1) the superpriority portion of the lien was tendered prior to the sale; and  
9 (2) the equities balance in favor of BANA.

10 ***I. BANA's Offer Redeemed the Super-Priority As a Matter of Law.***

11           3.       NRS116.3116 provides in part:

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

16 (*emphasis added*)

17           4.       The only portion of the HOA's lien that is prior to the first deed of trust's  
18 interest is that amount for up to nine months of assessments only. *Horizons at Seven Hills*  
19 *Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016).

20           5.       In *SFR Investments*, the Nevada Supreme Court held that a first deed of trust  
21 holder's pre-foreclosure tender prevents the first deed of trust from being extinguished. 334  
22 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off  
23 the [HOA] lien to avert loss of its security[.]").

24           6.       The HOA's foreclosure begins at the recording of the notice of delinquent  
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,*  
26 *N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 \_\_ (2017). *See also Property Plus*  
27  
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1 *Investments, LLC v. Mortgage Electronic Registration Systems Inc., et al.*, 133 Nev. Ad. Op.  
2 62\_\_ (September 2017).

3 7. The parties stipulated that prior to the HOA foreclosure sale, Miles Bauer, on  
4 behalf of the beneficiary of the first deed of trust, requested the lien balance from NAS. NAS  
5 stipulated that it received this letter, but it did not respond to Miles Bauer's letter based upon  
6 its claim that doing so would violate the FDCPA.

7 8. BANA's offer to pay coupled with NAS's refusal to accept, acknowledge, or  
8 even respond, was sufficient to redeem the seniority for the first deed of trust. As a matter of  
9 law, tender is complete when "the money is offered to a creditor who is entitled to receive  
10 it." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added); *see*  
11 *also Fresk v. Kramer*, 99 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am.  
12 Jur. 2d Tender § 22 (2014). Money need not actually change hands. "[W]hen a party, able  
13 and willing to do so, offers to pay another a sum of money and is told that it will not be  
14 accepted, the offer is a tender without the money being produced." *Guthrie v. Curnutt*, 417  
15 F.2d 764, 765-766 (10th Cir. 1969); *accord Ebert v. Western States Refining Co.*, 75 Nev.  
16 217, 221-222, 337 P.2d 1075, 1077 (1959) (Tender of rent sufficient where offered by tenant  
17 and refused by landlord).

18 9. Bank of America, through its counsel Miles Bauer, offered to pay the super-  
19 priority  
20 portion of the lien. Miles Bauer was ready, willing, and able to provide payment for a super-  
21 priority tender. Based on the testimony of Rock Jung and Jessica Woodbridge, Miles Bauer  
22 was hired by BANA to do just that. The testimony evidences that Miles Bauer was hired to  
23 pay the super-priority portion of the lien or more, and it would have done so, as it did  
24 hundreds of times, if information was provided from NAS as requested. In addition to  
25 providing thousands of similar tender payments, Miles Bauer provided an (over)payment of  
26 tender to the Master Association. Having demonstrated they were ready, willing and able to  
27 pay when the Master Association provided Miles Bauer the information they needed to do  
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1 so, it is evident that had NAS provided what was requested, Miles Bauer would have issued  
2 a check to Mandolin as well. This court concludes that Miles Bauer was ready, willing and  
3 able to pay the superpriority portion of the lien as well as additional fees and costs. The  
4 testimony from Chris Yergensen and Susan Moses at trial corroborated this conclusion.  
5 NAS knew that the only proof of an accounting needed to obtain a super-priority check was  
6 an itemized letter, and it knew that Miles Bauer would send such a check if it had that  
7 information. There was no evidence or argument at trial to suggest a contrary conclusion.<sup>2</sup>

8 10. As a matter of law, the FDCPA only prohibits third-party communications  
9 made “in connection with the collection of a debt.” 15 U.S.C. § 1692c(b). A communication  
10 is made in connection with the collection of a debt only if the “animating purpose of the  
11 communication [is] to induce payment by the debtor.” *McIvor v. Credit Control Services,*  
12 *Inc.*, 773 F.3d 909, 914 (8th Cir. 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266  
13 (3d Cir. 2013); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011);  
14 *Gburek v. Litton Loan Servicing*, 614 F.3d 380, 382 (7th Cir.2010). Foreclosing on a lien is  
15 not a “debt collection” as defined by the FDCPA, and is thus outside the statute’s purview.  
16 *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App’x. 476, 480 (9th Cir. 2001); *Warren v.*  
17 *Countrywide Home Loans, Inc.*, 342 Fed. App’x 458, 460 (11th Cir. 2009) (explaining that  
18 “the plain language of the FDCPA supports” the conclusion that “foreclosing on a security  
19 interest is not debt collection activity”); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700  
20 (6th Cir. 2003); *Nadalin v. Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir.  
21 1999). NAS’s refusal to respond on the basis of the FDCPA was unreasonable for multiple  
22 reasons.. It was just an excuse to be able to go forward with the foreclosure sale. The court  
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24 <sup>2</sup> In fact, BANA’s offer was in excess of the actual super-priority lien in this case. “[T]he superpriority lien ...is limited  
25 to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Horizon at*  
26 *Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at \*6  
27 (emphasis added). The HOA’s foreclosure begins at the recording of the notice of delinquent assessment lien. *Saticoy*  
28 *Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (2017).NAS agreed there  
were only five months’ worth of assessments prior to the NOL (and the homeowner satisfied all but \$39.10 of the super-  
priority).

1 does not accept NAS's position that the HOA was prohibited from disclosing information  
2 about the super-priority component of the lien, if any, under the FDCPA. First, the entirety  
3 of the lien was already a matter of public record. Second, NAS, itself, had a practice of  
4 disclosing, at no cost, what it believed to be the super-priority component up to at least 2012.  
5 Third, even if the FDCPA would otherwise prevent disclosure of information that is already  
6 a matter of public record, the CC&Rs expressly set forth BANA's right to obtain this  
7 information. The CC&Rs are a covenant that ran with the land, and operate as Nolan's  
8 consent. Nevada's Supreme Court defines CC&Rs in both contractual and real property  
9 terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P. 3d 1155, 1160-1161 (Nev. 2007)  
10 (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a  
11 benefit of rights to the property owner, *superseded on other grounds* 125 Nev. 397, 215 P.3d  
12 27 (2009). NAS was, therefore, obligated to provide the requested information to Miles  
13 Bauer.

14 11. NAS' refusal to accept the offer to pay the super-priority or otherwise provide  
15 an account ledger to Miles Bauer cannot form a basis to defeat the tender. "[A]ny  
16 affirmative tender of performance is excused when performance has in effect been prevented  
17 by the other party... It is a principle of fundamental justice that if a promisor is himself the  
18 cause of the failure of performance, either of an obligation due him or of a condition upon  
19 which his own liability depends, he cannot take advantage of the failure." 15 Williston, A  
20 Treatise on the Law of Contracts, § 47:4 (4th ed. 2017).

21 12. Even if super-priority notice had been provided, the super-priority and  
22 anything less than payment in full would have been rejected, as stated in the testimony of  
23 Moses and Yergensen. "A tender is not necessary where the declarations of the offeree are  
24 such as to indicate that the actual offer of money will be rejected; the law does not require a  
25 man to do a vain and fruitless thing; a strict and formal tender is not necessary where it  
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1 appears that if it had been made it would have been refused.” *Enfield v. Huffman Motor Co.*,  
2 117 Cal. App. 2d 800, 807 (1953).

3 13. Consequently, the bank’s tender offer through Miles Bauer was all that the  
4 bank needed to do to protect its interest in the property. Alternatively, the Court concludes  
5 that payment of the super-priority would have been futile because that payment would have  
6 been rejected. Therefore, as a matter of law, BANA’s first deed of trust was not  
7 extinguished by the subject foreclosure sale.

8 14. Even if Miles Bauer had learned the amount of the superpriority component—  
9 either from NAS or through an archived ledger from Mandolin — actual payment of the  
10 superpriority amount would have been futile. The evidence established that NAS had an  
11 ordinary course of business of rejecting payments from Miles Bauer if the payments were  
12 only for the superpriority component.

13 15. Based upon the foregoing, and good cause appearing, the Court hereby finds  
14 and concludes that because of the bank’s tender of the super-priority portion of the HOA’s  
15 lien, the bank preserved its interest in the subject property, and the HOA foreclosed on only  
16 the sub-priority portion of its lien.

17 16. The Court further finds that Plaintiff’s status as a bona fide purchaser is moot  
18 by virtue of the superpriority component having been extinguished by the Miles Bauer  
19 rejected tender.

## 20 **II. Equitable Balancing**

21 17. In addition to defenses available at law, the court possesses the equitable  
22 power to determine whether an HOA sale extinguished a deed of trust. *Nationstar*  
23 *Mortgage, LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91  
24 (Nov. 22, 2017); *Shadow Wood Homeowners Ass’n v. New York Cmty. Bancorp, Inc.*, 132  
25 Nev. Adv. Op. 5, 366 P.3d 1105, (2016). Recently in *Shadow Canyon*, the Court explained  
26 that while price alone is not sufficient to invalidated a sale, when the sale price is palpably  
27 and greatly inadequate, coupled with unfairness, fraud, oppression or irregularity, the sale  
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1 may be set aside. Only slight evidence of unfairness is needed to set aside the foreclosure  
2 sale. *See Shadow Canyon*, 405 P.3d at 649

3 18. The parties stipulated that on February 1, 2013, Plaintiff purchased the subject  
4 property at the HOA foreclosure sale with a bid of \$14,600.00. BANA's expert appraiser  
5 determined the fair market value (FMV) of the property at the time of the February 1, 2013  
6 HOA sale, to be \$158,500.00. The purchase price was less than 9% of the FMV. The point  
7 of the *Restatement (Third) of Real Property: Mortgages* §8.3 (1997) approach analyzed by  
8 *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
9 P.3d 1105, 1114 (2016) is to compare the fair market value of the property versus what it  
10 actually sold for at the foreclosure sale, and if the foreclosure sale price is less than 20% of  
11 the fair market value, then that fact can render the price to be "palpably and greatly  
12 inadequate" which, in conjunction with other circumstances that reflect fraud, unfairness, or  
13 oppression, can support setting aside the sale. *See Shadow Canyon*, 405 P.3d at 649

14 19. The price contemplated by this test is not the amount that a reasonable  
15 purchaser at a foreclosure sale would have paid. Under *Shadow Wood*, the Fair Market  
16 Value standard is defined as a sale which is not the fair "forced sale" value of the real estate,  
17 but the price which would result from negotiation and mutual agreement, after ample time to  
18 find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser  
19 who is willing to buy, but not compelled to take a particular piece of real estate. *Restatement*  
20 *(Third) of Prop.: Mortgages* § 8.3 cmt. b (1997). *See also Shadow Wood Homeowners Ass'n*  
21 *v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

22 20. Although this Court does not agree, the binding Nevada Supreme Court  
23 precedent in *Shadow Wood*, indicates that Fair Market Value does not consider whether the  
24 price of \$14,600 was "fair" in comparison to other HOA foreclosure sales. The Fair Market  
25 Value standard contemplates what the property would have sold for outside of the forced  
26 sale setting. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev.  
27 Adv. Op. 5, 366 P.3d 1105, (2016). Even so, the Court only sets aside a foreclosure sale if  
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1 the fraud, oppression, or unfairness “causes” the low price. In this case, this Court is not  
2 convinced that the low price resulted from any fraud, oppression, or unfairness, and  
3 consequently, the foreclosure sale will not be set aside or considered a “wrongful  
4 foreclosure.”

5 21. In considering whether Plaintiff was a bona fide purchaser for value (BFP), the  
6 Court is not convinced that this analysis is appropriate when dealing with a forced or  
7 distressed sale such as an HOA foreclosure sale.

8 22. Generally, a BFP analysis is appropriate when dealing with UCC issues, and  
9 the sale of goods on the open market. The Nevada Supreme Court has indicated, however,  
10 that consideration of a purchaser’s BFP status may be appropriate for cases such as this. The  
11 Court has recently indicated that a subsequent purchaser is bona fide under common-law  
12 principles if it takes the property for a valuable consideration and without notice of the prior  
13 equity, and without notice of facts which upon diligent inquiry would be indicated and from  
14 which notice would be imputed to him, if he failed to make such inquiry. *Shadow Wood at*  
15 *1115, citing Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947); *Moore v.*  
16 *DeBernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923).

17 23. Mr. Haddad, who testified for the Plaintiff trust, has been a real estate investor  
18 for more than 20 years. Mr. Haddad, and Plaintiff, admitted that prior to purchasing the  
19 property, they knew that the Deed of Trust had been recorded against the property. The  
20 Planned Unit Development Rider to this Deed of Trust placed them on record notice that “If  
21 Borrower does not pay assessments when due, the lender may pay them.” Mr. Haddad  
22 conceded that he made no inquiry as to whether there was a payment on the super-priority  
23 portion of the lien, or attempted payment on the super-priority portion of the lien, of any  
24 party, including NAS, the HOA, Bank of America, or any other individual or entity. When  
25 Mr. Haddad decided to purchase the property despite there being a recorded deed of trust  
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1 against it, without inquiring whether there had been an attempt to pay the superpriority  
2 portion of the lien, he took the risk that the deed may be encumbered by a first deed of trust.

3 24. The recorded notice of sale, as well as the published notice in the Nevada  
4 Legal news, both indicated that the sale was made without warranty.

5 25. The purchaser at an HOA foreclosure sale can only obtain what the seller has  
6 to give. There is no warranty or guaranty, and consequently, whatever the seller had is the  
7 most that Plaintiff could acquire. Since the superpriority amount was tendered, and this  
8 Court finds that such tender protected BANA's security interest in the property, Plaintiff  
9 obtained only the title or interest in the property that was available for sale.

10 26. Based upon the facts and circumstances as set forth herein, and in the  
11 pleadings, the Court concludes that the only interest the HOA had to convey was the  
12 subpriority portion of their lien. The Plaintiff's took interest in the property, is subject to  
13 BANA's deed of trust.

#### 14 JUDGMENT

15 The Court having made its Findings of Fact and Conclusions of Law,

16 **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the  
17 sub-priority portion of its lien; and

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the super-  
19 priority portion of the HOA's lien was discharged and extinguished prior to the HOA  
20 foreclosures sale as a result of the tender by the bank; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Plaintiff 7510  
22 Perla Del Mar Ave. Trust purchased an interest in the Property, located at 7510 Perla Del  
23 Mar Avenue, Las Vegas, Nevada subject to BANA's deed of trust, which remains a first  
24 position lien against the Property; and

25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed  
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property  
27 and is superior to the interest conveyed in the Foreclosure Deed; and  
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1       **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining  
2 claims not specifically mentioned, including all claims in Plaintiff's Complaint, are mooted  
3 by the findings above and thereby dismissed with prejudice; and

4       **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA shall  
5 have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion  
6 practice directed thereto.

7               DATED 21 March, 2018.

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11                               DISTRICT COURT JUDGE  
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7 Attorney for plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 7510 PERLA DEL MAR AVE TRUST,

11 Plaintiff,

12 vs.

13 BANK OF AMERICA, N.A.; NORTH  
14 AMERICAN TITLE COMPANY, A NEVADA  
15 CORPORATION; MOUNTAINS EDGE  
16 MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

17 Defendants.

CASE NO.: A-13-686277-C

DEPT NO.: XXX

18 **NOTICE OF APPEAL**

19 NOTICE IS HEREBY GIVEN that Plaintiff, 7510 Perla Del Mar Ave Trust, hereby appeals to  
20 the Supreme Court of Nevada from the Amended Findings of Fact, Conclusions of Law and Judgment  
21 entered on March 21, 2018.

22 DATED this 12th day of April 2018.

23 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

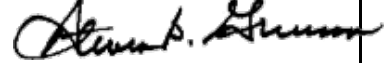
24 By: /s/ /Michael F. Bohn, Esq./  
25 MICHAEL F. BOHN, ESQ.  
26 376 E. Warm Springs Road, Suite 140  
27 Las Vegas, Nevada 89119  
28 Attorney for plaintiff

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
Offices of Michael F. Bohn., Esq., and on the 12th day of April, 2018 an electronic copy of the  
**NOTICE OF APPEAL** was served on opposing counsel via the Court's electronic service system to the  
following counsel of record:  
Darren T. Brenner, Esq.  
Rebekkah B. Bodoff, Esq.  
AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada, 89134  
Attorney for defendant Bank of America, N.A.

/s/ Marc Sameroff  
An Employee of the LAW OFFICES OF  
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7510 Perla Del Mar Ave Trust

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,  
Plaintiff,

vs.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY, A NEVADA  
CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,  
Defendants.

BANK OF AMERICA, N.A.,  
Counter-Claimant,

vs.

7510 PERLA DEL MAR AVENUE TRUST and  
MOUNTAINSS EDGE MASTER  
ASSOCIATION,  
Counter-Defendants.

CASE NO.: A686277  
DEPT NO.: XXX

**PLAINTIFF/COUNTERDEFENDANT 7510  
PERLA DEL MAR AVE TRUST'S  
ANSWER TO AMENDED  
COUNTERCLAIM**

1 BANK OF AMERICA, N.A.,  
2 Cross-Claimant,

3 vs.

4 SILVER STATE TRUSTEE SERVICES, LLC;  
5 and NEVADA ASSOCIATION SERVICES,  
6 INC.,  
7 Cross-Defendants.

8 **PLAINTIFF/COUNTERDEFENDANT 7510 PERLA DEL MAR AVE TRUST'S ANSWER TO**  
9 **AMENDED COUNTERCLAIM**

10 Plaintiff/Counterdefendant, 7510 Perla Del Mar Ave Trust's ("counterdefendant"), by and through  
11 its attorneys, Michael F. Bohn, Esq. and Adam R. Trippiedi, Esq., answers defendant/counterclaimant  
12 Bank of America, N.A.'s ("counterclaimant") amended counterclaim filed August 10, 2016, as follows:

13 **GENERAL ALLEGATIONS**

- 14 1. Counterdefendant admits the allegations contained in paragraphs 1 through 4.  
15 2. Counterdefendant denies the allegations contained in paragraph 5.

16 **The Deed of Trust and Assignment**

- 17 3. Counterdefendant admits the allegations contained in paragraphs 6 and 7 of the counterclaim.

18 **The HOA Lien and Foreclosure**

- 19 4. Counterdefendant denies the allegations contained in paragraphs 8 through 14 and 22  
20 through 27 of the counterclaim.

- 21 5. Counterdefendant is without sufficient information or knowledge to admit or deny the  
22 allegations contained in paragraphs 15 through 20 of the counterclaim and, upon that basis, denies the  
23 same

- 24 6. Counterdefendant admits the allegations contained in paragraph 21 of the counterclaim.

25 **FIRST CAUSE OF ACTION**

- 26 7. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 27 of the  
27 counterclaim as though fully set forth at length herein.

1 8. Counterdefendant admits the allegations contained in paragraphs 44 through 46 and 52 of  
2 the first cause of action.<sup>1</sup>

3 9. Counterdefendant denies the allegations contained in paragraphs 47 through 51, 53, and 54  
4 of the first cause of action.

5 SECOND CAUSE OF ACTION

6 10. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 54 of the  
7 counterclaim as though fully set forth at length herein.

8 11. Counterdefendant admits the allegations contained in paragraphs 41, 42, and 46 of the  
9 second cause of action.

10 12. Counterdefendant denies the allegations contained in paragraphs 43 through 45, 47, and  
11 48 of the second cause of action.

12 THIRD CAUSE OF ACTION

13 13. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 48 of the  
14 counterclaim as though fully set forth at length herein.

15 14. Counterdefendant denies the allegations contained in paragraphs 50 and 59 of the  
16 counterclaim.

17 15. Counterdefendant admits the allegations contained in paragraph 51 of the counterclaim.

18 16. Counterdefendant is without sufficient information or knowledge to admit or deny the  
19 allegations contained in paragraphs 52 through 58 and, upon that basis, denies the same.

20 FOURTH CAUSE OF ACTION

21 17. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 59 of the  
22 counterclaim as though fully set forth at length herein.

23 18. Counterdefendant is without sufficient information or knowledge to admit or deny the  
24 allegations contained in paragraphs 61 through 63 and, upon that basis, denies the same.

25 19. Counterdefendant denies the allegations contained in paragraphs 64.

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26 <sup>1</sup>Beginning with the first cause of action, the numbering scheme in the amended counterclaim is not in sequential,  
27 numerical order, resulting in this answer having numbers which are not sequential as well.

1 FIFTH CAUSE OF ACTION

2 20. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 64 of the  
3 counterclaim as though fully set forth at length herein.

4 21. Counterdefendant admits the allegations contained in paragraphs 66 and 67 of the  
5 counterclaim.

6 22. Counterdefendant is without sufficient information or knowledge to admit or deny the  
7 allegations contained in paragraphs 68 through 72 and, upon that basis, denies the same.

8 23. Counterdefendant denies the allegations contained in paragraphs 73 and 74 of the  
9 counterclaim.

10 SIXTH CAUSE OF ACTION

11 24. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 74 of the  
12 counterclaim as though fully set forth at length herein.

13 25. Counterdefendant admits the allegations contained in paragraph 76 of the counterclaim.

14 26. Counterdefendant is without sufficient information or knowledge to admit or deny the  
15 allegations contained in paragraphs 77 through 79 and, upon that basis, denies the same.

16 27. Counterdefendant denies the allegations contained in paragraphs 80 and 81.

17 SEVENTH CAUSE OF ACTION

18 28. Counterdefendant reasserts and realleges its responses to paragraphs 1 through 83 of the  
19 counterclaim as though fully set forth at length herein.

20 29. Counterdefendant is without sufficient information or knowledge to admit or deny the  
21 allegations contained in paragraph 83 and, upon that basis, denies the same.

22 30. Counterdefendant denies the allegations contained in paragraphs 84 through 87 of the  
23 counterclaim.

24 AFFIRMATIVE DEFENSES

25 FIRST AFFIRMATIVE DEFENSE

26 The counterclaim fails to state a claim against counterdefendant upon which relief may be  
27 granted.

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SECOND AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate its damages.

THIRD AFFIRMATIVE DEFENSE

Counterclaimant is guilty of laches and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimant’s damages, if any, were caused by its own acts and omissions or by the acts or omissions of third parties over which counterdefendant had no authority or control.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant assumed the risk of the damages of which it now complains.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant failed to exercise due care in its business dealings.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

Counterclaimant gave its consent, expressed or implied to the acts, omissions and/or conduct alleged of this answering counterdefendant.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimant ratified the alleged acts of this answering counterdefendant.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant expressly, impliedly and/or equitably released all rights against this answering counterdefendant.

THIRTEENTH AFFIRMATIVE DEFENSE

The HOA Sale was conducted pursuant to statute and therefore extinguished

1 counterclaimant's security interest in the property

2 FOURTEENTH AFFIRMATIVE DEFENSE

3 Counterdefendant is a bona fide purchaser for value without notice of any claims of any party  
4 or defects in title.

5 FIFTEENTH AFFIRMATIVE DEFENSE

6 Counterdefendant is a bona fide purchaser without knowledge of the claims of  
7 counterclaimant.

8 SIXTEENTH AFFIRMATIVE DEFENSE

9 Counterclaimant has failed to include indispensable parties to this action.

10 SEVENTEENTH AFFIRMATIVE DEFENSE

11 Counterclaimant's claims are barred by the voluntary payment doctrine.

12 EIGHTEENTH AFFIRMATIVE DEFENSE

13 Counterclaimant lacks standing to prosecute this action.

14 NINETEENTH AFFIRMATIVE DEFENSE

15 Counterdefendant has good title pursuant to NRS 116.31164

16 TWENTIETH AFFIRMATIVE DEFENSE

17 The foreclosure sale was conducted pursuant to statute which is commercially reasonable as a  
18 matter of law.

19 TWENTY-FIRST AFFIRMATIVE DEFENSE

20 Counterdefendant reserves the right to add additional affirmative defenses as new information  
21 currently not known or available to counterdefendant becomes known or knowable during the  
22 pendency of this action.

23 WHEREFORE, counterdefendant prays for Judgment as follows:

- 24 1. That the counterclaimant take nothing by way of its counterclaim;  
25 2. For a determination and declaration that counterdefendant is the rightful holder of title to  
26 the property, free and clear of all liens, encumbrances, and claims of the counterclaimant;  
27



- 1 3. For a determination and declaration that the counterclaimant has no estate, right, title,  
2 interest or claim in the property;  
3 4. For a judgment forever enjoining the counterclaimant from asserting any estate, right, title,  
4 interest or claim in the property;  
5 5. For an award of attorneys fees and costs; and  
6 6. For such other and further relief as the Court may deem just and proper.

7 DATED this 3rd day of July 2017.

8 LAW OFFICES OF  
9 MICHAEL F. BOHN, ESQ., LTD.

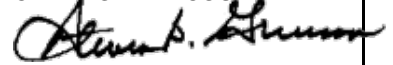
10 By: /s/ Adam R. Trippiedi, Esq.  
11 Michael F. Bohn, Esq.  
12 Adam R. Trippiedi, Esq.  
13 376 East Warm Springs Road, Ste. 140  
14 Las Vegas, Nevada 89119

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
16 Law Offices of Michael F. Bohn, Esq., and on the 3rd day of July, 2017, an electronic copy of the  
17 **PLAINTIFF/COUNTERDEFENDANT 7510 PERLA DEL MAR AVE TRUST'S ANSWER TO**  
18 **AMENDED COUNTERCLAIM** was served on opposing counsel via the Court's electronic service  
19 system to the following counsel of record:

20 Darren T. Brenner, Esq.  
21 Rebekkah B. Bodoff, Esq.  
22 AKERMAN LLP  
23 1160 Town Center Drive, Suite 330  
24 Las Vegas, NV 8944  
25 *Attorneys for Bank of America, N.A.*

24 /s/ Marc Sameroff /  
25 An Employee of the LAW OFFICES OF  
26 MICHAEL F. BOHN, ESQ., LTD.  
27  
28



1 **PMEM**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No.: 12294

4 [atrippiedi@bohnlawfirm.com](mailto:atrippiedi@bohnlawfirm.com)

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for plaintiff/counterdefendant

8 7510 Perla Del Mar Ave Trust

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 7510 PERLA DEL MAR AVE TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; NORTH  
15 AMERICAN TITLE COMPANY, A NEVADA  
16 CORPORATION; MOUNTAINS EDGE  
17 MASTER ASSOCIATION; and DOMINIC J.  
18 NOLAN,

19 Defendants.

20 BANK OF AMERICA, N.A.,

21 Counter-Claimant,

22 vs.

23 7510 PERLA DEL MAR AVENUE TRUST and  
24 MOUNTAINS EDGE MASTER  
25 ASSOCIATION,

26 Counter-Defendants.

CASE NO.: A686277

DEPT NO.: XXX

**JOINT EDCR 2.67 PRE-TRIAL  
MEMORANDUM**

27 Plaintiff 7510 Perla Del Mar Ave Trust and defendant Bank of America N.A., pursuant to  
28 EDCR 2.67, through their respective counsel, conducted the requisite conference on June 30, 2017,

1 and a supplemental conference on January 5, 2018, and hereby submit this joint pretrial memorandum  
2 as follows:

3 **I. BRIEF STATEMENT OF THE CASE (EDCR 2.67(b)(1))**

4 **a. Nature of the Dispute**

5 This is an HOA post foreclosure quiet title and damages action. On February 1, 2013, the  
6 Mandolin Phase 3 At Mountains Edge (the “**HOA**”), through its agent, Nevada Association Services,  
7 Inc. (“**NAS**”) conducted a foreclosure sale on the subject property located at 7510 Perla Del Mar Ave,  
8 Las Vegas, Nevada (the “**Property**”). The subject foreclosure sale was conducted pursuant to NRS  
9 116.3116, *et seq.* (2011). Plaintiff was the winning bidder at the foreclosure sale by bidding  
10 \$14,600.00. Plaintiff claims through this quiet title action that the prior recorded, first Deed of Trust  
11 was extinguished by the HOA’s foreclosure sale. Bank of America contends that the Deed of Trust  
12 survived the sale and the purchaser takes subject to it, because *inter alia*, Bank of America or its  
13 predecessor-in-interest allegedly tendered payment of the super-priority amount of the HOA’s lien by  
14 delivering the same to NAS, and NAS failed to accept the offer.

15 **II. CLAIMS FOR RELIEF**

16 **a. Plaintiff’s claims for relief**

- 17 1. Quiet Title against all defendants; and  
18 2. Declaratory Relief against all defendants.

19 **b. Defendant’s claims for relief**

- 20 1. Quiet Title/Declaratory Relief against plaintiff;  
21 2. Declaratory Judgment against plaintiff;  
22 3. Unjust Enrichment against Mandolin;  
23 4. Unjust Enrichment Against NAS  
24 5. Tortious Interference with Contractual Relations Against Mandolin and  
25 NAS;  
26 6. Breach of the Duty of Good Faith Against Mandolin and NAS  
27 7. Wrongful Foreclosure Against Mandolin and NAS

1 **III. AFFIRMATIVE DEFENSES**

2 **a. Defendant Bank of America**

- 3 1. Plaintiff has failed to state facts sufficient to constitute any cause of action against  
4 Defendants.
- 5 2. To the extent that Plaintiffs' interpretation of NRS 116.3116 is accurate, the statute,  
6 and Chapter 116, are void for vagueness as applied to this matter.
- 7 3. A senior deed of trust beneficiary cannot be deprived of its property interest in  
8 violation of the Procedural Due Process Clause of the 14 Amendment of the United  
9 States Constitution and Article 1, Sec. 8, of the Nevada Constitution.
- 10 4. The super-priority lien was satisfied prior to the homeowner's association  
11 foreclosure under the doctrines of tender, estoppel, laches, or waiver.
- 12 5. The homeowner's association foreclosure sale was not commercially reasonable,  
13 and the circumstances of sale of the property violated the homeowner's association's  
14 obligation of good faith and duty to act in a commercially reasonable manner.
- 15 6. Plaintiffs' claims are barred in whole or in part because of its failure to take  
16 reasonable steps to mitigate its damages, if any.
- 17 7. The Plaintiffs lacks standing to bring some or all of their claims and causes of  
18 action.
- 19 8. Defendant avers the affirmative defense of unclean hands.
- 20 9. Defendant denies that the Plaintiff is entitled to any relief for which it prays.
- 21 10. Defendant avers the affirmative defense of failure to do equity.
- 22 11. Defendants were not provided proper notice of the "superpriority" assessment  
23 amounts and the homeowner's association foreclosure sale, and any such notice  
24 provided to Defendants failed to comply with the statutory and common law  
25 requirements of Nevada and with state and federal constitutional law.
- 26 12. The HOA foreclosure sale is void for failure to comply with the provisions of NRS  
27 Chapter 116, and other provisions of law.
- 28 13. The homeowners' association sale is void or otherwise fails to extinguish the  
applicable deed of trust because it violates provisions of the United States'  
Constitution and/or applicable federal law.
14. The HOA sale is void or otherwise fails to extinguish the applicable deed of trust  
pursuant to the Supremacy Clause of the United States Constitution.
15. Pursuant to NRCP 11, Defendants reserve the right to assert additional affirmative  
defenses in the event discovery and/or investigation disclose the existence of other  
affirmative defenses.

16. Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its "opt-in" notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice to a record lien holder before depriving that lien holder of its property rights, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of the Nevada Constitution.
17. Plaintiff purchased the property with record notice of the interest of the senior deed of trust recorded against the property.
18. Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions and transactions upon which it now bases its various claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.
19. Plaintiffs claim of free and clear title to the Property is barred by 12 U.S.c. § 46170)(3), which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts any state law to the contrary.

**b. Plaintiff**

1. The complaint fails to state a claim against answering counterdefendant upon which relief may be granted.
2. Counterclaimant has failed to mitigate its damages.
3. Counterclaimant is guilty of laches and unclean hands.
4. Counterclaimant's damages, if any, were caused by its own acts and omissions or by the acts or omissions of third parties over which counterdefendant had no authority or control.
5. Counterclaimant's claims are barred by the applicable statute of limitations.
6. Counterclaimant's claims are barred by the doctrine of estoppel.
7. Counterclaimant assumed the risk of the damages of which it now complains.
8. Counterclaimant failed to exercise due care in its business dealings.
9. Counterclaimant's claims are barred by the doctrine of waiver.
10. Counterclaimant gave its consent, expressed or implied to the acts, omissions and/or conduct alleged of this answering counterdefendant.
11. Counterclaimant ratified the alleged acts of this answering counterdefendant.
12. Counterclaimant expressly, impliedly and/or equitably released all rights against this answering counterdefendant.
13. The HOA Sale was conducted pursuant to statute and therefore extinguished counterclaimant's security interest in the property

14. Counterdefendant is a bona fide purchaser for value without notice of any claims of any party or defects in title.
15. Counterclaimant has failed to include indispensable parties to this action.
16. Counterclaimant's claims are barred by the voluntary payment doctrine.
17. Counterclaimant lacks standing to prosecute this action.
18. Counterdefendant reserves the right to add additional affirmative defenses as new information currently not known or available to counterdefendant becomes known or knowable during the pendency of this action.

**IV. CLAIMS TO BE ABANDONED**

None

**V. EXHIBITS**

**a. Plaintiff's Exhibits**

1. Bank of America Email correspondence with counsel [PDM000001];
2. Deed of Trust recorded December 10, 2012 [BANA/Nolan-01-000010-000033];
3. Assignment of Deed of Trust recorded July 10, 2013 [BANA/Nolan01-000051-000052];
4. Notice of Delinquent Assessment Lien recorded January 4, 2012 [BANA/Nolan01-000035];
5. Notice of Default and Election to Sell under Homeowners Association Lien recorded February 27, 2012 [BANA/Nolan01-000044-000045];
6. Notice of Foreclosure Sale recorded November 15, 2012 [BANA/Nolan01-000048-000049];
7. Foreclosure Deed recorded February 7, 2013 [BANA/Nolan01-000038-000040]; and
8. Brunson Jiu Appraisal Review dated July 15, 2016 [PDM000002-000041].

**b. Bank of America's Exhibits**

1. Notice of Completion, instrument no. 20100121-0002324 BANA/Nolan-01-00001-00003.
2. Notice of Completion, instrument no. 2010121-00002322, BANA/Nolan-01-000004-00006.
3. Annexation, instrument no. 201012-00002323, BANA/Nolan-01-000007-000009.
4. Deed of Trust, instrument no. 2010121-00002325, BANA/Nolan-01-000010-000033.

5. Notice of Claim of Lien, instrument no. 2011113-00000442, BANA000034.
6. Notice of Delinquent Assessment Lien, Instrument No. 20120104-0001123, BANA/Nolan-01-000035.
7. Assignment of Deed of Trust, instrument no. 20120106-0000225, BANA/Nolan-01-000036-000037.
8. Foreclosure Deed, instrument no. 20130207-0001210, BANA/Nolan-01-000038-7 000040.
9. Notice of Claim of Lien, instrument no. 20120821-0002010, BANA/Nolan-01-000041.
10. Notice of Default and Election to Sell Under Homeowners Association Lien, instrument no. 20120227-0002448, BANA/Nolan-01-000044-000045.
11. Notice of Default and Election to Sell Under Notice of Delinquent Assessment Lien, instrument no. 20120814-0001300, BANA/Nolan-01-000044-000045.
12. Notice of Delinquent Assessment Lien, instrument no. 20120202-0001210, BANA/Nolan-01-000046-000047.
13. Notice of Foreclosure Sale, instrument no. 20121115-0002280, BANA/Nolan-01-000048-000049.
14. Notice of Claim of Lien, instrument no. 20130306-0003035, BANA/Nolan-01-000050.
15. Assignment of Deed of Trust, instrument no. 2013071-00000782, BANA/Nolan-01-000051-000052.
16. Notice of Claim of Lien, instrument no. 20130821-0000965, BANA/Nolan-01-000053.
17. Notice of Delinquent Assessment Lien, instrument no. 20130827-0000568, BANA/Nolan-01-000054-000055.
18. Substitution of Trustee, instrument no. 2013028-0000481, BANA/Nolan-01-000056.
19. Notice of Rescission of Notice of Default and Election to Sell, instrument no. 20140113-0000978, BANA/Nolan-01-000057-000058.
20. Release of Lien, instrument no. 20140123-0001617, BANA/Nolan-01-000059.
21. Release of Lien, instrument no. 20140123-0001616, BANA/Nolan-01-000060.
22. Release of Notice of Delinquent Assessment Lien, instrument no. 20140113-0001481, BANA-01-000061-000062.

23. Release of Notice of Delinquent Assessment Lien, instrument no. 20140113-0001482, BANA/Nolan-01-000063-000064.
24. Notice of Claim of Lien, instrument no. 20140305-0002983, BANA/Nolan-01-00065.
25. Notice of Claim of Lien, instrument no. 20140827-0003370, BANA/Nolan-01-000066.
26. Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust, instrument no. 20140902-0002988, BANA/Nolan-01-000067-000073.
27. Request for Notice, instrument no. 20150227-0003362, BANA/Nolan-01-000074 .
28. Notice of Claim of Lien, instrument no. 20150303-0004684, BANA/Nolan-01-000075.
29. Miles Bauer Borrower Letter Affidavits and Correspondence, BANA/Nolan-01-000076-000113.
30. Expert Report, BANA/Nolan-01-000114-000128
31. Declaration of Covenants, Conditions and Restrictions for Mandolin, BANA/Nolan-01-000129-000214
32. First Amendment to Declaration of Covenants, Conditions and Restrictions for Mandolin, BANA/Nolan-01-000215-000218.
33. Mandolin Homeowners Association's Response to Subpoena Duces Tecum, including Affidavit of Custodian of Records and Documents Produced by Mandolin Homeowners Association, BANA/Nolan-01-000219-000247.
34. Notice of Release of Lis Pendens, BANA/Nolan-01-000248-000252.
35. File Maintained by NAS, BANA/Nolan-01-000253-000448.
36. Updated Payment History, BANA/Nolan-01-000449-000454.
37. Updated Payoff Description, BANA/Nolan-01-000455-000457.
38. Promissory Note, BANA/Nolan-01-000458-000460.
39. River Gilder Trust Bankruptcy Petition, BANA/Nolan-01-000461-000500.
40. Haddad Motion to Use Cash Collateral, BANA/Nolan-01-000501-000511.
41. Order on Motion to Use Cash Collateral, BANA/Nolan-01-000512-000513.
42. Haddad Lien-Stripping Motion, BANA/Nolan-01-000514-000519.
43. Haddad Filings Admitting Encumbrance on Properties, BANA/Nolan-01-000520-000614.



1 BANA offers the following Exhibits, which may be used at trial as needed:

2 44. Response of 7510 Perla Del Mar Ave Trust to Request for Admissions

3 45. Response of 7510 Perla Del Mar Ave Trust to Interrogatories

4 46. Response of 7510 Perla Del Mar Ave Trust to Request for Production

5 **VI. AGREEMENTS REGARDING EVIDENCE**

6 The parties agree to admit all publicly recorded documents without objection as to the  
7 authenticity of the documents.

8 Although the parties do not anticipate any further objections to the authenticity of other joint  
9 exhibits, the parties reserve their right to enter appropriate objections at the time of trial.

10 The Parties reserve the right to offer any and all discovery responses by Plaintiff and Bank of  
11 America, including: Responses to Requests for Admission; Responses to Interrogatories; Responses to  
12 Requests for Production of Documents. The Parties reserve the right to offer any and all documents  
13 disclosed by any party to this action, including, without limitation, the documents disclosed in the Pretrial  
14 Disclosures of all parties pursuant to N.R.C.P. 16.1(a)(3).

15 **VII. WITNESSES**

16 **a. Plaintiff's Witnesses**

17 1. Eddie Haddad, person most knowledgeable for plaintiff  
18 c/o the Law Offices of Michael F. Bohn, Esq., Ltd.  
19 376 E. Warm Springs Road, Ste. 140  
20 Las Vegas, NV 89119

21 2. Person Most Knowledgeable, Mandolin Phase 3 At Mountains Edge  
22 c/o Las Vegas Community Management LLC  
23 7571 Tule Springs Rd.  
24 Las Vegas, NV 89131

25 3. Michael L. Brunson, MNAA, SRA  
26 Brunson Jiu, LLC  
27 10161 Park Run Drive #150  
28 Las Vegas, NV 89145

**b. Bank of New York Mellon's Witnesses**

1. Donna DeLonney and/or other corporate representative  
Rule 30(b)(6) Witness for Bank of America, N.A.

- 1 c/o Darren Brenner, Esq. and/or Rebekkah Bodoff, Esq.  
AKERMAN LLP  
2 1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
3 Telephone (702) 634-5000
- 4 2. Dominic J. Nolan  
Contact information unknown
- 5 3. Rule 30(b)(6) Witness for 7510 Perla Del Mar Ave Trust  
6 c/o Michael F. Bohn, Esq.  
376 E. Warm Springs Road, Suite 140  
7 Las Vegas, Nevada 89119
- 8 4. Rule 30(b)(6) Witness for Miles, Bauer, Bergstrom & Winters, LLP  
2200 Paseo Verde Pkwy., Suite 250  
9 Henderson, Nevada, 89052  
Telephone: (800-297-1430)
- 10 5. Doug Bergstrom  
11 Rule 30(b)(6) Witness for Miles, Bauer, Bergstrom & Winters, LLP  
2200 Paseo Verde Pkwy., Suite 250  
12 Henderson, Nevada, 89052  
Telephone: (800-297-1430)
- 13 5. Rock K. Jung, Esq.  
14 Miles, Bauer, Bergstrom & Winters, LLP  
2200 Paseo Verde Pkwy., Suite 250  
15 Henderson, Nevada, 89052  
Telephone: (800-297-1430)
- 16 6. Rule 30(b)(6) Witness for Mountains Edge Master Association  
17 c/o FERA, LLC  
3455 Cliff Shadows Parkway, Suite 220  
18 Las Vegas, Nevada 89129
- 19 7. Matthew J. Lubawy, or other representative witness of Valbridge Property  
Advisors/Lubawy & Associates  
20 3034 S. Durango Dr., Suite #100  
Las Vegas, Nevada 89117
- 21 9. Witness for Nevada Association Services  
22 6224 W. Desert Inn Road, #A  
Las Vegas, Nevada 89146
- 23 10. Susan Moses  
24 c/o 6224 W. Desert Inn Road, #A  
Las Vegas, Nevada 89146
- 25 11. Chris Yergensen  
26 1797 Mezza Court,  
Henderson, NV 89012
- 27  
28

1 **VIII. ISSUES OF LAW TO BE CONTESTED AT THE TIME OF TRIAL**

2 **1. Whether the NRS 116's HOA foreclosure provisions are constitutional.**

3 a. It is Bank of America's position that the Statute is not constitutional.

4 b. It is Plaintiff's position that the Statute is constitutional.

5 **2. Whether there is sufficient evidence to demonstrate that the HOA possessed and**  
6 **foreclosed on a superpriority lien right or should the sale should be declared**  
7 **voidable or subject to Bank of America's Deed of Trust because Bank of America**  
8 **tendered the super-priority amount for the Property by sending correspondence**  
9 **to the HOA or its trustee including a check equal or in addition to the super-**  
10 **priority amount.**

11 a. It is Bank of America's position that Bank of America's letter and check to the  
12 HOA which included twice the super-priority amount extinguished the HOA's  
13 super-priority lien prior to the foreclosure sale.

14 b. It is Plaintiff's position that the Association's lien that was foreclosed upon  
15 contained a super priority portion, which extinguished the first deed of trust  
16 held by Bank of America. Further, the purported tender was sent to Silver  
17 State Trustee Services, which was not the foreclosure agent or trustee for  
18 Mandolin. Thus, plaintiff disputes a tender was even made to Mandolin.  
19 Additionally, Bank of America's tender was ineffective because Bank of  
20 America did not record the tender; the tender was not unconditional; plaintiff  
21 was a bona fide purchaser; and even if it was effective, the tender would only  
22 entitle Bank of America to be equitably subrogated to the HOA's lien.

23 **3. Whether the HOA's foreclosure sale was commercially reasonable.**

24 a. It is Bank of America's position that the price plaintiff paid for the property  
25 was for approximately 9% of its fair market value and that, combined with  
26 other errors, renders the sale commercially unreasonable.

27 b. It is Plaintiff's position that the sale was conducted in good faith and that there  
28 is no requirement for a sale to be commercially reasonable under Nevada law;  
absent a showing of fraud, oppression, or unfairness which brings about an

unreasonably low purchase price, the sale is presumed to have been conducted in good faith.

**4. Whether plaintiff is a bona fide purchaser.**

- a. It is Bank of America's position that plaintiff is not a bona fide purchaser because plaintiff had knowledge, constructive or actual, of the senior deed of trust and the Mortgage Protection Clause and inquiry notice of the super-priority tender; plaintiff is a sophisticated real estate investment company, well aware of the inherent risks in purchasing properties at HOA foreclosure sales and the substantial discounts for which it was purchasing properties; and plaintiff admitted that he was aware of the risks associated with an HOA foreclosure sale.
- b. It is Plaintiff's position that plaintiff is a bona fide purchaser because it paid valuable consideration for the property and had no notice of any prior equity.

**5. Whether the sale complied with NRS 116.**

- a. It is Bank of America's position the HOA sale did not comply with NRS 116 because the HOA lien notices included additional fees and costs.
- b. It is Plaintiff's and the Association's position that the notices fully complied with NRS 116.

**6. Whether Bank of America is entitled to equitable relief against Plaintiff.**

- a. It is Bank of America's position that Bank of America is entitled to equitable relief as Plaintiff has unfairly benefitted/profited from the Foreclosure Sale in contravention of Bank of America's rights with respect to the same.
- b. It is Plaintiff's position that Bank of America has no right to equitable relief against plaintiff because any damages Bank of America may have sustained as result of an alleged wrongful foreclosure can be compensated with money damages and because plaintiff is a bona fide purchaser.

**7. Whether the foreclosure deed establishes conclusive presumptions that plaintiff**

obtained title free and clear of the first position deed of trust

a. It is Bank of America's position the deed recitals are not conclusive according to the Nevada Supreme Court.

b. It is Plaintiff's position that the deed recitals are conclusive in the absence of grounds for equitable relief and that because defendant Bank of America is not entitled to equitable relief, the deed recitals are indeed conclusive.

**8. Whether the decision in SFR Investments Pool 1, LLC v. U.B. Bank, N.A., 334 P.3d 408 (Nev. 2014) ("SFR") should be applied retroactively.**

a. It is Bank of America's position that SFR should not be applied retroactively pursuant to K&P Homes v. Christiana Trust, 133 Nev. Adv. Op. 51, 398 P.3d 292 (2017) and it was not foreseeable.

b. It is Plaintiff's position that SFR applies retroactively.

**IX. ESTIMATE OF TIME NEEDED FOR TRIAL**

Two to three days.

**X. ANY OTHER MATTER WHICH COUNSEL DESIRES TO BRING TO THE ATTENTION OF THE COURT PRIOR TO TRIAL**

None.

DATED this 5<sup>th</sup> day of January, 2018.

LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

AKERMAN LLP

By: /s/ Adam R. Trippiedi, Esq.  
Michael F. Bohn, Esq.  
Adam R. Trippiedi, Esq.  
376 E. Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
Attorney for plaintiff

By: /s/ Karen A. Whelan, Esq.  
Darren T. Brenner, Esq.  
Karen A. Whelan, Esq.  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
Attorney for defendant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law  
3 Offices of Michael F. Bohn., Esq., and on the 5th day of January, 2018, an electronic copy of the JOINT  
4 EDCR 2.67 PRE-TRIAL MEMORANDUM was served on opposing counsel via the Court's electronic  
5 service system to the following counsel of record:

6 Darren T. Brenner, Esq.  
7 Rebekkah B. Bodoff, Esq.  
8 AKERMAN LLP  
9 1160 Town Center Drive, Suite 330  
Las Vegas, Nevada, 89114  
Attorney for plaintiff

10 */s/ /Marc Sameroff /*  
11 An Employee of the LAW OFFICES OF  
12 MICHAEL F. BOHN, ESQ., LTD.  
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EXHIBIT 7

EXHIBIT 7

Inst #: 201302070001210

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$78.50 Ex: #

02/07/2013 09:34:04 AM

Receipt #: 1489167

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

(3)-1  
Please mail tax statement and  
when recorded mail to:  
7510 Perla Del Mar Ave Trust  
PO Box 36208  
Las Vegas, NV 89133

### FORECLOSURE DEED

APN # 176-34-114-031

North American Title #45010-12-36179

NAS # N69603

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Mandolin), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 4, 2012 as instrument number 0001123 Book 20120104, in Clark County. The previous owner as reflected on said lien is Dominic J Nolan. Nevada Association Services, Inc. as agent for Mandolin does hereby grant and convey, but without warranty expressed or implied to: 7510 Perla Del Mar Ave Trust (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 Clark County

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Mandolin governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 2/27/2012 as instrument # 0002448 Book 20120227 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Mandolin at public auction on 2/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$14,600.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: February 2, 2013



By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

BANA/Nolan-01-000038

APP000111

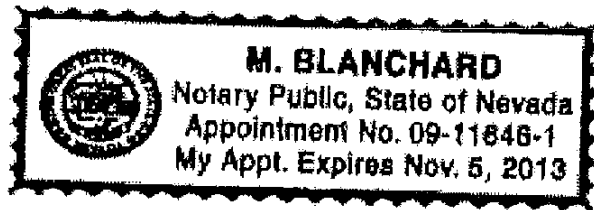


STATE OF NEVADA )  
COUNTY OF CLARK )

On February 2, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)

(Signature)



*M. Blanchard*

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 176-34-114-031  
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

\$ 14,600.00

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

c. Transfer Tax Value: \$ 14,600.00

d. Real Property Transfer Tax Due \$ 76.50

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 [Signature] Capacity: Agent

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

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

Print Name: Nevada Association Services  
Address: 6224 W. Desert Inn Rd.  
City: Las Vegas  
State: NV Zip: 89146

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

Print Name: 7510 Perla Del Mar Ave Trust  
Address: PO Box 36208  
City: Las Vegas  
State: NV Zip: 89133

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

North American Title Company \_\_\_\_\_  
8485 W. Sunset Road, Suite 111 \_\_\_\_\_  
Las Vegas, Nevada 89113 \_\_\_\_\_

Escrow # 36179 / N69603  
State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT 29

# EXHIBIT 29

---

**MILES BAUER BORROWER LETTER AFFIDAVIT**

---

State of California     }  
                                      } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.     I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP  
(**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of  
Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     The information in this affidavit is taken from Miles Bauer's business records. I have  
personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or  
near the time of the occurrence of the matters recorded by persons with personal knowledge of the  
information in the business record, or from information transmitted by persons with personal  
knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it  
is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles  
Bauer's procedures for creating and maintaining these business records. I personally confirmed that  
the information in this affidavit is accurate by reading the affidavit and attachments, and checking  
that the information in this affidavit matches Miles Bauer's records available to me.

4.     Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to  
homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following  
loan:

Loan Number: [REDACTED]

Borrower(s): Dominic J. Nolan

Property Address: 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a March 16, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Dominic J. Nolan.

FURTHER DECLARANT SAYETH NOT.

Date: 2/25/15

AM  
Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

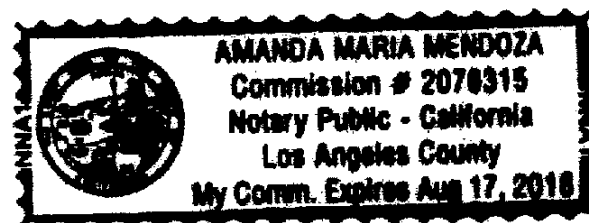
County of Orange

Subscribed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of February, 2015,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)  
(Signature of Notary Public)



# EXHIBIT 1

BANA/Nolan-01-000078

APP000117

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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

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

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
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CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
MICHAEL J. FOX

March 16, 2012

Dominic J. Nolan  
7510 Perla Del Mar Avenue  
Las Vegas, NV 89179

*SENT VIA FIRST CLASS MAIL.*

Re: *Property Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179*  
*MBBW File No. 12-H0607*

Mr. Nolan:

This letter is written in response to the attached Notice of Default your HOA caused to be issued and recorded as a result of you allegedly neglecting to timely pay your required HOA assessments on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. As you know, BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

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

The association has a lien on a unit for:

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

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

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

BANA/Nolan-01-000079

APP000118

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

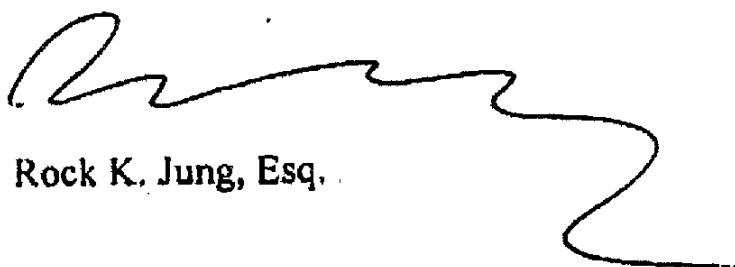
**The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

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

Please be advised that, in the event you do not immediately bring your HOA account current by paying all sums past due, BANA *may* advance the sums necessary to protect *its lien interest* on the property. If BANA does in fact advance said sums, those sums may be added on to the balance you owe on the first position note and deed in trust you executed. BANA may do this per Nevada law and per the express terms of the note and deed of trust you executed. Further, BANA may add the attorney's fees and costs that are being incurred as a result of this matter to your loan. BANA may also do this per Nevada law and per the express terms of the note and deed of trust you executed. Please note that the HOA foreclosure sale may still occur despite any advancement of sums made by BANA in order to protect its lien interest on the property. Thus, we strongly advise that you contact your HOA and/or Nevada Association Services immediately and make the necessary arrangements to bring your HOA account current. If you have already brought your HOA account current with Nevada Association Services, then please disregard this letter.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.



APN # 176-34-114-031  
NAS # N69603  
North American Title # 45010-12-36179  
Property Address: 7510 Perla Del Mar Ave

DOCUMENT RECORDED ON 2/27/2012  
DOCUMENT # 0002448 Book 20120227  
Clark COUNTY  
DATE MAILED 3/7/2012

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN.**

**IMPORTANT NOTICE**

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

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT  
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in  
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted  
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice  
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$1,992.87 as of February 23, 2012 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)  
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and  
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the  
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your  
Covenants Conditions and Restrictions, Mandolin (the Association) may insist that you do so in order to reinstate  
your account in good standing. In addition, the Association may require as a condition to reinstatement that you  
provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You  
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you  
must pay all amounts in default at the time payment is made. However, you and your Association may mutually  
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure  
the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your  
default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the  
obligation being foreclosed upon or a separate written agreement between you and your Association permits a  
longer period, you have only the legal right to stop the sale of your property by paying the entire amount  
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your  
property is in foreclosure for any other reason, contact Nevada Association Services, Inc. on behalf of Mandolin,  
6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at  
(888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of  
assessment on your property.

NAS # N69603

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 NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Dominic J Nolan, dated December 29, 2011, and recorded on 1/4/2012 as instrument number 0001123 Book 20120104 in the official records of Clark County, Nevada, executed by Mandolin, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 6, 2006, as instrument number 000347 BK 20060706, as security has occurred in that the payments have not been made of homeowner's assessments due from 8/1/2011 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

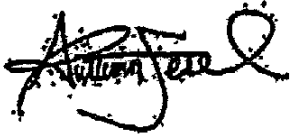
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Association Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark

Dated: February 23, 2012



By: Autumn Fernald of Nevada Association Services, Inc.  
on behalf of Mandolin

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544.

BANA/Nolan-01-000082

APP000121

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**MILES BAUER AFFIDAVIT**

---

State of California     }  
                                      } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.     I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4.     Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED]

Borrower(s): Dominic J. Nolan

Property Address: 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 10, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Mountains Edge Master Association, care of Silver State Trustee Services.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of Statement of Account from Silver State Trustee Services, LLC dated September 20, 2012 and received by Miles Bauer in response to the September 10, 2012 letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a October 4, 2012 letter from Mr. Jung to Silver State Trustee Services enclosing a check for \$932.83.

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9. Based on Miles Bauer's business records, Silver State Trustee Services refused delivery of the October 4, 2012 and the \$932.83 check. A copy of the delivery receipt from Miles Bauer's business records is attached as **Exhibit 4**. A copy of the voided check from Miles Bauer's business records is attached as **Exhibit 5**. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as **Exhibit 6**.

FURTHER DECLARANT SAYETH NOT.

Date: 3/2/15 AK  
Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 2<sup>nd</sup> day of March, 2015,  
by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)  
(Signature of Notary Public)



# EXHIBIT 1

BANA/Nolan-01-000086

APP000125

**DOUGLAS E. MILES**  
Also Admitted in California &  
Illinois  
**JEREMY T. BERGSTROM**  
Also Admitted in Arizona  
**GINA M. CORENA**  
**ROCK K. JUNG**  
**KRISTA J. NIELSON**  
**JORY C. GARABEDIAN**  
**THOMAS M. MORLAN**  
Admitted in California  
**STEVEN E. STERN**  
Admitted in Arizona & Illinois  
**ANDREW H. FASTWICK**  
Also Admitted in Arizona &  
California  
**PATERNO C. JURANI**



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

2200 Paseo Verde Pkwy., Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 942-0411

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

**RICHARD J. BAUER, JR.**  
**FRED TIMOTHY WINTERS**  
**KEENAN E. McCLENNAN**  
**MARK T. DOMEYER**  
Also Admitted in the District of  
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**TAMI S. CROSBY**  
**L. BRYANT JAQUEZ**  
**VY T. PHAM**  
**HADI R. SEYED-ALI**  
**BRIAN H. TRAN**  
**CORI B. JONES**  
**CATHERINE K. MASON**  
**CHRISTINE A. CHUNG**  
**HANH T. NGUYEN**  
**S. SHIELLY RAISZADEH**  
**SHANNON C. WILLIAMS**  
**LAWRENCE R. BOIVIN**  
**RICK J. NEHORAOFF**  
**BRIAN M. LUNA**  
**ELIZABETH D. SCOTT**

September 10, 2012

Mountains Edge Master Association  
Silver State Trustee Services  
1424 South Jones Blvd.  
Las Vegas, NV 89146-1231

Re: *Property Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179*  
*MBBW File No.: 12-H1796*

Dear Sir or Madam:

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

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

The association has a lien on a unit for:

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

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

BANA/Nolan-01-000087

APP000126

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated August 9, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

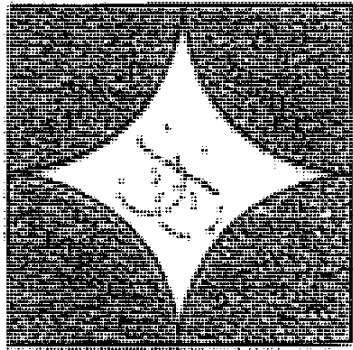




# EXHIBIT 2

BANA/Nolan-01-000089

APP000128



# Silver State Trustee Services, LLC

In Affiliation With Walsh & Freedman LLC, A Professional Law Corporation

1424 South Jones Boulevard • Las Vegas, Nevada 89146-1231

Phone (702) 221-8848 • Fax (702) 221-8849

September 20, 2012

Company: Miles, Bauer, Bergstrom & Winters, LLP  
 Attn: Alexander Bham  
 Fax #: 702-369-4955

## SERVICER/MORTGAGE DEMAND

Regarding: TS# 103816  
 Owner: Nolan, Dominic J.  
 Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179  
*Mountains Edge Master Association*

**\*\*The property owner and/or vested entity is hereby notified that the following past due community association assessments, foreclosure costs and interest thereon, are required to be PAID IN FULL prior to releasing any and all liens imposed by Silver State Trustee Services, LLC on behalf of the above referenced Community Association.\*\***

Assessments (@ \$75.00 per Quarter (10/2011 thru 12/2012))	\$ 375.00
Late fees (@ \$10.00 per Month (10/2011 thru 10/2012))	\$ 130.00
Other fees (Late letter, Intent to Lien letter, etc.)	\$ 123.50
Fines/Violations	\$ -
HOA Interest @ 5.25% per annum	\$ -
Lien & Foreclosure Costs and Fees	\$ 1,480.00
SSTS Administrative Fee	\$ 100.00
SSTS Escrow, Mortgage or Realtor Demand fees (@ \$150 each)	\$ 150.00
Credits:	\$ -
<b>Amount Due by Seller or Current Owner:</b>	<b>\$ 2,358.50</b>
Transfer Fee	\$ 360.00
1 Quarter Advance Assessments	\$ 75.00
<b>Amount Due By Buyer</b> (if property being sold)	<b>\$ 435.00</b>
<b>Total Amount Due:</b>	<b>\$ 2,793.50</b>

Due By: October 22, 2012

*If Account Not Paid in full by 10/22/2012, then a new demand will be needed as add'l fees will be assessed.*

Please remit the total amount due in the form of Certified Funds made payable to the Homeowners Association stated above, in care of Silver State Trustee Services, LLC. Upon receipt of said funds Silver State Trustee Services, LLC will release it's lien. Prepared By: Marques D. Simons

# EXHIBIT 3

BANA/Nolan-01-000091

APP000130

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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

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

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
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THOMAS B. SONG  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA  
ELIZABETH D. SCOTT

October 4, 2012

SILVER STATE TRUSTEE SERVICES  
1424 South Jones Blvd  
Las Vegas, NV 89146

Re: *Property Address:* 7510 Perla Del Mar Avenue  
*Account ID:* 103816  
*LOAN #:* [REDACTED]  
*MBBW File No.:* 12-H1796

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,793.50. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

BANA/Nolan-01-000092

APP000131

2. A lien under this section is prior to all other liens and encumbrances on a unit except:  
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

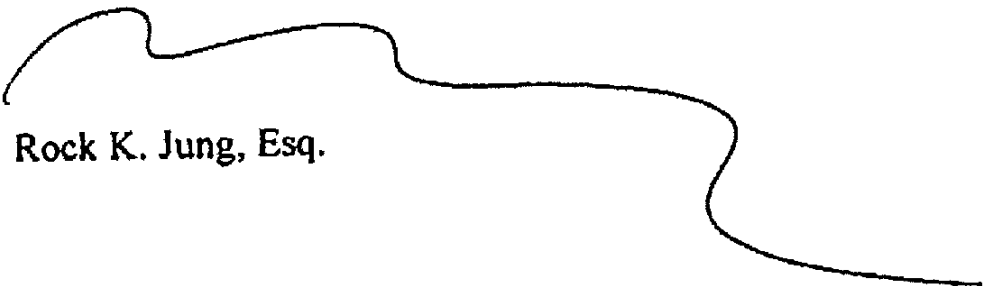
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.310313(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$707.83.

Thus, our client has authorized us to make payment to you in the amount of \$932.83, which takes into account both the maximum 9 months worth of common assessments as well as reasonable collection costs to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Silver State Trustee Services, LLC in the sum of \$932.83. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 7510 Perla Del Mar Avenue have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
Payee: SILVER STATE TRUSTEE SERVICES  
12-H1796  
Initials: SRN  
Date: 10/1/2012 Amount: 932.83  
Check #: 16953

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2012	103816	To Cure HOA Deficiency	932.83			

Miles, Bauer, Bergstrom & Winters, LLP  
Trust Account  
1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9100

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-687220  
1020  
12-H1796  
Loan #

16953

Date: 10/1/2012

Amount \$\*\*\*\* 932.83

Check Void After 90 Days

Pay \$\*\*\*\*\*Nine Hundred Thirty-Two & 83/100 Dollars  
to the order of

SILVER STATE TRUSTEE SERVICES

Security Features Included. Details on back.

# EXHIBIT 4

BANA/Nolan-01-000095

APP000134

On this day, October 5, 2012, Silver State Trustee Services received: (1) letters accompanying each of the checks listed below that address the purpose of the tender and the effect of accepting said checks and (2) the following checks for the addresses listed. Please note: checks include HOA Trustee's reasonable collection costs.

Amount	Address	Ref#	MBBW#
\$932.83	7510 Perla Del Mar Avenue	103816	12-H1796
\$1,089.67	9329 Weeping Water Avenue	103787	12-H1789
\$959.00	7473 Glorious Sun Drive	103911	12-H1790
\$891.67	9777 Maspalomas Street	103747	12-H1784
\$1,554.50	9424 Big Timber Ridge Road	101443	12-H1811

By signing below you acknowledge and confirm receipt of said checks.

Signature: \_\_\_\_\_  
An Employee of Silver State Trustee Services

Date: \_\_\_\_\_

Print

RUN # 907  
FIRM: MILES, HAUER, BERGSTROM, WINTERS, LLC  
ADDR: 2300 PARKWAY DRIVE, \* RTA # 220  
PH # 702-369-3960  
384-0305 • Fax: 384-8638  
1118 Fremont St.  
Las Vegas, NV 89101

Barcode: [Barcode]  
\* 0 1 2 8 5 4 2 2 \*

ATTN: [Signature] DATE: 10/5/12

CASE NAME: \_\_\_\_\_ NO: \_\_\_\_\_  
DOCUMENTS: \_\_\_\_\_ CK # \_\_\_\_\_ \$ \_\_\_\_\_  
REF # 10051253 Limit of Liability: \$100.00 per form

☐ Return Copy ☐ Return Original ☐ Call When Completed/Problem (Extra Fee)

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

OCT 09 2012

☐ NEXT DAY ☐ REGULAR ☐ SPECIAL (4 HRS) ☐ EXPEDITED (2 HRS)

Statute Expires: \_\_\_\_\_  
May be subject to an additional charge.  
LAST DATE: / / (SPECIFY DATE/TIME)  
RETURN DATE: / /

Received by: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

☒ NOT COMPLETE DUE TO [Signature] [Signature] [Signature]  
9/10/12

☐ DISTRICT  
☐ ARB ☐ DISC  
☐ M/C ☐ D.A.  
☐ JUDGE ☐ INDEX  
☐ FAMILY  
☐ M/C ☐ D.A.  
☐ JUDGE ☐ INDEX  
☐ JUSTICE  
☐ CIVIL ☐ EVICT  
☐ CRIM ☐ S.C.  
☐ TRAF ☐ D.A.  
☐ MUNI CT  
☐ RECORDER  
☐ CONSTABLE  
☐ SHERIFF  
☐ FEDERAL  
☐ BANKRUPTCY  
☐ SECTRY OF STATE  
☐ HEARINGS OFFICER  
☐ APPEALS OFFICER



# EXHIBIT 5

BANA/Nolan-01-000097

APP000136

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct      12-H1796      Initials: SRN  
 Payee: SILVER STATE TRUSTEE SERVICES      Check #: 16953      Date: 10/1/2012      Amount: 932.83

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2012	103816	To Cure HOA Deficiency	932.83			
<b>VOID</b>						

**Miles, Bauer, Bergstrom & Winters, LLP**  
 Trust Account  
 1231 E. Dyer Road, #100  
 Santa Ana, CA 92705  
 Phone: (714) 481-9100

**Bank of America**  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074  
 16-661220  
 1020  
 12-H1796

Pay \$\*\*\*\*\*Nine Hundred Thirty-Two & 83/100 Dollars  
 to the order of  
 SILVER STATE TRUSTEE SERVICES

**16953**  
 Date: 10/1/2012  
 Amount \$\*\*\*\*\*932.83

Check Void After 90 Days

**VOIDED**


**RECEIVED**  
 OCT 26 2012

M.B.B.&W  
 ACCOUNTING DEPT

Security Features Included: Details on back.

 ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FINANCIAL INSTITUTION USE \*

 RS-12

*The security features listed below, as well as those not listed, exceed industry guidelines.*

<b>Security Features:</b>	<b>Results of document alteration:</b>
Chemically Sensitive Paper	• Stains or spots may appear with chemical alteration
Erasure Protection	• White mark appears when erased
Security Screen	• Absence of "Original Document" verbiage on back of check
Authentic Watermark	• Authentic watermark not visible when held to light

© Padlock design is a certification mark of the Check Payment Systems Association  
★ FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

BANA/Nolan-01-000099

APP000138

# EXHIBIT 6

BANA/Nolan-01-000100

APP000139

BANA/Nolan-01-000101

---

**MILES BAUER BORROWER LETTER AFFIDAVIT**

---

State of California     }  
                                      } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1. I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to homeowners associations (HOA) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED]

Borrower(s): Dominic J. Nolan

Property Address: 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 10, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Dominic J. Nolan.

FURTHER DECLARANT SAYETH NOT.

Date: 3/2/15

Adm Kendis  
Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

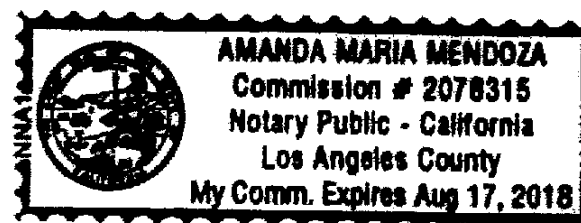
County of Orange

Subscribed and sworn to (or affirmed) before me on this 2<sup>nd</sup> day of March, 2015,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)  
(Signature of Notary Public)



# EXHIBIT 1

BANA/Nolan-01-000104

APP000143



DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW IL PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA  
ELIZABETH D. SCOTT

September 10, 2012

Dominic J. Nolan  
7510 Perla Del Mar Avenue  
Las Vegas, NV 89179

Re: *Property Address:* 7510 Perla Del Mar Avenue, Las Vegas, NV 89179  
*MBBW File No.:* 12-H1796

Dear Mr. Nolan:

This letter is written in response to the attached Notice of Default your HOA caused to be issued and recorded by SILVER STATE TRUSTEE SERVICES as a result of you allegedly neglecting to timely pay your required HOA assessments on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. As you know, BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

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

The association has a lien on a unit for:

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

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

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

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

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

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

Please be advised that, in the event you do not immediately bring your HOA account current by paying all sums past due, BANA *may* advance the sums necessary to protect *its lien interest* on the property. If BANA does in fact advance said sums, those sums may be added on to the balance you owe on the first position note and deed of trust you executed. BANA may do this per Nevada law and per the express terms of the note and deed of trust you executed. Further, BANA may add the attorney's fees and costs that are being incurred as a result of this matter to your loan. BANA may also do this per Nevada law and per the express terms of the note and deed of trust you executed. Please note that the HOA foreclosure sale, may still occur despite any advancement of sums made by BANA in order to protect its lien interest on the property, since the amount that my client may advance may not be the same amount that your HOA/SILVER STATE TRUSTEE SERVICES is claiming to be due and owing from you. Thus, we strongly advise that you contact your HOA and/or SILVER STATE TRUSTEE SERVICES immediately to bring your HOA account current to avoid having your property sold at a potential HOA foreclosure sale by SILVER STATE TRUSTEE SERVICES. If you have already brought your HOA account current with SILVER STATE TRUSTEE SERVICES, then please disregard this letter.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

  
Rock K. Jung, Esq.

When recorded return to:  
Silver State Trustee Services, LLC  
1424 S. Jones Boulevard  
Las Vegas, NV 89146-1231

Inst #: 201208140001300  
Fees: \$18.00  
N/C Fee: \$0.00  
08/14/2012 08:19:44 AM  
Receipt #: 1270840  
Requestor:  
NORTH AMERICAN TITLE  
COMPAN  
Recorded By: ADF Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN# 176-34-114-031  
TS# 103816

Accommodation

137789

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

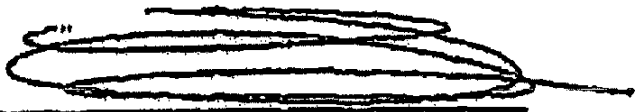
NOTICE IS HEREBY GIVEN, that Mountains Edge Master Association is the lien holder and beneficiary under a Notice of Delinquent Assessment executed by Silver State Trustee Services, LLC., agent for Mountains Edge Master Association, recorded 2/2/2012, Book No. 20120202, as Instrument No. 0001210 of the official records in the Office of Recorder of Clark County Nevada, describing the land therein as:

Lot 63 Block --; Mandolin Phase 3 at Mountains Edge  
as shown by map on file in Plat Book 134, Page 21  
in the records of the County Recorder of Clark County,  
Nevada, and more commonly known as:  
7510 Perla Del Mar Avenue, Las Vegas, NV 89179-2500

to secure certain financial obligations of Nolan, Dominic J.; reputed owner(s) of the property. Said financial obligations total \$2,183.50 as of 8/8/2012, including the amount of the original lien of \$718.50, plus accruing assessments, interest, costs and fees of the agent since that time. **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** The beneficial interest under such Assessment Lien and the obligations secured thereby are presently held by the undersigned: that a breach of, and default in, the obligations for which such assessment Lien is security, has occurred in that payment has not been made in the above-reverenced amounts: that by reason thereof, present beneficiary under such Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy secured thereby.  
Pursuant to Nevada Revised Statutes 116.31116, a sale will be held if this obligation is not completely satisfied and paid within ninety (90) days from the recording date of the Notice, on real property described hereinabove.

SILVER STATE TRUSTEE SERVICES, LLC  
1424 S. JONES BOULEVARD  
LAS VEGAS, NV 89146-1231  
PHONE: (702) 221-8848

As Agent for Mountains Edge Master Association

  
Marques Simons  
Dated the 9<sup>TH</sup> day of August 2012.

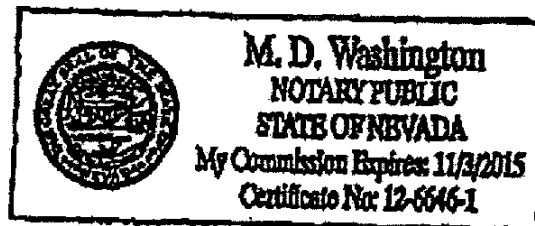
State of Nevada     }  
County of Clark    }

Marques Simons, being first duly sworn, deposes and says: That I am the authorized representative of Mountains Edge Master Association in the above entitled action: that I have read the foregoing Notice of Default And Election to Sell and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

  
Marques Simons

On the 9<sup>TH</sup> day of August 2012, personally appeared before me a notary public, Marques Simons, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed the above instrument.

  
Notary Public



---

**MILES BAUER AFFIDAVIT**

---

State of California     }  
                                      } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.     I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4.     Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED]

Borrower(s): Dominic J. Nolan

Property Address: 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a March 16, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Mandolin, care of Nevada Association Services, Inc.

7. Based on Miles Bauer's business records, I've located no response to the above correspondence.

FURTHER DECLARANT SAYETH NOT.

Date: 2/25/15 AK KL

Declarant Adam Kendir

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

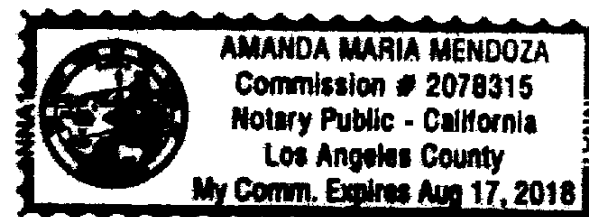
State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of February, 2015,  
by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amb Mai Meh (Seal)  
(Signature of Notary Public)



# EXHIBIT 1

BANA/Nolan-01-000111

APP000150

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



**MILES, BAUER, BERGSTROM & WINTERS, LLP**  
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S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
MICHAEL J. FOX

March 16, 2012

Mandolin  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

*SENT VIA FIRST CLASS MAIL*

Re: *Property Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179*  
*MBBW File No. 12-H0607*

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

BANA/Nolan-01-000112

APP000151



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

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

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

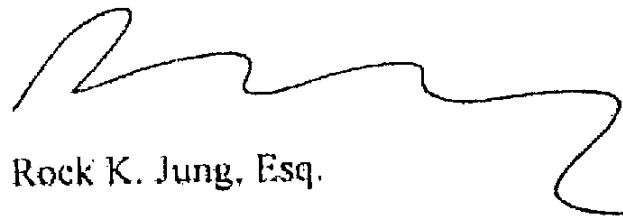
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated February 23, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.



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7 Attorney for plaintiff/counterdefendant

8 7510 Perla Del Mar Ave Trust

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 7510 PERLA DEL MAR AVE TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; NORTH  
15 AMERICAN TITLE COMPANY, A NEVADA  
16 CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

17 Defendants.

CASE NO.: A-13-686277-C

DEPT NO.: XXX

**PLAINTIFF'S PRE-TRIAL**  
**MEMORANDUM PURSUANT**  
**TO EDCR 7.27**

18  
19 BANK OF AMERICA, N.A.,

20 Counter-Claimant,

21 vs.

22 7510 PERLA DEL MAR AVENUE TRUST and  
23 MOUNTAINS EDGE MASTER  
ASSOCIATION,

24 Third-Party Defendants.

25  
26 Plaintiff/counterdefendant 7510 Perla Del Mar Avenue Trust, by and through its attorneys,  
27 Michael F. Bohn, Esq. and Adam R. Trippiedi, Esq., submits this pre-trial memorandum pursuant to

1 EDCR 7.27 as follows.

2 **FACTS**

3 The parties will be submitting a stipulated set of facts. The undisputed facts pertinent to the  
4 plaintiffs case are as follows.

5 Plaintiff/counterdefendant 7510 Perla Del Mar Avenue Trust (“plaintiff”) is the owner of real  
6 property commonly known as 7510 Perla Del Mar Ave, Las Vegas, Nevada.

7 The property is encumbered by CC&R’s by two associations. Mandolin Phase 3 and the  
8 Mountains Edge Master Association.

9 Plaintiff acquired title to the property at foreclosure sale conducted on February 1, 2013, as  
10 evidenced by the foreclosure deed recorded on February 7, 2013 conducted by Mandolin Phase 3.

11 Defendant/counterclaimant Bank of America, N.A. (“defendant”) was the beneficiary of a deed  
12 of trust that was recorded as an encumbrance to the subject property on December 10, 2010. The deed  
13 of trust was assigned to defendant by an assignment recorded on January 6, 2012.

14 Both Mandolin Phase 3 and the master association began their own foreclosure procedures.

15 Nevada Association Services was the foreclosure agent for Mandolin Phase 3. Silver State  
16 Trustee Services was the master associations’s agent for its collection efforts.

17 Prior to the foreclosure sale, Nevada Association Services sent the former owner, Dominic J.  
18 Nolan, the pre-lien demand letter.

19 Thereafter, Nevada Association Services recorded the notice of delinquent assessment lien on  
20 January 4, 2012. Nevada Association Services sent a copy of the lien to the former owner.

21 Silver State, on behalf of the master association, recorded a notice of delinquent assessment lien  
22 on February 2, 2012.

23 On February 27, 2012, Nevada Association Services recorded a notice of default and election to  
24 sell under homeowners association lien. Nevada Association Services also mailed the notice to the  
25 former owner and to other interested parties.

26 Silver State, on behalf of the master association, recorded a notice of default and election to sell  
27 on August 14, 2012.

1 The defendant, through the law firm of Miles Bauer, sent a letter to Nevada Association Services  
2 dated March 16, 2012 inquiring about the super priority portion of the lien. Nevada Association Services  
3 did not respond to the letter. The defendant took no further steps regarding this lien.

4 The defendant, through the law firm of Miles Bauer sent a letter dated September 10, 2012 to  
5 Silver State, inquiring about the super priority portion of the lien. The master association provided a  
6 statement of account. The defendant did submit a payment to Silver State.

7 On November 15, 2012, Nevada Association Services recorded a notice of foreclosure sale.  
8 Nevada Association Services also mailed a copy of the notice of foreclosure sale to the former owner and  
9 to other interested parties.

10 The notice of foreclosure sale under the lien for delinquent assessments was also served upon the  
11 unit owner by posting a copy of the notice in a conspicuous place on the property. The notice of sale was  
12 also posted in three locations within the county. Nevada Association Services also published the notice  
13 of sale in the Nevada Legal News.

14 As evidenced by the foreclosure deed, the public auction was held on February 1, 2013. Plaintiff,  
15 being the highest bidder at the sale, became the purchaser of the subject property.

#### 16 **POINTS AND AUTHORITIES**

##### 17 **A. The Shadow Wood factors**

18 The Nevada Supreme Court in the case of Shadow Wood Homeowners Association v. New  
19 York Community Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016) named 4 factors to be considered  
20 by the court in determining an equitable challenge to a foreclosure sale. Those four factors are:

- 21 1. The price paid;
- 22 2. The presence of fraud, oppression or unfairness;
- 23 3. The failure of the complaining party to act to protect its interest prior to the sale;
- 24 4. The interests of a bona fide purchaser

25 Each of these factors are discussed herein, along with the presumptions in favor of the validity  
26 of the sale, the burdens of proof, and how the statutory rules of real estate and recording all favor  
27 judgment in favor of the plaintiff.  
28

1 **B. General principles of law and equity apply to sales under NRS Chapter 116**

2 NRS 116.1108 provides:

3 **Supplemental general principles of law applicable.** The principles of **law and equity**,  
4 including the law of corporations and any other form of organization authorized by law  
5 of this State, the law of unincorporated associations, **the law of real property**, and the  
6 law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud,  
misrepresentation, duress, coercion, mistake, receivership, substantial performance, or  
other validating or invalidating cause supplement the provisions of this chapter, except  
to the extent inconsistent with this chapter. (emphasis added)

7 The principles of equity and real property are applicable to this foreclosure sale, and preclude  
8 relief to the defendant.

9 **C. Equitable relief is not available because the defendants predecessor was on notice of the sale  
10 and failed to take any steps to protect its interests.**

11 The court in Shadow Wood, noted that equitable relief is not available to a party that was on  
12 notice but failed to act. Footnote 7 to the decision states:

13 Consideration of harm to potentially innocent third parties is especially pertinent here  
14 where NYCB did not use the legal remedies available to it to prevent the property from  
15 being sold to a third party, such as by seeking a temporary restraining order and  
16 preliminary injunction and filing a lis pendens on the property. *See* NRS 14.010; NRS  
17 40.060. *Cf. Barkley's Appeal. Bentley's Estate*, 2 Monag. 274, 277 (Pa.1888) (“**In the case  
before us, we can see no way of giving the petitioner the equitable relief she asks  
without doing great injustice to other innocent parties who would not have been in  
a position to be injured by such a decree as she asks if she had applied for relief at  
an earlier day.**”). (emphasis added)

18 The Shadow Wood court also cited the case of Nussbaumer v. Superior Court in & for Yuma City,  
19 107 Ariz. 504, 489 P.2d 843, 846 (Ariz. 1971) “Where the complaining party has access to all the facts  
20 surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his  
21 act, equity should normally not interfere, especially where the rights of third parties might be prejudiced  
22 thereby,”

23 Also in Shadow Wood, the court cited several cases refusing to grant equitable relief where the  
24 rights of third persons are affected, invoking the bona fide purchaser doctrine.

25 When sitting in equity, however, courts must consider the entirety of the circumstances  
26 that bear upon the equities....

27 This includes considering the status and actions of all parties involved, including whether  
an innocent party may be harmed by granting the desired relief.<sup>7</sup> *Smith v. United States*,

373 F.2d 419, 424 (4th Cir.1966) (“Equitable relief will not be granted to the possible detriment of innocent third parties.”); *see also In re Vlasek*, 325 F.3d 955, 963 (7th Cir.2003) (“[I]t is an age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties.”); *Riganti v. McElhinney*, 248 Cal.App.2d 116, 56 Cal.Rptr. 195, 199 (Ct.App.1967) (“[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.”).

The defendant received the foreclosure notices and sent a letter of inquiry to the foreclosure agent, which failed to respond. Rather than take steps to stop the sale or pay the lien in full and request a refund, the defendant didn’t do anything, and the property was acquired by a third party. The defendant is not entitled to equitable relief.

**D. Equitable relief is not available because there is an adequate remedy at law**

The common law rule is that there is no equity jurisdiction when a party has available to itself an adequate remedy at law. See Las Vegas Valley Water District v. Curtis Park Manor Water Users Association, 98 Nev. 275, 646 P.2d 549 (1982) “The district court was without authority to grant equitable relief since an adequate remedy exists at law.”

In Washoe County v. City of Reno 77 Nev. 152, 360 P.2d 602 (1961), the court held that the fact that the judgment may not be collectable is not an issue to be considered. The court stated:

During oral argument, counsel for respondents suggested that an action at law would not be adequate because it could not be enforced by a writ of execution against a county fund. Whether this be true or not, it is hardly to be supposed that an execution would be necessary in the event a judgment at law were obtained against the county in this type of case any more than a contempt proceeding would be required in the event a peremptory writ of mandamus were issued. **In answer to this suggestion however it is necessary to say only that our concern is with the existence of a remedy and not whether it will be unproductive in this particular case**, *Hughes v. Newcastle Mutual Insurance Co.*, 13 U.C.Q.B. (Ont.) 153, or inconvenient, *Gulf Research & Development Co. v. Harrison*, 9 Cir., 185 F.2d 457, or ineffectual, *United States ex rel. Crawford v. Addison*, 22 How. 174, 63 U.S. 174, 16 L.Ed. 304.

In *Stewart v. Manget*, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill in equity on the ground that the plaintiff had an adequate remedy at law, the Florida Supreme Court cited with approval the following language from *Tampa & G. C. R. Co. v. Mulhern*, 73 Fla. 146, 74 So. 297, 299:

‘The inadequacy of a remedy at law to produce money is not the test of the applicability of the rule. **All remedies, whether at law or in equity, frequently fail to do that; and to make that the test of equity jurisdiction would be substituting the result of a proceeding for the proceeding which is invoked to produce the result. The true test is, could a judgment be obtained in a proceeding at law, and not, would the judgment procure pecuniary compensation.**’

(Emphasis added)

In the case of Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent allowed a trustee's sale to go forward even though it had available cash deposits to pay off the loan. Id. at 828. The trial court set aside the sale because "[t]he value of the property was four times the amount of the debt/sales price." Id. at 829. The Court of Appeals reversed the trial court's order and stated:

**Thus as a general rule, a trustor has no right to set aside a trustee's deed as against a bona fide purchaser for value by attacking the validity of the sale.** (Homestead Savings v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption precludes an attack by the trustor on a trustee's sale to a bona fide purchaser **even though there may have been a failure to comply with some required procedure which deprived the trustor of his right of reinstatement or redemption.** (4 Miller & Starr, supra, § 9:141, p. 463; cf. Homestead v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The 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. **Where the trustor is precluded from suing to set aside the foreclosure sale, the trustor may recover damages from the trustee.** (Munger v. Moore (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)

Id. at 831-832. (emphasis added)

Under the Shadow Wood factors, the defendant bank must show there is some defect with the sales process to justify equitable relief, and if the plaintiff is a bona fide purchaser, the banks remedy is against Nevada Association Services.

There has been no defect with the sales process because defendant BANA failed to make any payment on the super priority portion of the lien. All that BANA did was send a letter of inquiry. Should the court, however, find some tender was made and rejected, defendant bank has no remedies against Saticoy Bay LLC because any damages which the defendant may have sustained as a result of any alleged wrongful rejection on the part of Nevada Association Services can be compensated with money damages against Nevada Association Services.

The Restatement (Third) of Prop.: Mortgages § 8.3, Comment (b) recognizes that where the property has been purchased by a bona fide purchaser, "the real estate is unavailable" and that "price inadequacy" may be raised in a suit against the foreclosing mortgagee for damages, stating:

On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale is usually not required and the issue of price inadequacy will therefore arise only if the party attacking the sale files an independent judicial action. Typically this will be an

1 action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the  
2 holders of other junior interests who are prejudiced by the sale. **If the real estate is**  
3 **unavailable because title has been acquired by a bona fide purchaser**, the issues of  
4 price inadequacy may be raised by the mortgagor or a junior interest holder in a suit  
5 against the foreclosing mortgagee for damages for wrongful foreclosure. **This latter**  
6 **remedy, however, is not available based on gross price inadequacy alone.** In addition,  
7 the mortgagee must be responsible for a defect in the foreclosure process of the type  
8 described in Comment *c* of this section. (emphasis added)

9 Shadow Wood, consistent with this stated:

10 “The decisions are uniform that the bona fide purchaser of a legal title is not affected by  
11 any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has  
12 no notice, actual or constructive.” citing *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P.  
13 544, 547 (1923)

14 There is no defect with the sales process and fore, if the purchaser is a bona fide purchaser, the  
15 sale cannot be set aside. The bank, however, is not without a remedy, providing, of course, that there was  
16 a prejudicial defect with the sale (which has not been shown here). It has an claim for money damages  
17 against Nevada Association Services for any defect in the sale process.

#### 18 **E. Equitable relief is not available because of the bona fide purchaser doctrine**

19 The bona fide purchaser doctrine is grounded on the concept of notice. In the recent case of SFR  
20 Investments Pool 1 v. First Horizon Home Loans 134 Nev. Adv. Op. 4 (2018), the court stated “The very  
21 purpose of recording statutes is to impart notice to a subsequent purchaser.” A bona fide purchaser is a  
22 purchaser that has no notice of any defects with title, or in the case of a foreclosure, notice of defects in  
23 the sale process.

24 Miller & Starr, California Real Estate §10.51 (4<sup>th</sup> Ed. 2016) provides:

25 **Evidence required.** The person claiming to be a bona fide purchaser satisfies the burden  
26 of proof when it is proved that he or she paid value for the title or lien. It is then  
27 presumed that the lien or interest was received in good faith and without notice, and the  
28 burden shifts to the other person to prove that the alleged bona fide purchaser had notice.

...  
In a commentary to this section, the treatise states:

As a practical matter, it makes little difference who has the burden of proof. The alleged  
bona fide purchaser usually testifies that he or she did not have notice, and the other party  
must prove that he or she did.

The initial burden of proof is on the bank, seeking to invoke the equity jurisdiction of the court



1 and have its deed of trust restored, to prove that the purchaser is NOT a bona fide purchaser. In the case  
2 of Nationstar Mortgage LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon , 133 Nev. Adv. Op. 91,  
3 405 P.3d 641 (2017) the court noted there is a presumption in favor of the record title holder and there  
4 is a presumption that the sale complied with the law, citing NRS 47.250(16)., stating:

5 Nationstar has the burden to show that the sale should be set aside in light of Saticoy Bay's  
6 status as the record title holder, *see Breliant v. Preferred Equities Corp.*, 112 Nev. 663,  
7 669, 918 P.2d 314, 318 (1996) (“[T]here is a presumption in favor of the record  
8 titleholder.”), and the statutory presumptions that the HOA's foreclosure sale complied  
9 with NRS Chapter 116's provisions, NRS 47.250(16) (providing for a rebuttable  
presumption “[t]hat the law has been obeyed”); *cf.* NRS 116.31166(1)-(2) (providing for  
a conclusive presumption that certain steps in the foreclosure process have been  
followed);

10 Similarly, in First Fidelity Thrift & Loan Ass’n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal.  
11 Rptr. 2d 295 (1998), the court recognized that where a party is seeking equitable relief, the burden is on  
12 the party seeking equitable relief to allege and prove that the person holding legal title is not a bona fide  
13 purchaser:

14 **That Alliance had knowledge of First Fidelity's equitable claim for reinstatement of**  
15 **its reconveyed deed of trust was an element of First Fidelity's case.** "The general rule  
16 places the burden of proof upon a person claiming bona fide purchaser status to present  
evidence that he or she acquired interest in the property without notice of the prior  
17 interest. (*Bell v. Pleasant* (1904) 145 Cal. 410, 413-414, 78 P. 957; *Alcorn v. Buschke*  
(1901) 133 Cal. 655, 657-658, 66 P. 15; *Hodges v. Lochhead* (1963) 217 Cal. App.2d 199,  
203, 31 Cal. Rptr. 879; 2 Miller & Starr, *Current Law of Cal. Real Estate* [1977] § 11:28,  
18 p. 51.) ... [¶] If the prior party claims an equitable rather than a legal title, however, the  
burden of proof is upon the person asserting that title. (*Bell v. Pleasant, supra*, 145 Cal.  
19 410, 414-415, 78 P. 957; *Garber v. Gianella* (1893) 98 Cal. 527, 529-530, 33 P. 458; 2  
Miller & Starr, *Current Law of Cal. Real Estate, supra*, § 11:28, pp. 52-53.)" (*Gates*  
20 *Rubber Co. v. Ulman* (1989) 214 Cal. App. 3d 356, 366, fn. 6, 262 Cal. Rptr. 630.) (2b)  
21 **Showing that Alliance was not an innocent purchaser for value was hence an element**  
**of First Fidelity's claim.** (*Firato v. Tuttle, supra*, 48 Cal.2d 136, 138, 308 P.2d 333.)  
(emphasis added)

22 60 Cal. App. 4th at 1442, 71 Cal. Rptr. at 301.

23 The defendant has the burden to prove a defect with the sale, and that the purchaser knew of the  
24 defect at or before the time of the sale. The defendant has failed in both counts.

25 The concept of bona fide purchaser has more application in voluntary sales in which title is  
26 transferred by deed. In these cases, a purchaser takes subject to any matters which are recorded against  
27 the property. However, in foreclosure cases, the bona fide purchaser doctrine rarely comes into play

1 because all interests on the property which are junior to the lien being foreclosed upon are extinguished.  
2 This is even more so with an HOA foreclosure because it is senior to all other liens other than prior  
3 existing debts and taxes are extinguished by the foreclosure. In these situations, the purchaser would be  
4 precluded from bona fide purchaser status in HOA foreclosure cases only if there was some irregularity  
5 in the sale AND the purchaser knew of the irregularity.

6 The treatise 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth,  
7 *Real Estate Finance Law* (6<sup>th</sup> ed. 2014) was cited in the Shadow Wood decision.

8 Section 7.21 of this treatise is entitled “defective power of sale foreclosure-“void-  
9 voidable” distinction. The treatise explains there are three types of defects which may affect the validity  
10 of foreclosure sales, void, voidable, or inconsequential.

11 The treatise then explains:

12 Most defects render the foreclosure voidable and not void. When a voidable error occurs,  
13 bare legal title passes to the sale purchaser, subject to the redemption rights of those  
14 injured by the defective foreclosure. Typically, a voidable error is “an irregularity in the  
15 execution of a foreclosure sale” and must be “substantial or result in a probably  
16 unfairness.”

17 If the defect only renders the sale voidable, the redemption rights can be cut off if a bona  
18 fide purchase for value acquires the land. When this occurs, an action for damages against  
19 the foreclosing mortgagee or trustee may be the only remaining remedy.

20 The treatise then goes on to explain who is a bona fide purchaser in a foreclosure context:

21 If the defective sale is only voidable, who is a bona fide purchaser? A mortgagee  
22 purchaser should rarely, if every, qualify as a bona fide purchaser, because the mortgagee  
23 or its attorney normally manages the power of sale foreclosure and should be responsible  
24 for defects. The result should be the same when a deed of trust is foreclosed. Although  
25 the trustee, rather than the lender, normally is in charge of the proceedings, the court  
26 probably will treat the trustee as the lender’s agent for purposes of determining BFP  
27 status. **If the sale purchaser paid value and is unrelated to the mortgagee, he should  
28 take free of voidable defects if : (a) he has no actual knowledge of he defects; (b) he  
is not on reasonable notice from recorded instruments; and (c) the defects are such  
that a person attending the sale and exercising reasonable care would be unaware  
of the defects....**

(emphasis added, footnotes omitted)

29 The defendant answered an interrogatory about the plaintiffs status as bona fide purchaser. The  
30 plaintiff propounded interrogatory 19:

**INTERROGATORY NO. 19:** Identify all facts, information, and evidence of which  
you are aware that contradicts plaintiff’s assertion that it was a bona fide purchaser for

1 value at the Association foreclosure sale.

2 The defendant's response was:

3 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
4 temporally limited. Further, this Interrogatory is overly broad and unduly burdensome  
5 insofar as it seeks a categorization of all facts. This Interrogatory violates the work  
6 product doctrine because it seeks information about mental impressions. Moreover, this  
7 Interrogatory is premature as discovery is ongoing. Without waiving any objection,  
8 BANA was not provided with proper notice that the HOA was attempting an alleged  
"super-priority" foreclosure sale or apprised of how BANA could protect its secured  
interest. BANA also did not receive notice of the alleged super-priority amount. BANA  
further denies that the HOA's foreclosure sale was properly noticed or commercially  
reasonable and denies that it was valid. Discovery is ongoing, and BANA reserves its right  
to supplement this response.

9 The defendant's answers to interrogatories regarding the issue of bona fide purchaser do not allege  
10 any defect in the sales process or that the purchaser knew of the defect in the sales process.

11 The answers set forth two basis to claim that the plaintiff is not a bona fide purchaser. The notices  
12 did not set out the super priority portion of the lien, and the sale was not commercially reasonable. Both  
13 grounds are contrary to Nevada case law.

14 In SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. Adv. Op 75, 334 P.3d 408 (2014)  
15 the court stated:

16 The notices went to the homeowner and other junior lienholders, not just U.S. Bank, so  
17 it was appropriate to state the total amount of the lien. As U.S. Bank argues elsewhere,  
18 dues will typically comprise most, perhaps even all, of the HOA lien. *See supra* note 3.  
19 And from what little the record contains, nothing appears to have stopped U.S. Bank from  
20 determining the precise superpriority amount in advance of the sale or paying the entire  
amount and requesting a refund of the balance. *Cf. In re Medaglia*, 52 F.3d 451, 455 (2d  
Cir.1995) ("[I]t is well established that due process is not offended by requiring a person  
with actual, timely knowledge of an event that may affect a right to exercise due diligence  
and take necessary steps to preserve that right.").

21 Additionally, in the case of Nationstar Mortgage LLC v. Saticoy Bay LLC Series 2227 Shadow  
22 Canyon, 133 Nev. Adv. Op. 91, 405 P.3d 641 (2017) the Supreme Court held that HOA foreclosure sales  
23 are not evaluated under a commercial reasonableness standard stating:

24 Thus, HOA foreclosure sales of real property are ill suited for evaluation under Article 9's  
25 commercial reasonableness standard.

26 Recently, in the case of SFR v First Horizon 134 Nev. Adv. Op. 4 (2018), in citing NRS 111.320  
27 stated "The very purpose of recording statutes is to impart notice to a subsequent purchaser."

Shadow Wood discusses bona fide purchaser in detail. The many points contained in the decision can be summarized as:

1. A bona fide purchase is without notice of any **prior equity**.
2. “The decisions are uniform” that the title of a bona fide purchaser is not affected by any matter of which he has no notice.
3. The bona fide purchaser must pay **valuable** consideration, not “adequate” consideration.
4. The fact that the foreclosure price may be “low” is not sufficient to put the purchaser on notice of any alleged defects with the sale.
5. The fact that the court retains equitable power to void the sale does deprive the purchaser of bona fide purchaser status.
6. The time to determine the status of bona fide purchaser is at the time of the sale.

The defendant has failed to produce any evidence or basis during discovery to evidence any defect in the foreclosure process or that the plaintiff was on notice of any such defect. Again, in the case of SFR v First Horizon 134 Nev. Adv. Op. 4 (2018), the court noted in footnote 4:

The parties submitted arguments regarding SFR's position as a bona fide purchaser, but our determination that Silver Springs' foreclosure sale was valid renders SFR's status as a bona fide purchaser a moot point.

**F. The failure of the defendant to protect its interest before the sale precludes relief in its favor**

The defendant created the situation by letting the property go to sale without doing anything to satisfy the lien or stop the sale, and permitted an innocent third party purchase the property. The Supreme Court in both SFR and Shadow Wood noted that the defendant banks were responsible for their own damages.

In SFR Investments Pool 1 v. U.S. Bank 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) the court said not once, but twice, that the price paid at the foreclosure sale was not an issue because the bank could simply have paid the super priority amount to preserve its interest in the property. The Court stated at page 414:

U.S. Bank's final objection is that it makes little sense and is unfair to allow a relatively nominal lien—nine months of HOA dues—to extinguish a first deed of trust securing hundreds of thousands of dollars of debt. But as a junior lienholder, U.S. Bank could have

1 paid off the SHHOA lien to avert loss of its security; it also could have established an  
2 escrow for SHHOA assessments to avoid having to use its own funds to pay delinquent  
3 dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA § 3–116 cmt. 2. **The inequity**  
4 **U.S. Bank decries is thus of its own making and not a reason to give NRS 116.3116(2)**  
5 **a singular reading at odds with its text and the interpretation given it by the authors**  
6 **and editors of the UCIOA.** (emphasis added)

7 The Court also stated at page 418:

8 U.S. Bank further complains about the content of the notice it received. It argues that due  
9 process requires specific notice indicating the amount of the superpriority piece of the lien  
10 and explaining how the beneficiary of the first deed of trust can prevent the superpriority  
11 foreclosure sale. But it appears from the record that specific lien amounts were stated in  
12 the notices, ranging from \$1,149.24 when the notice of delinquency was recorded to  
13 \$4,542.06 when the notice of sale was sent. The notices went to the homeowner and other  
14 junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of  
15 the lien. As U.S. Bank argues elsewhere, dues will typically comprise most, perhaps even  
16 all, of the HOA lien. *See supra* note 3. **And from what little the record contains,**  
17 **nothing appears to have stopped U.S. Bank from determining the precise**  
18 **superpriority amount in advance of the sale or paying the entire amount and**  
19 **requesting a refund of the balance.** *Cf. In re Medaglia*, 52 F.3d 451, 455 (2d Cir.1995)  
20 (“[I]t is well established that due process is not offended by requiring a person with actual,  
21 timely knowledge of an event that may affect a right to exercise due diligence and take  
22 necessary steps to preserve that right.”). (Emphasis added)

23 In the case of *Shadow Wood Homeowners Association v. New York Community Bank*, 132  
24 Nev. Ad. Op. 5, 366 P.3d 1105 (2016), the Supreme Court stated other ways that a bank could protect  
25 itself.

26 Against these inconsistencies, however, must be weighed NYCB's (in)actions. The NOS  
27 was recorded on January 27, 2012, and the sale did not occur until February 22, 2012.  
28 NYCB knew the sale had been scheduled and that it disputed the lien amount, yet it did  
not attend the sale, request arbitration to determine the amount owed, or seek to enjoin the  
sale pending judicial determination of the amount owed. The NOS included a warning as  
required by NRS 116.311635(3)(b):

....

366 P.3d at 1114

The defendant bank had remedies available to it to protect its interests before the foreclosure sale  
and failed to avail itself of these remedies. It cannot now seek relief from this court.

#### **G. Presumptions: The sale is presumed valid**

In the case of *Nationstar Mortgage LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133  
Nev. Adv. Op. 91, 405 P.3d 641 (2017) the court noted there is a presumption in favor of the record title  
holder and there is a presumption that the sale complied with the law, citing NRS 47.250(16).

1 The purpose of the presumption of validity and the public policy of finality is to encourage  
2 prospective purchasers to participate in the foreclosure process and to maximize the prices paid at  
3 foreclosure sale. See Moeller v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994).

4 The recitals in the deed between Nevada Association Services and the purchaser at the foreclosure  
5 sale are conclusive from this statute, NRS116.31166. The sole exception would be in the case of fraud  
6 or other grounds for equitable relief. See Shadow Wood Homeowners Association v. New York  
7 Community Bank, 132 Nev. Ad. Op. 5, 366 P.3d 1105 (2016).

#### 8 **H. Fraud, oppression or unfairness**

9 The standard to set aside a sale is in inadequate sales price, inadequacy of price, and additional  
10 proof of some fraud, oppression or unfairness **that accounts for and brings about the inadequacy of**  
11 **price.** See Nationstar Mortgage LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon , 133 Nev. Adv.  
12 Op. 91, 405 P.3d 641 (2017) ; Shadow Wood Homeowners Association v. New York Community  
13 Bank, 132 Nev. Ad. Op. 5, 366 P.3d 1105 (2016).

14 The case of Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), cited by the court in Shadow  
15 Wood specifically denied the inadequacy of price standard for setting aside foreclosure sales, stating:

16 (In approving the rule thus stated, we necessarily reject the dictum in Dazet v. Landry,  
17 supra, implying that the rule requiring more than mere inadequacy of price will not be  
18 applied if ‘the inadequacy be so great as to shock the conscience.’)

18 The case of Oller v. Sonoma County Land Title Company 137 Cal. App.2d 633, 290 P.2d 880,  
19 (1955), cited by the court in Golden, held that an examination of the sales price is not necessary when  
20 there is no showing of fraud, oppression or unfairness, stating:

21 Since inadequacy of price is not alone ground for setting aside the sale, the failure of the  
22 court to find upon the value of the property is immaterial.

23 During discovery, the plaintiff served written discovery on the defendant. The plaintiff  
24 propounded interrogatory 24 regarding fraud, oppression or unfairness:

25 **INTERROGATORY NO. 24:** Identify all facts, information, and evidence of which  
26 you are aware which evidences any fraud, oppression or unfairness in regards to the  
27 association foreclosure sale.

28 The defendant’s response was:

1 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
2 temporally limited. Further, this Interrogatory is overly broad and unduly burdensome  
3 insofar as it seeks a categorization of all facts. This Interrogatory violates the work  
4 product doctrine because it seeks information about mental impressions. Moreover, this  
5 Interrogatory is premature as discovery is ongoing. Without waiving any objection,  
6 BANA was not provided with proper notice that the HOA was attempting an alleged  
7 “super-priority “foreclosure sale or apprised of how BANA could protect its secured  
8 interest. BANA also did not receive notice of the alleged super-priority amount.  
9 Furthermore, the gross inadequacy of the consideration Plaintiff paid for what it contends  
10 is free and clear title to the property put Plaintiff on constructive notice of BANA’s  
11 adverse interest. Although the property had a fair market value of \$158,500.00 at the time  
12 of the HOA’s sale, plaintiff paid only \$14,600.00. Under the facts of this case, Plaintiff  
13 took the property subject to and aware of BANA’s lien. Discovery is ongoing, and BANA  
14 reserves its right to supplement this response.

15 The banks answers to interrogatories do not set forth any evidence or contentions of any defect  
16 in the sale. As set forth above, in the SFR decision, the court specifically noted that the notices need not  
17 set forth the super priority amount.

18 Also, in Nationstar Mortgage LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon , 133 Nev.  
19 Adv. Op. 91, 405 P.3d 641 (2017) , the court concluded its opinion stating:

20 In sum, because a low sales price alone does not warrant invalidating the foreclosure sale,  
21 and because Nationstar failed to introduce evidence that the sale was affected by fraud,  
22 unfairness, or oppression, the district court correctly determined that Saticoy Bay was  
23 entitled to summary judgment on its quiet title and declaratory relief claims. *Wood*, 121  
24 Nev. at 729, 121 P.3d at 1029. We therefore affirm.

25 Defendant BANA has no evidence to show any fraud, oppression or unfairness in regards to the  
26 sale.

27 Noticeably missing from the answers to interrogatories is the alleged attempt at a tender. The  
28 defendant should be prohibited from introducing any evidence of attempted tender because the issue was  
not raised in its answers to interrogatories.

**I. The defendant bank’s attempted tender does not affect plaintiff’s title**

The proof of tender that will be submitted is the submission of a check which was rejected. The  
defendant has no proof that the tender was “kept good.” The defendant has not alleged any other efforts  
or actions on its part, or on the part of its predecessor, to attempt to pay the super priority portion of the  
lien or any act undertaken to record any document in the public record to put third persons on notice of  
the alleged rejected tender. This is not a proper tender.

1 The concept of tender is discussed in the Restatement (Third) of Prop.: Mortgages §6.4. The rules  
2 stated in the Restatement, (Third) of Mortgages, §6.4 regarding payment and discharge by persons not  
3 primarily liable on the debt are:

4 **§ 6.4 Redemption from Mortgage by Performance or Tender**

5 (e) A performance in full of the obligation secured by a mortgage, or a performance  
6 that is accepted by the mortgagee in lieu of payment in full, by one who holds an  
7 interest in the real estate subordinate to the mortgage but is not primarily  
8 responsible for performance, does not extinguish the mortgage, but redeems the  
9 interest of the person performing from the mortgage and entitles the person  
10 performing to subrogation to the mortgage under the principles of §7.6. Such  
11 performance may not be made until the obligation secured by the mortgage is due,  
12 but may be made at or after the time the obligation is due but prior to foreclosure.

13 (f) Upon receipt of performance as provided in Subsection (e), the mortgagee has a  
14 duty to provide to the person performing, within a reasonable time, an appropriate  
15 assignment of the mortgage in recordable form. If the mortgagee fails to do so  
16 upon reasonable request, the person performing may obtain judicial relief ordering  
17 the mortgage assigned and, unless the mortgagee acted in good faith in rejecting  
18 the request, awarding against the mortgagee any damages resulting from the delay.

19 (g) **An unconditional tender of performance in full by a person described in  
20 Subsection (e), even if rejected by the mortgagee, if kept good has the effect  
21 of performance under Subsections (e) and (f) above.**  
22 (emphasis added)

23 Comment d to this section states in part:

24 Tender of payment rejected by mortgagee. Under Subsection (c), a mortgage is  
25 extinguished by mere *tender* of full payment by the person primarily responsible for  
26 payment, even if the mortgagee rejects it. the tender must be kept good in the sense that  
27 the person making the tender must continue at all times to be ready, willing, and able to  
28 make the payment. If the payor brings an action to have the mortgage cancelled, the  
money must be paid into the court to keep the tender good.

The tender must be unconditional. However, the payor's demand that the mortgagee  
return the mortgagor's promissory note, mark it "paid," or execute a discharge of the  
mortgage is not a condition of the sort that will invalidate the tender. See Illustration 5.

The next section of comment (d) to this section explains the significance of recording notice of  
the tender:

The rule extinguishing the mortgage when a tender is rejected has only limited modern  
significance. The reason is that mortgages are virtually always recorded, and the payor  
derives little benefit, merely from the theoretical extinction of the mortgage if it is in fact  
still present, and apparently undischarged in the public records.

The Nevada Supreme Court has previously adopted the position that a tender must be "kept good"



1 in several cases.

2 In the case of Rhodes v. O'Farrell 2 Nev. 60 (1866), Respondent Rhodes attempted to pay his  
3 property taxes to the Storey County tax collector in legal tender notes. The tax collector refused the  
4 tender and insisted in payment in gold coin. The court stated:

5 Respondent ought not to be restrained from selling **unless the tender is kept good.**

6 As it does not appear from the transcript whether that has been done or not, the court will  
7 retain this case until that is ascertained. Upon the respondent producing satisfactory  
8 evidence, either by receipt of appellant, or by the certificate of the clerk, **that he has  
either paid the money tendered to the appellant, or that he has deposited it in court  
subject to the disposal of the appellant**, the judgment of the court below will be  
affirmed, with costs.

9 The case of State v. Central Pacific Railroad 21 Nev. 247, 30 P. 686 (1892) also dealt with the  
10 payment of property taxes. The court stated:

11 *Tender.* In our judgment, the tender of the taxes to the treasurer as ex officio tax receiver,  
12 and their subsequent payment to the district attorney, were sufficient to avoid the  
13 penalties. The defendant, at the proper time, tendered all the taxes due upon all its  
14 property, except land. We held upon the former appeal that it had a right to make such  
15 payment, and need not tender the full amount due upon the entire assessment, which  
16 included other subdivisions of property. The tender was doubtless refused upon the theory  
17 that the defendant must pay upon all or none. ...The money being promptly paid to the  
18 district attorney when demanded by him, **it must be presumed that the tender was kept  
good.** The judgment and orders overruling motions for new trial are affirmed.

16 The case of State v. Ernst 26 Nev. 113, 65 P.7 (1901) also dealt with the payment of taxes. The  
17 court stated:

18  
19 It appears from the record that the appellants Ernst & Esser have tendered (and kept good  
20 their tender) the amount of taxes due upon the property assessed to them, and that a retrial  
of the case will not be necessary.

21 There is no evidence that the defendant bank's predecessor did anything to keep the tender good.  
22 The tender therefore is not valid.

23 A tender or purported tender needs to be recorded to put third persons, such as bidders at  
24 foreclosure sales, on notice of any issue with the payment of the super priority portion of the lien. This  
25 is especially true when the bank pays or attempts to pay the super priority knowing that the property is  
26 going to foreclosure sale. And because the bank is contending that the tender is a payment, the fact of  
27 the tender must be recorded.

1 Nevada statutes are consistent with the rules set forth in the Restatement to require the recording  
2 of a notice of satisfaction of a lien that has been performed by a party to put third persons on notice of  
3 the satisfaction.

4 **J. Nevada statutes require that notice of satisfaction must be recorded.**

5 NRS 116.1108 provides:

6 **Supplemental general principles of law applicable.** The principles of law and equity,  
7 including the law of corporations and any other form of organization authorized by law  
8 of this State, the law of unincorporated associations, **the law of real property**, and the  
9 law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud,  
misrepresentation, duress, coercion, mistake, receivership, **substantial performance**, or  
other validating or invalidating cause supplement the provisions of this chapter, except  
to the extent inconsistent with this chapter.

10 There are no provisions contained in Chapters 106, 111 or 116 which provides that notice of  
11 payment of the super priority portion of the lien would NOT be subject to the recording laws of this state.

12 Under Nevada law, interests in property must be recorded. An unrecorded interest in property is  
13 void against a subsequent purchaser if the subsequent purchaser's interest is first duly recorded. Tae-Si  
14 Kim v. Kearney, 838 F. Supp. 2d 1077, 1087-1088 (D. Nev. 2012). To give effect to this public policy,  
15 the legislature has crafted a statutory scheme which sets forth the legal requirements for recording  
16 assignments, transfers or other conveyances of an interest in real property. Specifically, in the context  
17 of this case, "conveyances" must be recorded, or else they will have zero effect on a subsequent  
18 purchaser:

19 **NRS 111.315 Recording of conveyances and instruments: Notice to third persons.**  
20 Every conveyance of real property, and every instrument of writing setting forth an  
21 agreement to convey any real property, or whereby any real property may be affected,  
22 proved, acknowledged and certified in the manner prescribed in this chapter, to operate  
23 as notice to third persons, shall be recorded in the office of the recorder of the county in  
which the real property is situated or to the extent permitted by NR 105.010 to 105.080,  
inclusive, in the Office of the Secretary of State, but shall be valid and binding between  
the parties thereto without such record.

24 **NRS 111.325 Unrecorded conveyances void as against subsequent bona fide purchaser  
for value when conveyance recorded.**

25 Every conveyance of real property within this State hereafter made, which shall not be  
26 recorded as provided in this chapter, shall be void as against any subsequent purchaser,  
27 in good faith and for valuable consideration, of the same real property, or any portion  
thereof, where his or her own conveyance shall be first duly recorded.

(Emphasis added)

Thus, the question becomes whether the payment of the super priority portion of the lien constitutes a “conveyance” under NRS Chapter 111. It does.

NRS 111.010(1) defines “conveyance” very broadly to include anything affecting title to the property:

**NRS 111.010 Definitions.** As used in this chapter:

1. “Conveyance” shall be construed to embrace 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)

Payment can be construed as either “assignment” of the lien or a surrender of the lien, and therefore a “conveyance” that is required to be recorded.

The holder of a junior mortgage or encumbrance who pays or advances money to pay the debt secured by the prior mortgage or encumbrance is generally entitled to be subrogated to the rights of the senior encumbrancer. See Restatement, 2<sup>nd</sup> of Mortgages, §7.6; American Sterling Bank v. Johnny Management LV, INC., 126 Nev. 423, 245 P.3d 535 (2010); Houston v. Bank of America 119 Nev. 485, 78 P.3d 71 (2003). This rule is particularly important where a foreclosure of a senior lien will erase the security interest of a junior lien. Thus, at the threat of foreclosure, a junior lienor is entitled, even without express contractual authority, to reinstate the loan by making a payment sufficient to cure the default or to pay of the senior lien and become subrogated to the rights of the senior lienholder as against the owner of the property. See Restatement, 2<sup>nd</sup> of Mortgages, §7.6; American Sterling Bank v. Johnny Management LV, INC., 126 Nev. 423, 245 P.3d 535 (2010); Houston v. Bank of America 119 Nev. 485, 78 P.3d 71 (2003).

This is exactly what occurs when a lender, such as defendant bank or its predecessor, purportedly pays or tenders the super priority portion of an HOA’s lien. The lender becomes subrogated to the rights of the HOA. However, the lien is not extinguished. A subrogated claim is not in any way diminished or extinguished by the subrogation; it is merely taken over by another who stands in the place of the original claimant. Pep’E v. McCarthy, 249 A.D.2d 286, 287, 672 N.Y.S.2d 350 (2d Dept. 1998). See

1 Restatement, 2<sup>nd</sup> of Mortgages, §6.4(e). Payment by the guarantor is treated not as creating a new debt  
2 and extinguishing the original debt, but as preserving the original debt and merely substituting the  
3 guarantor for the creditor. Putnam v. C.I.R., 352 U.S. 82 (1956).

4 Subrogation is broadly defined as the substitution of one person in the place of another with  
5 reference to a lawful claim or right. St. Paul Fire and Marine Insurance Co. v. Employers Insurance  
6 Company of Nevada 122 Nev. 991, 146 P.3d 258 (2006). It is a right which is purely derivative, Gulf  
7 Ins. Co. v. TIG Ins. Co., 103 Cal Rptr. 2d 305 (2d Dist. 2001), and it permits a party who has been  
8 required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and  
9 pursue recovery from the responsible wrongdoer. Fireman's Fund Ins. Co. v. Maryland Casualty Co., 26  
10 Cal. Rptr. 2d 762 (Cal. App. 4th Dist. 1994); Browder v. U.S. Fidelity & Guar. Co., 893 P.2d 132 (Colo.  
11 1995). Stated another way, it is a substitution of one person in place of another with reference to a lawful  
12 claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to a  
13 debt or claim, and its rights, remedies or securities. See Arguello v. Sunset Station, Inc., 127 Nev. Adv.  
14 Op. 29, 252 P.3d 206 (2011); Subrogation is a device adopted by equity which applies in a great variety  
15 of cases and is broad enough to include every instance in which one party pays a debt for which another  
16 is primarily liable, and which in equity and good conscience should have been discharged by the latter.  
17 Laffranchini v. Clark 39 Nev. 48, 153 P. 250 (1915).

18 "Equitable" or "legal" subrogation is given a liberal application. Laffranchini v. Clark 39 Nev.  
19 48, 153 P. 250 (1915); St. Paul Fire & Marine Ins. Co. v. Murray Guard, Inc., 37 S.W.3d 180 (Ark. 2001).  
20 It applies where one who has discharged the debt of another may, under certain circumstances, succeed  
21 to the rights and position of the satisfied creditor if: (1) payment must have been made by the subrogee  
22 to protect his or her own interest; (2) the subrogee must not have acted as a volunteer; (3) the debt paid  
23 must have been one for which the subrogee was not primarily liable; (4) the entire debt must have been  
24 paid; and (5) subrogation must not work any injustice to the rights of others. Sehremelis v. Farmers &  
25 Merchants Bank, 7 Cal Rptr. 2d 903, 17 U.C.C. Rep. Serv. 2d 831 (Cal. App. 2nd Dist. 1992); Dade  
26 County School Bd. v. Radio Station WQBA, 731 S. 2d 638 (Fla. 1999); Wilshire Servicing Corp. v.  
27 Timber Ridge Partnership, 743 N.E.2d 1173 (Ind. Ct. App. 2001).

1 Comment (g) to §6.4 of the Restatement provides in part:

2 The second distinction, mentioned above, is that redemption by a person who is not  
3 primarily responsible for payment of the debt **does not extinguish the mortgage, but**  
4 **rather assigns both the mortgage and the debt to the payor by operation of law**  
5 **under the doctrine of subrogation**; See §7.6. In cases of this sort, the payoff has paid,  
6 not out of duty, but to protect a real estate interest from foreclosure. Thus, the payoff is  
7 entitled to reimbursement from whomever is primarily responsible for payment, and can  
8 enforce the mortgage against that person to aid in collection of the reimbursement.  
9 Subrogation in this context helps prevent the unjust enrichment of the party who is  
10 primarily responsible at the expense of the payor. See §7.6, Illustrations 1 and 2. Since  
11 the mortgage is not extinguished, and since the payor has actually paid or tendered the  
12 balance owing to protect his or her interest, the accrual of interest on the balance ceases  
13 in favor of the mortgagee but continues unabated in favor of the payor. (emphasis added)

14 In this case, the deed of trust contains provisions for payment of obligations by the lender and  
15 subrogation of rights in favor of the lender. The deed of trust provides that any payment made by the  
16 bank becomes additional debt secured by the deed of trust.

17 The payment or tender of assessments by the defendant bank or its predecessor subrogates the  
18 defendant to the super priority portion lien of the HOA.

19 Because it is an assignment of an interest in real property it must be recorded to be effective as  
20 to subsequent purchasers. The recording of the assignment of the lien is required because when the  
21 purchaser bids on the property he or she is relying on the information contained in the public records  
22 when determining whether or not to bid on the property and how much to pay for the property. In other  
23 words, the purchaser needs to know what he or she is buying.

24 **K. If tender discharges a lien, it must be recorded to be effective.**

25 If the tender of payment by the defendant bank or its predecessor is not viewed as the basis for  
26 equitable subrogation and instead is viewed as extinguishing the superpriority lien, the payment must still  
27 be recorded, because an extinguishment or surrender of the debt owed by the lien is a “conveyance” and  
28 includes extinguishment or discharge of the lien.

29 The purported satisfaction of the superpriority portion of the HOA’s lien is a surrender or release  
30 of the HOA’s senior position. Likewise, NRS 111.325, makes it abundantly clear that an unrecorded  
31 satisfaction of lien on the part of the defendant is void against a subsequent purchaser, such as plaintiff.

32 Additionally, to the extent that the purported tender is claimed to have worked to discharge or

1 extinguish the HOA's lien, such a discharge or release must also be recorded in the office of the county  
2 recorder. Separate and apart from "conveyances," all discharges of liens must be recorded.

3 **NRS 106.260 Discharge and assignment: Marginal entries; discharge or release**  
4 **must be recorded when mortgage or lien recorded by microfilm.**

5 1. Any mortgage or lien, that has been or may hereafter be recorded, may be  
6 discharged or assigned by an entry on the margin of the record thereof, signed by the  
7 mortgagee or the mortgagee's personal representative or assignee, acknowledging the  
8 satisfaction of or value received for the mortgage or lien and the debt secured thereby, in  
the presence of the recorder or the recorder's deputy, who shall subscribe the same as a  
witness, and such entry shall have the same effect as a deed of release or assignment duly  
acknowledged and recorded. Such marginal discharge or assignment shall in each case be  
properly indexed by the recorder.

9 2. In the event that the mortgage or lien has been recorded by a microfilm or other  
10 photographic process, a marginal release may not be used and **a duly acknowledged**  
**discharge or release of such mortgage or lien must be recorded.** (emphasis added)

11 It has been established that the super-priority lien under NRS 116.3116(2) is a true priority lien  
12 and is superior to a first deed of trust. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d at  
13 412-414. The Nevada Supreme Court relied, in part, on the holding in 7912 Limbwood Court Trust v.  
14 Wells Fargo Bank, N.A., 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013). Limbwood recognizes that in order  
15 to avoid the extinguishment of the first deed of trust, the first deed of trust holder needs to pay the HOA  
16 to obtain the priority position.

17 NRS 111.325 mandates that any claimed interest on the part of the defendant bank is void as a  
18 matter of law. The purpose of recording documents is to provide notice to all persons of the recording  
19 party's interest in the property. An unrecorded or other instrument required to be recorded is not valid  
20 and effective against a bona fide purchaser.

21 As shown above, whether regarded as an assignment, subrogation or subordination, an instrument  
22 must be recorded with the Clark County Recorder's office in order to be effective as to subsequent  
23 purchasers, such as plaintiff. Defendant bank does not allege nor can it show any evidence of the  
24 recording of this property interest. The purported tender of payment of the super-priority interest is void  
25 as a property interest as a matter of law against the foreclosure deed to plaintiff because evidence of the  
26 payment was not recorded in accordance with Nevada's recording laws. As a result of the failure to  
27 record any evidence of this property interest prior to the date that the foreclosure deed was recorded, the

1 property interest created by the defendant bank or its predecessor's payment is void as against the  
2 foreclosure deed issued in this.

3 This analysis is consistent with the recent amendment to the statute by the Nevada Legislature  
4 which requires recording of evidence of the payments and announcement of the payment at the auction,  
5 prior to bidding.

6 **L. Any change in priority must be recorded.**

7 Further, because the purported tender of payment would have the effect of changing the priority  
8 of the HOA's lien, versus the deed of trust, it is required to be recorded as well.

9 **NRS 106.220 Filing and recording of instruments subordinating or waiving priority  
10 of mortgages or deeds of trust; constructive notice; effect of unrecorded instruments.**

11 1. Any instrument by which any mortgage or deed of trust of, lien upon or interest in  
12 real property is subordinated or waived as to priority, must, in case it concerns only one  
13 or more mortgages or deeds of trust of, liens upon or interests in real property, together  
14 with, or in the alternative, one or more mortgages of, liens upon or interests in personal  
15 property or crops, the instruments or documents evidencing or creating which have been  
16 recorded prior to March 27, 1935, be recorded in the office of the recorder of the county  
17 in which the property is located, and from the time any of the same are so filed for record  
18 operates as constructive notice of the contents thereof to all persons. The instrument is not  
19 enforceable under this chapter or chapter 107 of NRS unless and until it is recorded.

20 2. Each such filing or recording must be properly indexed by the recorder.  
21 (Emphasis added)

22 Thus, in order to be effective, a satisfaction of lien must be recorded.

23 **M. Notice to third parties is of utmost significance**

24 The court in Shadow Wood Homeowners Association v. New York Community Bank, 132 Nev.  
25 Adv. Op 5, 366 P.3d 1105 (2016) defined a bona fide purchaser as:

26 A subsequent purchaser is bona fide under common-law principles if it takes the property  
27 "for a valuable consideration and without notice of the prior equity, and without notice  
28 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." *Bailey v. Butner*, 64 Nev. 1, 19, 176  
P.2d 226, 234 (1947)

In summarizing the evidence regarding the lack of notice to the putative bona fide purchaser, the  
court in Shadow Wood stated:

. . . And NYCB points to **no other evidence indicating that Gogo Way had notice  
before it purchased the property, either actual, constructive, or inquiry, as to  
NYCB's attempts to pay the lien and prevent the sale**, or that Gogo Way knew or  
should have known that Shadow Wood claimed more in its lien than it actually was owed,

1 especially where the record prevents us from determining whether that is true. *Lennartz*  
2 v. *Quilty*, 191 Ill. 174, 60 N.E. 913, 914 (Ill.1901) (finding a purchaser for value protected  
3 under the common law who took the property without record or other notice of an  
4 infirmity with the discharge of a previous lien on the property). **Because the evidence**  
5 **does not show Gogo Way had any notice of the pre-sale dispute between NYCB and**  
6 **Shadow Wood**, the potential harm to Gogo Way must be taken into account and further  
7 defeats NYCB's entitlement to judgment as a matter of law.

8 Notice to potential third party bidders who could otherwise claim status of a bona fide purchaser  
9 is critical to this court's evaluation of this case. The defendant bank or its predecessor had actual  
10 knowledge that the property was in foreclosure and that third persons could likely bid on the property.  
11 For the nominal cost of recording a notice at \$17.00 for the first page with the county recorder, the  
12 defendant bank or its predecessor could have simply recorded a one page notice with the recorder and put  
13 the world on notice.

14 In evaluating the equities between the various parties, the court should keep in mind that the  
15 defendant bank and its predecessor had a simple and inexpensive method to notify the world, including  
16 defendant bank, of its payment and preservation of its deed of trust. The defendant bank failed to do so,  
17 and the equities should weigh in favor of Saticoy Bay LLC Series 1637 Bent Arrow as the bona fide  
18 purchaser without knowledge of the tender.

19 **N. The Trust Deed has been Extinguished.**

20 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.  
21 Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court stated:

22 NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual  
23 homeowner's property for up to nine months of unpaid HOA dues. With limited exceptions, this  
24 lien is "prior to all other liens and encumbrances" on the homeowner's property, even a first deed  
25 of trust recorded before the dues became delinquent. NRS 116.3116(2). We must decide whether  
26 this is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property  
27 and, if so, whether it can be foreclosed nonjudicially. We answer both questions in the  
28 affirmative and therefore reverse.

334 P.3d at 409.

At the conclusion of its opinion, the Nevada Supreme Court stated:

NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will  
extinguish a first deed of trust. Because Chapter 116 permits nonjudicial foreclosure of  
HOA liens, and because SFR's complaint alleges that proper notices were sent and  
received, we reverse the district court's order of dismissal. In view of this holding, we  
vacate the order denying preliminary injunctive relief and remand for further proceedings



1 consistent with this opinion.

2 334 P.3d at 419.

3 Because the facts in the present case are substantially the same as the facts in SFR this Honorable  
4 Court should reach the same conclusion that the nonjudicial foreclosure arising from the HOA's super  
5 priority lien extinguished the deed of trust held by the defendant bank on the date of sale. As a result, this  
6 Court should rule that the deed of trust held by defendant was extinguished by the HOA's foreclosure  
7 sale.

8 **O. The bankruptcy filings are irrelevant to any issue in this case**

9 In the cases of Marcuse v. Del Webb Communities, Inc., 123 Nev. 278, 163 P.3d 462 (2007) and  
10 NOLM, LLC v. County of Clark, 120 Nev. 736, 100 P.3d 658 (2004), the Supreme Court explained the  
11 application of judicial estoppel:

12 Whether judicial estoppel applies is a question of law subject to de novo review. The  
13 primary purpose of judicial estoppel is to protect the judiciary's integrity, and a court may  
14 invoke the doctrine at its discretion. However, judicial estoppel should be applied only  
15 when **"a party's inconsistent position [arises] from intentional wrongdoing or an  
16 attempt to obtain an unfair advantage."** Judicial estoppel does not preclude changes  
17 in position that are not intended to sabotage the judicial process.

18 [T]he doctrine generally applies "when " '(1) the same party has taken two positions; (2)  
19 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) **the  
20 party was successful in asserting the first position (i.e., the tribunal adopted the  
21 position or accepted it as true);** (4) the two positions are totally inconsistent; and (5) **the  
22 first position was not taken as a result of ignorance, fraud, or mistake.** ' '" (footnotes  
23 omitted)

24 In the case of Kitty-Anne Music Co. v. Swan 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796 (2003), cited  
25 in a footnote in NOLM v. Clark County, supra, the court stated:

26 Judicial estoppel applies where a party takes inconsistent positions that affect the orderly  
27 administration of justice. ( Jackson v. County of Los Angeles, supra, 60 Cal.App.4th 171,  
28 181, 70 Cal.Rptr.2d 96.) Requirements for application of the rule include a party's taking  
two positions in judicial or administrative proceedings, success in the assertion of the first  
position, inconsistency between the two positions, and a lack of ignorance, fraud, or  
mistake in asserting the first position. ( Id., at p. 183, 70 Cal.Rptr.2d 96.) **The doctrine  
requires that the positions be clearly inconsistent " "so that one necessarily excludes  
the other.** ' '" ( Id., at p. 182, 70 Cal.Rptr.2d 96.)

**Judicial estoppel is an extraordinary remedy that is applied "with caution."** ( Haley  
v. Dow Lewis Motors, Inc. (1999) 72 Cal.App.4th 497, 511, 85 Cal.Rptr.2d 352.) To

1 invoke the rule, a party's inconsistent position must arise from intentional wrongdoing or  
2 an attempt to obtain an unfair advantage. ( Id., at pp. 509–510, 85 Cal.Rptr.2d 352.) The  
3 determination whether judicial estoppel applies is a question of law. ( Kelsey v. Waste  
Management of Alameda County (1999) 76 Cal.App.4th 590, 597, 90 Cal.Rptr.2d 510.)  
(Emphasis added)

4 Prior to the Supreme Court's decision in the SFR case, everyone was uncertain as to whether or  
5 not the foreclosure sale extinguished the deed of trust. The purchaser's inconsistent position was taken  
6 before the law was clarified. There is no intent on the part of the purchaser to gain an unfair advantage.

7 Bankruptcy law requires that all claims and debts, even if disputed, must be included in a  
8 bankruptcy filing. The purchasers representative was required by law to include all disputed claims.

9 Judicial estoppel also does not apply because the bankruptcy was dismissed, so the purchaser was  
10 never successful in adopting that position in the bankruptcy court. Lastly, no party can claim that it was  
11 prejudiced by the representations in the bankruptcy filings.

12 The time to determine a bona fide purchaser is at the time that the money is paid. See Bailey v.  
13 Butner 64 Nev. 1, 176 P.2d 226 (1947); Moore v. De Bernardi 47 Nev. 33, 220 P.544 (1923). Therefore,  
14 any activity done after the sale, including the bankruptcy status does not affect the validity of the sale, or  
15 the purchasers status as a bona fide purchaser.

### 16 CONCLUSION

17 The HOA's foreclosure sale extinguished the defendant's deed of trust. The foreclosure sale is  
18 presumed to be valid by statute, the and the recitals in the foreclosure deed are conclusive proof the  
19 HOA's foreclosure sale complied with all requirements of Nevada law. The burden of proof is on the  
20 bank to set the sale aside, and the purchaser, as record title holder has the presumption of validity title  
21 in its favor. The defendant has not produced any evidence to show that the plaintiff is not a bona fide  
22 purchaser, and has failed to demonstrate any defect in the sale to justify setting aside the foreclosure sale.  
23 Additionally, the bank failed to take any steps to protect its interests, and permitted the sale to go forward.

24 ///

25 ///

1 Most importantly, the defendant is not entitled to equitable relief because it was on notice of the  
2 foreclosure sale, and failed to take any steps prior to the foreclosure sale to protect its interest.

3 DATED this 8<sup>th</sup> day of February, 2018

4 LAW OFFICES OF  
5 MICHAEL F. BOHN, ESQ., LTD.

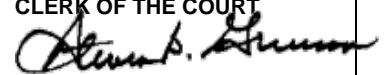
6 By: /s/ Michael F. Bohn, Esq. /  
7 Michael F. Bohn, Esq.  
8 376 E. Warm Springs Road, Ste. 140  
9 Las Vegas, Nevada 89119  
10 Attorney for Plaintiff/counterdefendant  
11  
12

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law  
15 Offices of Michael F. Bohn, Esq., Ltd., and on the 8th day of February, 2018, an electronic copy of the  
16 **PLAINTIFF'S PRE-TRIAL MEMORANDUM PURSUANT TO EDCR 7.27** was served on  
17 opposing counsel via the Court's electronic service system to the following counsel of record:

18 Darren T. Brenner, Esq.  
19 Rebekkah B. Bodoff, Esq.  
20 AKERMAN LLP  
21 1160 Town Center Drive, Suite 330  
22 Las Vegas, NV 8944  
23

24 /s/ Marc Sameroff/  
25 An Employee of the LAW OFFICES OF  
26 MICHAEL F. BOHN, ESQ., LTD.  
27  
28



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*Attorneys for Bank of America, N.A.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH AMERICAN  
TITLE COMPANY; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

Defendants.

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION and  
NEVADA ASSOCIATION SERVICES, INC.

Cross-Defendants.

Case No.: A-13-686277-C

Dept.: XXX

**TRIAL BRIEF**

...

...

## STATEMENT OF THE CASE

BANA is entitled to judgment for multiple reasons:

**First**, Bank of America satisfied the tender doctrine by offering to pay the super-priority portion of Mandolin Homeowner's Association's (**HOA**) lien before the foreclosure sale to the HOA trustee, Nevada Association Services, Inc. (**NAS**). Accordingly, under *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Opinion 35 (Nev. April 28, 2016), Bank of America did exactly what Nevada law requires to protect its lien priority — *i.e.*, submitting a letter in good faith to get the payoff amount of the HOA's full super priority lien amount. Bank of America preserved its lien, and its interests in the property were not extinguished by the sale. See *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226 (Nev. 2017)(confirming ability to extinguish super-priority prior to HOA sale).

**Second**, the foreclosure price was palpably and greatly inadequate, oppressive and unfair. The property was worth \$158,500.00, at the time of the HOA foreclosure sale, but sold at that sale for \$14,600.00 — a mere 9% of the subject property's fair market value. As confirming in *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*. In only "very slight additional evidence of unfairness or irregularity" is sufficient to show that an association's foreclosure did not extinguish a senior deed of trust **if the inadequacy of the foreclosure-sale price "is palpable and great."** See *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 648 (2017) (emphasis added, and herein referred to as "*Shadow Canyon*"). That unfairness is present here given the lack of notice of the super-priority portion, NAS's failure to disclose and its related self-dealing conduct, and representations in the CC&Rs, among other things.

## STIPULATED FACTS

The following facts are stipulated by the parties:

1. Dominic Nolan purchased the property located at 97510 Perla Del Mar Ave., Las Vegas, Nevada (the **property**) in 2010. **Joint Exhibit 3.**
2. The property is located in the Mandolin Phase 3 at Mountain's Edge (**Mandolin Phase 3**) planned unit development. Mandolin Phase 3 is subject to CC&Rs, recorded on September 14, 2006

1 and June 26, 2007, Instrument Nos. 20060914-0001790 and 20070626-3072. **Joint Exhibits 34 and**  
2 **35.**

3 3. The property is also located within the Mountain's Edge Master Association (**Master**  
4 **Association**) planned unit development and is encumbered by the CC&Rs of the Master Association.

5 4. Mr. Nolan financed the property with a \$164,032.00 loan from KBA Mortgage, LLC  
6 in 2010. **Joint Exhibit 3.**

7 5. Mr. Nolan secured the loan with a deed of trust on the property, dated December 9,  
8 2010 and recorded with the Clark County Recorder on December 10, 2010, as Instrument No.  
9 20101210-0002325 (the **deed of trust**). **Joint Exhibit 3.**

10 6. The deed of trust identifies Mortgage Electronic Registration Systems, Inc. (**MERS**)  
11 as the initial deed of trust beneficiary. **Joint Exhibit 3**

12 7. Bank of America, N.A. (**BANA**) was the servicer of the loan until July 21, 2013.

13 8. Nevada Association Services, Inc. (**NAS**) was Mandolin Phase 3's agent in connection  
14 with the foreclosure sale of the property. **Joint Exhibit 37.**

15 9. Silver State Trustee Services (**Silver State**) was the Master Association's agent in  
16 connection with the foreclosure sale of the property.

17 10. On December 8, 2011, NAS on behalf of Mandolin Phase 3 sent the former owner a  
18 pre-lien letter. **Joint Exhibit 1.**

19 11. NAS, on Mandolin Phase 3's behalf, recorded a notice of delinquent assessment lien  
20 with the Clark County Recorder on January 4, 2012, as Instrument No. 201201040001123. **Joint**  
21 **Exhibit 4.**

22 12. NAS, on Mandolin Phase 3's behalf, recorded a notice of default and election to sell  
23 under homeowners association lien with the Clark County Recorder on February 27, 2012, as  
24 Instrument No. 201202270002448. **Joint Exhibit 8.**

25 13. On March 7, 2017, NAS on behalf of Mandolin Phase 3 sent the notice of default and  
26 election to sell to the former owner, Bank of America, MERS, and other interested parties by certified  
27 mail. **Trial Exhibit 37 BANA/Nolan-01-000289.**

28 ...

1           14. Silver State, on the Master Association's behalf, recorded a notice of delinquent  
2 assessment lien with the Clark County Recorder on February 2, 2012, as Instrument No.  
3 201202020001210. **Joint Exhibit 8.**

4           15. Silver State, on the Master Association's Behalf, recorded a notice of default and  
5 election to sell with the Clark County Recorder on August 14, 2012, as Instrument No.  
6 201208140001300. **Joint Exhibit 7.**

7           16. BANA, through its counsel Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**),  
8 sent Mr. Nolan a letter dated March 16, 2012 regarding the lien. **Joint Exhibit 20.**

9           17. BANA, through its counsel Miles Bauer, sent a letter dated March 16, 2012 to  
10 Mandolin Phase 3, c/o NAS regarding payment of the super-priority the lien, the terms no which speak  
11 for themselves, and include a request for identification of the super-priority portion measure at a  
12 maximum of nine months of unpaid assessments, and offering to pay that amount upon proof of the  
13 same. **Joint Exhibit 32.**

14           18. NAS received Miles Bauer's letter, but did not respond based on its claim that doing  
15 so would violate the FDCPA.

16           19. BANA, through its counsel Miles Bauer, sent a letter dated September 10, 2010 to the  
17 Master Association, c/o Silver State, offering to pay the sum of nine months of common assessments  
18 pre-dating Mr. Nolan's default, requesting proof of that amount, and requesting information regarding  
19 the Master Association's sale. **Joint Exhibit 22.**

20           20. The Master Association provided a statement of account showing the total amount Mr.  
21 Nolan owed the Master Association through September 20, 2012 in response to Miles Bauer's letter.  
22 **Joint Exhibit 23.**

23           21. The Master Association assessed property owners in its community quarterly  
24 assessments of \$75.00 per quarter in 2011 and 2012. **Joint Exhibit 23.**

25           22. Miles Bauer, on BANA's behalf, delivered a \$932.83 check to the Master Association  
26 c/o Silver State on or about October 4, 2012. **Joint Exhibits 24 and 25.** This included \$225 nine  
27 months' worth of unpaid assessments, plus a voluntary payment of certain collection costs/fees.

28 ...

1           23.     MERS assigned the deed of trust to BANA, successor by merger to BAC Home Loans  
2     Servicing, LP f/k/a Countrywide Home Loans Servicing, LP via an assignment of deed of trust dated  
3     January 3, 2012 and recorded with the Clark County Recorder on January 6, 2012, as Instrument No.  
4     201201060000225. **Joint Exhibit 5.**

5           22.     BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide  
6     Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage, LLC, via an assignment  
7     of the deed of trust recorded with the Clark County Recorder on July 10, 2013, as Instrument No.  
8     201307100000782. **Joint Exhibit 11.**

9           23. NAS, on Mandolin Phase 3's behalf, recorded a notice of foreclosure sale with the Clark  
10    County Recorder on November 15, 2012, as Instrument No. 201211150002280, advising it intended  
11    to conduct a public auction on December 14, 2012 pursuant to Mandolin Phase 3 CC&Rs. **Joint**  
12    **Exhibit 9.**

13           24.     NAS, on Behalf of Mandolin Phase 3, mailed the Notice of Foreclosure Sale to Bank  
14    of America, the former owner, and other interested parties on November 13, 2017. **Joint Exhibit 37**  
15    **BANA/Nolan01-000357 - 362**

16           25.     On November 15, 2012, NAS on behalf of Mandolin Phase 3, caused a copy of the  
17    notice of sale to be posted on the property and in three locations in Clark County, Nevada. **Joint**  
18    **Exhibit 52.**

19           26.     NAS, on behalf of Mandolin Phase 3, caused the notice of sale to be published on three  
20    dates in the Nevada Legal News. **Joint Exhibit 53.**

21           27.     Mandolin Phase 3 and NAS sold the property at auction on February 1, 2013.

22           28.     NAS recorded a foreclosure deed with the Clark County Recorder on February 7, 2013,  
23    as Instrument No. 201302070001210 reflecting that 7510 Perla Del Mar Ave Trust purchased the  
24    property for \$14,600 at Mandolin Phase 3's sale. **Joint Exhibit 8.**

25           29.     The trustee of 7510 Perla Del Mar Ave Trust is Resources Group, LLC.

26           30.     Eddie Haddad is the manager of Resources Group, LLC.

27           31.     The "Fair Market Value" of the property at the time of the sale was \$158,500.00. *See*  
28    **Joint Exhibit 33**, expert report of Matthew Labuwy. The Fair Market Value definition does not



1 consider the “forced sale” value of the real estate or the price of other comparable HOA non-judicial  
2 foreclosure sales, but the price which would result from negotiation and mutual agreement, after ample  
3 time to find a purchaser, between a vender who is willing, but no compelled to sell, and a purchaser  
4 who is willing to buy, but not compelled to take a particular piece of real estate. Plaintiff stipulates  
5 the calculation is correct under the definition of Fair Market Value, but disputes the relevance of the  
6 Fair Market Value calculation to this case.

7 32. The Fee Simple Impaired Value of the property at the time of the sale in comparison to  
8 other HOA non-judicial foreclosure sales was \$14,600. **See Joint Exhibit 2**, expert report of Michael  
9 Brunson. Defendant stipulates the calculation is correct as to a forced HOA non-judicial foreclosure  
10 sale, but disputes the relevance of the Fee Simple Impaired Value calculation to this case.

11 In addition to the stipulated facts, the evidence at trial will show:

12 1. Bank of America/Miles Bauer would have issued a check if NAS had provided  
13 information needed to satisfy the super-priority;

14 2. The CC&Rs contain representations that the deed of trust would survive any  
15 foreclosure sale;

16 3. NAS acted in a self-serving and self-dealing manner in refusing to provide the super-  
17 priority, despite its direct knowledge of Bank of America/Miles Bauer’s offer to pay.

## 18 **ARGUMENT**

### 19 **I. BANA’S TENDER EXTINGUISHED THE SUPERPRIORITY COMPONENT OF THE HOA LIEN.**

20 In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), the Nevada  
21 Supreme Court held that a first deed of trust holder’s pre-foreclosure tender prevents the first deed of  
22 trust from being extinguished. 334 P.3d at 414 (“[A]s junior lienholder, [the holder of the first deed  
23 of trust] could have paid off the [HOA] lien to avert loss of its security[.]”). In fact, the drafters of the  
24 Uniform Common Interest Ownership Act (**UCIOA**), adopted by Nevada as NRS 116, *et seq.*,  
25 contemplated this result when drafting the super-priority provision, stating that “[a]s a practical matter,  
26 secured lenders will most likely pay the [nine] months assessments demanded by the association rather  
27 than having the association foreclose on the unit.” 1982 UCIOA § 3-116 cmt. 1 (cited with approval  
28 in *SFR Investments*, 334 P.3d at 414.).

1 Further, the Nevada Real Estate Division of the Department of Business and Industry, the  
2 agency charged with administering the HOA Lien Statute, has explained that it is "likely that the holder  
3 of the first security interest will pay the super priority lien amount to avoid foreclosure by [an HOA]."  
4 13—01 Op. Dep't of Bus. & Indus., Real Estate Div. 18 (2012); *see also Folio v. Briggs*, 99 Nev. 30,  
5 34, 656 P.2d 842, 844 (1983) (explaining that courts "are obliged to attach substantial weight to [an]  
6 agency's interpretation" of a statute it is charged with administering).

7 Nevada's Supreme Court has confirmed that the only portion of the HOA's lien that is prior to  
8 the first deed of trust's interest is that amount for *nine months of assessments only*. *Ikon Holdings*, 373  
9 P.3d at 73. As the Supreme Court held, "Taking into consideration the legislative intent, the statute's  
10 text, and statutory construction principles, we conclude the super priority lien granted by NRS  
11 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is  
12 limited to an amount equal to the common expense assessments due during the nine months before  
13 foreclosure." *Id.*

14 Even if the HOA was able to unwittingly foreclose on super-priority lien contrary to its own  
15 intentions, it did not do so here because BANA offered payment prior to the foreclose sale.

16 Just as stated above, in *SFR Investments*, Miles Bauer's letter prevents the first deed of trust  
17 from being extinguished. 334 P.3d 408, 414. Under longstanding Nevada law, an offer to pay is  
18 sufficient tender. *See, e.g., Ebert v. Western States Refining Co.*, 75 Nev. 217, 221–22, 337 P.2d 1075,  
19 1077 (1959); *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (tender is complete  
20 when "the **money is offered** to a creditor who is entitled to receive it") (emphasis added). In *Ebert*,  
21 the Court held that a party's statement that it would pay two months' rent to exercise an option to  
22 purchase property was a sufficient tender, despite the failure to deliver the checks, where the seller  
23 indicated it would not accept them and the purchaser was at all times ready, willing, and able to  
24 physically deliver the checks. *Id.*

25 After the money is offered to the creditor, "nothing further remains to be done, and the  
26 transaction is completed and ended." *Id.* Black's Law Dictionary also defines tender in terms of an  
27 offer of performance rather than actual performance: "A valid and sufficient offer of performance."  
28

1 Here, the servicer at the time did exactly what the law requires, and its counsel's letter could not have  
2 been clearer:

3 "That amount, whatever it is, is the amount BANA should be required to rightfully pay  
4 to fully discharge its obligations to the HOA per NRS 116.3102 and **my client hereby**  
5 **offers to pay that sum upon presentation of adequate proof of the same by the**  
6 **HOA.**"

7 Trial Ex. 32 (emphasis added). That NAS did not take the offer is irrelevant. Tender is perfect  
8 and complete when the offer is made, and Nevada law comports with the law elsewhere on this point.  
9 *See Guthrie v. Curnutt*, 417 F.2d 764, 765–66 (10th Cir. 1969) ("The failure of the [tenderor] to count  
10 out the cash or to present a cashier's check in the actual amount does not destroy the tender. We have  
11 held that when a party, able and willing to do so, offers to pay another a sum of money and is told that  
12 it will not be accepted, **the offer is a tender without the money being produced.**") (emphasis added);  
13 *see also Fresk v. Kraemer*, 99 P.3d 282, 286–87 (Or. 2004) (defining tender as an "**offer** of payment")  
14 (emphasis added); *Tamerlane, Ltd. v. U.S.*, 550 F.3d 1135, 1142–43 (Fed. Cir. 2008) (tender does not  
15 require an attempt to physically transfer money); *APC Operating P'ship v. Mackey*, 841 F.2d 1031,  
16 1034 (10th Cir. 1988) ("the common usage of 'tender' implies no requirement of personal delivery").  
17 Accordingly, BANA's proofer of payment satisfied the super-priority portion of the lien.

18 NAS did not respond to Miles Bauer. Ever. Even if BANA could have deduced the statutory  
19 super-priority amount and had sent a check for that amount, NAS would have erroneously deemed  
20 that amount insufficient to discharge the super-priority lien, as NAS took the position that nine months  
21 of delinquent assessments was not sufficient to extinguish the superpriority lien.

22 Additionally, Miles Bauer demonstrated it was ready, willing and able to pay the superpriority  
23 amount of the lien when it did just that to the Master Association. On September 10, 2012, Miles Bauer  
24 sent the Master Association a letter just like the one it sent to Mandolin. Trial Exhibit 22. The Master  
25 Association, clearly unimpeded by the FDCPA, responded by sending a demand to Miles Bauer. Trial  
26 Exhibit 23. While that demand did not specifically inform Miles Bauer what the superpriority portion  
27 of the lien amounted to, they were able to make a calculation from the information in the demand to  
28 estimate an amount to send in. On October 4, 2012, Miles Bauer then sent another letter to the Master  
Association together with a check for what amounted to four times the superpriority lien amount. Trial

1 Exhibits 24 and 25. Miles Bauer's actions demonstrate that BANA was ready, willing and able to  
2 follow through and pay the superpriority of the line in order to protect their interest in the property.

3 **A. NAS's Supposed Reliance on the FDCPA was Unreasonable.**

4 NAS provided no other reason for rejecting Miles Bauer's offer to pay, other than its misplaced  
5 and self-serving claim that the FDCPA prohibited disclosure of the super-priority lien. This argument  
6 is a façade to cover its bad faith refusal to accept tender for its own personal gain, and fails miserably.

7 **First**, as a matter of law the only justification for rejection is a belief that the offer was  
8 insufficient to satisfy the super-priority portion of the lien. 59 C.J.S. Mortgages § 582 (2016). That's  
9 not what occurred in this case. NAS did not refuse the offer or even reject it for that matter. It refused  
10 to disclose an amount that BANA was required to pay. NAS knew that it (1) would not get paid to  
11 respond to Miles Bauer; and (2) that if Miles Bauer was able to pay, NAS may not be able to recover  
12 its fees. This will be demonstrated by the testimonial evidence at trial.

13 **Second** NAS's assertion of the FDCPA is not justifiable even if that matters, NAS stated the  
14 full assessment delinquency on each publicly recorded notice as required under Nevada state law,  
15 which it clearly couldn't have done if it was prevented from doing so by the FDCPA.<sup>1</sup> By only  
16 providing the full lien amount, and not the lesser superpriority amount when requested, NAS was  
17 clearly seeking to maximize its recovery at the cost of banks like BANA, effectively extorting senior  
18 beneficiaries into paying far more than NRS 116.3116 requires under the threat of losing their security  
19 interest and incurring costly litigation.<sup>2</sup>

20  
21  
22 <sup>1</sup> If the FDCPA was a prohibition on providing payoff ledgers to first mortgagees as NAS  
23 asserts, then the conflict between state and federal law would have invalidated NRS 116. Moreover,  
24 common sense dictates that in order for a first mortgagee to preserve its senior interest it must know  
25 the superpriority amount. Here, NAS refused to respond to Miles Bauer's request, let alone provide a  
26 payoff ledger. There were no online assessment repositories, or other means by which Miles Bauer  
27 could have determined the dues, especially considering each foreclosure notice listed NAS as the  
28 contact.

26 <sup>2</sup> NAS encouraged the HOA to foreclose on a property so that NAS could recover its collection  
27 costs and fees. If a property was sold to a third party investor NAS would get paid off. NAS sent an e-  
28 mail to the HOA telling suggesting that the HOA take the property to foreclosure sale because more  
third party investors were scooping up the properties and there was a greater chance of "all part[ies]  
get[ting] paid". Joint Ex. 37 at BANA/Nolan-01-000363.

1 NAS's reliance is nevertheless misplaced because the FDCPA only prohibits third-party  
2 communications made "in connection with the collection of a debt." 15 U.S.C. § 1692c(b). A  
3 communication is made in connection with the collection of a debt only if the "animating purpose of  
4 the communication [is] to induce payment by the debtor." *McIvor v. Credit Control Services, Inc.*,  
5 773 F.3d 909, 914 (8th Cir. 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266 (3d Cir. 2013);  
6 *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011); *Gburek v. Litton Loan*  
7 *Servicing*, 614 F.3d 380, 382 (7th Cir.2010). The Ninth Circuit has held that foreclosing on a security  
8 interest is not a "debt collection" as defined by the FDCPA, and is thus outside the statute's purview.  
9 *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App'x. 476, 480 (9th Cir. 2001); *see also Warren v.*  
10 *Countrywide Home Loans, Inc.*, 342 Fed. App'x 458, 460 (11th Cir. 2009) (explaining that "the plain  
11 language of the FDCPA supports" the conclusion that "foreclosing on a security interest is not debt  
12 collection activity"); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700 (6th Cir. 2003); *Nadalin v.*  
13 *Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir. 1999). Unlike debt collection,  
14 foreclosing a lien is intended to satisfy the debt from the subject property, not from the debtor. Here,  
15 the FDCPA did not bar NAS from responding to BANA's request for a super-priority payoff statement  
16 because the communication was not made for the purpose of inducing payment by the debtor. Rather,  
17 it had the "animating purpose" of inducing a junior lienholder to pay off a senior lien in connection  
18 with the foreclosure of the HOA's security interest, which is "not a debt collection activity under the  
19 FDCPA." *Warren*, 342 Fed. App'x at 460. If NAS was concerned about "mischaracterizing" the debt  
20 under the FDCPA, it could have simply provided a full payoff ledger with a breakdown of the  
21 assessments and fees so that BANA could calculate the superpriority amount for itself. However, it  
22 refused to do even that, leaving BANA without the ability to calculate the superpriority amount.

23 Moreover, BANA did not need permission from the Borrower to obtain the superpriority  
24 amount as it had explicit permission under the CC&R's to examine the HOA's books; CC&R's that  
25 NAS had agreed to abide by in its agreement with the HOA. The CC&Rs expressly state that an  
26 Eligible Mortgagee is entitled to "prompt written notice" of [a]ny delinquency in the payment...which  
27 remains uncured for a period of sixty (60) days. Joint Exhibit 34 at BANA/Nolan-01-000203§ 6.2.3  
28 There is no reasonable dispute that BANA was an Eligible Mortgage as it requested information in

1 correspondence identifying itself as the holder of a first security interest and that it identified the proper  
2 address of the Property. *Id.*, Section 1.24. There is equally no dispute that BANA was entitled to  
3 inspect the “books and records of the Association”. *Id.* at BANA/Nolan-01-000206 § 6.2.6.

4 Here, BANA, through its counsel Miles Bauer, sent a letter dated March 16, 2012 to Mandolin  
5 Phase 3, c/o NAS regarding payment of the super-priority the lien, which included a request for  
6 identification of the super-priority of nine months of unpaid assessments, and offering to pay that  
7 amount upon proof of the same. Joint Exhibit 32. However, NAS never responded to the letter and  
8 rested on the excuse that the FDCPA prohibited them from providing that type of account information  
9 to a third party. *See also* stipulated fact 16.

10 Throughout the process, BANA demonstrated they were ready willing and able to pay the  
11 superpriority amount when they sent the same letter to the Master Association on September 10, 2010  
12 requesting the same information. Joint Exhibit 22. While the Master Association did not provide the  
13 amount of the nine months of assessments Mr. Nolan was in arrears, they did provide a statement of  
14 the total assessments, costs and fees due at that time. Joint Exhibit. 23. Clearly, they understood that  
15 the FDCPA did not apply to the request made by BANA through Miles Bauer. Once Miles Bauer got  
16 the statement sent by the Master Association, they sent a check for \$932.83, which was not only nine  
17 months of assessments but included a voluntary additional amount of \$707.83 to cover certain fees  
18 and costs. In essence, BANA tendered over four times the amount of the nine months’ delinquent  
19 monthly assessments. Had the Master Association accepted the check, the superpriority would have  
20 been extinguished for both associations because the amount in the check Miles Bauer received the  
21 voided, uncashed tender check *back* from the Master Association on October 26, 2012. Joint Exhibit  
22 27.

23 Between the Master Association and the Sub-Association, the message was clearly sent that  
24 they were unwilling to accept the money BANA was trying to send. More importantly, once Miles  
25 Bauer tendered the letter to Mandolin, tender was complete. It would have been futile to send  
26 additional letters to NAS to seek the information needed to calculate the nine months of superpriority  
27 as they would not provide information.

28 ...

1           **B.       BFP is not a Defense to Tender.**

2           BFP is irrelevant under the doctrine of tender because the HOA cannot pass title greater than  
3 it has to foreclose on. *See Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank,*  
4 *National Association*, Nev. Sup. Ct. Doc, 71246 (Dec. 22, 2017)(unpublished disposition). As  
5 explained in *Saticoy Bay*, when the superpriority is satisfied, the HOA sale cannot extinguish the first  
6 deed of trust. Furthermore, where BFP is concerned, the Nevada Supreme Court went on to note that  
7 even if the respondent in that case were a BFP, they had done nothing to explain how being a BFP  
8 would revive the superpriority component of the lien. *Id.* at FN1.

9           **II. ALTERNATIVELY, WHERE PRICE DISPARITY IS GREAT, ONLY “SLIGHT” UNFAIRNESS IS**  
10 **REQUIRED TO FIND THE DEED OF TRUST SURVIVED.**

11           If the HOA foreclosed on a super-priority lien despite the offer to pay, then the sale of the  
12 property for \$14,600.00 was void because it was oppressive and unfair, meaning the deed of trust  
13 survived the HOA’s foreclosure sale. The Nevada Supreme Court just confirmed that to set aside an  
14 association’s foreclosure sale or hold that the sale did not extinguish a senior deed of trust, there “must  
15 [ ] be a showing of fraud, unfairness, or oppression.” *Nationstar Mortgage, LLC v. Saticoy Bay LLC*  
16 *Series 2227 Shadow Canyon*, 405 P.3d 641 (2017). BANA will refer to the foregoing case as *Shadow*  
17 *Canyon* in order to distinguish it to this Court, from the several other *Saticoy Bay* cases. But the  
18 Supreme Court made clear that the foreclosure-sale price is a highly relevant factor, explaining that  
19 only “slight” evidence of unfairness is needed to overturn a sale where the price “inadequacy is  
20 palpable and great”:

21                   It is universally recognized that inadequacy of price is a circumstance  
22 of greater or lesser weight to be considered in connection with other  
23 circumstances impeaching the fairness of the transaction as a cause of  
24 vacating it, and that, **where the inadequacy is palpable and great,**  
**very slight additional evidence of unfairness or irregularity is**  
**sufficient** to authorize the granting of the relief sought.

25 *Id.*, at 15 (emphasis added). Here, the elements of grossly inadequate price and unfairness in the sale  
26 are satisfied.

27           **A.       The Property Was Sold for 9% of its Fair Market Value.**

28           Under binding Nevada Supreme Court precedence, Fair Market Value does not ask the  
question of whether the price of \$14,600 was “fair” in comparison to other HOA foreclosure sales.

1 The Fair Market Value standard contemplates what the property would have sold for outside of the  
2 forced sale setting. Specifically, the Fair Market Value standard is defined as a sale which is not the  
3 fair “forced sale” value of the real estate, but the price which would result from negotiation and mutual  
4 agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled  
5 to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate  
6 Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997). *See also Shadow Wood Homeowners*  
7 *Ass’n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

8 To illustrate, in *Shadow Canyon*, the Supreme Court compared a \$35,000.00 association-  
9 foreclosure-sale price to an appraisal showing the fair-market value of free and clear title to the subject  
10 property was \$335,000.00 to determine the association sold the property “for roughly 11 percent of  
11 [its] fair market value.” *See Nationstar*, 405 P.3d at 649. The Supreme Court explained that this  
12 comparison between fair-market value and foreclosure-sale price was the same method it utilized in  
13 *Shadow Wood* to determine whether that association “sold [the] property at its foreclosure sale for an  
14 inadequate price[.]” *Id.*, at 648 (quoting *Shadow Wood Homeowners Ass’n v. New York Cmty.*  
15 *Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11,  
16 13, 639 P.2d 528, 530 (1982))). In fact, this test – comparing the fair market value of the foreclosed  
17 property to the foreclosure-sale price – has been used by the Nevada Supreme Court to determine the  
18 validity of forced-sale transactions continuously since 1865. *See Runkle v. Gaylord*, 1 Nev. 123, 129  
19 (1865) (“To say that a mortgagee with a power to sell, who has an encumbrance on the estate of **less**  
20 **than one-third of its value**—an encumbrance which five or six months’ rent will discharge—has the  
21 right to sell the estate absolutely to the first man he meets who will pay the amount of the encumbrance,  
22 without any attempt to get a larger price for it, would in our opinion be equivalent to saying fraud and  
23 oppression shall be protected and encouraged.”) (emphasis added).

24 In light of the recent and binding *Shadow Canyon* decision, it is impossible for Plaintiff to  
25 prevail in any argument that the price he paid for the property at the HOA’s foreclosure sale was in  
26 any way adequate. The Nevada Supreme Court compared the forced-sale price to the fair market value  
27 of the subject property in *Runkle* in 1865, in *Golden* in 1963, and in the association foreclosure sale  
28 context specifically in 2016 and 2017 in *Shadow Wood* and *Shadow Canyon*, respectively. That is



1 clearly the test that applies here, and Plaintiff's claims to the contrary are expressly contradicted by  
2 150 years of crystal-clear Nevada law.

3 **B. BANA Demonstrated Unfairness.**

4 In light of this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of  
5 unfairness is needed to set aside the foreclosure sale. See *Shadow Canyon*, 405 P.3d at 649  
6 (emphasis added). There is more than "slight evidence of unfairness" if the HOA's foreclosure is  
7 construed as a super-priority foreclosure, as the HOA's super-priority lien was extinguished prior to  
8 the HOA foreclosure sale. Slight evidence of unfairness is further shown by the NAS's refusal to even  
9 provide the correct super-priority amount to BANA in advance of the sale, conveniently hiding behind  
10 the FDCPA in order to serve its own interests. NAS sent an e-mail to the HOA suggesting that the  
11 HOA take the property to foreclosure sale because more third party investors were scooping up the  
12 properties and there was a greater chance of "all part[ies] get[ting] paid". Joint Ex. 37 at BANA/Nolan-  
13 01-000363. However, when NAS is asked questions during trial it is most likely they will identify "all  
14 part[ies]" as just themselves and the HOA. Not anyone else with any interest in the property.

15 Further, NAS was unfair because they failed to properly notice BANA regarding the  
16 foreclosure Sale. Included in the requirements is a mandate that the notice must describe the  
17 deficiency in payment and separately must "describe" the deficiency in the notice. See NRS  
18 116.31162(2). To the contrary, each and every notice refers to the CC&Rs, which expressly state a  
19 deed of trust cannot be extinguished. See Trial Ex. 34 at BANA/Nolan-01-000208, CC&Rs at §6.3.11.  
20 Because nothing in the notice "describes" the super-priority component of the lien and if anything  
21 refutes it, Miles Bauer requested this information. In essence, Miles Bauer requested notice of the  
22 amount of the super-priority component of the lien (if any) missing from the recorded notices  
23 themselves. NAS's failure to provide notice—particularly upon request—is precisely the type of  
24 unfairness contemplated in *Shadow Canyon*. See *Shadow Canyon*, 405 P.3d 641, 648 (stating that the  
25 non-exhaustive list of unfairness includes misrepresentation and failure of notice).

26 In sum, the sale was the foreclosure sale was the result of unfair acts on the part of NAS. They  
27 refused to provide BANA with a payoff amount of any kind, let alone the amount that would constitute  
28 the superpriority portion of the loan.

1           **C. Plaintiff is Not a Bona Fide Purchaser.**

2           To the extent the court is required the balance the equities, Plaintiff cannot establish that it was  
3 a bona fide purchaser. The party claiming to be a bona fide purchaser bears the burden of proof. Nev.  
4 Rev. Stat. § 111.325; *see also Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979)  
5 (explaining that the putative bona fide purchaser “was required to show that legal title had been  
6 transferred to her before she had notice of the prior conveyance to appellant”); *see also [RLP-Ampus*  
7 *Place, LLC v. U.S. Bank*, Nev. Sup. Ct. Doc. 71883 (Dec. 22, 2017)(unpublished disposition). Even  
8 if that burden is satisfied, it is but one factor toward equitable balancing. *Shadow Wood*, 366 P.3d at  
9 1115. Moreover, the bona fide purchaser doctrine cannot alter the legal effect of tender, and as such,  
10 balancing of the equities is not required. Even if the doctrine were relevant, Plaintiff’s is not a *bona*  
11 *fide* purchaser.

12           In *Shadow Wood*, the Court reiterated that a subsequent purchaser is a bona fide under  
13 common-law principles if it takes the property “for a valuable consideration and without notice of  
14 prior equity, and without notice of facts which upon diligent inquiry would be indicated and from  
15 which notice would be imputed to him, if he failed to make such inquiry.” *Shadow Wood*, 366 P.3d  
16 at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)). Here, Plaintiff had actual  
17 notice of the Deed of Trust Prior to the HOA foreclosure sale, which contains the beneficiary’s right  
18 to pay off any association lien. Joint Trial Ex. 3, PUD Rider (“If Borrower does not pay [HOA]  
19 assessments and assessments when due, **then Lender may pay them.**”); *Id.* Plaintiff’s responses to  
20 BANA’s discovery requests (Admitting in its response to RFA No. 8 that prior to purchasing the  
21 property that Plaintiff had knowledge of the Deed of Trust recorded against the property). Joint Exhibit  
22 46.

23           Additionally, Plaintiff: (1) conducted research on the market value of the property, (RFA 6);  
24 (2) knew the HOA recorded a Notice of Delinquent Assessment Lien on January 4, 2012 (29 years  
25 before the Deed of Trust was to mature); (3) the statute creating the HOA lien stated that only nine  
26 months of assessments were superior to the Deed of Trust; and (4) as of the date of the HOA  
27 foreclosure sale, the Deed of Trust had not been released. Plaintiff, himself a real-estate agent, knew  
28 exactly the risks of purchasing this property without inquiry into whether this was a super-priority

1 sale, and whether payment was offered or provided. Indeed, Mr. Haddad was no novice who was  
2 somehow led to believe he was purchasing a \$158,600.00 property for \$14,600.00. He is a  
3 sophisticated real estate broker and investor who not only knew the Las Vegas real estate market, but  
4 who knew Plaintiff was purchasing an encumbered interest in the Property. Mr. Haddad has owned  
5 his own real estate brokerage for 20 years, is himself a broker, and has been purchasing properties in  
6 Nevada for 10 years. Consequently, to the extent Plaintiff has any interest in the Property that interest  
7 is subject to the Deed of Trust.

### 8 CONCLUSION

9 For all of the above reasons, the Court should enter judgment in BANA's favor and rescind  
10 the sale. In the alternative, the Court should find that Plaintiff took title to the property subject to  
11 BANA's Deed of Trust. The evidence conclusively supports BANA's requested remedy. The HOA,  
12 at best, conducted a sub-priority sale, as demonstrated by NAS's course of conduct. Likewise, the  
13 tender satisfied the super-priority portion of the lien and the sale was sub-priority only. Once the super-  
14 priority was tendered, the question of whether Plaintiff was a bona fide purchaser is moot. The Deed  
15 of Trust survived the sale under both or either situation. Assuming arguendo, that equitable balancing  
16 is required, the equities fall in BANA's favor and dictate the same outcome –the Deed of Trust survived  
17 the sale and the property remains encumbered.

18 DATED this 9th day of February 2018.

19 **AKERMAN LLP**

20 /s/ Karen A. Whelan

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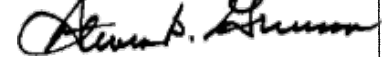
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 9<sup>th</sup> day of February, 2018, I caused to be served a true and correct copy of the foregoing **TRIAL BRIEF**, in the following manner:

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

**LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.**  
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/s/ Carla Llarena  
An employee of AKERMAN LLP



**STIP**

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*Attorneys for Bank of America, N.A.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH AMERICAN  
TITLE COMPANY; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

Defendants.

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION and  
NEVADA ASSOCIATION SERVICES, INC.

Cross-Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**STIPULATED FACTS**

...

...

...

44091793;1

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LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 The parties all agree the following facts are admitted and require no proof:

2 1. Dominic Nolan purchased the property located at 97510 Perla Del Mar Ave., Las  
3 Vegas, Nevada (the **property**) in 2010. **Joint Exhibit 3.**

4 2. The property is located in the Mandolin Phase 3 at Mountain's Edge (**Mandolin Phase**  
5 **3**) planned unit development. Mandolin Phase 3 is subject to CC&Rs, recorded on September 14, 2006  
6 and June 26, 2007, Instrument Nos. 20060914-0001790 and 20070626-0003072. **Joint Exhibits 34**  
7 **and 35.**

8 3. The property is also located within the Mountain's Edge Master Association (**Master**  
9 **Association**) planned unit development and is encumbered by the CC&Rs of the Master Association.

10 4. Mr. Nolan financed the property with a \$164,032.00 loan from KBA Mortgage, LLC  
11 in 2010. **Joint Exhibit 3.**

12 5. Mr. Nolan secured the loan with a deed of trust on the property, dated December 9,  
13 2010 and recorded with the Clark County Recorder on December 10, 2010, as Instrument No.  
14 20101210-00002325 (the **deed of trust**). **Joint Exhibit 3.**

15 6. The deed of trust identifies Mortgage Electronic Registration Systems, Inc. (**MERS**)  
16 as the initial deed of trust beneficiary. **Joint Exhibit 3**

17 7. Bank of America, N.A. (**BANA**) was the servicer of the loan until July 21, 2013.

18 8. Nevada Association Services, Inc. (**NAS**) was Mandolin Phase 3's agent in connection  
19 with the foreclosure sale of the property. **Joint Exhibit 37 at BANA/Nolan-01-000255.**

20 9. Silver State Trustee Services (**Silver State**) was the Master Association's agent in  
21 connection with the foreclosure sale of the property.

22 10. On December 8, 2011, NAS on behalf of Mandolin Phase 3 sent the former owner a  
23 pre-lien letter. **Joint Exhibit 1.**

24 11. NAS, on Mandolin Phase 3's behalf, recorded a notice of delinquent assessment lien  
25 with the Clark County Recorder on January 4, 2012, as Instrument No. 201201040001123. **Joint**  
26 **Exhibit 4.**

27 12. NAS, on Mandolin Phase 3's behalf, recorded a notice of default and election to sell  
28 under homeowners association lien with the Clark County Recorder on February 27, 2012, as

1 Instrument No. 201202270002448. **Joint Exhibit 6.**

2 13. On March 7, 2012, NAS on behalf of Mandolin Phase 3 sent the notice of default and  
3 election to sell to the former owner, Bank of America, MERS, and other interested parties by certified  
4 mail. **Trial Exhibit 37 – Bates number BANA/Nolan-01-000287 - 289.**

5 14. Silver State, on the Master Association's behalf, recorded a notice of delinquent  
6 assessment lien with the Clark County Recorder on February 2, 2012, as Instrument No.  
7 201202020001210. **Joint Exhibit 8.**

8 15. Silver State, on the Master Association's Behalf, recorded a notice of default and  
9 election to sell with the Clark County Recorder on August 14, 2012, as Instrument No.  
10 201208140001300. **Joint Exhibit 7.**

11 16. BANA, through its counsel Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**),  
12 sent Mr. Nolan a letter dated March 16, 2012 regarding the lien. **Joint Exhibit 20.**

13 17. BANA, through its counsel Miles Bauer, sent a letter dated March 16, 2012 to  
14 Mandolin Phase 3, c/o NAS regarding payment of the super-priority lien, the terms of which speak for  
15 themselves, and included a request for identification of the super-priority portion measure at a  
16 maximum of nine months of unpaid assessments, and offering to pay that amount upon proof of the  
17 same. **Joint Exhibit 32.**

18 18. NAS received Miles Bauer's letter, but did not respond based on its claim that doing  
19 so would violate the FDCPA.

20 19. BANA, through its counsel Miles Bauer, sent a letter dated September 10, 2012 to the  
21 Master Association, c/o Silver State, offering to pay the sum of nine months of common assessments  
22 pre-dating Mr. Nolan's default, requesting proof of that amount, and requesting information regarding  
23 the Master Association's sale. **Joint Exhibit 22.**

24 20. The Master Association provided a statement of account showing the total amount Mr.  
25 Nolan owed the Master Association through September 20, 2012 in response to Miles Bauer's letter.  
26 **Joint Exhibit 23.**

27 21. The Master Association assessed property owners in its community quarterly  
28 assessments of \$75.00 per quarter in 2011 and 2012. **Joint Exhibit 23.**

1           22.     Miles Bauer, on BANA's behalf, delivered a \$932.83 check to the Master Association  
2 c/o Silver State on or about October 4, 2012. **Joint Exhibits 24, 25, and 26.** This included \$225 nine  
3 months' worth of unpaid assessments, plus a voluntary payment of certain collection costs/fees.

4           23.     MERS assigned the deed of trust to BANA, successor by merger to BAC Home Loans  
5 Servicing, LP f/k/a Countrywide Home Loans Servicing, LP via an assignment of deed of trust dated  
6 January 3, 2012 and recorded with the Clark County Recorder on January 6, 2012, as Instrument No.  
7 201201060000225. **Joint Exhibit 5.**

8           22.     BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide  
9 Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage, LLC, via an assignment  
10 of the deed of trust recorded with the Clark County Recorder on July 10, 2013, as Instrument No.  
11 201307100000782. **Joint Exhibit 11.**

12           23. NAS, on Mandolin Phase 3's behalf, recorded a notice of foreclosure sale with the Clark  
13 County Recorder on November 15, 2012, as Instrument No. 201211150002280, advising it intended  
14 to conduct a public auction on December 14, 2012 pursuant to Mandolin Phase 3 CC&Rs. **Joint**  
15 **Exhibit 9.**

16           24.     NAS, on Behalf of Mandolin Phase 3, mailed the Notice of Foreclosure Sale to Bank  
17 of America, the former owner, and other interested parties on November 13, 2012. **Joint Exhibit 37**  
18 **Bates number BANA/Nolan-01-000357 - 362**

19           25.     On November 15, 2012, NAS on behalf of Mandolin Phase 3, caused a copy of the  
20 notice of sale to be posted on the property and in three locations in Clark County, Nevada. **Joint**  
21 **Exhibit 52.**

22           26.     NAS, on behalf of Mandolin Phase 3, caused the notice of sale to be published on  
23 November 21, 2012, November 30, 2012 and December 7, 2012 in the Nevada Legal News. **Joint**  
24 **Exhibit 53.**

25           27.     Mandolin Phase 3 and NAS sold the property at auction on February 1, 2013.

26           28.     NAS recorded a foreclosure deed with the Clark County Recorder on February 7, 2013,  
27 as Instrument No. 201302070001210 reflecting that 7510 Perla Del Mar Ave Trust purchased the  
28 property for \$14,600 at Mandolin Phase 3's sale. **Joint Exhibit 10.**



1           29.     The trustee of 7510 Perla Del Mar Ave Trust is Resources Group, LLC.  
2           30.     Eddie Haddad is the manager of Resources Group, LLC.  
3           31.     The "Fair Market Value" of the property at the time of the sale was \$158,500.00. *See*  
4 **Joint Exhibit 33**, expert report of Matthew Lubawy. The Fair Market Value definition does not  
5 consider the "forced sale" value of the real estate or the price of other comparable HOA non-judicial  
6 foreclosure sales, but the price which would result from negotiation and mutual agreement, after ample  
7 time to find a purchaser, between a vender who is willing, but no compelled to sell, and a purchaser  
8 who is willing to buy, but not compelled to take a particular piece of real estate. Plaintiff stipulates  
9 the calculation is correct under the definition of Fair Market Value, but disputes the relevance of the  
10 Fair Market Value calculation to this case.

11           32.     The Fee Simple Impaired Value of the property at the time of the sale in comparison to  
12 other HOA non-judicial foreclosure sales was \$14,600. *See Joint Exhibit 2*, expert report of Michael  
13 Brunson. Defendant stipulates the calculation is correct as to a forced HOA non-judicial foreclosure  
14 sale, but disputes the relevance of the Fee Simple Impaired Value calculation to this case.

15 DATED: February 12, 2018

16 **AKERMAN LLP**

17 */s/ [Signature]*  
18 **DARREN T. BRENNER, ESQ.**  
19 Nevada Bar No. 8386  
20 **KAREN A. WHELAN, ESQ.**  
21 Nevada Bar No. 10466  
22 1635 Village Center Circle, Suite 200  
23 Las Vegas, Nevada 89134

*Attorneys for Bank of America, N.A.*

15 DATED: February 12, 2018

16 **LAW OFFICES OF MICHAEL F. BOHN,**  
17 **ESQ., LTD**

18 */s/ [Signature]*  
19 **MICHAEL F. BOHN, ESQ.**  
20 Nevada Bar No. 16461  
21 **ADAM R. TRIPPIEDI, ESQ.**  
22 Nevada Bar No. 12294  
23 376 East Warm Springs Road, Suite 140  
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7 Attorney for appellant

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Sep 19 2018 02:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8  
9 SUPREME COURT  
10 STATE OF NEVADA

11  
12 7510 PERLA DEL MAR AVE TRUST,

CASE NO.: 75603

13 Appellant,

14 vs.

15 BANK OF AMERICA, N.A.,

16 Respondent.

17  
18 **JOINT APPENDIX 1**  
19

20 Michael F. Bohn, Esq.  
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24 Attorney for Appellant

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Jared M. Sechrist, Esq.  
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Attorney for Respondent

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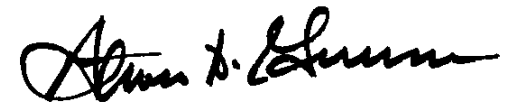
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CLERK OF THE COURT

1 ACOM  
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3 Nevada Bar No.: 1641  
4 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
5 LAW OFFICES OF  
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Attorney for plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY, A NEVADA  
CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

Defendants.

CASE NO.: A686277  
DEPT NO.:

**EXEMPTION FROM ARBITRATION:**  
**Title to real property**

**AMENDED COMPLAINT**

Plaintiff, 7510 Perla Del Mar Ave Trust, by and through it's attorney, Michael F. Bohn, Esq.  
alleges as follows:

**FIRST CLAIM FOR RELIEF**

1. Plaintiff is the owner of the real property commonly known as 7510 Perla Del Mar  
Avenue, Las Vegas, Nevada 89179.

2. Plaintiff obtained title by way of a Foreclosure Deed recorded on February 7, 2013.

3. Plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments  
due from the former owner to Mandolin pursuant to NRS Chapter 116.

4. Defendant Bank of America, N.A. is the assignee of a deed of trust which was recorded as an encumbrance to the subject property on December 10, 2010.

5. Defendant North American Title Company is the trustee on the deed of trust.

6. Defendant Dominic J. Nolan is the former owner of the subject real property.

7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owner, Dominic J. Nolan, to Mandolin, pursuant to NRS Chapter 116.

8. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010, that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.

9. Plaintiff is entitled to an award of attorneys fees and costs.

## **SECOND CLAIM FOR RELIEF**

10. Plaintiff repeats the allegations contained in paragraphs 1 through 9.

11. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

12. Plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

///

///

///

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

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

DATED this 1<sup>st</sup> day of September 2013.

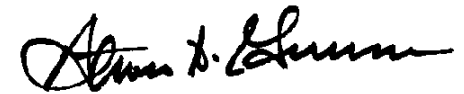
LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /  
Michael F. Bohn, Esq.  
376 East Warm Springs Road, Ste. 125  
Las Vegas, Nevada 89119  
Attorney for plaintiff

AOS

**DISTRICT COURT,  
CLARK COUNTY, NEVADA**

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CLERK OF THE COURT

**7510 PERLA DEL MAR AVE TRUST**

**Plaintiff**

**VS**

**BANK OF AMERICA, N.A., ET AL**

**Defendant**

**CASE NO: A686277**

**HEARING DATE/TIME:**

**DEPT NO: XXX**

**AFFIDAVIT OF SERVICE**

JACK RILEY 3015835 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the AMENDED SUMMONS; AMENDED COMPLAINT, on the 27th day of September, 2013 and served the same on the 30th day of September, 2013, at 12:15 by:

serving the servee BANK OF AMERICA, N.A. by personally delivering and leaving a copy at (address) 300 SO. FOURTH ST., 2ND FLOOR, LAS VEGAS NV 89101 with JUDY MCNUTT as RECEPTIONIST, an agent lawfully designated by statute to accept service of process;

**Pursuant to NRS 53.045**

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

**EXECUTED this** 2 **day of** October **20** 13



**JACK RILEY 3015835**

Junes Legal Services - 630 South 10th Street - Suite B - Las Vegas NV 89101 - (702) 579-6300 - Fax (702) 259-6249 - Toll Free (888) 56Junes

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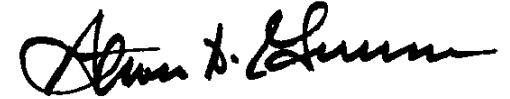
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APP000004



AOS

**DISTRICT COURT,  
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

**7510 PERLA DEL MAR AVE TRUST,  
ET AL**

**Plaintiff**

**VS**

**BANK OF AMERICA, N.A., ET AL**

**Defendant**

**CASE NO: A686277**

**HEARING DATE/TIME:**

**DEPT NO: XXX**

**AFFIDAVIT OF SERVICE**

GREGORY BROWN R-013683 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the AMENDED SUMMONS; AMENDED COMPLAINT, on the 26th day of September, 2013 and served the same on the 30th day of September, 2013, at 10:39 by:

serving the servee MOUNTAIN'S EDGE MASTER ASSOCIATION C/O REGISTERED AGENT FERA, LLC by personally delivering and leaving a copy at (address) 3455 CLIFF SHADOWS PKWY., #220, LAS VEGAS NV 89129 with SALEEMAH B. MANNSUR-JOHNSTON, pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

**Pursuant to NRS 53.045**

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

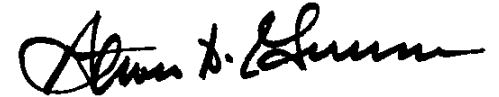
**EXECUTED this** 1 **day of** October, 2013.



**GREGORY BROWN R-013683**

AOS

**DISTRICT COURT,  
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

**7510 PERLA DEL MAR AVE TRUST,  
ET AL**

**Plaintiff**

**VS**

**BANK OF AMERICA, N.A., ET AL**

**Defendant**

**CASE NO: A686277**

**HEARING DATE/TIME:**

**DEPT NO: XXX**

**AFFIDAVIT OF SERVICE**

DOUGLAS DEMOTTA 0830109 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the AMENDED SUMMONS; AMENDED COMPLAINT, on the 26th day of September, 2013 and served the same on the 28th day of September, 2013, at 09:56 by:

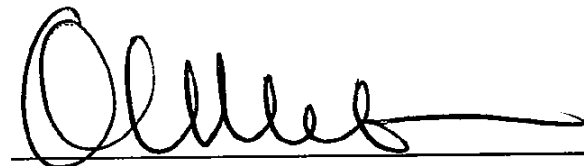
delivering and leaving a copy with the servee DOMINIC J. NOLAN at (address) 10451 GOLD SHADOW AVE., LAS VEGAS NV 89129

DESCRIPTION; 5'10" TALL, 170LBS, DARK HAIR, BLACK MALE 21 PLUS YEARS OLD.

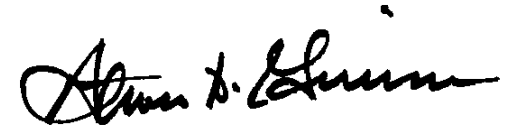
**Pursuant to NRS 53.045**

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

**EXECUTED this** 30 **day of** Sept, 2013



**DOUGLAS DEMOTTA 0830109**



CLERK OF THE COURT

AANS  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
REBEKKAH B. BODOFF, ESQ.  
Nevada Bar No. 12703  
AKERMAN LLP  
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Email: rebekkah.bodoff@akerman.com

*Attorneys for Bank of America, N.A.,*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,  
  
Plaintiff,  
  
v.  
  
BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN  
  
Defendants.

Case No.: A-13-686277-C

Dept.: XXX

**DEFENDANT BANK OF AMERICA,  
N.A.'S AMENDED ANSWER TO  
COMPLAINT, COUNTERCLAIMS  
AGAINST PLAINTIFF, AND  
CROSSCLAIMS AGAINST MANDOLIN  
HOMEOWNERS ASSOCIATION AND  
NEVADA ASSOCIATION SERVICES,  
INC.**

**(To Correct Improperly Named Cross-  
Defendants)**

BANK OF AMERICA, N.A.,  
  
Cross-Claimant,  
  
v.  
  
MANDOLIN HOMEOWNERS ASSOCIATION  
AND NEVADA ASSOCIATION SERVICES,  
INC.  
  
Cross-Defendants.

{38801644;2}

1 Defendant Bank of America, N.A. (**Bank of America**) amends its answer to 7510 Perla Del  
2 Mar Ave Trust (**Plaintiff**) Complaint as follows:

3 **COMPLAINT**

4 1. Denied.

5 2. Denied.

6 3. Denied.

7 4. Admit.

8 5. Admit.

9 6. BANA is without knowledge or information sufficient to form a belief as to the truth  
10 of the allegations contained in Paragraph 6 and, therefore, denies the allegations of Paragraph 6.

11 7. Denied.

12 8. Denied.

13 9. Denied.

14 10. Bank of America reasserts and re-alleges its responses and defenses as set forth above  
15 in Paragraphs 1 through 9.

16 11. Denied.

17 12. Denied.

18 13. With respect to the WHEREFORE clause following Paragraph 12, Bank of America  
19 denies that Plaintiff is entitled to any of the relief requested.

20 **AFFIRMATIVE DEFENSES**

21 Bank of America asserts the following additional defenses. Discovery and investigation of  
22 this case is not yet complete, and Bank of America reserves the right to amend this Answer by  
23 adding, deleting, or amending defenses as may be appropriate. In further answer to the Complaint,  
24 and by way of additional defenses, Bank of America avers as follows:

25 **FIRST AFFIRMATIVE DEFENSE**  
26 **(Failure to State a Claim)**

27 Plaintiff has failed to state facts sufficient to constitute any cause of action against  
28 Defendants.

**SECOND AFFIRMATIVE DEFENSE****(Void for Vagueness)**

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

**THIRD AFFIRMATIVE DEFENSE****(Due Process Violations)**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

**FOURTH AFFIRMATIVE DEFENSE****(Tender, Estoppel, Laches and Waiver)**

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

**FIFTH AFFIRMATIVE DEFENSE****(Commercial Reasonableness and Violation of Good Faith)**

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

**SIXTH AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

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

**SEVENTH AFFIRMATIVE DEFENSE****(No Standing)**

The Plaintiffs lacks standing to bring some or all of their claims and causes of action.

**EIGHTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

Defendant avers the affirmative defense of unclean hands.

**NINTH AFFIRMATIVE DEFENSE****(Plaintiff is Not Entitled to Relief)**

Defendant denies that the Plaintiff is entitled to any relief for which it prays.

**TENTH AFFIRMATIVE DEFENSE****(Failure to Do Equity)**

Defendant avers the affirmative defense of failure to do equity.

**ELEVENTH AFFIRMATIVE DEFENSE****(Failure to Provide Notice)**

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

**TWELFTH AFFIRMATIVE DEFENSE****(Void Foreclosure Sale)**

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

**THIRTEENTH AFFIRMATIVE DEFENSE****(Federal Law)**

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

**FOURTEENTH AFFIRMATIVE DEFENSE****(Supremacy Clause)**

The HOA sale is void or otherwise fails to extinguish the applicable deed of trust pursuant to the Supremacy Clause of the United States Constitution.

**FIFTEENTH AFFIRMATIVE DEFENSE****(Additional Affirmative Defenses)**

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

**SIXTEENTH AFFIRMATIVE DEFENSE****(Due Process — Facially Unconstitutional Provisions)**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE****(Plaintiff is not a Bona Fide Purchaser for Value)**

Plaintiff purchased the property with record notice of the interest of the senior deed of trust recorded against the property.

**EIGHTEENTH AFFIRMATIVE DEFENSE****(Assumption of the Risk)**

Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions and transactions upon which it now bases its various claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.

**NINETEENTH AFFIRMATIVE DEFENSE****(Barred by 12 U.S.C. § 4617(j)(3))**

Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts any state law to the contrary.

**COUNTERCLAIMS AND CROSS-CLAIMS**  
**GENERAL ALLEGATIONS**

1. Under Nevada law, homeowners' associations have the right to charge property owners residing within the community assessments to cover the homeowners' association's expenses for maintaining or improving the community, among other things.

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

3. A homeowners' association may impose a lien for "any penalties, fees, charges, late charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

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

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



### The Deed of Trust and Assignment

6. On or about December 9, 2010, Dominic J. Nolan (**Borrower**) purchased real property located at 7510 Perla Del Mar Ave, Las Vegas, Nevada (the **Property**) via a loan secured by a deed of trust executed in favor of KBA Mortgage, LLC. A true and correct copy of the Deed of Trust is attached as **Exhibit A**.

7. KBA Mortgage, LLC's Deed of Trust was assigned to Bank of America via an Assignment of Deed of Trust recorded on January 6, 2012. A true and correct copy of the Assignment is attached as **Exhibit B**.

### The HOA Liens and Foreclosure

8. Upon information and belief, Borrower failed to pay the HOA all amounts due to it. Accordingly, on January 4, 2012, Nevada Association Services (NAS), as agent for the Mandolin (**Mandolin**), recorded a Notice of Delinquent Assessment Lien. **Exhibit C**. The Lien recorded by NAS stated the amount due to the HOA was \$987.44, which included assessments, late fees, collection fees and interest. The Lien neither identifies the super-priority amount claimed by the HOA, nor describes the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

9. On February 2, 2012, Silver State Trustee Services (Silver State), as agent for the master association, Mountain's Edge Masters Association (**Mountain's Edge**), recorded a Notice of Delinquent Assessment Lien. **Exhibit D**. The lien recorded by Silver State stated the amount due to the Mountain's Edge Masters Association was \$718.50, which included assessments, late fees, collection fees and interest. **Exhibit D**. The lien neither identifies the super-priority amount claimed by the HOA, nor describes the "deficiency in payment" required by NRS 116.31162(1)(b)(1). Upon information and belief, this lien was satisfied.

10. On February 27, 2012, Mandolin, through its agent NAS, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien. The Notice stated the amount due

1 to the HOA was \$1,992.87, which included assessments, late fees, collection fees and interest. A true  
2 and correct copy of the Notice of Default is attached as **Exhibit E**. The Notice of Default neither  
3 identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment”  
4 required by NRS 116.31162(1)(b)(1).

5 ...

6 11. On August 14, 2012, Mountain’s Edge, through its agent Silver State, recorded a  
7 Notice of Default and Election to Sell Under Homeowners Association Lien. The Notice stated the  
8 amount due to Mountain’s Edge Masters Association was \$2,183.50, which included assessments,  
9 late fees, collection fees and interest. A true and correct copy of the Notice of Default is attached as  
10 **Exhibit F**. The Notice of Default neither identifies the super-priority amount claimed by the HOA,  
11 nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

12 12. On November 15, 2012, Mandolin, through NAS, recorded a Notice of Foreclosure  
13 Sale, stating the total amount due to the HOA was \$3,954.62 and setting the sale for December 14,  
14 2012. A true and correct copy of the Notice is attached as **Exhibit G**. The Notice of Sale neither  
15 identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment”  
16 required by NRS 116.31162(1)(b)(1).

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

20 14. In none of the recorded documents nor in any notice did the HOA specify that Bank  
21 of America’s interest in the Property would be extinguished by the HOA foreclosure.

22 15. On or about March 16, 2012, Bank of America, through counsel Miles Bauer  
23 requested NAS, as agent for Mandolin, provide it with information about and offered to pay the  
24

25

26

27 {38801644;2}

1 amount of nine months of assessments. **Exhibit H.** Bank of America did not receive a response to  
2 this letter. *Id.*

3 16. Bank of America, through counsel at Miles Bauer, tried again after March 16, 2012 to  
4 obtain the amount of nine months of assessments in order to tender such an amount to NAS. David  
5 Stone, the President of NAS, however, confirmed to Miles Bauer that he would not provide the  
6 requisite payoff ledger and tender information out of concern for violating the Fair Debt Collection  
7 Practices Act. As such, Bank of America's attempt to tender payment was rejected.

8 17. After rejecting Bank of America's offer to tender payment of the full super-priority  
9 amount, the HOA non-judicially foreclosed on the Property, selling the Property to Plaintiff on or  
10 about February 1, 2013 for \$14,600.00. A true and correct copy of the Foreclosure Deed is attached  
11 as **Exhibit I.**

12 18. Bank of America, through its counsel, also requested Silver State, as agent for  
13 Mountain's Edge Masters Association, provide it with information about and offered to pay the  
14 amount of nine months of assessments on September 10, 2012. **Exhibit J.**

15 19. While Silver State did provide a payoff demand on September 20, 2012, Silver State  
16 demanded payment in the amount of \$2,793.50 to satisfy the super-priority portion of the lien. A true  
17 and correct copy of the payoff demand is attached as **Exhibit K.** Silver State demanded this amount  
18 despite the fact that NRS 116.3116(2)(c) grants super-priority to only that portion of a HOA lien  
19 equal to the last nine months of delinquent assessments.

20 20. Bank of America, through counsel at Miles Bauer, tendered payment of \$932.83 to  
21 Silver State on or about October 4, 2012. This \$932.83 was equal to the last nine months of  
22 delinquent assessments, which was the maximum amount the Mountain's Edge Masters Association  
23 could claim had super-priority over BANA's first Deed of Trust and reasonable collection costs. A  
24 true and correct copy of the tender letter and cashier's check is attached as **Exhibit L.** Nevertheless,  
25 the Mountain's Edge Masters Association, through the Silver State, rejected Bank of America's  
26 tender payment. **Exhibit M.**

21. Despite correspondence to the contrary, Mountain's Edge Masters Association did not foreclose upon the subject property. Instead, Mandolin, through NAS, conducted its own foreclosure sale.

22. NAS's sale of Mandolin's interest in the Property for approximately 9% of the value of the senior Deed of Trust, and upon information and belief, a similarly diminutive percentage of the Property's fair market value, is commercially unreasonable and not in good faith as required by NRS 116.1113.

23. Mandolin and NAS were aware prior to the sale of a split among Nevada courts concerning their ability to eliminate Bank of America's first Deed of Trust by foreclosing, and proceeded to sell the Property for an extremely depressed price due to the legal uncertainty.

24. This foreclosure sale was commercially unreasonable because the manner in which Mandolin and NAS conducted the sale, including the notices it provided, the legal uncertainty concerning the effect of the sale, and other circumstances surrounding the sale, was not calculated to attract proper perspective purchasers, and thus could not promote an equitable sales price of the Property.

25. Mandolin and NAS' foreclosure sale was commercially unreasonable because, in calculating the super-priority amount allegedly owed, the HOA included amounts in its supposed super-priority lien – including fines, interest, late fees, and costs of collection – that were not allowed to be included in its super-priority lien under NRS 116.311(c). It was also unreasonable that the HOA and NAS failed to provide the chance for Bank of America to tender any alleged super-priority lien.

26. Mandolin and NAS' foreclosure sale was invalid and did not extinguish Bank of America's first Deed of Trust because Bank of America's attempted tender of the super-priority amount extinguished any super-priority lien held by Mandolin.

27. Mandolin and NAS' foreclosure sale was commercially unreasonable because any failure to receive a tender amount was caused by NAS's refusal to identify or accurately define the amount of the HOA's super-priority lien.

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief / Quiet Title Against Plaintiff)**

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

44. Under NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and authority to declare Bank of America's rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

45. The HOA, through NAS, foreclosed on the HOA's lien on February 1, 2013.

46. Upon information and belief, Plaintiff claims an interest in the Property adverse to Bank of America, in that Plaintiff claims that the HOA and NAS' foreclosure sale extinguished Bank of America's interest in the Property. A judicial determination is necessary to ascertain the rights, obligations, and duties of the various parties.

47. Bank of America is entitled to a declaration that the HOA and NAS' foreclosure sale did not extinguish Bank of America's interest.

48. The HOA and NAS' foreclosure sale did not extinguish Bank of America's senior Deed of Trust because the recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required by Nevada law, including, without limitation: whether the deficiency included a "super-priority" component, the amount of the super-priority component, how the super-priority component was calculated, when payment on the super-priority component was required, where payment was to be made, or the consequences for failure to pay the super-priority component.

49. The foreclosure sale did not extinguish Bank of America's senior Deed of Trust because Bank of America attempted to tender the super-priority amount to the HOA and NAS, and the HOA and NAS wrongfully refused to provide an amount to tender.

50. The HOA and NAS' foreclosure sale did not extinguish Bank of America's senior Deed of Trust because the statute authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does not mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as required by the Due Process Clause of the United States Constitution.

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

**(Declaratory Judgment Against Plaintiff)**

...

1           43.     This foreclosure sale is invalid, and thus did not extinguish Bank of America's deed  
2 of trust, because NRS 116, *et seq.* is facially unconstitutional, as it does not mandate that deed of  
3 trust beneficiaries receive actual notice of an HOA's foreclosure sale, as required by the Due Process  
4 Clause of the United States Constitution.

5           44.     The HOA's foreclosure sale did not extinguish Bank of America's senior Deed of  
6 Trust because the recorded notices, even if they were in fact provided, failed to describe the lien in  
7 sufficient detail as required by the United States Constitution and Nevada law, including, without  
8 limitation: whether the deficiency included a "super-priority" component, the amount of the super-  
9 priority component, how the super-priority component was calculated, when payment on the super-  
10 priority component was required, where payment was to be made, or the consequences for failure to  
11 pay the super-priority component.

12           45.     The foreclosure sale did not extinguish the senior Deed of Trust because the sale was  
13 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS  
14 116.1113 in several respects, including, without limitation: the lack of sufficient notice, NAS and the  
15 HOA's failure to provide Bank of America with a payoff ledger showing the super-priority amount,  
16 the sale of the Property for a fraction of the loan balance or actual market value of the Property, a  
17 foreclosure that was not calculated to promote an equitable sales price for the Property or to attract  
18 proper prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a  
19 maximum profit for the HOA and NAS without regard to the rights and interests of those who have  
20 an interest in the loan and made the purchase of the Property possible in the first place.

21           46.     Based on the adverse claims being asserted by the parties, there is an actual case in  
22 controversy between them, and a judicial determination is necessary to ascertain the rights,  
23 obligations, and duties of the various parties.

24           47.     Bank of America is entitled to a declaration that the HOA sale did not extinguish the  
25 senior Deed of Trust, which is superior to any interest acquired by Plaintiff through the HOA  
26 foreclosure sale.

27 ...

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

3                           **THIRD CAUSE OF ACTION**  
4                           **(Unjust Enrichment Against Mandolin)**

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

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

9           51. The portion of the lien with super-priority consists of only the last nine months of  
10 assessments for common expenses incurred prior to the institution of an action to enforce the lien.  
11 The remainder of a homeowners' association's lien is subordinate to a first deed of trust.

12           52. Prior to the foreclosure sale, Bank of America, through counsel at Miles Bauer,  
13 requested from NAS and the HOA a payoff ledger detailing the super-priority amount Bank of  
14 America would be required to tender to protect its first Deed of Trust.

15           53. NAS and the HOA refused to provide a payoff ledger in order for Bank of America to  
16 identify the true super-priority amount allowed under NRS 116.3116(2)(c).

17           54. The HOA, through NAS rejected Bank of America's tender of the super-priority  
18 amount by failing to provide the amount needed for tender to Bank of America.

19           55. Instead, the HOA, through NAS, foreclosed on the Property. This allowed the HOA  
20 to sell the property at the foreclosure sale for \$14,600, approximately 9% of the original value of the  
21 first Deed of Trust.

22           56. By foreclosing on the Property rather than permitting Bank of America to tender the  
23 super-priority amount, the HOA was unjustly enriched in an amount at least equal to the difference  
24 between the true super-priority portion of its lien and the amount the HOA actually recovered from  
25 the foreclosure proceeds.

26           57. Bank of America was injured as a direct and proximate result of the HOA's actions.

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



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

**FOURTH CAUSE OF ACTION**  
**(Unjust Enrichment Against NAS)**

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

61. By refusing to accept Bank of America's offer to tender the full super-priority amount necessary to prevent foreclosure, NAS provided itself with the opportunity to perform many additional services relating to the foreclosure on behalf of the HOA.

62. Consequently, NAS has been unjustly enriched by refusing in bad faith to accept Bank of America's efforts to tender the full super-priority amount and Bank of America has been injured as a direct and proximate result of NAS' conduct. NAS has been unjustly enriched in an amount at least equal to NAS' charges for services rendered after Bank of America attempted tender; services that would have been unnecessary if NAS had agreed to provide a payoff ledger.

63. Bank of America is entitled to a reasonable amount of the benefits obtained by the NAS based on a theory of unjust enrichment.

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

**FIFTH CAUSE OF ACTION**  
**(Tortious Interference with Contractual Relations Against Mandolin and NAS)**

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

66. On December 9, 2010, Borrower executed a Deed of Trust of trust in favor of KBA Mortgage, LLC. This Deed of Trust was subsequently assigned to Bank of America, via an Assignment of Deed of Trust recorded on January 6, 2012.

67. On November 15, 2012, NAS, as agent for the HOA, recorded a Notice of Foreclosure Sale, stating the Borrower owed \$3,954.62 in assessments, dues, interest, and fees.

68. In an effort to protect its first Deed of Trust, Bank of America, through counsel at Miles Bauer, reached out to NAS to obtain a payoff ledger, seeking to determine the portion of the HOA's lien which had super-priority over Bank of America's first Deed of Trust. NAS failed to provide a payoff ledger.

69. Rather than accept Bank of America's effort to tender, the HOA, through NAS, foreclosed on the Property. The HOA sold the Property to Plaintiff for \$14,600, approximately 9% of the original amount of the senior deed of trust.

70. The HOA's decision to foreclose on the Property rather than accept Bank of America's tender overtures—which would have prevented foreclosure—was designed to disrupt, and did disrupt, the contractual relationship between Bank of America and Borrower by extinguishing Bank of America's first Deed of Trust.

71. The HOA and NAS' foreclosure allowed the HOA to recover the full value of its delinquent assessment lien rather than just the amount of the lien with super-priority over Bank of America's first Deed of Trust.

72. While NAS' rejection of tender and subsequent foreclosure sale allowed the HOA to recover the full value of its lien, its conduct directly and proximately injured Bank of America in that it has put the first priority position of Bank of America's Deed of Trust in dispute.

73. Bank of America is entitled to an order establishing that its Deed of Trust is the senior lien encumbering the Property or, in the alternative, monetary damages equal to the value secured by its first Deed of Trust that was purportedly extinguished as a direct result of the HOA and NAS and Silver State's intentional acts.

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

#### **SIXTH CAUSE OF ACTION**

#### **(Breach of the Duty of Good Faith Against Mandolin and NAS)**

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

1 76. NRS 116.1113 provides that every duty governed by NRS 116, the Common-Interest  
2 Ownership Uniform Act, must be performed in good faith.

3 77. Prior to the foreclosure of the Property, Bank of America attempted to obtain payoff  
4 information from NAS, as agent for the HOA, but NAS, acting on behalf of the HOA, refused to  
5 provide the requested information.

6 78. Rather than accept a payment which would satisfy its super-priority lien, the HOA  
7 determined in bad faith to foreclose on the Property pursuant to NRS 116, and thereby breached its  
8 duty of good faith.

9 79. This bad-faith foreclosure allowed the HOA to recover the full value of its lien for  
10 delinquent assessments, rather than the portion of the lien with priority over Bank of America's first  
11 Deed of Trust. As a direct and proximate result of the HOA and NAS' conduct, the first priority  
12 position of Bank of America's Deed of Trust with an original amount of \$164,032.00 has been put  
13 in dispute.

14 80. Bank of America is entitled to an order establishing that its Deed of Trust is the senior  
15 lien encumbering the Property or, in the alternative, monetary damages equal to the value secured by  
16 its first Deed of Trust that was purportedly extinguished as a direct result of the HOA and NAS' bad-  
17 faith foreclosure.

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

20 **SEVENTH CAUSE OF ACTION**  
21 **(Wrongful Foreclosure Against Mandolin and NAS)**

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

24 83. Prior to the foreclosure of the Property, Bank of America attempted to obtain payoff  
25 information from NAS, as agent for the HOA, but NAS, acting on behalf of the HOA, refused to  
26 provide the requested information.

27 ...

28 ...

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

WHEREFORE, Bank of America prays for the following:

4. A preliminary injunction prohibiting Plaintiff, its successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the Property that is claimed to be superior to the senior Deed of Trust, or not subject to the senior Deed of Trust;

5. A preliminary injunction requiring Plaintiff to pay all taxes, insurance, and homeowner's association dues during the pendency of this action;

6. Judgment in Bank of America's favor against Plaintiff for the amount that it was unjustly enriched in an amount in excess of \$10,000;

7. Judgment in Bank of America's favor against the HOA for the damages it caused Bank of America in an amount in excess of \$10,000;

8. Judgment in Bank of America's favor against NAS for the damages it caused Bank of America in an amount in excess of \$10,000;

9. Reasonable attorney's fees as special damages and the costs of the suit; and

10. For such other and further relief the Court deems proper.

DATED: August 10, 2016

**AKERMAN LLP**

/s/ Rebekkah B. Bodoff, Esq.

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH B. BODOFF, ESQ.

Nevada Bar No. 12703

AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Defendant Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 10<sup>th</sup> day of August, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.’S AMENDED ANSWER TO COMPLAINT, COUNTERCLAIMS AGAINST PLAINTIFF, AND CROSSCLAIMS AGAINST MANDOLIN HOMEOWNERS ASSOCIATION AND NEVADA ASSOCIATION SERVICES, INC. (To Correct Improperly Named Cross-Defendants)**, in the following manner:

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

Law Offices of Michael F. Bohn, Esq. – Attorney for Plaintiff		
	Contact	Email
	Eserve Contact	<a href="mailto:office@bohnlawfirm.com">office@bohnlawfirm.com</a>
	Michael F Bohn Esq	<a href="mailto:mbohn@bohnlawfirm.com">mbohn@bohnlawfirm.com</a>
Michael F. Bohn, Esq. Law Offices Of Michael F. Bohn, Esq. Ltd. 376 East Warm Springs Road, Suite 125 Las Vegas, Nevada 89119		

/s/ Carla Llarena  
An employee of AKERMAN LLP

# EXHIBIT A

# EXHIBIT A

Assessor's Parcel Number:  
176-34-114-031  
After Recording Return To:

Inst #: 201012100002325  
Fees: \$37.00  
N/C Fee: \$0.00  
12/10/2010 02:05:11 PM  
Receipt #: 608447  
Requestor:  
NORTH AMERICAN TITLE MAIN  
Recorded By: OSA Pgs: 24  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

Recon Trust Co./TX2-979-01-0  
P.O. Box 619003  
Dallas, TX 75261-9003  
Prepared By:  
LING TING  
Recording Requested By:  
M. WARNER

KBA Mortgage, LLC

7660 DEAN MARTIN DR, STE  
201A  
LAS VEGAS  
NV 89139

[Space Above This Line For Recording Data]

LAP454562778322 45002-10-12984 000 2010  
[Case #] [Escrow/Closing #] [Doc ID #]

Lender affirms that this instrument does not contain Personal Information as that term is defined in Nevada  
Revised Statutes §603A.040.

## DEED OF TRUST

MIN 1001337-0003726029-9

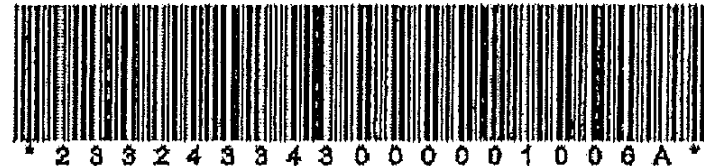
NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT  
THE APPROVAL OF THE DEPARTMENT OF  
VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)(d/l)

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APP000028



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12010

**DEFINITIONS**

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

(A) "Security Instrument" means this document, which is dated DECEMBER 09, 2010, together with all Riders to this document.

(B) "Borrower" is

DOMINIC J NOLAN, A SINGLE MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

KBA Mortgage, LLC

Lender is a

CORPORATION

organized and existing under the laws of DELAWARE

Lender's address is

27001 Agoura Road, Suite 200

Calabasas Hills, CA 91301

(D) "Trustee" is

NORTH AMERICAN TITLE COMPANY

3571 E SUNSET ROAD

LAS VEGAS, NV 89120

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

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 09, 2010.

The Note states that Borrower owes Lender

ONE HUNDRED SIXTY FOUR THOUSAND THIRTY TWO and 00/100

Dollars (U.S. \$ 164,032.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2041.

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

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

Form 3029 1/01

MERS Deed of Trust-NV  
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12010

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

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

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

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

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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BANA/Nolan-01-000012

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2010

described property located in the

COUNTY

of

[Type of Recording Jurisdiction]

CLARK

:

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

7510 PERLA DEL MAR AVE, LAS VEGAS

[Street/City]

Nevada 89179-2500 ("Property Address"):

[Zip Code]

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

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

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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12010

subject to any encumbrances of record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing

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

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further;

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

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

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

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

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

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

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

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

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

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in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a

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substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity;

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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APP000039

CASE #: LAP454562778322

DOC ID #: 000\_\_\_\_\_12010

or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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CASE #: LAP454562778322

DOC ID #: 000

12010

affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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APP000041

CASE #: LAP454562778322

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12010

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

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



DOMINIC J. NOLAN

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

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

Form 3029 1/01

MERS Deed of Trust-NV  
1006A-NV (08/08)

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APP000042



CASE #: LAP454562778322  
STATE OF NEVADA  
COUNTY OF Clark

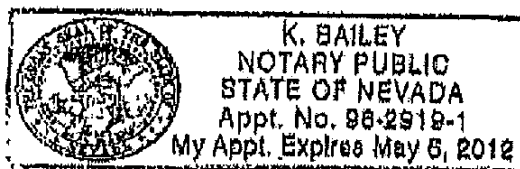
DOC ID #: 000

L2010

This instrument was acknowledged before me on 12-9-10 by  
Dominic J. Nolan

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065



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

MERS Deed of Trust-NV  
1006A-NV (08/08)

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Form 3029 1/01

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APP000043

CASE #: LAP454562778322

DOC ID #: 000.

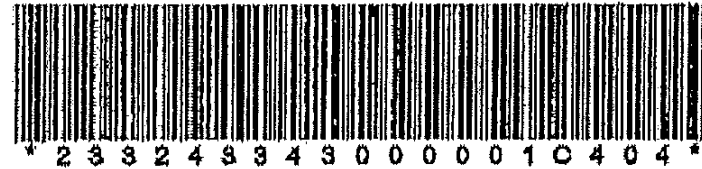
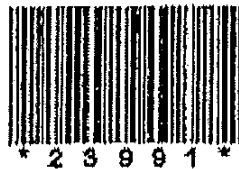
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## LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by map thereof on file in Book 134 of Plats, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

Legal Description Exhibit A  
1C404-XX (08/08)(d/I)

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BANA/Nolan-01-000026

APP000044



## VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

LAP454562778322  
[Case #]

45002-10-12984  
[Escrow/Closing #]

000: 12010  
[Doc ID #]

**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT  
THE APPROVAL OF THE DEPARTMENT OF VETERANS  
AFFAIRS OR ITS AUTHORIZED AGENT.**

THIS VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER is made this NINTH  
day of DECEMBER, 2010 , and is incorporated into and shall be deemed to amend and supplement the  
Mortgage, Deed of Trust or Deed to Secure Debt (herein "Security Instrument") dated of even date herewith,  
given by the undersigned (herein "Borrower") to secure Borrower's Note to  
KBA Mortgage, LLC

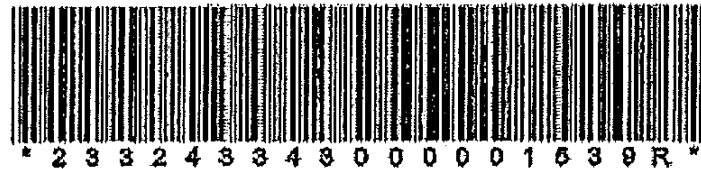
(herein "Lender") and covering the Property described in the Security Instrument and located at  
7510 PERLA DEL MAR AVE, LAS VEGAS, NV 89179-2500 .

[Property Address]

VA GUARANTEED LOAN COVENANT: In addition to the covenants and agreements made in the Security  
Instrument, Borrower and Lender further covenant and agree as follows:

If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and  
Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of  
Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection  
with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the  
provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision  
that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 18 of the Security  
Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or  
Regulations.

VA Guaranteed Loan and Assumption Policy Rider  
1539R-XX (07/10)(d/i) Page 1 of 3



BANA/Nolan-01-000027

APP000045

CASE #: LAP454562778322

DOC ID #: 000:

12010

**LATE CHARGE:** At Lender's option, Borrower will pay a "late charge" not exceeding four per centum (4%) of the overdue payment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

**TRANSFER OF THE PROPERTY:** This loan may be declared immediately due and payable upon transfer of the Property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

An authorized transfer ("assumption") of the Property shall also be subject to additional covenants and agreements as set forth below:

- (a) **ASSUMPTION FUNDING FEE:** A fee equal to one half of one percent ( 0.50 %) of the balance of this loan as of the date of transfer of the Property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729 (c).
- (b) **ASSUMPTION PROCESSING CHARGE:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.
- (c) **ASSUMPTION INDEMNITY LIABILITY:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the

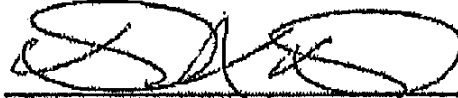
CASE #: LAP454562778322

DOC ID #: 000

12010

loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this VA Guaranteed Loan and Assumption Policy Rider.



DOMINIC J. NOLAN

- Borrower

- Borrower

- Borrower

- Borrower

## PLANNED UNIT DEVELOPMENT RIDER

LAP454562778322

[Case #]

45002-10-12984

[Escrow/Closing #]

000

[Doc ID #]

L2010

THIS PLANNED UNIT DEVELOPMENT RIDER is made this NINTH day of DECEMBER, 2010, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to KBA Mortgage, LLC.

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

7510 PERLA DEL MAR AVE  
LAS VEGAS, NV 89179-2500  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

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

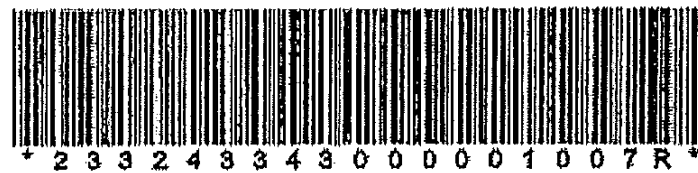
[Name of Planned Unit Development]

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

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01

Planned Unit Development Rider  
1007R-XX (05/08)(d/i)

Page 1 of 3



BANA/Nolan-01-000030

APP000048

CASE #: LAP454562778322

DOC ID #: 000

12010

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

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

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

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

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

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

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

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

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

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

Form 3150 1/01

Planned Unit Development Rider  
1007R-XX (05/08)

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CASE #: LAP454562778322

DOC ID #: 000

12010

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

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

  
\_\_\_\_\_  
DOMINIC J. NOLAN (Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01

Planned Unit Development Rider  
1007R-XX (05/08)

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BANA/Nolan-01-000032

APP000050

CASE #: LAP454562776322

LOAN #:

### LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by map thereof on file in Book 134 of Plans, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

Legal Description Exhibit A  
2C404-XX (07/10)(d/i)

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BANA/Nolan-01-000033

APP000051

# EXHIBIT B

# EXHIBIT B



Recording Requested By:  
Bank of America  
Prepared By: Aida Duenas  
888-603-9011  
When recorded mail to:  
CoreLogic  
450 E. Boundary St.  
Attn: Release Dept.  
Chapin, SC 29036



DocID# 122 10733  
Tax ID: 176-34-114-031  
Property Address:  
7510 Perla Del Mar Ave  
Las Vegas, NV 89179-2500  
NVO-ADT 16687097 1/3/2012

Inst #: 201201060000225

Fees: \$18.00

N/C Fee: \$0.00

01/05/2012 08:01:36 AM

Receipt #: 1025277

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1001337-0003726029-9

MERS Phone #: 888-679-6377

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1901 E Voorhees Street, Suite C, Danville, IL 61834 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: KBA MORTGAGE, LLC  
Made By: DOMINIC J NOLAN, A SINGLE MAN  
Trustee: NORTH AMERICAN TITLE COMPANY  
Date of Deed of Trust: 12/9/2010 Original Loan Amount: \$164,032.00

Recorded in Clark County, NV on: 12/10/2010, book 20101210, page 0002325 and instrument number N/A

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

1-3-2012

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

By:

Cynthia Santos Assistant Secretary

BANA/Nolan-01-000036

APP000053

State of California  
County of Ventura

On JAN 09 2012 before me, Barbara J. Gibbs, Notary Public, personally appeared  
Cynthia Santos

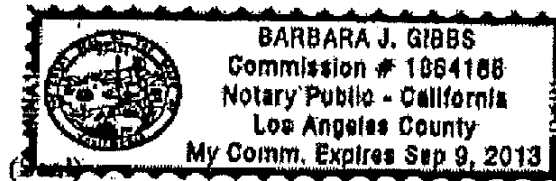
, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that ~~he~~ she ~~they~~ executed the same in his ~~her~~ her authorized capacity (ies), and that by his ~~her~~ her signature(s) on the instrument 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 Public: Barbara J. Gibbs  
My Commission Expires: September 9, 2013



DocID# 12223324334310733

BANA/Nolan-01-000037

APP000054

# EXHIBIT C

# EXHIBIT C

Inst #: 201201040001123  
Fees: \$17.00  
N/C Fee: \$0.00  
01/04/2012 09:18:22 AM  
Receipt #: 1025708  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: SOL Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### Accommodation

APN # 176-34-114-031  
# N69603

### 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 July 6, 2006, as instrument number 000347 BK 20060706, of the official records of Clark County, Nevada, the Mandolin has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 7510 Perla Del Mar Ave Las Vegas, NV 89179 particularly legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Dominic J Nolan

Mailing address(es):  
7510 Perla Del Mar Ave Las Vegas, NV 89179

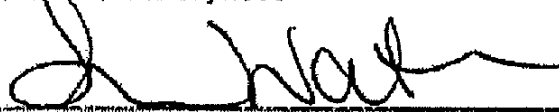
\*Total amount due as of today's date is \$987.44.

This amount includes late fees, collection fees and interest in the amount of \$648.34

\* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: December 29, 2011



By Shea Watkins, of Nevada Association Services, Inc., as agent for Mandolin

When Recorded Mail To:  
Nevada Association Services  
TS # N69603  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

BANA/Nolan-01-000035

APP000056

# EXHIBIT D

# EXHIBIT D

(17)

Inst #: 201202020001210

Fee: \$18.00

N/C Fee: \$0.00

02/02/2012 09:32:38 AM

Receipt #: 1054971

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:  
Silver State Trustee Services, LLC  
In affiliation with  
Robert Walsh, Esq.  
1424 South Jones Blvd.  
Las Vegas, NV 89146-1231

APN#: 176-34-114-031  
TS# 103816

**Accommodation**

**Notice of Delinquent Assessment Lien**

Notice is hereby given pursuant to NRS 116.3116, **Mountains Edge Master Association**, having a declaration of Covenants, Conditions and Restrictions recorded 04/14/2003 Instrument No. 02089, Book # 20030414 claims a lien upon real property, building, improvements and structures thereon, described below.

The amount of assessments, interest costs and penalties in arrears is \$323.50 together with collection and lien costs and fees of \$395.00 the **total amount due is: \$718.50. Due by 03/09/2012.** If not cured within thirty (30) days, a Notice of Default Election to Sell Real Property under Assessment Claim & Lien will be recorded against the property.

Property Address: 7510 Perla Del Mar Avenue  
Las Vegas, NV 89179-2500

Legal Description: Plat Book 134, Page 21; Lot 63 Block --  
Mandolin Phase 3 at Mountains Edge

Owner of Record: Nolan, Dominic J.

Mailing Address: Same

The amount owed to cure this lien increases at the rate of quarterly assessments, monthly late fees, interest and special assessments as well as all additional fees of the Agent for the Association and/or Management body.

Dated this 31<sup>ST</sup> day of January 2012  
Contracted Agent for  
**Mountains Edge Master Association**


  
\_\_\_\_\_  
Monique Washington

BANA/Nolan-01-000046

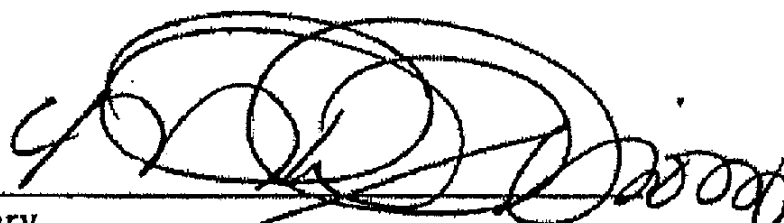
APP000058

State of Nevada     }  
County of Clark    }

Monique Washington, being first duly sworn, deposes and says: That I am the authorized representative of **Mountains Edge Master Association** in the above entitled action: That I have read the foregoing Notice of Delinquent assessment Lien and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
Monique Washington

Subscribed and Sworn to before  
me the 31<sup>ST</sup> day of January, 2012.

  
\_\_\_\_\_  
Notary

M. D. SIMONS  
NOTARY PUBLIC  
STATE OF NEVADA  
My Commission Expires: 5-10-2014  
Certificate No: 04-3822-1

BANA/Nolan-01-000047

APP000059

# EXHIBIT E

# EXHIBIT E



APN # 176-34-114-031  
NAS # N69603  
North American Title # 36179  
Property Address: 7510 Perla Del Mar Ave

Inst #: 201202270002448  
Fee: \$18.00  
N/C Fee: \$0.00  
02/27/2012 02:41:00 PM  
Receipt #: 1078602  
Requestor:  
NORTH AMERICAN TITLE SUNSET  
Recorded By: LEX Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### **Accommodation**

## **NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

### **IMPORTANT NOTICE**

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

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT  
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in  
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted  
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice  
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$1,992.87 as of February 23, 2012 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)  
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and  
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the  
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your  
Covenants Conditions and Restrictions, Mandolin (the Association) may insist that you do so in order to reinstate  
your account in good standing. In addition, the Association may require as a condition to reinstatement that you  
provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You  
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you  
must pay all amounts in default at the time payment is made. However, you and your Association may mutually  
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure  
the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your  
default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the  
obligation being foreclosed upon or a separate written agreement between you and your Association permits a  
longer period, you have only the legal right to stop the sale of your property by paying the entire amount  
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your  
property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Mandolin,  
6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at  
(888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of  
assessment on your property.

NAS # N69603

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 NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Dominic J Nolan, dated December 29, 2011, and recorded on 1/4/2012 as instrument number 0001123 Book 20120104 in the official records of Clark County, Nevada, executed by Mandolin, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 6, 2006, as instrument number 000347 BK 20060706, as security has occurred in that the payments have not been made of homeowner's assessments due from 8/1/2011 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

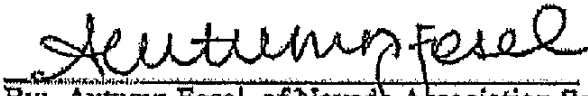
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Association Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark

Dated: February 23, 2012



By: Autumn Fesel, of Nevada Association Services, Inc.  
on behalf of Mandolin

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544

BANA/Nolan-01-000043

APP000062

# EXHIBIT F

# EXHIBIT F

When recorded return to:  
Silver State Trustee Services, LLC  
1424 S. Jones Boulevard  
Las Vegas, NV 89146-1231

Inst #: 201208140001300  
Fees: \$18.00  
N/C Fee: \$0.00  
08/14/2012 09:19:44 AM  
Recalpt #: 1270840  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: ADF Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN# 176-34-114-031  
TS# 103816

Accommodation

37789

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

NOTICE IS HEREBY GIVEN, that Mountains Edge Master Association is the lien holder and beneficiary under a Notice of Delinquent Assessment executed by Silver State Trustee Services, LLC., agent for Mountains Edge Master Association, recorded 2/2/2012, Book No. 20120202, as Instrument No. 0001210 of the official records in the Office of Recorder of Clark County Nevada, describing the land therein as:

Lot 63 Block --; Mandolin Phase 3 at Mountains Edge  
as shown by map on file in Plat Book 134, Page 21  
in the records of the County Recorder of Clark County,  
Nevada, and more commonly known as:  
7510 Perla Del Mar Avenue, Las Vegas, NV 89179-2500

to secure certain financial obligations of Nolan, Dominic J.; reputed owner(s) of the property. Said financial obligations total **\$2,183.50** as of **8/8/2012**, including the amount of the original lien of \$718.50, plus accruing assessments, interest, costs and fees of the agent since that time. **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** The beneficial interest under such Assessment Lien and the obligations secured thereby are presently held by the undersigned: that a breach of, and default in, the obligations for which such assessment Lien is security, has occurred in that payment has not been made in the above-reverenced amounts; that by reason thereof, present beneficiary under such Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy secured thereby.

Pursuant to Nevada Revised Statutes 116.31116, a sale will be held if this obligation is not completely satisfied and paid within ninety (90) days from the recording date of the Notice, on real property described hereinabove.

BANA/Nolan-01-000044

APP000064

SILVER STATE TRUSTEE SERVICES, LLC  
1424 S. JONES BOULEVARD  
LAS VEGAS, NV 89146-1231  
PHONE: (702) 221-8848

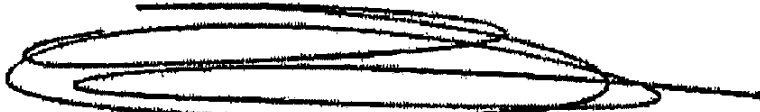
As Agent for Mountains Edge Master Association



Marques Sirmons  
Dated the 9<sup>TH</sup> day of August 2012.

State of Nevada       )  
County of Clark       )

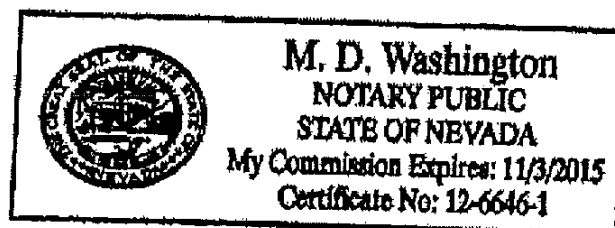
Marques Sirmons, being first duly sworn, deposes and says: That I am the authorized representative of **Mountains Edge Master Association** in the above entitled action: that I have read the foregoing Notice of Default And Election to Sell and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.



Marques Sirmons

On the 9<sup>TH</sup> day of August 2012, personally appeared before me a notary public, Marques Sirmons, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed the above instrument.

  
Notary Public



BANA/Nolan-01-000045

APP000065

# EXHIBIT G

# EXHIBIT G

2

**RECORDING COVER PAGE**

Must be typed or printed clearly in black ink only.

APN# 176-34-114-031  
11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

Inet #: 201211150002280  
Fees: \$18.00  
N/C Fee: \$0.00  
11/15/2012 09:38:24 AM  
Receipt #: 1383723  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: KGP Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**TITLE OF DOCUMENT (DO NOT Abbreviate)**

NOTICE OF FORECLOSURE SALE

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

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET ROAD #111

City/State/Zip LAS VEGAS, NV 89113

This page provides additional information required by NRS 111.912 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12\_2010

BANA/Nolan-01-000048

APP000067

APN # 176-34-114-031  
Mandolin

NAS # N69603

**Accommodation NOTICE OF FORECLOSURE 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 NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, December 29, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 12/14/2012 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on July 6, 2006 as instrument number 000347 BK 20060706 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 4, 2012 as document number 0001123 Book 20120104 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 7510 Perla Del Mar Ave, Las Vegas, NV 89179. Said property is legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63, official records of Clark County, Nevada.

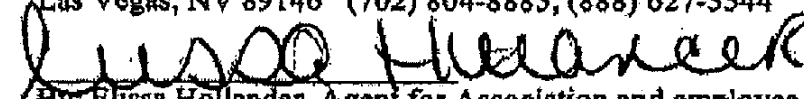
The owner(s) of said property as of the date of the recording of said lien is purported to be: Dominic J Nolan  
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. 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 \$3,954.62. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 2/27/2012 as instrument number 0002448 Book 20120227 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

November 12, 2012

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

  
By: Elissa Hollander, Agent for Association and employee of  
Nevada Association Services, Inc.

BANA/Nolan-01-000049

APP000068



# EXHIBIT H

# EXHIBIT H

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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

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

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
ANNA A. GHAJAR  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ADIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
MICHAEL J. FOX

March 16, 2012

Mandolin  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179*  
*MBBW File No. 12-H0607*

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

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

The association has a lien on a unit for:

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

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

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

BANA/Nolan-01-000112

APP000070

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

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

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

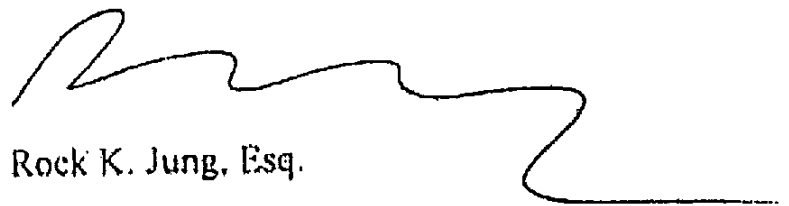
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated February 23, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

  
Rock K. Jung, Esq.

# EXHIBIT I

# EXHIBIT I

Inst #: 201302070001210

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$78.50 Ex: #

02/07/2013 09:34:04 AM

Receipt #: 1489167

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

(3)-1  
Please mail tax statement and  
when recorded mail to:  
7510 Perla Del Mar Ave Trust  
PO Box 36208  
Las Vegas, NV 89133

### FORECLOSURE DEED

APN # 176-34-114-031

North American Title #45010-12-36179

NAS # N69603

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Mandolin), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 4, 2012 as instrument number 0001123 Book 20120104, in Clark County. The previous owner as reflected on said lien is Dominic J Nolan. Nevada Association Services, Inc, as agent for Mandolin does hereby grant and convey, but without warranty expressed or implied to: 7510 Perla Del Mar Ave Trust (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 Clark County

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Mandolin governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 2/27/2012 as instrument # 0002448 Book 20120227 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Mandolin at public auction on 2/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$14,600.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: February 2, 2013



By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

BANA/Nolan-01-000038

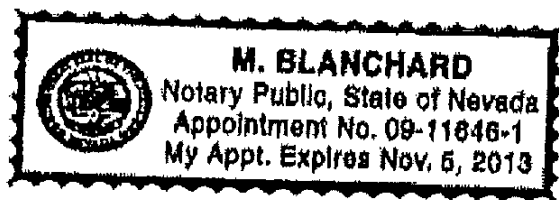
APP000073

STATE OF NEVADA )  
COUNTY OF CLARK )

On February 2, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)

(Signature)



*M. Blanchard*

BANA/Nolan-01-000039

APP000074

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 176-34-114-031  
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

\$ 14,600.00

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

c. Transfer Tax Value:

\$ 14,600.00

d. Real Property Transfer Tax Due

\$ 76.50

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

[Signature]

Capacity: Agent

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Rd.

City: Las Vegas

State: NV

Zip: 89146

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: 7510 Perla Del Mar Ave Trust

Address: PO Box 36208

City: Las Vegas

State: NV

Zip: 89133

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

North American Title Company \_\_\_\_\_

8485 W. Sunset Road, Suite 111 \_\_\_\_\_

Las Vegas, Nevada 89113 \_\_\_\_\_

Escrow # 36179 / N69603

State: \_\_\_\_\_

Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT J

# EXHIBIT J



DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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

2200 Paseo Verde Pkwy., Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 942-0411

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENNAN  
MARK T. DOMEYER

Also Admitted in the District of  
Columbia & Virginia

TAMI S. CROSBY  
L. BRYANT JAQUEZ  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA  
ELIZABETH D. SCOTT

September 10, 2012

Mountains Edge Master Association  
Silver State Trustee Services  
1424 South Jones Blvd.  
Las Vegas, NV 89146-1231

Re: *Property Address:* 7510 Perla Del Mar Avenue, Las Vegas, NV 89179  
*MBBW File No.:* 12-H1796

Dear Sir or Madam:

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

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

The association has a lien on a unit for:

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

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

BANA/Nolan-01-000087

APP000077

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated August 9, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

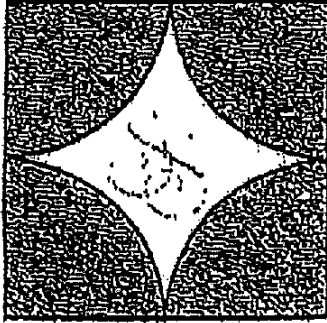
Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

# EXHIBIT K

# EXHIBIT K



# Silver State Trustee Services, LLC

In Affiliation With Walsh & Freedman LLC, A Professional Law Corporation  
 1424 South Jones Boulevard • Las Vegas, Nevada 89146-1231  
 Phone (702) 221-8848 • Fax (702) 221-8849

September 20, 2012

Company: Milos, Bauer, Bergstrom & Winters, LLP  
 Attn: Alexander Bham  
 Fax #: 702-369-4955

## SERVICER/MORTGAGE DEMAND

Regarding: TSH# 103816  
 Owner: Nolan, Dominic J.  
 Address: 7510 Perla Del Mar Avenue, Las Vegas, NV 89179  
 Mountains Edge Master Association

**\*\*The property owner and/or vested entity is hereby notified that the following past due community association assessments, foreclosure costs and interest thereon, are required to be PAID IN FULL prior to releasing any and all liens imposed by Silver State Trustee Services, LLC on behalf of the above referenced Community Association.\*\***

Assessments (@ \$75.00 per Quarter (10/2011 thru 12/2012)	\$ 375.00
Late fees (@ \$10.00 per Month (10/2011 thru 10/2012)	\$ 130.00
Other fees (Late letter, Intent to Lien letter, etc.)	\$ 123.50
Fines/Violations	\$ -
HOA Interest @ 5.25% per annum	\$ -
Lien & Foreclosure Costs and Fees	\$ 1,480.00
SSTS Administrative Fee	\$ 100.00
SSTS Escrow, Mortgage or Realtor Demand fees (@ \$150 each)	\$ 150.00
Credits:	\$ -
<b>Amount Due by Seller or Current Owner:</b>	<b>\$ 2,358.50</b>
Transfer Fee	\$ 360.00
1 Quarter Advance Assessments	\$ 75.00
Amount Due By Buyer (if property being sold)	\$ 435.00
<b>Total Amount Due:</b>	<b>\$ 2,793.50</b>

Due By:

October 22, 2012

*If Account Not Paid in full by 10/22/2012, then a new demand will be needed as add'l fees will be assessed.*

Please remit the total amount due in the form of Certified Funds made payable to the Homeowners Association stated above, in care of Silver State Trustee Services, LLC. Upon receipt of said funds Silver State Trustee Services, LLC will release it's lien. Prepared By: Marques D. Simons

# EXHIBIT L

# EXHIBIT L

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California  
PATERNO C. JURANI



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

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

**CALIFORNIA OFFICE**  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
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HANH T. NGUYEN  
THOMAS B. SONG  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOPF  
BRIAN M. LUNA  
ELIZABETH D. SCOTT

October 4, 2012

SILVER STATE TRUSTEE SERVICES  
1424 South Jones Blvd  
Las Vegas, NV 89146

Re: *Property Address:* 7510 Perla Del Mar Avenue  
*Account ID:* 103816  
*LOAN #:* [REDACTED]  
*MBBW File No.:* 12-H1796

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,793.50. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

BANA/Nolan-01-000092

APP000082

2. A lien under this section is prior to all other liens and encumbrances on a unit except:  
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.310313(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$707.83.

Thus, our client has authorized us to make payment to you in the amount of \$932.83, which takes into account both the maximum 9 months worth of common assessments as well as reasonable collection costs to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Silver State Trustee Services, LLC in the sum of \$932.83. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 7510 Perla Del Mar Avenue have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
Payee: SILVER STATE TRUSTEE SERVICES  
12-H1796  
Initials: SRN  
Date: 10/1/2012  
Amount: 932.83  
Check #: 16953

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2012	103816	To Cure HOA Deficiency	932.83			

Miles, Bauer, Bergstrom & Winters, LLP  
Trust Account  
1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9108

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-587220  
1020  
12-H1796  
Loan # 16953

Pay \$\*\*\*\*\*Nine Hundred Thirty-Two & 83/100 Dollars  
to the order of  
SILVER STATE TRUSTEE SERVICES

16953  
Date: 10/1/2012  
Amount \$\*\*\*\* 932.83  
Check Valid After 90 Days

Security Features Included. Details on back.

Handwritten mark resembling a large 'C' or a checkmark.





# EXHIBIT M

# EXHIBIT M

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 12-H1796 Initials: SRN  
 Payee: SILVER STATE TRUSTEE SERVICES Check #: 16953 Date: 10/1/2012 Amount: 932.83

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2012	103816	To Cure HOA Deficiency	932.83			
<b>VOID</b>						

Miles, Bauer, Bergstrom & Winters, LLP  
 Trust Account  
 1231 E. Dyer Road, #100  
 Santa Ana, CA 92705  
 Phone: (714) 481-9100

Bank of America  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074  
 16-66/1220  
 1020  
 12-H1796  
 Loan # [REDACTED]

Pay \$\*\*\*\*\*Nine Hundred Thirty-Two & 83/100 Dollars  
 to the order of

SILVER STATE TRUSTEE SERVICES

**RECEIVED**

OCT 26 2012

M.B.B.B.W.  
 ACCOUNTING DEPT

16953

Date: 10/1/2012

Amount \$\*\*\* 932.83


Check Void After 90 Days

**VOIDED**

Security Features Included: Details on back:

 ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FINANCIAL INSTITUTION USE \*

 The security features listed below, as well as those not listed, exceed industry guidelines.

**Security Features:**

- Chemically Sensitive Paper
- Erasure Protection
- Security Screen
- Authentic Watermark

**Results of document alteration:**

- Stains or spots may appear with chemical alteration
- White mark appears when erased
- Absence of "Original Document" verbiage on back of check
- Authentic watermark not visible when held to light

© Padlock design is a certification mark of the Check Payment Systems Association

★ FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

BANA/Nolan-01-000099

APP000087

AFFIDAVIT OF SERVICE  
DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

*Ann D. Quinn*  
CLERK OF THE COURT

7510 PERLA DEL MAR AVE TRUST,

Plaintiff(s)

v.

BANK OF AMERICA, N.A.; et al.,

Defendant(s)

Case No.: A-13-686277-C

Rebekkah B. Bodoff Esq., Bar No. 12703

AKERMAN LLP

1160 Town Center Dr. # 330

Las Vegas, NV 89144

(702) 634-5000

Attorneys for the Defendant Bank of America, N.A.

Client File# 298298

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons-Civil; Defendant Bank of America, N.A.'s Amended Answer to Complaint, Counterclaims Against Plaintiff, and Crossclaims Against Desert Shores Community Association and Nevada Association Services, Inc., from AKERMAN LLP

That on 8/8/2016 at 3:15 PM I served the above listed documents to Desert Shores Community Association - c/o Cary Brackett, Registered Agent by personally delivering and leaving a copy at 2500 Regatta Drive, Las Vegas, NV 89128 with Rosalinda Tellese - Facilities Manager, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Hispanic, Age: 50's, Height: 5'6", Weight: 160 lbs., Hair: Black, Eyes: Brown/Glasses, Marks: Glasses

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 8/12/16

*Judith Mae All*  
Judith Mae All

Registered Work Card# R-040570

State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:

Nationwide Legal Nevada, LLC

720 S. 4th Street, Suite 305

Las Vegas, NV 89101

(702) 385-5444

Nevada Lic # 1656



Order #: NV31169  
Their File 298298

AFFIDAVIT OF SERVICE

DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

*Alan D. Levine*  
CLERK OF THE COURT

7510 PERLA DEL MAR AVE TRUST,

Plaintiff(s)

v.

BANK OF AMERICA, N.A.; et al.,

Defendant(s)

Case No.: A-13-686277-C  
Rebekkah B. Bodoff Esq., Bar No. 12703  
AKERMAN LLP  
1160 Town Center Dr. # 330  
Las Vegas, NV 89144  
(702) 634-5000  
*Attorneys for the Bank of America, N.A.*  
Client File# 298298

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons-Civil; Defendant Bank of America, N.A.'s Amended Answer to Complaint, Counterclaims Against Plaintiff, and Crossclaims Against Desert Shores Community Association and Nevada Association Services, Inc., from AKERMAN LLP

That on 8/8/2016 at 3:56 PM I served the above listed documents to Nevada Association Services, Inc. - c/o Chris Yergensen, Esq., Registered Agent by personally delivering and leaving a copy at 6224 West Desert Inn Road, Las Vegas, NV 89146 with Chuikin Joa - Receptionist, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Asian, Age: 30's, Height: Seated, Weight: 150 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 8/12/16

*Judith Mae All*  
Judith Mae All  
Registered Work Card# R-040570  
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:  
Nationwide Legal Nevada, LLC  
720 S. 4th Street, Suite 305  
Las Vegas, NV 89101  
(702) 385-5444  
Nevada Lic # 1656



Order #: NV31170  
Their File 298298