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DISTRICT COURT
CLARK COUNTY, NEVADA

9 VENISE ABELARD

10 Plaintiffs,

11 vs.

12 9352 CRANESBILL TRUST, FORT APACHE
13 SQUARE HOMEOWNERS ASSOCIATION,
14 MESA MANAGEMENT, LAS VEGAS
15 ASSOCIATION MANAGEMENT, LLC,
16 BENCH MARCH ASSOCIATION
17 SERVICES, IYAD HADDAD; et. al.

16 Defendants

17 And all related matters.

Case No. A-12-671509-C
Dept No. VII

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MOTION FOR SUMMARY JUDGMENT

20 Defendants Iyad Haddad, Teal Petal St. Trust, and 9352 Cranesbill Trust, by and through their
21 attorney, Charles L. Geisendorf, Esq., move for summary judgment on their claims for quiet title and
22 declaratory relief, and for dismissal of counterclaims. This motion is based upon the points and
23 authorities contained herein.

24 Dated: January 31, 2018

25 GEISENDORF & VILKIN, PLLC

26 /s/ Charles L. Geisendorf
27 Charles L. Geisendorf, Esq. (6985)
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1 letter dated June 28, 2011. A copy of the letter and proof of mailing is attached as Exhibit B. The notice
2 of lien was recorded on July 12, 2011. A copy of the recorded notice of lien is Exhibit C.

3 On September 15, 2011, the foreclosure agent recorded the notice of default and election to sell
4 under homeowners association lien. The notice was also mailed out to interested parties, including Wells
5 Fargo's predecessor in interest, DHI Mortgage Company, and MERS. A copy of the lien and proof of
6 mailing is attached as Exhibit D.

7 On May 7, 2012, the foreclosure agent recorded the notice of foreclosure sale. A copy of the
8 notice is Exhibit E. The notice was also mailed out to interested parties, including Wells Fargo's
9 predecessor in interest, DHI Mortgage Company, and MERS. A copy of the proof of mailing is attached
10 as Exhibit F.

11 The foreclosure agent caused the notice of sale to be posted on the property and in three locations
12 within Clark County. A copy of the affidavit of posting is attached as Exhibit G.

13 The foreclosure agent also caused the notice of sale to be published in the Nevada Legal News.
14 A copy of the affidavit of publication is Exhibit H.

15 The sale was conducted on July 11, 2012, and was purchased by the 9352 Cranesbill Ct Trust for
16 \$4,900.00 as evidenced by the foreclosure deed, Exhibit A.

17 On July 27, 2012, the property was transferred by the 9352 Cranesbill Ct Trust to the Teal Petals
18 Trust. A copy of this deed is attached as Exhibit I.

19 Several months later, on October 17, 2012, Wells Fargo became the beneficiary of the deed of
20 trust. A copy of the assignment is attached as Exhibit J.

21 **II. REQUEST FOR JUDICIAL NOTICE**

22 Pursuant to N.R.S. 47.130, plaintiff requests the Court take judicial notice of Exhibits A, B, D,
23 E, I and J, because they are publicly recorded documents concerning the property's title history. *See*
24 *Whitehead v. Nevada Comm'n on Judicial Discipline*, 873 P.2d 946, 970 n.35 (Nev. 1994) (allowing,
25 based on public records, "judicial notice of facts capable of accurate and ready determination by resort
26 to sources whose accuracy cannot reasonably be questioned").

27 **III. LEGAL STANDARDS**

28 Summary judgment is appropriate if, after viewing the record in the light most favorable to the

1 nonmoving party, “no genuine issue of material fact exists, and the moving party is entitled to judgment
2 as a matter of law.” NRCp 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005).
3 “[T]he nonmoving party is entitled to have the evidence and all reasonable inferences accepted as true.”
4 *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996). The moving party
5 “bears the initial burden of production to show the absence of a genuine issue of material fact.” *Cuzze*
6 *v. Univ. and Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

7 IV. ARGUMENT

8 A. The Trust Deed has been Extinguished.

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

11 NRS 116.3116 gives a homeowners’ association (HOA) a superpriority lien on an
12 individual homeowner’s property for up to nine months of unpaid HOA dues. With
13 limited exceptions, this lien is “prior to all other liens and encumbrances” on the
14 homeowner’s property, even a first deed of trust recorded before the dues became
15 delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien such
16 that its foreclosure extinguishes a first deed of trust on the property and, if so, whether it
17 can be foreclosed nonjudicially. We answer both questions in the affirmative and
18 therefore reverse.

19 334 P.3d at 409.

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

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

27 334 P.3d at 419.

28 Because the facts in the present case are substantially the same as the facts in SFR Investments
Pool 1, LLC v. U.S. Bank, N.A., this Honorable Court should reach the same conclusion that the
nonjudicial foreclosure arising from the HOA’s super priority lien extinguished the deed of trust held by
the defendant bank on the date of sale. As a result, this Court should rule that the deed of trust held by
defendant was extinguished by the HOA’s foreclosure sale.

27 B. There is a Statutory Conclusive Presumption that the HOA’s Foreclosure Sale was Properly Conducted.

28 The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a

1 public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc.
2 v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family
3 Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller
4 & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank,
5 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Court described the non-judicial foreclosure
6 provisions of NRS Chapter 116 as “elaborate,” and therefore indicative of the public policy favoring the
7 finality of a foreclosure sale.

8 Additionally, there is a common law presumption that a foreclosure sale was conducted validly.
9 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25
10 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014);
11 Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen,
12 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust
13 Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431
14 S.E. 2d 475 (Ga. App 1993).

15 Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16). This
16 creates a disputable presumption that the foreclosure sale was conducted in compliance with the law. By
17 statute, the recitals in the deed are sufficient and conclusive proof that the required notices were mailed
18 by the HOA. The foreclosure deed, attached hereto as Exhibit A, recites in part:

19 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116
20 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.
21 Default occurred as set forth ill a Notice of Default and Election to Sell which was
22 recorded in the office of the recorder of said county. All requirements of law regarding
the mailing of copies of notices and the posting and publication of the copies of the
Notice of Sale have been complied with. Said property was sold by said Trustee at
publication on July 11, 2012 at the place indicated on the Notice of Trustee's Sale.

23 The controlling statute, NRS 116.31166, provides in part:

24 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper**
25 **application of purchase money; title vested in purchaser without equity or right of**
redemption.

26 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:

27 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
the notice of default and election to sell;

28 (b) The elapsing of the 90 days; and

 (c) The giving of notice of sale,
are **conclusive proof of the matters recited.**

1 2. **Such a deed containing those recitals is conclusive against** the unit's former
2 owner, his or her heirs and assigns, **and all other persons**. The receipt for the purchase
3 money contained in such a deed is sufficient to discharge the purchaser from obligation
4 to see to the proper application of the purchase money.

5 . . .

6 (emphasis added)

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

11 In addition to the recitals, the exhibits attached to the motion are additional proof that the
12 notices were served. It is respectfully submitted that this court should find that the foreclosure deed
13 received by the purchaser at the time it obtained title to the Property is conclusive and sufficient proof
14 that title is now vested in Teal Petal St. Trust and not subject to attack from the plaintiff or bank.

15 **C. Plaintiff is a bona fide purchaser**

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

18 1. A bona fide purchaser is without notice of any **prior equity**.

19 2. "The decisions are uniform" that the title of a bona fide purchaser is not affected by any
20 matter of which he has no notice.

21 3. The bona fide purchaser must pay **valuable** consideration, not "adequate" consideration.

22 4. The fact that the foreclosure price may be "low" is not sufficient to put the purchaser on notice
23 of any alleged defects with the sale.

24 5. The fact that the court retains equitable power to void the sale does deprive the purchaser of
25 bona fide purchaser status.

26 6. The time to determine the status of bona fide purchaser is at the time of the sale.

27 Death Valley is a bona fide purchaser as a matter of law, and the law must protect its title as to
28 all matters to which it does not have notice of.

 The concept of bona fide purchaser has more application in voluntary sales in which title is
transferred by deed. In these cases, a purchaser takes subject to any matters which are recorded against

1 the property.

2 In HOA foreclosure cases, the bona fide purchaser doctrine rarely comes into play because all
3 interests on the property other than prior existing debts and taxes are extinguished by the foreclosure.
4 Teal Petal St. Trust would be precluded from bona fide purchaser status in HOA foreclosure cases only
5 if there was some irregularity in the sale AND the purchaser knew of the irregularity.

6 **D. The bank is not entitled to relief against the bona fide purchaser**

7 Under both the Restatement and Nevada law, the plaintiff and bank have no remedies against Teal
8 Petal St. Trust in regard to the foreclosure sale because any damages which the plaintiff and bank may
9 have sustained as a result of an alleged wrongful foreclosure can be compensated with money damages.

10 The decision in the case of Shadow Wood Homeowners Association v. New York Community
11 Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016) has limited application because Shadow Wood dealt
12 with title divestment of the former owner. This case, however, deals with the extinguishment of the
13 bank's security interest in the property. However, because Teal Petal St. Trust is a bona fide purchaser,
14 the sale cannot be set aside.

15 In Shadow Wood, the Supreme Court referred to the Restatement (Third) of Prop.: Mortgages
16 § 8.3. Comment (b) recognizes that where the property has been purchased by a bona fide purchaser,
17 "the real estate is unavailable" and that "price inadequacy" may be raised in a suit against the foreclosing
18 mortgagee for damages. Comment b states:

19 On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale
20 is usually not required and the issue of price inadequacy will therefore arise only if the
21 party attacking the sale files an independent judicial action. Typically this will be an
22 action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the
23 holders of other junior interests who are prejudiced by the sale. **If the real estate is**
24 **unavailable because title has been acquired by a bona fide purchaser**, the issues of
25 price inadequacy may be raised by the mortgagor or a junior interest holder in a suit
26 against the foreclosing mortgagee for damages for wrongful foreclosure. **This latter**
27 **remedy, however, is not available based on gross price inadequacy alone.** In addition,
28 the mortgagee must be responsible for a defect in the foreclosure process of the type
described in Comment c of this section. (emphasis added)

25 A copy of Section 8.3 from the Restatement is attached as Exhibit K.

26 This authority from the Restatement is consistent with Nevada law and the common law rule that
27 there is no equity jurisdiction when a party has available to itself an adequate remedy at law.

28 Back in 1868, the court in Sherman v. Clark 4 Nev. 138 (1868) stated:

1 The writ is exclusively an equitable remedy. But equity is chary of its powers; it employs
2 them only when the impotent or tardy process of the law does not afford that complete and
3 perfect remedy or protection which the individual may be justly entitled to. **When**
4 **therefore it is shown that there is a complete and adequate remedy at law, equity will**
5 **afford no assistance.** “When a party has a remedy at law,” says Mr. Hilliard, “he cannot
6 come into equity, unless from circumstances not within his control he could not avail
7 himself of his legal remedy.” (Hill. Inj. sec. 23.) That full compensation can be had at law
8 is the great rule for withholding the strong arm of the chancellor,” says Mr. Justice
9 Thompson, in Pusey v. Wright, (31 Penn. 396.) See also Thompson v. Matthews (2 Edw.
10 Ch. R. 213; 9 Page, 323.) **Before refusing its aid upon this ground, however, it must**
11 **appear that the legal remedy is complete and adequate to afford the complainant full**
12 **redress; but when that fact does appear, equity at once relinquishes all control over**
13 **the case, and leaves the party to pursue his legal remedy.** (Emphasis added)

14 Likewise, in the case of Conley v. Chedic 6 Nev. 222 (1870) the court held:

15 Equity will not take jurisdiction or interpose its powers when there is a full, complete and
16 adequate remedy in the ordinary course of law; that is, when the wrong complained of
17 may be fully compensated in damages, which can easily be ascertained, and it is not
18 shown that a judgment at law cannot be satisfied by execution. (See Sherman v. Clark, 4
19 Nev. 138.)

20 In Turley v. Thomas 31 Nev. 181, 101 P. 568 (1909) the court stated:

21 Again, in a decision rendered last year, Hills v. McMunn, 232 Ill. 488, 83 N. E. 963, it is
22 stated: “It is also contended that the case made by the bill and proofs shows no grounds
23 for the interposition of a court of equity, and that if appellant has any remedy the law will
24 afford adequate relief.

25 In State v. Second Judicial District Court 49 Nev. 145, 241 P.317, 43 A.L.R. 1331 (1925), the
26 court stated:

27 As to the contention that pursuant to paragraph 6 the court was authorized to make the
28 appointment under its general equity jurisdiction, we need only say that where it does not
appear, as in this case, that the plaintiff has no adequate remedy at law, a court of equity
acquires no jurisdiction.

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

31 During oral argument, counsel for respondents suggested that an action at law would not
32 be adequate because it could not be enforced by a writ of execution against a county fund.
33 Whether this be true or not, it is hardly to be supposed that an execution would be
34 necessary in the event a judgment at law were obtained against the county in this type of
35 case any more than a contempt proceeding would be required in the event a peremptory
36 writ of mandamus were issued. **In answer to this suggestion however it is necessary to**
37 **say only that our concern is with the existence of a remedy and not whether it will**
38 **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.

39 In Stewart v. Manget, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill
40 in equity on the ground that the plaintiff had an adequate remedy at law, the Florida

1 Supreme Court cited with approval the following language from Tampa & G. C. R. Co.
2 v. Mulhern, 73 Fla. 146, 74 So. 297, 299:

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

10 (Emphasis added)

11 The rule that equity will not be imposed is consistent with Nevada case law protecting the interests
12 of a bona fide purchaser. Any defects in the sale gives the party damaged thereby a claim for money
13 damages against the foreclosure agent. The Supreme Court in the Shadow Wood decision repeatedly
14 stated the rule that the title of a bona fide purchaser will not be disturbed. This is consistent with the rule
15 that equity won’t interfere when there is an adequate remedy at law.

16 In discussing the bona fide purchaser doctrine the court stated:

17 A subsequent purchaser is bona fide under common-law principles if it takes the property
18 “for a valuable consideration and without notice of the prior equity, and without notice
19 of facts which upon diligent inquiry would be indicated and from which notice would be
20 imputed to him, if he failed to make such inquiry.” *Bailey v. Butner*, 64 Nev. 1, 19, 176
21 P.2d 226, 234 (1947) (emphasis omitted); *see also Moore v. De Bernardi*, 47 Nev. 33, 54,
22 220 P. 544, 547 (1923) (“**The decisions are uniform that the bona fide purchaser of**
23 **a legal title is not affected by any latent equity founded either on a trust,**
24 **[e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.”).
25 Although, as mentioned, NYCB might believe that Gogo Way purchased the property for**
26 **an amount lower than the property's actual worth, that Gogo Way paid “valuable**
27 **consideration” cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) (“The**
28 **question is not whether the consideration is adequate, but whether it is valuable.”); *see***
***also Poole v. Watts*, 139 Wash.App. 1018 (2007) (unpublished disposition) (stating that**
the fact that the foreclosure sale purchaser purchased the property for a “low price”
did not in itself put the purchaser on notice that anything was amiss with the sale).
366 P.3d at 1115-6 (emphasis added)

29 The plaintiff and bank have adduced no evidence that would put Teal Petal St. Trust on any kind
30 of notice of any type of claim that the bank may have. The court should therefore find that title is
31 properly in the name of Teal Petal St. Trust and that the bank’s trust deed has been extinguished.

32 Also noted in comment b to the Restatement, any claim the bank has is not against Teal Petal St.
33 Trust but against the foreclosure agent. This is consistent with the case law.

34 In the case of Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent
35 allowed a trustee’s sale to go forward even though it had available cash deposits to pay off the loan. Id.

1 at 828. The trial court set aside the sale because “[t]he value of the property was four times the amount
2 of the debt/sales price.” *Id.* at 829. The Court of Appeals reversed the trial court’s order and stated:

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

15 *Id.* at 831-832. (emphasis added)

16 This holding is consistent with Nevada case law. The Nevada Supreme Court has repeatedly held
17 that equity jurisdiction does not exist when there exists an adequate remedy at law which may be
18 compensated by a judgment for money damages. Any defects in the sale, and there are none in this case,
19 which may have damaged any party with an interest in the party may be compensated by money damages
20 in a claim against the foreclosure agent.

21 The plaintiff and bank therefore have no claim for relief which may be granted against the Teal
22 Petal St. Trust, because it is a bona fide purchaser.

23 **E. There is no requirement that the foreclosure agent obtain sums to satisfy junior liens.**

24 There is no authority for the proposition that a foreclosure agent must seek sufficient sums at
25 foreclosure sale to satisfy the claims of junior lienholders. This was noted by Judge Pro in *Bourne Valley*
26 *Court Trust v. Wells Fargo Bank*, 80 F. Supp. 3d 1131 (D. Nev. 2015). The decision addresses
27 commercial reasonableness and notes that there is no duty to obtain sums in excess of the sums necessary
28 to satisfy the HOA lien. The Court stated:

 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first deed
 of trust on the property, the HOA foreclosure sale was “commercially unreasonable” and
 therefore was void. (Opp’n at 5–7.) Specifically, Wells Fargo argues the HOA foreclosure
 sale was not conducted in good faith because “the HOA made no effort to obtain the best
 price or to protect either Johnson or Wells Fargo” by selling the property for \$4,145.00
 when the assessed value of the property was \$90,543.00. (*Id.* at 7.) Bourne Valley replies
 that Chapter 116 does not require an HOA foreclosure sale to be commercially reasonable.
 Bourne Valley further argues that the inadequacy of the price is not sufficient to void the
 HOA foreclosure sale when there is no evidence of fraud, procedural defects, or other
 irregularities in the conduct of the sale.

1 The commercial reasonableness here must be assessed as of the time the sale occurred.
2 Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable
3 due to the discrepancy between the sale price and the assessed value of the property
4 ignores the practical reality that confronted the purchaser at the sale. Before the Nevada
5 Supreme Court issued *SFR Investments*, purchasing property at an HOA foreclosure sale
6 was a risky investment, akin to purchasing a lawsuit. Nevada state trial courts and
7 decisions from the United States District Court for the District of Nevada were divided
8 on the issue of whether HOA liens are true priority liens such that their foreclosure
9 extinguishes a first deed of trust on the property. *SFR Investments*, 334 P.3d at 412. Thus,
10 a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in
11 the property subject to the first deed of trust. This risk is illustrated by the fact that title
12 insurance companies refused to issue title insurance policies on titles received from
13 foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to
14 Remand to State Court (Doc. # 6), Decl. of Ron Bloecker.) Given these risks, a large
15 discrepancy between the purchase price a buyer would be willing to pay and the assessed
16 value of the property is to be expected.

17 **Moreover, Wells Fargo does not point to any evidence or legal authority indicating**
18 **the Court must void an HOA foreclosure sale because the purchaser bid only a**
19 **fraction of the property's assessed value. Wells Fargo does not point to evidence of**
20 **fraud or any other procedural defects or other irregularities in the conduct of the**
21 **sale that would require the Court to void the sale, or any evidence indicating the**
22 **HOA acted in bad faith by selling the property for an amount that would satisfy the**
23 **unpaid assessments. Nor does Wells Fargo point to evidence or legal authority**
24 **indicating that beyond selling the property to the highest bidder, the HOA was**
25 **responsible for protecting Wells Fargo and Johnson's interests in addition to the**
26 **homeowners' interests. See *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1028–31**
27 **(9th Cir.2001) (stating that a court need not “comb the record” looking for a genuine issue**
28 **of material fact if the party has not brought the evidence to the court's attention) (quotation**
omitted)). Thus, no genuine issue of material fact remains as to whether the HOA
foreclosure sale was commercially unreasonable. Under the specific facts presented here,
it was not. (emphasis added)

17 Id. at 1135-1136.

18 In the case of BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the U.S.
19 Supreme Court explained why the fair market value of a property sold at foreclosure or a “forced sale”
20 is in fact the price said at the foreclosure sale:

21 ...the fact that a piece of property is legally subject to forced sale, like any other fact
22 bearing upon the property's use or alienability, necessarily affects its worth. Unlike most
23 other legal restrictions, however, foreclosure has the effect of completely redefining the
24 market in which the property is offered for sale; normal free-market rules of exchange are
25 replaced by the far more restrictive rules governing forced sales. Given this altered
26 reality, and the concomitant inutility of the normal tool for determining what property is
27 worth (fair market value), the only legitimate evidence of the property's value at the time
28 it is sold is the foreclosure-sale price itself.

26 This BFP case is also cited in Restatement (Third) of Prop.: Mortgages § 8.3.

27 The court should first consider that the Shadow Wood case was not an HOA lien extinguishment
28 case. In Shadow Wood, the property owner was trying to set aside the foreclosure sale. Next, the

1 position taken by most bank counsel ignores the requirement, set forth more than once in the Shadow
2 Wood case, that there must be evidence of fraud, unfairness or oppression.

3 As demonstrated by the authorities cited above, the plaintiff and bank's remedy for a wrongful
4 foreclosure would be a claim for money damages against the foreclosure agent because Teal Petal St.
5 Trust is a bona fide purchaser.

6 **F. The defendant's inactions must be viewed by the court**

7 The Supreme Court in both SFR and Shadow Wood noted that the defendant banks were
8 responsible for their own damages. In SFR Investments Pool 1 v. U.S. Bank 130 Nev. Adv. Op. 75, 334
9 P.3d 408 (2014) the court said not once, but twice, that the price paid at the foreclosure sale was not an
10 issue because the bank could simply have paid the super priority amount to preserve its interest in the
11 property. The Court stated at page 414:

12 U.S. Bank's final objection is that it makes little sense and is unfair to allow a relatively
13 nominal lien—nine months of HOA dues—to extinguish a first deed of trust securing
14 hundreds of thousands of dollars of debt. But as a junior lienholder, U.S. Bank could have
15 paid off the SHHOA lien to avert loss of its security; it also could have established an
16 escrow for SHHOA assessments to avoid having to use its own funds to pay delinquent
17 dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA § 3–116 cmt. 2. **The inequity
18 U.S. Bank decries is thus of its own making and not a reason to give NRS 116.3116(2)
19 a singular reading at odds with its text and the interpretation given it by the authors
20 and editors of the UCIOA.** (emphasis added)

21 The Court also stated at page 418:

22 U.S. Bank further complains about the content of the notice it received. It argues that due
23 process requires specific notice indicating the amount of the superpriority piece of the lien
24 and explaining how the beneficiary of the first deed of trust can prevent the superpriority
25 foreclosure sale. But it appears from the record that specific lien amounts were stated in
26 the notices, ranging from \$1,149.24 when the notice of delinquency was recorded to
27 \$4,542.06 when the notice of sale was sent. The notices went to the homeowner and other
28 junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of
the lien. As U.S. Bank argues elsewhere, dues will typically comprise most, perhaps even
all, of the HOA lien. *See supra* note 3. **And from what little the record contains,
nothing appears to have stopped U.S. Bank from 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."). (Emphasis added)

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

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

7

8 366 P.3d at 1114

9 The court in the Shadow Wood case also noted in footnote 7:

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

21 The bank had remedies available to it to protect its interests before the foreclosure sale and failed
22 to avail itself of these remedies. It cannot now seek relief from this court, especially when it has failed
23 to demonstrate fraud, oppression or unfairness.

24 **G. Shadow Wood’s limited application supports judgment in the purchaser’s favor**

25 The so called “20%” rule from the Restatement stated in Shadow Wood has no application in this
26 case because Death Valley is a bona fide purchaser, there are no irregularities regarding the sale, and if
27 there were any irregularities, equity would not interfere because the party harmed would have a claim
28 against the foreclosing agent. However, because the price paid is raised as an issue, Death Valley will
address it here and show that it has no application without a showing of “fraud, oppression or unfairness
as accounts for and brings about the inadequacy of price”.

In three instances before the court’s reference to the Restatement in the Shadow Wood case, the
Court reiterates, without contradiction or criticism, the standard that a foreclosure sale will not be set
aside absent fraud, oppression or unfairness which results in an inadequate sales price.

The first citation to the fraud, oppression or unfairness standard specifically reaffirms the
standards as set forth in both the Long and Golden cases. The court’s first reference to the standard was:

Shadow Wood and Gogo Way maintain that, under NRS 116.31166, recitals such as these
bar any post-sale challenge regardless of basis, whether it disputes the HOA’s compliance

1 with the statutory default, notice, and timing requirements or, as here, seeks to set aside
2 the sale for equity-based reasons. If true, this interpretation would call into question this
3 court's statement in *Long v. Towne*, that a common-interest community association's
4 nonjudicial foreclosure sale may be set aside, just as a power-of-sale foreclosure sale may
5 be set aside, upon a showing of grossly inadequate price plus "fraud, unfairness, or
6 oppression." 98 Nev. at 13, 639 P.2d at 530 (citing *Golden v. Tomiyasu*, 79 Nev. 503, 514,
7 387 P.2d 989, 995 (1963)) (stating that, while a power-of-sale foreclosure may not be set
8 aside for mere inadequacy of price, it may be if the price is grossly inadequate and there
9 is "in addition proof of some element of fraud, unfairness, or oppression as accounts for
10 and brings about the inadequacy of price" (internal quotation omitted))).

11 366 P.3d at 1110.

12 The second reference reaffirms the court's equitable power to set aside a foreclosure sale in the
13 limited instances when an inadequate price is accompanied by fraud, oppression or unfairness, and cites
14 the Nevada and California case law that discusses these requirements:

15 While not directly addressing the preemption argument Shadow Wood and Gogo Way
16 make as to NRS 116.31166, our post-NRS 107.030(8) cases reaffirm that courts retain the
17 power, in an appropriate case, to set aside a defective foreclosure sale on equitable
18 grounds. *See Golden v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the
19 California rule that "inadequacy of price, however gross, is not in itself a sufficient
20 ground for setting aside a trustee's sale legally made; there must be in addition proof
21 of some element of fraud, unfairness, or oppression as accounts for and brings about
22 the inadequacy of price" (quoting *Oller v. Sonoma Cty. Land Title Co.*, 137 Cal.App.2d
23 633, 290 P.2d 880, 882 (Cal.Ct.App.1955)); *McLaughlin v. Mut. Bldg. & Loan Ass'n*, 57
24 Nev. 181, 191, 60 P.2d 272, 276 (1936) (noting that, in the context of an action to recover
25 possession of a property after a trustee sale, "[h]ad the conduct of the trustee and
26 respondent, in connection with the sale, been accompanied by any actual fraud, deceit, or
27 trickery, a more serious question would be presented"); *see also Nev. Land & Mortg. Co.*
28 *v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) ("In the proper
case, the trial court may set aside a trustee's sale upon the grounds of fraud or
unfairness."). And, cases elsewhere to have addressed comparable conclusive-or
presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief
in a proper case; rather, such recitals are "conclusive, *in the absence of grounds for*
equitable relief." *Holland v. Pendleton Mortg. Co.*, 61 Cal.App.2d 570, 143 P.2d 493, 496
(Cal.Ct.App.1943) (emphasis added); *see Bechtel v. Wilson*, 18 Cal.App.2d 331, 63 P.2d
1170, 1172 (Cal.Ct.App.1936) (distinguishing between a challenge to the sufficiency of
pre-sale notice, which was precluded by the conclusive recitals in the deed, and an
equity-based challenge based upon the alleged unfairness of the sale); *compare* 1 Grant
S. Nelson, *Real Estate Finance Law*, *supra*, § 7:23, at 986–87 ("After a defective power
of sale foreclosure has been consummated, mortgagors and junior lienholders in virtually
every state have an equitable action to set aside the sale.") (footnotes omitted), *with id.* §
7:22, at 980–82 (noting that "[m]any states have attempted to enhance the stability of
power of sale foreclosure titles by enacting a variety of *presumptive statutes*"), and 6
Baxter Dimaway, *Law of Distressed Real Estate*, § 64:161 (2015) (noting that a trustee's
deed recital can be overcome on a showing of actual fraud).

11 366 P.3d at 1110.

12 The third reiteration of the standard is in the paragraph immediately before the reference to the
13 Restatement. The court, having twice stated the standards of an inadequate price as the result of fraud,

1 oppression and unfairness, therein begins its review of these standards. The first element reviewed is the
2 standard for inadequate price, which contains a limited reference to the Restatement. The reference to the
3 Restatement must therefore be read in context with the prior paragraph which is the beginning of the
4 court's analysis of each of the elements required for the court to invoke its equitable powers. The full,
5 two paragraph citation reads:

6 The question remains **whether NYCB demonstrated sufficient grounds** to justify the
7 district court in setting aside Shadow Wood's foreclosure sale on NYCB's motion for
8 summary judgment. Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d
9 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in
10 its favor). **As discussed above, demonstrating that an association sold a property at
11 its foreclosure sale for an inadequate price is not enough to set aside that sale; there
12 must also be a showing of fraud, unfairness, or oppression.** Long, 98 Nev. at 13, 639
13 P.2d at 530.

14 **NYCB failed to establish that the foreclosure sale price was grossly inadequate as a
15 matter of law.** NYCB compares Gogo Way's purchase price, \$11,018.39, to the amount
16 NYCB bought the property for at its foreclosure sale, \$45,900.00. Even using NYCB's
17 purchase price as a comparator, and adding to that sum the \$1,519.29 NYCB admits
18 remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's
19 purchase price reflects 23 percent of that amount and is therefore not obviously
20 inadequate. See Golden, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a
21 property was "sold for a smaller proportion of its value than 28.5%," it did not justify
22 setting aside the sale); see also Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b
23 (1997) (stating that while "[g]ross inadequacy cannot be precisely defined in terms
24 of a specific percentage of fair market value[, g]enerally ... a court is warranted in
25 invalidating a sale where the price is less than 20 percent of fair market value and,
26 absent other foreclosure defects, is usually not warranted in invalidating a sale that
27 yields in excess of that amount"). (emphasis added)

28 366 P.3d at 1112

1 A examination of the Restatement shows that the entirety of comment b to section 8.3 actually
2 favors the purchaser's position because it is specific to legal proceedings occurring post foreclosure when
3 a bona fide purchaser acquires title to the real property.

4 A portion of comment a to Section 8.3 notes that "close judicial scrutiny of the sale price is more
5 justifiable when the price is being employed to calculate the amount of a deficiency judgment context."

6 The "Reporters' Note" portion of the Restatement contained on page 590 states in part:
7 All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not
8 accompanied by other defects in the foreclosure process, will not automatically invalidate
9 a sale. (case citations omitted)

10 The Shadow Wood case cites to the case of Golden v. Tomiyasu 79 Nev. 503, 387 P.2d 989
11 (1963). The Golden case and the Shadow Wood case both cite to the case of Oller v. Sonoma County
12 Land Title Company 137 Cal. App 2d 633, 290 P.2d 880 (1955). Both the Golden case and the Oller case

1 cite to the case of Schroeder v. Young, 161 U.S. 334, 16 S. Ct. 512, 40 L. Ed. 721 (1896). The U.S.

2 Supreme Court cited examples of irregularities which may affect the sale. The court stated:

3 'While mere inadequacy of price has rarely been held sufficient in itself to justify setting
4 aside a judicial sale of property, courts are not slow to seize upon other circumstances
5 impeaching the fairness of the transaction as a cause for vacating it, especially if the
6 inadequacy be so gross as to shock the conscience. If the sale has been attended by any
7 irregularity, as if several lots have been sold in bulk where they should have been sold
8 separately, or sold in such manner that their full value could not be realized; if bidders
have been kept away; if any undue advantage has been taken to the prejudice of the owner
of the property, or he has been lulled into a false security; or if the sale has been
collusively or in any other manner conducted for the benefit of the purchaser, and the
property has been sold at a greatly inadequate price, the sale may be set aside, and the
owner may be permitted to redeem.'

9 The requirements for relief from a foreclosure sale when the property has been purchased by a
10 third party in the Restatement, as well as Shadow Wood, Long and Golden is inadequacy of the price, and
11 fraud, oppression and unfairness causing the inadequacy of price. At no time in the Shadow Wood
12 opinion did court use any language to question the validity of the standards or overturn the court's prior
13 rulings.

14 Many bank attorneys are selectively citing the 20% language of the Restatement cited by the court
15 in Shadow Wood to argue that sales price alone is sufficient to set aside the sale. However, on March
16 18, 2016, the Supreme Court issued an unpublished decision in the case of Centeno v. JPMorgan Chase
17 Bank, docket no. 67365. A copy of the decision is attached as Exhibit L. The case involved the denial
18 of an injunction based on the Supremacy Clause and because of a commercially unreasonable sales price.
19 The Supreme Court addressed the commercially reasonable argument, stating:

20Similarly, this court's reaffirmation in Shadow Wood Homeowners Association v.
21 New York Community Bank, 132 Nev. Ad. Op. 5, ___ P.3d ___ (2016), that a low
22 sales price is not a basis for voiding a foreclosure sale absent "fraud, unfairness, or
oppression," undermines the second basis for the district court's decision.

23 Here, the defendant has failed to show any instances of fraud, oppression or unfairness in regard
24 to the foreclosure sale. Absent any showing of fraud, oppression or unfairness, there are no grounds to
25 set aside the foreclosure sale or declare that the deed of trust has survived the sale. The motion for
summary judgment should be granted in favor of Teal Petal St. Trust.

26 Here, the plaintiff and bank have failed to show any instances of fraud, oppression or unfairness
27 in regards to the foreclosure sale. Absent any showing of fraud, oppression or unfairness, there are no
28 grounds to set aside the foreclosure sale or declare that the deed of trust has survived the sale. The

1 motion for summary judgment should be granted in favor of Teal Petal St. Trust.

2 **G. Plaintiff Venise Aberland should be ordered to reimburse Teal Petal St. Trust for property**
3 **insurance, taxes and HOA dues.**

4 On July 22, 2015, an order was entered requiring Plaintiff Venise Aberland to pay the property
5 insurance, taxes and HOA dues if she is to continue occupying the property. The annual property
6 insurance is \$1,400.00; the annual property taxes are \$1,845.00, the annual HOA dues are \$744.00.
7 Additionally, while occupying the property, Plaintiff Venise Aberland has caused 9352 Cranesbill Trust
8 and/or Teal Petals St. Trust to incur approximately \$2,000.00 in HOA violations. Although ordered,
9 Plaintiff Venise Aberland has not paid anything while continuing to occupy the property.

10 9352 Cranebill Ct. Trust, Teal Petal St. Trust's predecessor, acquired title to the property on July
11 18, 2012. At this point, more than 5.5 years later, plaintiff owes Teal Petal St. Trust \$21,939.50 plus
12 \$2,000.00 in HOA violations, for a total of \$23,939.50. Teal Petal St. Trust judgment in said amount.

13 **V. CONCLUSION**

14 The HOA's foreclosure sale extinguished both the defendant's deeds of trust, and its interest in
15 the subject property. As conclusively evidenced by the recitals in the foreclosure deed, the HOA's
16 foreclosure sale complied with all requirements of Nevada law. The recitals are supported by
17 documentation to show the notices went out. The plaintiff and bank have not produced any evidence
18 to show that Teal Petal St. Trust is not a bona fide purchaser, and has failed to demonstrate any fraud,
19 oppression or unfairness to justify setting aside the foreclosure sale.

20 Accordingly, it is respectfully requested that this Court enter an order granting Teal Petal St.
21 Trust's motion for summary judgment and quieting title to the Property in the name of Teal Petal St.
22 Trust, free and clear of all liens and encumbrances and forever enjoining plaintiff and bank from asserting
23 any estate, title, right, interest, or claim to the property adverse to Teal Petal St. Trust.

24 Dated: January 31, 2018

GEISENDORF & VILKIN, PLLC

25 /s/ Charles L. Geisendorf
26 Charles L. Geisendorf, Esq. (6985)

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Certificate of Service

I hereby certify that on January 31, 2018, I served the following document(s):

A copy of the preceding **Motion for Summary Judgment**.

- By Electronic Transmission: by transmitting the document to the parties registered to receive service for this case via this Court's mandatory e-service system.

/s/ Charles L. Geisendorf
An employee of Geisendorf & Vilkin, PLLC

EXHIBIT A

EXHIBIT A

②-1

Inst #: 201207180003166
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$25.50 Ex: #
07/18/2012 03:55:24 PM
Receipt #: 1239191
Requestor:
ALESSI & KOENIG LLC
Recorded By: ANI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
9352 Cranesbill Ct Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.125-18-513-016

TS No. 27031-9352

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein: 9352 Cranesbill Ct Trust
The Foreclosing Beneficiary herein was: Fort Apache Square Homeowners Association
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$4,900.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$4,900.00
The Documentary Transfer Tax: \$25.50
Property address: 9352 CRANESBILL CT, LAS VEGAS, NV 89149
Said property is in [] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): ABELARD VENISE & COMPERE MARCUS.

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded July 12, 2011 as instrument number 0001465, in Clark County, does hereby grant, without warranty expressed or implied to: 9352 Cranesbill Ct Trust (Grantee), all its right, title and interest in the property legally described as: LOT 16 BLOCK B, as per map recorded in Book 123, Pages 73 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on July 11, 2012 at the place indicated on the Notice of Trustee's Sale.

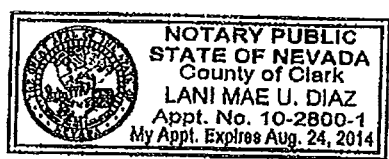
Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me July 18, 2012

WITNESS my hand and official seal.
(Seal)

(Signature)



STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 125-18-513-016
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 \$ 4,900.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 4,900.00
d. Real Property Transfer Tax Due \$ 25.50

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: Grantor

Signature: _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

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

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 9352 Cranesbill Ct Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

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

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

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT B

EXHIBIT B

Inst #: 201107120001465
Fees: \$14.00
N/C Fee: \$0.00
07/12/2011 09:56:26 AM
Receipt #: 841386
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-18-513-016

Trustee Sale # 27031-9352

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, Fort Apache Square Homeowners Association has a lien on the following legally described property.

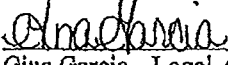
The property against which the lien is imposed is commonly referred to as **9352 CRANESBILL CT, LAS VEGAS, NV 89149** and more particularly legally described as: **LOT 16 BLOCK B Book 123 Page 73** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **ABELARD VENISE & COMPERE MARCUS**

The mailing address(es) is: **9352 CRANESBILL CT, LAS VEGAS, NV 89149**

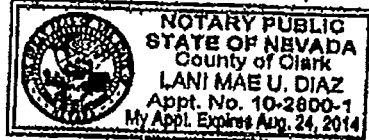
The total amount due through today's date is: **\$2,337.58**. Of this total amount **\$2,262.58** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **June 28, 2011**

By: 
Gina Garcia - Legal Assistant
Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me June 28, 2011

(Seal)



(Signature)



NOTARY PUBLIC

EXHIBIT C

EXHIBIT C

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW****

HUONG LAM***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

June 28, 2011

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

ABELARD VENISE & COMPERE MARCUS
9352 CRANESBILL CT
LAS VEGAS, NV 89149

Re: Fort Apache Square Homeowners Association/9352 CRANESBILL CT/HO #27031

Dear ABELARD VENISE & COMPERE MARCUS:

Our office has been retained by Fort Apache Square Homeowners Association to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Fort Apache Square Homeowners Association on June 28, 2011. The total amount due is \$2,398.58. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig. Cash will not be accepted.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that you dispute the debt, or any portion thereof, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require our office to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins when we are first advised that you have the right to inspect the association records, we will suspend efforts to collect the debt until we are advised that you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive payment of \$2,398.58, a Notice of Default will be recorded in the public records and additional fees and costs. Should you fail to reinstate your account, we will proceed with foreclosure of your property.

Sincerely,

ALESSI & KOENIG
Gina Garcia, Legal Counsel

Please be advised that Alessi & Koenig, LLC is a debt collector the information obtained will be used for

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	



To: ABELARD VENISE & COMPERE MARCUS
9352 CRANESBILL CT
LAS VEGAS, NV 89149

PS Form 3800, August 2006

See Reverse for Instructions

A&KRPD0004

APP000418

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 125-18-513-016

Trustee Sale # 27031-9352

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Fort Apache Square Homeowners Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **9352 CRANESBILL CT , LAS VEGAS, NV 89149** and more particularly legally described as: **LOT 16 BLOCK B Book 123 Page 73** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **ABELARD VENISE & COMPERE MARCUS**

The mailing address(es) is: **9352 CRANESBILL CT, LAS VEGAS, NV 89149**

The total amount due through today's date is: **\$2,337.58**. Of this total amount **\$2,262.58** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **June 28, 2011**

By: 
Gina Garcia – Legal Assistant
Alessi & Koenig, LLC on behalf of **Fort Apache Square Homeowners Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me **June 28, 2011**

(Seal)

(Signature)

NOTARY PUBLIC

EXHIBIT D

EXHIBIT D

Inst #: 201109150001788

Fees: \$14.00

N/C Fee: \$0.00

09/15/2011 09:53:36 AM

Receipt #: 913962

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

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

A.P.N. 125-18-513-016

Trustee Sale No. 27031-9352

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,403.58** as of **August 25, 2011** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Fort Apache Square Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **July 12, 2011** as document number **0001465**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **ABELARD VENISE & COMPERE MARCUS**, of **LOT 16 BLOCK B**, as per map recorded in Book **123**, Pages **73**, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 9352 CRANESBILL CT, LAS VEGAS, NV 89149.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **July 12, 2011**, executed by **Fort Apache Square Homeowners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **August 25, 2011**



Gina Garcia, Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

27031

VENISE ABELARD
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

MARCUS COMPERE
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

DHI MORTGAGE COMPANY
MIN 100020410001775498
12357 RIATA TRACE PARKWAY, SUITE

AUSTIN, TX 78727

MERS
MIN 100020410001775498
PO BOX 2026

CITY OF LAS VEGAS SEWER
CYCLE BILLING NO. 12-015295
400 E. STEWART AVE

NORTH AMERICAN TITLE
T.S. NO. N36501
6320 S. SANDHILL RD, SUITE 3

FLINT, MI 48501-2026

LAS VEGAS, NV 89101

LAS VEGAS, NV 89120

NEVADA ASSOCIATION SERVICES, INC.
T.S. NO. N36501
6224 W. DESERT INN RD, SUITE A

REPUBLIC SERVICES
ACCOUNT # 10-74588-8
PO BOX 98508

LAS VEGAS, NV 89146

LAS VEGAS, NV 89193-8508

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

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

7009 0960 0000 3724 9383

Sent to
Street
or PO
City, State
PS Form 3849

VENISE ABELARD
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

Postmark
Here

Instructions



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



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



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

MERS

MIN 100020410001775498
PO BOX 2026

NEVADA ASSOCIATION SERVICES, INC.

T.S. NO. N36501

6224 W. DESERT INN RD, SUITE A

LAS VEGAS, NV 89146

DHI MORTGAGE COMPANY
MIN 100020410001775498
12357 RIATA TRACE PARKWAY, SUITE

AUSTIN, TX 78727



**ALESSI
&
K O E N I G**

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

CITY OF LAS VEGAS SEWER
CYCLE BILLING NO. 12-015295
400 E. STEWART AVE

LAS VEGAS, NV 89101

**ALESSI
&
K O E N I G**

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

MARCUS COMPERE
9352 CRANESBILL CT

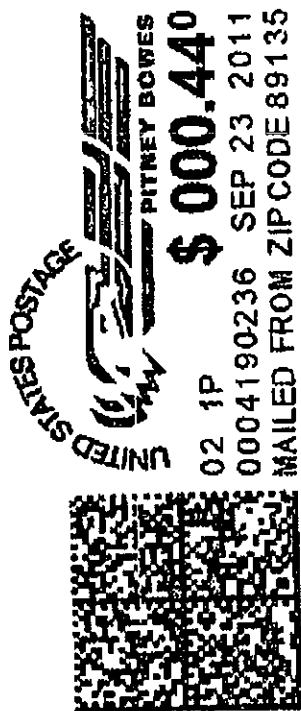
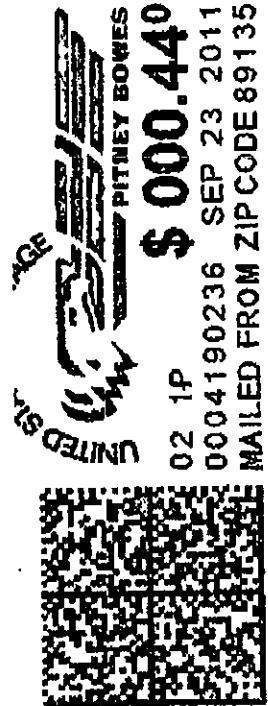
LAS VEGAS, NV 89149-1636

**ALESSI
&
K O E N I G**

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

REPUBLIC SERVICES
ACCOUNT # 10-74588-8
PO BOX 98508

LAS VEGAS, NV 89193-8508





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

NORTH AMERICAN TITLE
T.S. NO. N36501
6320 S. SANDHILL RD, SUITE 3

LAS VEGAS, NV 89120



EXHIBIT E

EXHIBIT E

Inst #: 201205070002189

Fees: \$17.00

N/G Fee: \$0.00

06/07/2012 02:51:04 PM

Receipt #: 1166288

Requestor:

ALESSI & KOENIG LLC

Recorded By: SAO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

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

APN: 125-18-513-016

TSN 27031-9352

NOTICE OF TRUSTEE'S SALE

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

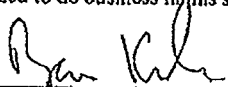
NOTICE IS HEREBY GIVEN THAT:

On June 06, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 12, 2011, as instrument number 0001465, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.58. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Fort Apache Square Homeowners Association

EXHIBIT F

EXHIBIT F

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

APN: 125-18-513-016

TSN 27031-9352

NOTICE OF TRUSTEE'S SALE

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

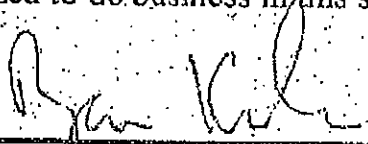
NOTICE IS HEREBY GIVEN THAT:

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The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.58. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Fort Apache Square Homeowners Association

27031

VENISE ABELARD
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

MARCUS COMPERE
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

DHI MORTGAGE COMPANY
12357 RIATA TRACE PARKWAY, SUITE

AUSTIN, TX 78727

MERS
PO BOX 2026

FLINT, MI 48501-2026

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE

LAS VEGAS, NV 89101

NORTH AMERICAN TITLE
6320 S. SANDHILL RD, SUITE 3

LAS VEGAS, NV 89120

NEVADA ASSOCIATION SERVICES, INC.
6224 W. DESERT INN RD, SUITE A

LAS VEGAS, NV 89146

REPUBLIC SERVICES
PO BOX 98508

LAS VEGAS, NV 89193-8508

National Default Servicing Corporation
7720 N. 16th Street, Suite 300

Phoenix, AZ 95020

Wells Fargo Bankm N.A.
c/o National Default Servicing Corporation
7720 No. 16th Street, Suite 300

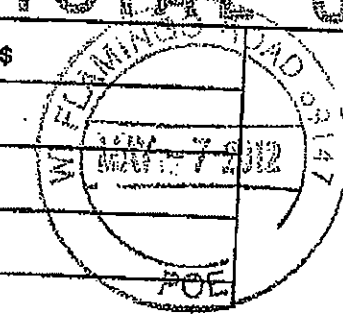
Phoenix, AZ 85020

OMBUDSMANS OFFICE
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

NOTS MAILINGS

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

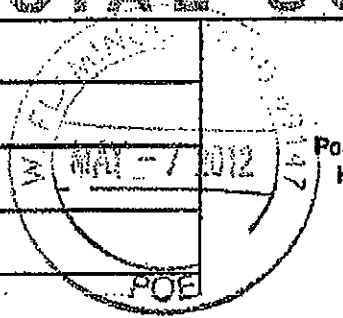
OFFICIAL USE

Postage \$			Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total P.			
Sent To	Wells Fargo Bankm N.A.		
Street, Apt. or PO Box	c/o National Default Servicing Corporation		
City, State, ZIP+4	7720 No. 16th Street, Suite 300		
	Phoenix, AZ 85020		

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

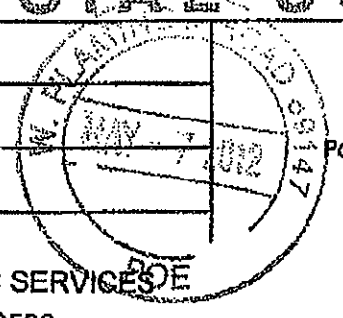
OFFICIAL USE

Postage \$			Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Post			
Sent To	CITY OF LAS VEGAS SEWER		
Street, Apt. or PO Box	400 E. STEWART AVE		
City, State, ZIP+4	LAS VEGAS, NV 89101		

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

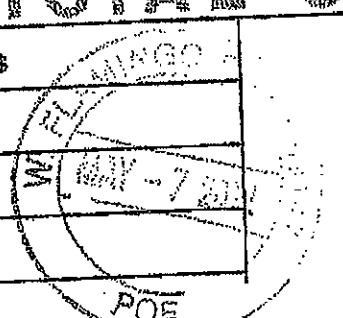
OFFICIAL USE

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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Post			
Sent To	REPUBLIC SERVICES		
Street, Apt. or PO Box	PO BOX 98508		
City, State, ZIP+4	LAS VEGAS, NV 89193-8508		

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

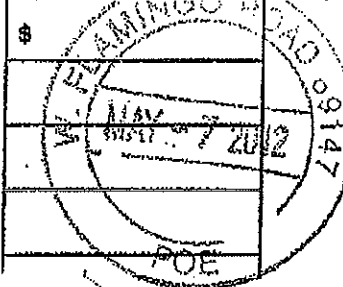
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Post			
Sent To	MARCUS COMPERE		
Street, Apt. or PO Box	9352 CRANESBILL CT		
City, State, ZIP+4	LAS VEGAS, NV 89149-1636		

PS Form 3800, August 2006 See Reverse for Instructions

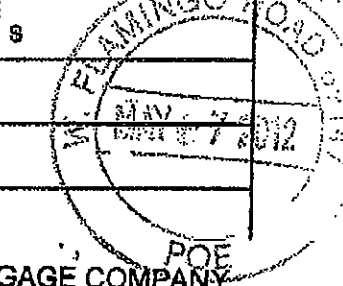
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APP000430

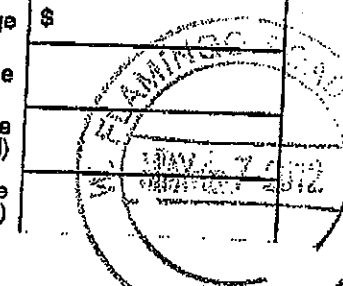
7012 0470 0002 4447 6806

U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Po:	National Default Servicing Corporation	
Sent To	7720 N. 16th Street, Suite 300	
Street, Ap. or PO Box	Phoenix, AZ 95020	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

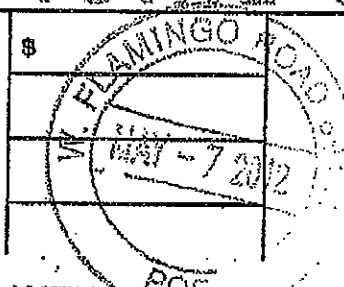
7012 0470 0002 4447 6820

U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total	DHI MORTGAGE COMPANY	
Sent To	12357 RIATA TRACE PARKWAY, SUITE	
Street, Ap. or PO Box	AUSTIN, TX 78727	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

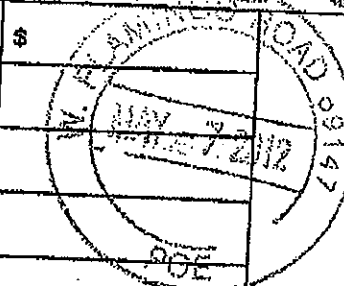
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U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total	MERS	
Sent To	PO BOX 2026	
Street, Ap. or PO Box	FLINT, MI 48501-2026	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

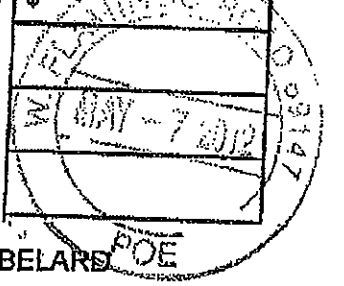
7012 0470 0002 4447 6813

U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Po	NORTH AMERICAN TITLE	
Sent To	6320 S. SANDHILL RD, SUITE 3	
Street, Ap. or PO Box	LAS VEGAS, NV 89120	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

7012 0470 0002 4447 6837

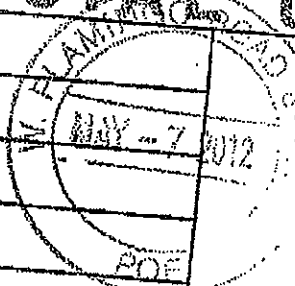
U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total	NEVADA ASSOCIATION SERVICES, INC.	
Sent To	6224 W. DESERT INN RD, SUITE A	
Street, Ap. or PO Box	LAS VEGAS, NV 89146	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

7012 0470 0002 4447 6851

U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage \$	 Postmark Here	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total	VENISE ABELARD	
Sent To	9352 CRANESBILL CT	
Street, Ap. or PO Box	LAS VEGAS, NV 89149-1636	
City, State		
PS Form 3800, August 2006		See Reverse for Instructions

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Payment		

RECIPIENT INFORMATION

Sent To **OMBUDSMANS OFFICE**
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

Street, Apt.
 or PO Box
 City, State

PS Form 3800, August 2006 See Reverse for Instructions

EXHIBIT G

EXHIBIT G

Alessi & Koenig, LLC

TSN # 27031-9352

AFFIDAVIT OF SERVICE

State of Nevada
County of Clark

I, Azra Vidovic, state:

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

I served ABELARD VENISE & COMPERE MARCUS with a copy of the Notice of Trustee's Sale, on 05/09/2012 at approximately 7:07 PM by:

Personally posting a copy of Notice of Trustee's Sale in the manner prescribed pursuant NRS 107.087, in the conspicuous place on the property, upon information and belief, at least 15 days before the date of sale, which is located at:

Trust Property:
9352 CRANESBILL CT
Las Vegas, NV 89149

I posted a copy of the Notice of Trustee Sale pursuant to NRS 107.080, for 20 days consecutively, in the public place in the county where the property is situated, to wit:

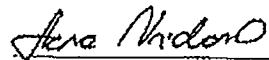
Nevada Legal News:
930 S.4th St. #100
Las Vegas, NV 89101

Regional Justice Center:
200 Lewis Ave
Las Vegas, NV 89101

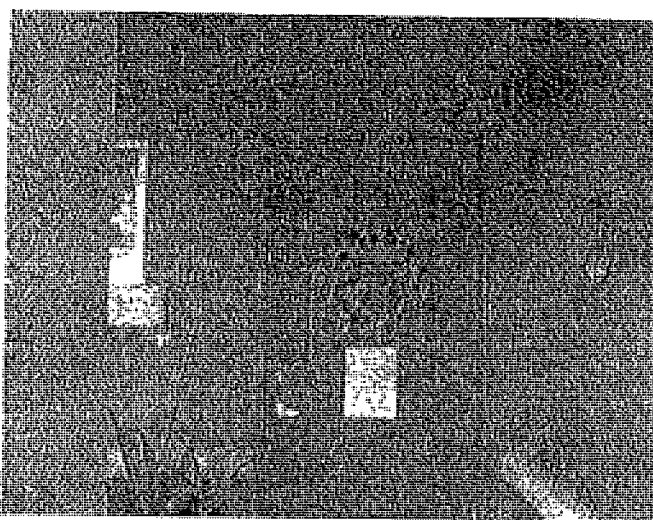
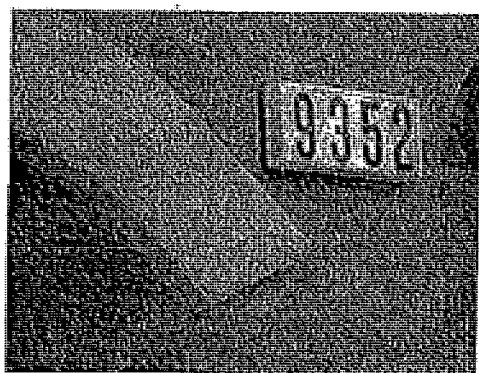
Clark County Law Library
309 S.3rd St, Ste B
Las Vegas, NV 89101

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

Dated 05/14/2012


Azra Vidovic
Alessi & Koenig, LLC
9500 West Flamingo Rd. Ste 205
Las Vegas, NV 89147

COUNTY OF SERVICE: CLARK
SERVER: Azra Vidovic



Photos taken by: Azra Vidovic

Photo date: 05/09/2012 at approximately 7:07 PM

Property owner: ABELARD VENISE & COMPERE MARCUS

Property address: 9352 CRANESBILL CT, Las Vegas, NV 89149

ALESSI & KOENIG, LLC

TSN 27031-9352

EXHIBIT H

EXHIBIT H

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-8907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On June 08, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 12, 2011, as Instrument number 0001485, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIER'S CHECK at 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS.

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.68. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC
on behalf of Fort Apache Square Homeowners Association

PUBLISHED
05/11/2012, 05/18/2012 & 05/25/2012

CLARK COUNTY LEGAL NEWS
NYE & CLARK COUNTY, NEVADA
CCLN FILE 12051104.mps

Certification of Publication

This is to confirm that, on the aforementioned dates, the attached Legal Notice was published in the Clark County Legal News newspaper, a newspaper of general and subscription circulation in Clark County, Nevada.

Per NRS 238.030, the Clark County Legal News newspaper is printed and published in whole or in part in both Clark County and Nye County, Nevada.

WITNESS my hand on this

05/25/2012
DATE

Jeremiah J. Donovan

JEREMIAH J. DONOVAN, publisher,
Clark County Legal News newspaper

EXHIBIT I

EXHIBIT I

Inst #: 201207270002642

Fees: \$19.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

07/27/2012 01:25:02 PM

Receipt #: 1250468

Requestor:

RESOURCES GROUP

Recorded By: MSH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 125-18-513-016

Affix R.P.T.T. Exempt 7

**WHEN RECORDED MAIL TO and MAIL TAX
STATEMENT TO:**

Teal Petals St. Trust

900 S. Las Vegas Blvd #810

Las Vegas, NV 89101

ESCROW NO:

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Resources Group, LLC, a Nevada Limited Liability Company as Trustee of the Cranesbill Court Trust dated 07-11-12 who acquired title as Cranesbill Court Trust

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

Teal Petals St. Trust

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

- Subject to:
1. Taxes for the current fiscal year, paid current.
 2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this _____ day of _____, .

Cranesbill Court Trust dated 7-11-12

By: Resources Group LLC, a Nevada Limited Liability Company, Trustee

BY: _____

Lynd Haddad, Manager

APP000439

STATE OF NEVADA
COUNTY OF CLARK

} ss:

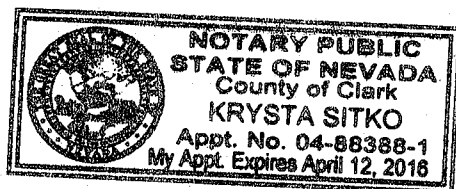
On this July 27, 2012
appeared before me, a Notary Public,

YAD HADDAD

personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.

Notary Public KRYSTA SITKO

My commission expires: 4/12/16



APP000440

LEGAL DESCRIPTION

EXHIBIT "A"

Assessor's Parcel No: 125-18-513-016

LOT 16 IN BLOCK B OF FINAL MAP OF FORT APACHE RANCH, AS SHOWN BY MAP THEREOF
ON FILE IN BOOK 123 OF PLATS, PAGE 73, IN THE OFFICE OF THE COUNTY RECORDER OF
CLARK COUNTY, NEVADA.

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s) ☐

- a) 125-18-513-016
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'V/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument # _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property: \$ _____
b. Deed in Lieu of Foreclosure Only (value of property): (0.00)
c. Transfer Tax Value: \$ _____
d. Real Property Transfer Tax Due: \$ 0.00

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption, per NRS 375.090, Section: 7
b. Explain Reason for Exemption: Transfer from a trust to a trust without consideration

5. Partial Interest: Percentage being transferred: _____%

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

Signature _____

Capacity Grantor

Signature _____

Capacity Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(REQUIRED)

(REQUIRED)

Print Name Cranebill Court Trust
Address: 900 S. Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89101

Print Name: Teal Petals St Trust
Address: 900 S. Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89101

COMPANY REQUESTING RECORDING

Print Name: Teal Petals St. Trust
Address: 900 S. Las Vegas Blvd #810
City/State/Zip: Las Vegas, NV 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

APP000442

EXHIBIT J

EXHIBIT J

APN: 125-18-513-016
State of Nevada
County of Clark
MERS ID:
100020410001775498
MERS Telephone: 1-888-679-6377

RECORDING REQUESTED BY:
WELLS FARGO BANK, N.A.
2701 WELLS FARGO WAY MAC X9999-018
MINNEAPOLIS MN 55467-8000

Inst #: 201210170001249

Fees: \$17.00

N/C Fee: \$0.00

10/17/2012 08:08:37 AM

Receipt #: 1346422

Requestor:

WELLS FARGO BANK, N.A.

Recorded By: SOL Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS (herein "Assignor") whose address is BOX 2026 FLINT MI 48501 1901 E VOORHEES ST STE C, DANVILLE, IL 61834, does hereby grant, sell, assign, transfer, and convey, unto WELLS FARGO BANK, NA (herein "Assignee"), whose address is 1 HOME CAMPUS, DES MOINES, IA 50328, a certain Mortgage dated 11/20/2007 and recorded 11/28/2007, made and executed by VENISE ABELARD, AN UNMARRIED WOMAN AND MARCUS COMPERE, A SINGLE MAN, to and in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS upon the following described property. Such Mortgage having been given to secure payment of \$226081.00 which Mortgage is of record in Book, Volume or Liber No., at Page, as Document No. 20071128-0003832, of the Records of Clark County, State of Nevada, 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 such Mortgage.

Legal Description:

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on 10/17/2012.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR DHI MORTGAGE COMPANY, LIMITED, ITS SUCCESSORS AND ASSIGNS

Lynn Marie Sevick

LYNN MARIE SEVICK, Assistant Secretary

STATE OF MN }
COUNTY OF Dakota } s.s.

On 10/17/2012, before me MICHAEL J. MURPHY, Notary Public, personally appeared LYNN MARIE SEVICK, Assistant Secretary 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 to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Michael J. Murphy

MICHAEL J. MURPHY

Commission #: 31045582

My Commission Expires: 01/31/2016

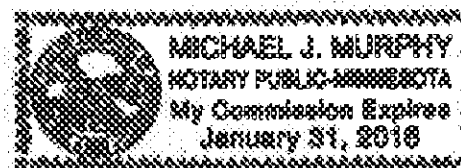


EXHIBIT K

EXHIBIT K

trap for the unwary, and often to be Draconian in its consequences. See, e.g., *Security Pacific National Bank v. Wozab*, 800 P.2d 557 (Cal. 1990); Conley, *The Sanction for Violation of California's One-Action Rule*, 79 Cal. L. Rev. 1601 (1991); Hetland & Hanson, *The "Mixed Collateral" Amendments to California's Commercial Code—Covert Repeal of California Real Property Foreclosure and Anti-deficiency Provisions or Exercise in Futility?*, 75 Cal. L. Rev. 185 (1987); Hirsh, Arnold, Rabin & Sigman, *The U.C.C. Mixed Collateral Statute—Has Paradise Really Been Lost?*, 36 U.C.L.A. L. Rev. 1, 6, 10 (1988); Munoz & Rabin, *The Sequel to Bank of America v. Daily: Security Pac. Nat'l Bank v. Wozab*, 12 Real Prop. L. Rep. 204 (1989).

For a consideration of the characteristics of judicial and power of sale foreclosure, see 1 G. Nelson & D. Whitman, *Real Estate Finance Law* §§ 7.11–7.14, 7.19–7.30 (3d ed. 1993).

Limitations on mortgagee's remedies, Comment b. Some states permit the mortgagee to sue on the mortgage obligation and simultaneously to bring a judicial foreclosure action or power of sale proceeding. See, e.g., *Hartford National Bank & Trust Co. v. Kotkin*, 441 A.2d 593 (Conn.1981); *Eastern Illinois Trust & Sav. Bank v. Vickery*, 517 N.E.2d 604 (Ill. App. Ct. 1987); *First Indiana Federal Sav.*

Bank v. Hartle, 567 N.E.2d 834 (Ind. Ct.App.1991); *Kepler v. Slade*, 896 P.2d 482 (N.M.1995); *Elmwood Federal Savings Bank v. Parker*, 666 A.2d 721 n.6 (Pa. Super. Ct. 1995); *In re Gayle*, 189 B.R. 914 (Bankr. S.D.Tex.1995). This section prohibits such a course of action. This reflects a policy of judicial economy and against harassment of the mortgagor by forcing him or her to defend two proceedings at once. This approach is supported by legislation in over a dozen states. See *Alaska Stat. § 09.45.200*; *Ariz. Rev. Stat. § 33-722*; *Fla. Stat. Ann. § 702.06*; *Idaho Code § 45-1505(4)*; *Iowa Code Ann. § 654.4*; *Mich. Comp. Laws Ann. §§ 600.3105(1), (2), 3204(2)*; *Minn. Stat. Ann. § 580.02*; *Neb. Rev. Stat. §§ 25-2140, -2143*; *N.Y. Real Prop. Acts. & Proc. L. §§ 1301, 1401(2)*; *N.D. Cent. Code § 32-19-05*; *Or. Rev. Stat. §§ 86.735(4), 88.040*; *S.D. Comp. Laws Ann. §§ 21-47-6, -48-4*; *Wash. Rev. Code Ann. § 61.12.120*; *Wyo. Stat. § 34-4-103*.

For authority that an election of remedies statute similar to the language of this section does not prohibit a mortgagee from foreclosing on a guarantor's real estate after having obtained a judgment against the principal debtor, see *Ed Herman & Sons v. Russell*, 535 N.W.2d 803 (Minn. 1995).

§ 8.3 Adequacy of Foreclosure Sale Price

(a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective unless the price is grossly inadequate.

(b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

Cross-References:

Section 7.1, Effect of Mortgage Priority on Foreclosure; § 8.4, Foreclosure: Action for a Deficiency; § 8.5, The Merger Doctrine Inapplicable to Mortgages.

Comment:

a. Introduction. Many commentators have observed that the foreclosure process commonly fails to produce the fair market value for foreclosed real estate. The United States Supreme Court recently emphasized this widely perceived dichotomy between "foreclosure sale value" and fair market value:

An appraiser's reconstruction of "fair market value" could show what similar property would be worth if it did not have to be sold within the time and manner strictures of state-prescribed foreclosure. But property that *must* be sold with these strictures is simply *worth* less. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques. And it is no more realistic to ignore that characteristic of the property (the fact that state foreclosure law permits the mortgagee to sell it at a forced sale) than it is to ignore other price-affecting characteristics (such as the fact that state zoning law permits the owner of the neighboring lot to open a gas station).

BFP v. Resolution Trust Corp., 511 U.S. 531, 539, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994).

There are several reasons for low bids at foreclosure sales. First, because the mortgage lender can "credit bid" up to the amount of the mortgage obligation without putting up new cash, it has a distinct bidding advantage over a potential third party bidder. Second, while foreclosure legislation usually requires published notice to potential third party purchasers, this notice, especially in urban areas, is frequently published in the classified columns of legal newspapers with limited circulation. Moreover, because the publication is usually highly technical, unsophisticated potential bidders have little idea as to the nature of the real estate being sold. Third, many potential third party purchasers are reluctant to buy land at a foreclosure sale because of the difficulty in ascertaining whether the sale will produce a good and marketable title and the absence of any warranty of title or of physical quality from the foreclosing mortgagee. Finally, when a mortgagee forecloses on improved real estate, potential bidders may find it difficult to inspect the premises prior to sale. Even though it may be in the self-interest of the mortgagor to allow such persons to inspect the premises, mortgagors who are about to lose their real estate through a foreclosure sale understandably are frequently reluctant to cooperate.

Given the nature of the foreclosure sale process, courts have consistently been unwilling to impose a "fair market value" standard on the price it produces. Courts are rightly concerned that an increased willingness to invalidate foreclosure sales because of price inadequacy will make foreclosure titles more uncertain. When a foreclosure sale is set aside, the court may upset third party expectations. A third party may have acquired title to the foreclosed real estate by purchase at the sale or by conveyance from the mortgagee-purchaser. Thus, a general reluctance to set aside the sale is understandable and sensible. This reluctance may be especially justifiable when price inadequacy is the only objection to the sale. Consequently, the end result of additional judicial activism on this issue might well be further exacerbation of the foreclosure price problem. This section largely reflects this judicial concern.

However, close judicial scrutiny of the sale price is more justifiable when the price is being employed to calculate the amount of a deficiency judgment context. This is especially the case where the mortgagee purchases at the sale and, in addition, seeks a deficiency judgment. The potential for unjust enrichment of the mortgagee in this situation may well demand closer judicial scrutiny of the sale price. Moreover, the interests of third parties are not prejudiced by judicial intervention in an action for a deficiency judgment. Because a deficiency proceeding is merely an *in personam* action against the mortgagor for money, the title of the foreclosure purchaser is not placed at risk. Consequently, a more intensive examination of the foreclosure price in the deficiency context is appropriate. This view is reflected in § 8.4 of this Restatement.

Ultimately, however, price inadequacy must be addressed in the context of a fundamental legislative reform of the entire foreclosure process so that it yields a price more closely approximating "fair market value." In order to ameliorate the price-suppressing tendency of the "forced sale" system, such legislation could incorporate many of the sale and advertising techniques found in the normal real estate marketplace. These could include, for example, the use of real estate brokers and commonly used print and pictorial media advertising. While such a major restructuring of the foreclosure process is desirable, it is more appropriate subject for legislative action than for the Restatement process.

b. *Application of the standard.* Section 8.4 deals with the question of adequacy of the foreclosure price in the deficiency judgment context. This section, on the other hand, applies to actions to nullify the foreclosure sale itself based on price inadequacy. This issue may arise in any of several different procedural contexts, depending on whether the mortgage is being foreclosed judicially or by power of

sale. Where the foreclosure is by judicial action, the issue of price typically will arise when the mortgagee makes a motion to confirm the sale.

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

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

"Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.

Foreclosures subject to senior liens can sometimes pose special problems in assessing price adequacy. For example, where one or

more senior liens are also in default and their amount substantial or controverted, a court may properly recognize the added uncertainties facing the foreclosure purchaser and refuse to invalidate a sale even though it produces a price that is less than 20 percent of the fair market value of the mortgagor's equity. This problem may be particularly acute where a senior mortgage has a substantial prepayment fee or if it is uncertain whether the senior mortgage is prepayable at all. See Illustration 6.

Moreover, courts can properly take into account the fact that the value shown on a recent appraisal is not necessarily the same as the property's fair market value on the foreclosure sale date, and that "gross inadequacy" cannot be precisely defined in terms of a specific percentage of appraised value. This is particularly the case in rapidly rising or falling market conditions. Appraisals are time-bound, and in such situations are often prone to error to the extent that they rely on comparable sales data, for such data are by definition historical in nature and cannot possibly reflect current market conditions with complete precision. For this reason, a court may be justified in approving a foreclosure price that is less than 20 percent of appraised value if the court determines that market prices are falling rapidly and that the appraisal does not take adequate account of recent declines in value as of the date of the foreclosure. See Illustration 7. Similarly, a court may be warranted in refusing to confirm a sale that produces more than 20 percent of appraised value if the court finds that market prices are rising rapidly and that the appraisal reflects an amount lower than the current fair market value as of the date of foreclosure. See Illustration 8.

Illustrations:

1. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre at the time of the sale is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.

2. The facts are the same as Illustration 1, except the foreclosure proceeding is by power of sale and Mortgagor files a judicial action to set aside the sale based on inadequacy of the sale price. A court is warranted in finding that the sale price is grossly inadequate and in setting aside the sale, provided that the property has not subsequently been sold to a bona fide purchaser.

3. The facts are the same as Illustration 2, except that the Mortgagee is responsible for conduct that chills bidding at the

sale. Blackacre is purchased at the foreclosure sale by a bona fide purchaser. Mortgagor files a suit against the Mortgagee to recover damages for wrongful foreclosure. A court is warranted in finding that the sale price is grossly inadequate and in awarding damages to Mortgagor.

4. Mortgagee forecloses a mortgage on Blackacre by judicial action. The foreclosure is subject to a senior lien in the amount of \$50,000. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$150,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.

5. The facts are the same as Illustration 1, except that Blackacre has a fair market value of \$60,000 at the time of the foreclosure sale. The court is not warranted in refusing to confirm the sale.

6. Mortgagee forecloses a mortgage on Blackacre by power of sale. The foreclosure is subject to a large (in relation to market value) senior lien that is in default, carries an above market interest rate, and provides for a substantial prepayment charge. At the time of the foreclosure sale, the current balance on the senior lien is \$500,000. Blackacre is sold at the foreclosure sale for \$10,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$600,000. The foreclosure proceeding is regularly conducted in compliance with state law. Mortgagor files suit to set aside the sale. A court is warranted in refusing to set the sale aside.

7. Mortgagee forecloses a mortgage on Blackacre, a vacant lot, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$10,000. The appraised value of Blackacre, based on an appraisal performed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been declining rapidly, and this is especially the case with respect to raw land. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$50,000 or less, the court is warranted in confirming the sale.

8. Mortgagee forecloses a mortgage on Blackacre, a residential duplex, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$35,000. The appraised value of Blackacre, based on an appraisal per-

formed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been rising rapidly, and this is especially the case with respect to residential rental real estate. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$175,000 or more, the court is warranted in refusing to confirm the sale.

c. Price inadequacy coupled with other defects. Even where the foreclosure price for less than fair market value cannot be characterized as "grossly inadequate," if the foreclosure proceeding is defective under local law in some other respect, a court is warranted in invalidating the sale and may even be required to do so. Such defects may include, for example, chilled bidding, an improper time or place of sale, fraudulent conduct by the mortgagee, a defective notice of sale, or selling too much or too little of the mortgaged real estate. For example, even a slight irregularity in the foreclosure process coupled with a sale price that is substantially below fair market value may justify or even compel the invalidation of the sale. See Illustrations 9 and 10. On the other hand, even a sale for slightly below fair market value may be enough to require invalidation of the sale where there is a major defect in the foreclosure process. See Illustration 11.

Illustrations:

9. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$15,000. The fair market value of Blackacre at the time of the sale is \$50,000. The foreclosure proceeding is regularly conducted in compliance with state law except that at the foreclosure sale the sheriff fails to read the foreclosure notice aloud as required by the applicable statute. A court is warranted in refusing to confirm the sale.

10. The facts are the same as Illustration 9, except that the foreclosure is by power of sale. The foreclosure proceeding is regularly conducted in compliance with state law except that notice of the sale is published only 16 times rather than 20 times as required by the applicable statute. Mortgagor files suit to set aside the sale. A court is warranted in setting the sale aside.

11. Mortgagee forecloses a deed of trust on Blackacre by power of sale. Blackacre is sold at the foreclosure sale for \$85,000. The fair market value of Blackacre as of the time of the sale is \$100,000. Although the foreclosure proceeding is otherwise regu-

larly conducted in compliance with state law, the trustee at the sale fails to recognize a higher bid from a junior lienor who is present at the sale. Mortgagor files suit to set aside the sale. The sale should be set aside.

REPORTERS' NOTE

Introduction, Comment a. Numerous commentators point out that foreclosure sales normally do not generally produce fair market value for the foreclosed real estate. See, e.g., Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L.J. 236 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959 (1993) (observing that there is a "disparity in values between the perceived fair market value of the foreclosed premises prior to foreclosure and amount actually realized upon foreclosure"); Ehrlich, *Avoidance of Foreclosure Sales as Fraudulent Conveyances: Accommodating State and Federal Objectives*, 71 Va. L. Rev. 933 (1985) ("contemporary foreclosure procedures are poorly designed to maximize sales price"); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 S. Cal. L. Rev. 843 (1980); G. Nelson & D. Whitman, *Real Estate Finance Law* § 8.8 (3d ed. 1994). In an empirical study of judicial foreclosure prices and resales in one New York county, Professor Wechsler has gone so far to conclude that

foreclosure by sale frequently operated as a meaningless charade, producing the functional equivalent of strict foreclosure, a process abandoned long ago. Mortgagees acquired properties at foreclosure sales and resold them at a significant profit in a large number of

cases.... In short, ... foreclosure by sale is not producing its intended results, and in many cases is yielding unjust and inequitable results.

Wechsler, *Through the Looking Glass: Foreclosure by Sale as De Facto Strict Foreclosure—An Empirical Study of Mortgage Foreclosure and Subsequent Resale*, 70 Cornell L. Rev. 850, 896 (1985). See *Resolution Trust Corp. v. Carr*, 13 F.3d 425 (1st Cir. 1993) ("It is common knowledge in the real world that the potential price to be realized from the sale of real estate, particularly in a recessionary period, usually is considerably lower when sold 'under the hammer' than the price obtainable when it is sold by an owner not under distress and who is able to sell at his convenience and to wait until a purchaser reaches his price.").

For a consideration of why foreclosure sales do not normally bring fair market value, see Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151, 152 (1982); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959, 966-72 (1993); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 848-851 (1980); *Carteret Savings & Loan Ass'n v. Davis*, 521 A.2d 831, 835 (N.J.1987) ("[I]t is likely that the

low turnout of third parties who actually buy property at foreclosure sales reflects a general conclusion that the risks of acquiring an imperfect title are often too high").

Until recently, claims of foreclosure price inadequacy commonly arose in the context of mortgagor bankruptcy proceedings. Debtors in possession and bankruptcy trustees frequently challenged pre-bankruptcy foreclosure sales as constructively fraudulent transfers under § 548 of the Bankruptcy Code. See 11 U.S.C. § 548. Under the latter section, a trustee or a debtor in possession may avoid a transfer by a debtor if it can be established that (1) the debtor had an interest in property; (2) the transfer took place within a year of the bankruptcy petition filing; (3) the debtor was insolvent at the time of the transfer or the transfer caused insolvency; and (4) the debtor received "less than a reasonably equivalent value" for the transfer. 11 U.S.C. § 548(a)(2)(A). In *Durrett v. Washington National Ins. Co.*, 621 F.2d 201 (5th Cir.1980), a controversial decision by the United States Court of Appeals for the Fifth Circuit, the court used the predecessor to § 548(a) to find, for the first time, that a foreclosure proceeding that otherwise complied with state law could be set aside if the sale price did not represent "reasonably equivalent value." In dictum the court suggested that a foreclosure price of less than 70 percent of fair market value failed to meet the "fair equivalency" test. Several other federal courts adopted *Durrett*. See, e.g., *In re Hulm*, 738 F.2d 323 (8th Cir.1984); *First Federal Savings & Loan Ass'n of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (N.D.Ga.1988); 1 G. Nelson & D. Whitman, *Real*

Estate Finance Law § 8.17 & notes 10-17 (3d ed. 1993).

Other courts, while rejecting a "bright line" 70 percent test, endorsed *Durrett* as a general principle, but adopted the view that "in defining reasonably equivalent value, the court should neither grant a conclusive presumption in favor of a purchaser at a regularly conducted, noncollusive foreclosure sale, nor limit its inquiry to a simple comparison of the sale price to the fair market value. Reasonable equivalence should depend on all the facts of each case." *Matter of Bundles*, 856 F.2d 815, 824 (7th Cir. 1988). *Durrett* was the subject of significant scholarly commentary. See, e.g., Baird & Jackson, *Fraudulent Conveyance Law and Its Proper Domain*, 38 Vand. L. Rev. 829 (1985); Henning, *An Analysis of Durrett and Its Impact on Real and Personal Property Foreclosures: Some Proposed Modifications*, 63 N.C. L. Rev. 257 (1984); Zinman, *Noncollusive Regularly Conducted Foreclosure Sales: Involuntary Nonfraudulent Transfers*, 9 Cardozo L. Rev. 581 (1987). The Ninth Circuit, however, rejected *Durrett* and its variations and held, in a case where the foreclosure price was allegedly less than 60 percent of the real estate's fair market value, "that the price received at a noncollusive, regularly conducted foreclosure establishes irrebuttably reasonably equivalent value" under § 548. *In re BFP*, 974 F.2d 1144 (9th Cir.1992). See also *Matter of Winshall Settlor's Trust*, 758 F.2d 1136 (6th Cir.1985).

The United States Supreme Court, in a 5-4 decision, affirmed the Ninth Circuit and rejected *Durrett* and its progeny:

[W]e decline to read the phrase "reasonably equivalent value" ...

to mean, in its application to foreclosure sales, either "fair market value" or "fair foreclosure price" (whether calculated as a percentage of fair market value or otherwise). We deem, as the law has always deemed, that a fair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with.

BFP v. Resolution Trust Corp., 511 U.S. 531, 545, 114 S.Ct. 1757, 1765, 128 L.Ed.2d 556 (1994). As a result, § 548 of the Bankruptcy Code now provides no basis for invalidating state foreclosure sales based on inadequacy of the price.

The *Durrett* principle has been rejected in another important context, the Uniform Fraudulent Transfer Act (UFTA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. Because of a fear that bankruptcy judges and state courts would interpret state fraudulent conveyance law as incorporating *Durrett* principles, the UFTA provides that "a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale ... under a mortgage, deed of trust or security agreement." U.F.T.A. § 3(b). The UFTA has been adopted by at least 30 states. See 7A Uniform Laws Ann. 170 (1993 Supp.).

For suggestions for statutory reform of the foreclosure process, see Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L. J. 286 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic*

Approach Based on the Paradigmatic Norms of Bankruptcy, 79 Va. L. Rev. 959 (1993); Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151 (1982).

The United States Supreme Court has yet to resolve whether an inadequate foreclosure sale price may under some circumstances be the basis for a preference attack under § 547 of the Bankruptcy Code. At least four cases hold that, assuming the mortgagor was insolvent at the time of foreclosure, a mortgagee foreclosure purchase for the amount of the mortgage obligation or less within 90 days of a mortgagor bankruptcy petition is a voidable preference to the extent that real estate was worth more than the mortgage obligation at the time of the foreclosure sale. See *In re Park North Partners, Ltd.*, 80 B.R. 551 (N.D.Ga.1987); *In re Winters*, 119 B.R. 283 (Bankr.M.D.Fla.1990); *In re Wheeler*, 34 B.R. 818 (Bankr.N.D.Ala. 1983); *Matter of Fountain*, 32 B.R. 965 (Bankr.W.D.Mo.1983). Cf. *In re Quinn*, 69 B.R. 776 (Bankr.W.D.Tenn. 1986) (foreclosure sale not a preference because mortgagor was not insolvent at time of the foreclosure sale). On the other hand, the United States Court of Appeals for the Ninth Circuit and at least one other court have rejected this use of § 547. See *In re Ehring*, 900 F.2d 184 (9th Cir. 1990); *First Federal Savings & Loan Assoc. of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (D.Ga.1988). See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 785-788 (3d ed. 1993). For criticism of the use of the preference approach in this context, see Kennedy, *Involuntary Fraudulent Transfer*, 9 Cardozo L. Rev. 531, 563-564 (1987).

Application of the standard, Comment b. An action to set aside a power of sale foreclosure may be brought not only by the mortgagor or other holder of the equity of redemption, but also by junior lienors. See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 537-540 (3d ed. 1993). This is also true with respect to actions for damages for wrongful foreclosure. *Id.* at 540-544.

All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not accompanied by other defects in the foreclosure process, will not automatically invalidate a sale. See, e.g., *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Boatmen's Bank of Jefferson County v. Community Interiors, Inc.*, 721 S.W.2d 72 (Mo.Ct.App.1986); *Greater Southwest Office Park, Ltd. v. Texas Commerce Bank, N.A.*, 786 S.W.2d 386 (Tex. Ct. App. 1990); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.1992).

In general, courts articulate two main standards for invalidating a foreclosure sale based on price. First, many courts require that, in the absence of some other defect or irregularity in the foreclosure process, the price be "grossly inadequate" before a sale may be invalidated. See, e.g., *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div.1994); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla. 1990); *Vend-A-Matic, Inc. v. Frankford Trust Co.*, 442

A.2d 1158 (Pa. Super. Ct. 1982). Second, other courts require a disparity between the sale price and fair market value so gross as to "shock the conscience of the court or raise a presumption of fraud or unfairness." See, e.g., *Allied Steel Corp. v. Cooper*, 607 So.2d 113 (Miss.1992); *Armstrong v. Csurilla*, 817 P.2d 1221 (N.M.1991); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991); *Trustco Bank New York v. Collins*, 623 N.Y.S.2d 642 (N.Y.App.Div.1995); *Key Bank of Western New York, N.A. v. Kessler Graphics Corp.*, 608 N.Y.S.2d 21 (N.Y.App.Div.1993); *Bascom Construction, Inc. v. City Bank & Trust*, 629 A.2d 797 (N.H.1993); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993); *Verec Assurance, Inc. v. AABREC, Inc.*, 436 N.W.2d 876 (Wis.Ct.App.1989). A few courts seem to conflate the foregoing standards by holding that a sale will be set aside only where the price is so "grossly inadequate as to shock the conscience." *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990).

At least one jurisdiction takes the position that "[i]f the fair market value of the property is over twice the sales price, the price is considered to be grossly inadequate, shocking 'the conscience of the court' and justifying the setting aside of the sale." *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414, 419 (Del.1994). At the other extreme, one state supreme court, in dealing with a price that was "shockingly inadequate" abandoned the "conscience shocking" standard as "impractical" and instead held that "[i]f a foreclosure sale is legally held, conducted and consummated, there must be some evidence of irregularity, misconduct, fraud, or unfairness

on the part of the trustee or mortgagee that caused or contributed to an inadequate price, for a court of equity to set aside the sale." *Holt v. Citizens Central Bank*, 688 S.W.2d 414, 416 (Tenn.1984). See also *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990).

It is unlikely that the "grossly inadequate" and "shock the conscience" standards differ materially. However, this section adopts the former standard on the theory that in form, if not in substance, it may afford a court somewhat greater flexibility in close cases to invalidate a foreclosure sale than does its "shock the conscience" counterpart.

Illustrations 1-4 establish that only rarely will a court be justified in invalidating a foreclosure sale based on substantial price disparity alone. Courts routinely uphold foreclosure sale prices of 50 percent or more of fair market value. See, e.g., *Danbury Savings & Loan Ass'n v. Hovi*, 569 A.2d 1143 (Conn. App. Ct. 1990); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Guerra v. Mutual Federal Savings & Loan Ass'n*, 194 So.2d 15 (Fla.Ct.App. 1967); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div. 1994); *Long Island Savings Bank v. Valiquette*, 584 N.Y.S.2d 127 (N.Y.App.Div.1992); *Glenville & 110 Corp. v. Tortora*, 524 N.Y.S.2d 747 (N.Y.App.Div.1988); *Zisser v. Noah Industrial Marine & Ship Repair, Inc.*, 514 N.Y.S.2d 786 (N.Y.App.Div. 1987); *S & T Bank v. Dalessio*, 632 A.2d 566 (Pa. Super. Ct. 1993); *Cedrone v. Warwick Federal Savings & Loan Ass'n*, 459 A.2d 944 (R.I.1983); *Federal Deposit Ins. Corp. v. Villemaire*, 849 F.Supp. 116 (D.Mass. 1994); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.

1992). But see *Murphy v. Financial Development Corp.*, 495 A.2d 1245 (N.H.1985) (sale price of 59% of fair market value indicated failure of due diligence on part of foreclosing mortgagee in exercising power of sale).

Moreover, courts usually uphold sales even when they produce significantly less than 50 percent. See, e.g., *Hurlock Food Processors Investment Associates v. Mercantile-Safe Deposit & Trust Co.*, 633 A.2d 438 (Md.Ct. App.1993) (35% of fair market value (FMV)); *Frank Buttermark Plumbing & Heating Corp. v. Sagarese*, 500 N.Y.S.2d 551 (N.Y.App.Div.1986) (30% of FMV); *Shipp Corp., Inc. v. Charpillot*, 414 So.2d 1122 (Fla.Dist. Ct.App.1982) (33% of FMV); *Moeller v. Lien*, 30 Cal.Rptr.2d 777 (Cal.Ct. App.1994) (25% of FMV). See generally *Dingus, Mortgages—Redemption After Foreclosure Sale in Missouri*, 25 Mo. L. Rev. 261, 262-63 (1960).

On the other hand, there are cases holding that a trial court is warranted in invalidating a foreclosure sale that produces a price of 20 percent of fair market value or less. See *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990) (approximately 20% of FMV); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (15% of FMV); *Rife v. Woolfolk*, 289 S.E.2d 220 (W.Va.1982) (14% of FMV); *Ballentyne v. Smith*, 205 U.S. 285, 27 S.Ct. 527, 51 L.Ed. 803 (1907) (14% of FMV); *Polish National Alliance v. White Eagle Hall Co., Inc.*, 470 N.Y.S.2d 642 (N.Y.App. Div.1983) ("foreclosure sales at prices below 10% of value have consistently been held unconscionably low"). According to the New Mexico Supreme Court, when the price falls into the 10-40 percent range, it should not be confirmed "absent good reasons why it should be." *Armstrong v. Csurilla*,

817 P.2d 1221, 1234 (N.M.1991). A Mississippi decision takes the position that a sale for less than 40 percent of fair market value "shocks the conscience." *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). One commentator maintains that there "is general agreement at the extremes as to what constitutes gross inadequacy. Sale prices less than 10 percent of value are generally held grossly inadequate, whereas those above 40 percent are held not grossly inadequate." Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 866 (1980).

On rare occasions, a trial court may abuse its discretion in confirming a grossly inadequate price. See *First National Bank of York v. Critel*, 555 N.W.2d 773 (Neb.1996) (reversing trial court's confirmation of a foreclosure sale that yielded 14% of appraised value).

Illustration 6 takes the position that a court may properly take into account that senior liens under some circumstances may make bidding at a junior foreclosure sale an especially precarious enterprise, and may thus be warranted in upholding the sale of the mortgagor's equity for an amount that would otherwise be deemed grossly inadequate. Support for this approach is found in *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). See also *Deibler v. Atlantic Properties Group, Inc.*, 652 A.2d 553, 558 (Del.1995); *Briehler v. Poseidon Venture, Inc.*, 502 A.2d 821, 822 (R.I.1986).

The "grossly inadequate" standard applied by this section is measured by reference to the fair market value of the mortgaged real estate at the time of the foreclosure sale. The definition of fair market value is derived

from *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-538, 114 S.Ct. 1757, 1761, 128 L.Ed.2d 556 (1994), which itself relies on *Black's Law Dictionary* 971 (6th ed. 1990):

The market value of . . . a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular . . . piece of property.

The formulation of "fair market value" used in this section also finds support in the definition used by the Internal Revenue Service. Under this approach, "fair market value" is defined as:

the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property . . . is not to be determined by a forced sale price. Nor is the fair market value . . . to be determined by the sale price of the item in a market other than that which such item is most commonly sold to the public.

Treas. Reg. § 20.2031-1(b).

Price inadequacy coupled with other defects, Comment c. Even if the price is not so low as to be deemed "grossly inadequate," the foreclosure sale may nevertheless be invalidated if it is otherwise defective under state

law. See, e.g., *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986) (sale for 28% of fair market value set aside where trustee failed to use due diligence to determine last known address of mortgagor); *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App.1988) (sale set aside where foreclosure price was for one third of fair market value and trustee refused to recognize a higher bid from a junior lienholder who was present at the sale); *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994) (sale for 12% of fair market value set aside where trustee failed to mail notice of default to executor); *Whitman v. Transtate Title Co.*, 211 Cal.Rptr. 582 (Cal.Ct.App.1985) (sale for 20% of FMV set aside where trustee refused request for one-day postponement of sale); *Federal National Mortgage Ass'n v. Brooks*, 405 S.E.2d 604 (S.C.Ct.App.1991) (sale for 3% of FMV set aside where improper information supplied to bidders); *Kouros v. Sewell*, 169 S.E.2d 816 (Ga.1969) (sale for 3% of FMV set aside where mortgagee gave mortgagor incorrect sale date). Conversely, more than nominal price inadequacy must exist notwithstanding other defects in the sale process in order to establish the requisite prejudice to sustain an attack on the sale. See *Cragin Federal Bank For Savings v. American National Bank & Trust Co. of Chicago*, 633 N.E.2d 1011 (Ill. App. Ct. 1994).

Illustration 11 is based in part on *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App. 1988).

It is not uncommon for the mortgagee, rather than the mortgagor or a junior lienor, to attempt to set aside a sale based on an inadequate price. Note that in this setting, the real estate not only will be sold for less

than fair market value, but usually, though not always, for a price that will not qualify as "grossly inadequate." Moreover, the foreclosure proceeding itself is normally not defective under state law. Rather, the mortgagee intends to enter a higher bid at the sale, but because of mistake or negligence on its part, actually makes a lower bid and a third party becomes the successful purchaser. Courts are deeply divided on this issue. Some take the position that mistake or negligence on the mortgagee's part should be treated as the functional equivalent of a defect under state law. As a result, these courts reason, the inadequate price plus the mistake or negligence are sufficient to justify setting aside the sale. See *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414 (Del. 1994) (sale for 71% to 80% of FMV set aside based on mistaken bid by mortgagee); *Alberts v. Federal Home Loan Mortgage Corp.*, 673 So.2d 158 (Fla.Dist.Ct.App.1996) (affirming trial court that set aside a foreclosure sale after mortgagee's agent, through a mistake in communications, entered a bid of \$18,995, instead of \$118,995 and property was sold to third party for a grossly inadequate \$19,000); *RSR Investments, Inc. v. Barnett Bank of Pinellas County*, 647 So.2d 874 (Fla.Dist.Ct.App.1994) (sale for 6% of FMV set aside because mortgagee inadvertently failed to appear at the sale); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (sale for 15% to 23% of FMV set aside based on mistaken bid by mortgagee). Other courts, however, have less sympathy for the mortgagee in this setting. See *Wells Fargo Credit Corp. v. Martin*, 605 So.2d 531 (Fla.Dist.Ct.App.1992) (trial court refusal to set aside sale affirmed even though mortgagee's agent, through a

misunderstanding, entered bid of \$15,500 instead of \$115,000 and property was sold to another for the grossly inadequate amount of \$20,000); *Mellon Financial Services Corp. #7 v. Cook*, 585 So.2d 1213 (La.Ct.App.1991) (sale upheld even though attorney for mortgagee, who was deaf in his right ear, failed to bid higher against a third party because he "contributed to the problem by not positioning himself in a more favorable position, considering his hearing disability."); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993) (sale to mortgagor's father for 28% to 34% of FMV upheld even though erroneous bidding instructions to mortgagee's agent caused him to cease bidding prematurely). According to the *Crossland* court, "[mortgagee's] mistake was unfortunate, [but] it did not pro-

vide a basis to invalidate the sale which was consummated in complete accord with lawful procedure ... since the mistake was unilateral on [mortgagee's] part." *Id.* at 131.

On balance, the latter approach to mortgagee mistake seems preferable. In general, third party bidding should be encouraged, and this section reflects that policy by making it extremely difficult to invalidate foreclosure sales based on price inadequacy alone. Where the foreclosure process itself complies with state law and the other parties to the process have not engaged in fraud or similar unlawful conduct, courts should be especially hesitant to upset third party expectations. This is especially the case where, as here, mortgagees can easily protect themselves by employing simple common-sense precautions.

§ 8.4 Foreclosure: Action for a Deficiency

(a) If the foreclosure sale price is less than the unpaid balance of the mortgage obligation, an action may be brought to recover a deficiency judgment against any person who is personally liable on the mortgage obligation in accordance with the provisions of this section.

(b) Subject to Subsections (c) and (d) of this section, the deficiency judgment is for the amount by which the mortgage obligation exceeds the foreclosure sale price.

(c) Any person against whom such a recovery is sought may request in the proceeding in which the action for a deficiency is pending a determination of the fair market value of the real estate as of the date of the foreclosure sale.

(d) If it is determined that the fair market value is greater than the foreclosure sale price, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any liens on the real estate that were not extinguished by the foreclosure, exceeds the sale price.

EXHIBIT L

EXHIBIT L

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN CENTENO,
Appellant,
vs.
JP MORGAN CHASE BANK, N.A.,
Respondent.

No. 67365

FILED

MAR 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AND REMANDING

This is a pro se appeal from a district court order denying a motion for a preliminary injunction in a quiet title action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

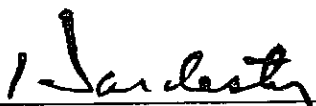
The district court denied appellant's request for a preliminary injunction, reasoning that appellant lacked a likelihood of success on the merits of his quiet title claim because (1) the Supremacy Clause prevented the HOA foreclosure sale from extinguishing respondent's deed of trust, which secured a federally insured loan; and (2) the purchase price at the HOA sale was commercially unreasonable.

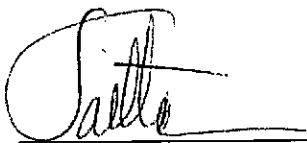
Having considered the parties' arguments that were made in district court, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), we conclude that the district court underestimated appellant's likelihood of success on the merits and therefore abused its discretion in denying injunctive relief.¹ *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009) (recognizing that a district court may abuse its discretion in denying

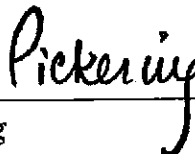
¹We disagree with respondent's suggestion that this appeal is moot, as appellant's request for injunctive relief sought more than to simply prevent respondent from selling the subject property at foreclosure.

injunctive relief if its decision is based on an error of law). In particular, the district court summarily based its Supremacy Clause analysis on non-binding, non-uniform precedent. Compare *Washington & Sandhill Homeowners Ass'n v. Bank of Am.*, 2014 WL 4798565, at *6 (D. Nev. Sept. 25, 2014), with *Freedom Mortg. Corp. v. Las Vegas Dev. Grp.*, 106 F. Supp. 3d 1174, 1183-86 (D. Nev. 2015).² Similarly, this court's reaffirmation in *Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc.*, 132 Nev., Adv. Op. 5, ___ P.3d ___ (2016), that a low sales price is not a basis for voiding a foreclosure sale absent "fraud, unfairness, or oppression," undermines the second basis for the district court's decision. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Saitta


_____, J.
Pickering

cc: Hon. Kathleen E. Delaney, District Judge
Martin Centeno
Smith Larsen & Wixom
Ballard Spahr, LLP
Eighth District Court Clerk

²We recognize that the *Freedom Mortgage* decision was not issued until after the district court entered the order being challenged in this appeal.

EXHIBIT M

EXHIBIT M

**DECLARATION OF IYAD HADDAD IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

1. I, Iyad “Eddie” Haddad, declare as follows:

2. I am the person most knowledgeable for 9352 Cranesbill Trust, Teal Petals St. Trust and Iyad Haddad, Defendants in *Venise Abelard vs. 9352 Cranesbill Trust*, which is now pending in the Eighth Judicial District Court, as Case No. A-12-671509-C.

3. This Declaration is made based on my own personal knowledge and in support of 9352 Cranesbill Trust and Iyad Haddad’s Motion for Summary Judgment.

4. 9352 Cranesbill Trust is the owner of the real property commonly known as 9352 Cranesbill Ct., Las Vegas, Nevada (“the Property”).

5. The Property was originally sold to 9352 Cranesbill Trust at the HOA foreclosure sale conducted on July 11, 2012 as evidenced by the foreclosure deed recorded on July 18, 2012.

6. In July 2012, Cranesbill transferred title by grant deed to the Teal Petals St. Trust.

7. The foreclosure deed reflects that valuable consideration in the sum of \$4,900.00 was paid for the property.

8. 9352 Cranesbill Trust’s title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Fort Apache Square Homeowners Association pursuant to NRS Chapter 116.

9. Prior to and at the time of the foreclosure sale, there was nothing recorded in the public record to put me on notice of any claims or notices that any portion of the lien had been paid.

10. Prior to and at the time of the foreclosure sale, there is no way for myself or any other potential bidder at the foreclosure sale to research if the notices were sent to the proper parties at the proper address. I, and other potential bidders are forced to rely only on the

1 professional foreclosure agent to have obtained a trustee's sale guarantee issued by a local title
2 and escrow company and to serve the notices upon the parties who are entitled to notice.

3 11. As a result of the limited information available to myself and other potential
4 bidders at foreclosure sale, I, on behalf of 9352 Cranesbill Trust and Teal Petals St. Trust, am a
5 bona fide purchaser of the property, for value, without notice of any claims on the title to the
6 property or any alleged defects in the sale itself.

7
8 12. At no time prior to the foreclosure sale did I receive any information from the
9 HOA or the foreclosure agent about the property or the foreclosure sale.

10
11 13. Neither myself or anyone associated with 9352 Cranesbill Trust or Teal Petals St.
12 Trust, have any affiliation with the HOA board or the foreclosure agent.

13 14. On July 22, 2015, an order was entered requiring Plaintiff Venise Aberlard to pay
14 the property insurance, taxes and HOA due if she is to continue occupying the property. The
15 annual property insurance is \$1,400.00; the annual property taxes are \$1,845.00, the annual HOA
16 dues are \$744.00. Additionally, while occupying the property, Plaintiff Venise Aberlard has
17 caused 9352 Cranesbill Trust and/or Teal Petals St. Trust to incur approximately \$2,000.00 in
18 HOA violations. Although ordered, Plaintiff Venise Aberlard has not paid anything while
19 continuing to occupy the property.
20

21
22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on January 31, 2018.

24
25 DocuSigned by:

26
27
28

Iyad "Eddie" Haddad

APP000466

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
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5 Attorney for appellant
6

Electronically Filed
Jan 28 2019 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10 9352 CRANESBILL TRUST; TEAL
11 PETALS ST. TRUST; AND IYAD
HADDAD,

CASE NO.: 76017

12 Appellants,

13 vs.

14 WELLS FARGO BANK, N.A.,
15 Respondents.
16

17 **JOINT APPENDIX 2**
18

19
20 Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 140
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3883 Howard Hughes Pky Ste 1100
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24 Attorney for Respondent
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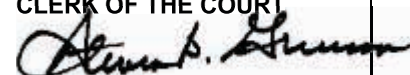
INDEX TO APPENDIX 2

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Motion for Summary Judgment	2	APP000394

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Answer to Amended Complaint and Counterclaim	1	APP000089
Answer to Defendant Haddad and 9352 Cranesbill Trusts' Counterclaim	1	APP000095
Answer to Second Amended Complaint	1	APP000158
Answer and Counterclaim	1	APP000050
Answer and Counterclaim	1	APP000044
Answer to Complaint	1	APP000028
Appendix of Exhibits to Motion for Summary Judgment	2	APP000238
Complaint for Declaratory Relief, Damages, Wrongful Foreclosure, Violations of the FDCPA, Negligence, Fraud and Demand for Jury Trial	1	APP000001
Findings of Fact, Conclusions of Law and Order Granting Wells Fargo Bank, N.A.'s Motion for Summary Judgment	3	APP000600
Fort Apache Square Homeowners Association and Alessi & Koenig, LLC's Answer to Wells Fargo Bank, N.A.'s Cross-Claim	1	APP000120
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12	Summons - Mesa Management	1	APP000022
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14	Summons - Fort Apache Square Homeowners Association	1	APP000018
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21			
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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

9352 CRANESBILL TRUST; FORT APACHE
SQUARE HOMEOWNERS ASSOCIATION;
MESA MANAGEMENT, LAS VEGAS
ASSOCIATION MANAGEMENT, LLC;
BENCHMARK ASSOCIATION SERVICES;
IYAD HADDAD, an individual; ALESSI &
KOENIG, LLC; NEVADA ASSOCIATION
SERVICES and DOES I through X and ROE
COMPANIES I through X, inclusive,

Defendants.

And all related Parties and Actions.

Case No. A-12-671509-C

Dept. VII

**APPENDIX OF EXHIBITS TO
MOTION FOR SUMMARY
JUDGMENT**

///

///

///

1 Intervenor Wells Fargo Bank, N.A. (“Wells Fargo”), by and through its counsel, the law
2 firm of Snell & Wilmer L.L.P., files this Appendix of Exhibits to their Motion for Summary
3 Judgment filed concurrently herewith.

4 Dated this 31st day of January, 2018. SNELL & WILMER L.L.P.

6 By: /s/ Daniel S. Ivie
7 Amy F. Sorenson, Esq.
8 Jeffrey Willis, Esq.
9 Erica J. Stutman, Esq.
10 Daniel S. Ivie, Esq.
11 3883 Howard Hughes Parkway, Suite 1100
12 Las Vegas, Nevada 89169
13 *Attorneys for Intervenor*
14 *Wells Fargo Bank, N.A.*

EXHIBITS

Description	Ex. No.	Page Nos.
Deposition transcript of I. Haddad, as representative of Teal Petals	1	001-004
Deposition transcript of I. Haddad, as representative of Cranesbill	2	005-009
Deposition transcript of V. Abelard	3	010-032
10/5/2011 Letter from Alessi & Koenig to V. Abelard	4	033
Deposition transcript of T. Wozniak	5	034-038
Deposition transcript of M. Endelman	6	039-052
10/7/2011 Check transaction detail	7	053
10/7/2011 Check transaction detail	8	054
2/13/2012 Check transaction detail	9	055
5/24/2012 Check transaction detail	10	056
6/20/2012 Duplicate check stub	11	057
6/3/2016 Deposition transcript of D. Alessi	12	058-063
Notice of Default and Election to Sell under HOA lien	13	064-068
Notice of Trustee's Sale	14	069-072
5/30/2012 Letter from V. Abelard to Alessi & Koenig	15	073
Fax cover letter from Alessi & Koenig to V. Abelard re Account Breakdown & Ledger	16	074-077
Prior Management Company Ledger	17	078
6/8/2016 Deposition transcript of D. Alessi	18	079-083
Appraisal Report of S. Dugan	19	084-108
Marchai Decision and Order	20	109-123
Order in Design 3.2 LLC v. Bank of New York Mellon	21	124-131

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR SUMMARY JUDGMENT** by the method indicated:

 X U. S. Mail
 U.S. Certified Mail
 Federal Express
 X Electronic Service
 E-mail

and addressed to the following:

Via Electronic Service

Charles L. Geisendorf, Esq.
 GEISENDORF & VILKIN, PLLC
 2470 St. Rose Parkway, Suite 309
 Henderson, Nevada 89074
*Attorney for Defendants/Counterclaimants
 Iyad Haddad and 9352 Cranesbill Trust*

Via Electronic Service

Steven T. Loizzi, Jr., Esq.
 9500 W. Flamingo Road, Suite 204
 Las Vegas, NV 89147
Attorneys for Alessi Koenig, LLC

Via U.S. Mail

Office of the Attorney General
 Attn: Gina Long
 555 E. Washington Ave.
 Suite 3900
 Las Vegas, NV 89101

DATED this 31st day of January, 2018.

Via Electronic Service

Debra A. Bookout, Esq.
 Dan L. Wulz, Esq.
 LEGAL AID CENTER OF SOUTHERN
 NEVADA, INC.
 725 E. Charleston Blvd.
 Las Vegas, Nevada 89101
Attorney for Plaintiff Venise Abelard

Via Electronic Service

James W. Pengilly, Esq.
 Elizabeth B. Lowell, Esq.
 PENGILLY LAW FIRM
 1995 Village Center Cir. Suite 190
 Las Vegas, NV 89134
Attorneys for Fort Apache Square HOA

/s/ Gaylene Kim

An employee of Snell & Wilmer L.L.P.

EXHIBIT 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,)
)
Plaintiff,) Case No.
) A-12-671509-C
vs.) Dept. No.
) VII
9352 CRANESBILL TRUST; FORT)
APACHE SQUARE HOMEOWNERS)
ASSOCIATION; MESA MANAGEMENT,)
LAS VEGAS ASSOCIATION)
MANAGEMENT, LLC; BENCHMARK)
ASSOCIATION SERVICES; IYAD)
HADDAD, an individual; ALESSI &)
KOENIG, LLC; NEVADA ASSOCIATION)
SERVICES and DOES I through X)
and ROE COMPANIES I through X,)
inclusive,)
)
Defendants.)
)
)
AND ALL RELATED MATTERS.)
)

DEPOSITION OF IYAD HADDAD
LAS VEGAS, NEVADA
WEDNESDAY, APRIL 27, 2016

REPORTED BY: HOLLY LARSEN, CCR NO. 680, CA CSR 12170
JOB NO.: 299753B

1 notice?

2 A. Yes, I am.

3 Q. Are you prepared to testify regarding all
4 of those topics?

5 A. Yes, I am.

6 Q. What did you do to prepare for your
7 deposition on behalf of Teal Petals Street Trust?

8 A. Nothing.

9 Q. What does the name Teal Petals Street Trust
10 signify?

11 A. Nothing. Nothing particular.

12 Q. Is that the correct name of the entity that
13 now holds 9352 Cranesbill Court?

14 A. Yes.

15 Q. Who is the trustee of the Teal Petals
16 Street Trust?

17 A. That would be Resources Group, LLC.

18 Q. And you're the manager of Resources Group,
19 LLC; correct?

20 A. Yes, that is correct.

21 Q. Does Teal Petals Street Trust have any
22 offices?

23 A. No.

24 Q. Does it have any employees?

25 A. No.

1 MR. BOHN: And the second question?

2 MR. PERKINS: Whether they're the same as
3 the beneficiaries of the Cranesbill Court Trust.

4 MR. BOHN: Can I take a break and talk to
5 my client?

6 MR. PERKINS: Yes.

7 (A discussion was held off the record.)

8 MR. BOHN: We're going to go halfway and
9 just reveal -- we're not going to say who they are,
10 but we will admit that the beneficiary of Cranesbill
11 and the beneficiary of Teal Petals are the same.

12 BY MR. PERKINS:

13 Q. After Cranesbill Court Trust purchased the
14 property at the HOA foreclosure sale, it transferred
15 the property to the Teal Petals Street Trust;
16 correct?

17 A. Yes.

18 Q. Why did it do that?

19 A. I don't recall. This was years ago.

20 Q. Do you recall if it was Cranesbill Court or
21 Teal Petals Street, which one, that initiated the
22 eviction process?

23 A. I don't. But I'm sure that's public
24 record. It's in the justice court system I think or
25 district court.

1 CERTIFICATE OF REPORTER

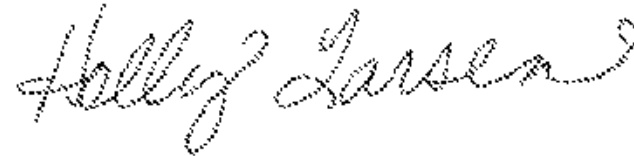
2 STATE OF NEVADA)
) SS
3 COUNTY OF CLARK)

4 I, Holly Larsen, a duly commissioned and
5 licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness, Iyad
8 Haddad, commencing on Wednesday, April 27, 2016, at
9 4:48 p.m.

10 That prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true, and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of an attorney
19 or counsel involved in said action, nor a person
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,
22 in my office, in the County of Clark, State of
23 Nevada, this 8th day of May, 2016.

24 
25

HOLLY LARSEN, CCR NO. 680

EXHIBIT 2

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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,)
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Plaintiff,) Case No.
) A-12-671509-C
vs.) Dept. No.
) VII
9352 CRANESBILL TRUST; FORT)
APACHE SQUARE HOMEOWNERS)
ASSOCIATION; MESA MANAGEMENT,)
LAS VEGAS ASSOCIATION)
MANAGEMENT, LLC; BENCHMARK)
ASSOCIATION SERVICES; IYAD)
HADDAD, an individual; ALESSI &)
KOENIG, LLC; NEVADA ASSOCIATION)
SERVICES and DOES I through X)
and ROE COMPANIES I through X,)
inclusive,)
)
Defendants.)
)
)
AND ALL RELATED MATTERS.)
)

DEPOSITION OF IYAD HADDAD
LAS VEGAS, NEVADA
WEDNESDAY, APRIL 27, 2016

REPORTED BY: HOLLY LARSEN, CCR NO. 680, CA CSR 12170
JOB NO.: 299753

1 in court?

2 A. Yes, I do.

3 Q. Have you ever been convicted of a felony?

4 A. No.

5 Q. Are you on any drugs or medication that
6 would affect your ability to recall information
7 today?

8 A. No.

9 Q. What's the highest level of education you
10 obtained?

11 A. Bachelor's degree in business marketing.

12 Q. From what school?

13 A. UNLV.

14 Q. What year?

15 A. You're taking me back. '94 I'd say
16 approximately.

17 Q. Who is your current employer?

18 A. Self-employed.

19 Q. What are you self-employed doing?

20 A. Real estate broker with Great Bridge
21 Properties.

22 Q. How long have you been a real estate broker
23 with Great Bridge?

24 A. 20 years.

25 Q. What did you do before that?

1 **Q. Do you know what it is today?**

2 A. 230 something. 230,000 approximately. I
3 could be off again.

4 **Q. Do you know what the average price per**
5 **square foot houses were selling for in 2012?**

6 A. NRS 107 sales? \$30 a square foot.

7 **Q. On the market.**

8 A. Well, earlier you referred to fair market
9 value, which is an unfair assessment because you get
10 all the guarantees with fair market value. When
11 we're looking at NRS 116, we have to compare with
12 NRS 116 sales and NRS 107 sales, which are
13 considerably lower than fair market value.

14 **Q. My question is still do you remember what**
15 **the price per square foot properties were selling**
16 **for in the Las Vegas valley in July 2012?**

17 A. I do not.

18 **Q. When you bought the property, did you know**
19 **that Wells Fargo had a Deed of Trust recorded**
20 **against the property?**

21 A. I don't recall if I knew that or not.

22 **Q. Is that something you usually look for?**

23 A. I don't recall at that time if I looked for
24 that or not. It's easily accessible from the County
25 Recorder's office. But I don't recall if I knew

1 that or not.

2 Q. Is that something you would consider
3 important in deciding whether to buy a property?

4 A. Only in the terms of, you know, added
5 litigation.

6 Q. Why would a lawsuit be necessary if there
7 was a Deed of Trust against the property?

8 A. Because banks are not -- the bank's
9 departments don't communicate with each other, so
10 they start filing Notice of Default and Notice of
11 Sales on their Deeds of Trust not noticing that the
12 property was sold at an HOA lien.

13 Q. When you purchased the property, did you
14 believe that the HOA foreclosure sale would
15 extinguish the Deed of Trust against the property?

16 A. Yes. Most likely, yes.

17 Q. Do you have an opinion as to the current
18 fair market value of the property?

19 A. I do not.

20 Q. What did Cranesbill Court Trust do with the
21 Cranesbill Court property after the sale?

22 A. Well, right after the sale, although I
23 don't recollect, we would have sent our locksmith to
24 either go out and either post a notice or change the
25 locks if it was vacant. This particular property

1 CERTIFICATE OF REPORTER

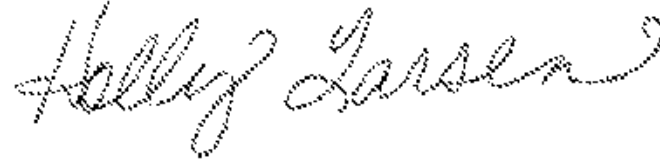
2 STATE OF NEVADA)
) SS
3 COUNTY OF CLARK)

4 I, Holly Larsen, a duly commissioned and
5 licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness, Iyad
8 Haddad, commencing on Wednesday, April 27, 2016, at
9 3:30 p.m.

10 That prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true, and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of an attorney
19 or counsel involved in said action, nor a person
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,
22 in my office, in the County of Clark, State of
23 Nevada, this 10th day of May, 2016.

24 
25

HOLLY LARSEN, CCR NO. 680

EXHIBIT 3

Venise Abelard - 8/26/2015
Venise Abelard vs. 9352 Cranesbill Trust, et al.

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DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,)
)
Plaintiff,) CASE NO.: A671509
) DEPT NO.: VII
vs.)
)
9352 CRANESBILL TRUST, FORT)
APACHE SQUARE HOMEOWNERS)
ASSOCIATION, MESA MANAGEMENT)
LAS VEGAS ASSOCIATION)
MANAGEMENT, LLC, BENCH MARCH)
ASSOCIATION SERVICES, IYAD)
HADDAD; et. al.)
)
Defendants.)
)
9352 CRANESBILL TRUST)
)
Counterclaimant,)
vs.)
)
VENISE ABELARD,)
)
Counter defendant.)
)

DEPOSITION OF VENISE ABELARD

Taken at the offices of Michael F. Bohn
on Wednesday, August 26, 2015
at 2:16 p.m.

at 376 East Warm Springs Road, Suite 125
Las Vegas, Nevada 89119

Reported by: Trina K. Sanchez, CCR No. 933, RPR

1 Q. Let me start you out -- let's show you
2 what's been marked as Exhibit A.

3 Have you seen that document before?

4 **A. No. I didn't see that document.**

5 Q. Okay. The date of that letter is June
6 28th, 2011; is that correct?

7 **A. Yes.**

8 Q. Okay. Let me show you what we marked as
9 Exhibit B. That's a letter -- is that a letter
10 that -- did you write that letter?

11 **A. Yes, I did.**

12 Q. Okay. And that letter is dated June
13 30th, just two days after the demand letter of June
14 28th, 2011.

15 Did you write your letter of June 30th in
16 response to this letter of June 28th, 2011?

17 **A. No.**

18 Q. Okay. What prompted you to write your
19 letter of June 30th?

20 **A. The reason I write this letter, it's**
21 **because I did not receive like the pamphlet to --**
22 **for the -- like the stub they send you every year.**
23 **So I did not receive that pamphlet.**

24 So I called and asked and then I
25 understand that the management has been changed. I

1 had to find out through my neighbor that it has
2 been changed, so that's what prompted me to write
3 this and, you know, to demand my -- on my -- the
4 stubs.

5 Q. Okay. On June 30th, when was the last
6 time you had made payments to your HOA?

7 A. I don't recall, but I think in this
8 letter here, it's explaining the last day.

9 Q. What does it say? December 2010?

10 A. It says that I was -- in December, "I
11 have been waiting for further notice, but I have
12 not received any. I do not want to be accountable
13 for faults that are not done by me. Information
14 that I find that the check in the amount of 366 for
15 the month of January through June of 2011."

16 So that was -- I did continue. So the
17 check that I had sent, that was the month -- that's
18 what it says, for the month of January through June
19 of 2011.

20 Q. Okay. So along with this letter, you
21 sent them a check for six months?

22 A. I did send them a check, I believe, yes.
23 That's what it says. "Include -- therefore,
24 include is a check in the amount of \$366."

25 Q. What happened in June 2011 that prompted

1 you to write this letter?

2 **A.** Like I said, it was -- you know, like the
3 letter explains, it was for my stubs, you know,
4 because I did not hear from the HOA or anything
5 like that when they did, you know, take over, so...

6 Q. All righty.

7 **A.** So it's like after I spoke to my
8 neighbor.

9 Q. Well, let me ask you this: When you
10 purchased the house, were you aware that the house
11 was subject to certain -- what they call CC&Rs,
12 covenants, conditions, and restrictions?

13 **A.** I know there was a, you know, yeah, HOA.

14 Q. Okay. And did you know that you were
15 obligated to pay certain assessments on the
16 property?

17 **A.** You mean by the HOA dues?

18 Q. Yes.

19 **A.** Yes, I knew that I had to pay HOA dues.

20 Q. And it's your testimony that you were
21 current until December 2010? You paid constantly
22 from the time you acquired the house until December
23 2010?

24 **A.** 2010, yes.

25 Q. That's what it says in the letter?

1 **letter.**

2 Q. Okay. Did you get any response from the
3 HOA or the management company?

4 A. **I did not get any response from them.**

5 Q. Okay. Do you know if they cashed the
6 check?

7 A. **Yes, they did cash the check because I**
8 **have the return check. I went to the bank and get**
9 **it. It was stamped, the back.**

10 Q. All right. Do you know who cashed the
11 check?

12 A. **I don't recall, but it was -- it was**
13 **cashed.**

14 Q. Do you know who you sent the letter to?

15 A. **I sent the letter to the HOA.**

16 Q. Who was it? There's no address on it.
17 Did you send it to the management company?

18 A. **I send it to the management company.**

19 Q. Do you know who the management company
20 was at the time?

21 A. **It was Mesa.**

22 Q. Mesa?

23 A. **Yes.**

24 Q. Okay. Let me show you what's been marked
25 as Exhibit C. That's a letter that -- is that your

1 signature at the bottom of the letter?

2 **A. Yes, it is.**

3 Q. And it's dated September 14th, 2011?

4 **A. Yes.**

5 Q. Okay. And you're including two months
6 payments for July and August?

7 **A. Yes.**

8 Q. All right. And who did you send this
9 letter to?

10 **A. I send it to Mesa.**

11 Q. Did you ever make any phone calls to Mesa
12 Management about your missing payment book?

13 **A. I don't recall.**

14 Q. Okay. Did you get any response from this
15 letter?

16 **A. No, I did not.**

17 Q. Okay. Let me show you what's next been
18 marked as Exhibit D.

19 Have you ever seen this document before?

20 **A. No, I haven't seen that document. I**
21 **don't recall seeing that document.**

22 Q. Okay. The date on that at the bottom is
23 August 25th, 2011; is that correct?

24 **A. Yes.**

25 Q. And that's just a few weeks before you

1 wrote your letter of September 14th, 2011; is that
2 correct?

3 **A. Yes.**

4 Q. And it's your testimony that before
5 today, you had never seen this document at all?

6 **A. I didn't see that. I didn't see that**
7 **document. I don't recall seeing it.**

8 Q. Is today the first time you recall seeing
9 this document, Exhibit D?

10 **A. I'm not saying the first time because I**
11 **see it through my lawyer, you know, from the**
12 **evidence you sent, so I see it my second time.**

13 Q. So would it be your testimony the first
14 time you saw this document entitled "Notice of
15 Default/Election to Sell" was after this lawsuit
16 was filed?

17 **A. After the lawsuit was filed, yes.**

18 Q. Okay. I'm going to show you what's been
19 marked as Exhibit E.

20 Have you ever seen that document before
21 or any of those documents?

22 **A. No. That's -- again, it's been shown to**
23 **me by my lawyer.**

24 Q. Okay. Oh --

25 **A. But, like, seeing it, I never see it.**

1 MS. BOOKOUT: Or Exhibit A?

2 MR. IVIE: When you say, "Did you keep a
3 copy of that letter," were you referring to Exhibit
4 F or Exhibit A?

5 BY MR. BOHN:

6 Q. Well, did you keep a copy of the letter
7 you referred to in your letter here, Exhibit F?

8 A. I don't recall.

9 Q. You don't recall. Okay. Thank you.
10 Let's go on to Exhibit G.

11 Now, this I can represent to you your
12 attorney produced, and it's got your name at the
13 bottom of it.

14 Have you seen this document before?

15 A. No. I don't recall seeing it.

16 Q. Do you know where your attorney would
17 have gotten this from?

18 A. I'm trying to remember, but I don't -- I
19 never seen it.

20 Q. Can you speak up, please.

21 A. I don't remember, you know, seeing it. I
22 might have seen it, but -- because I remember
23 finding out that HOA has went up. It was, like I
24 said, through my neighbor, so I don't -- I don't
25 remember seeing this.

1 Q. Okay. Do you remember going to that
2 board directors meeting?

3 A. I never been to HOA meeting.

4 Q. Okay.

5 A. Never been to HOA meeting.

6 Q. Now, you wrote a letter in September 2011
7 about five weeks before this memo that's Exhibit F,
8 your letter. Did you ever speak to anyone after
9 September 23rd, 2011, at Alessi & Koenig about the
10 money they claimed was due on your house?

11 A. After -- you mean after that -- after
12 that letter, I never seen -- no, I didn't talk to
13 anybody at Alessi & Koenig.

14 Q. I'm talking about the letter of September
15 23rd, 2011.

16 A. Yes, this one.

17 Q. By this time, you knew that your HOA was
18 claiming you were behind on your dues, correct?

19 A. I suppose, but like I said, I don't
20 recall writing this letter.

21 Q. Okay. Well, that is your signature,
22 correct?

23 A. Yes, it is my signature there. It looks
24 like my signature.

25 Q. And in the letter you're telling Alessi &

1 Koenig you got a letter from them claiming that you
2 owed \$2,493.58; is that correct?

3 **A. That's what the letter said, yes.**

4 Q. Okay. After this date, did you ever
5 speak with anyone at Alessi & Koenig about the
6 money they thought you owed?

7 **A. I didn't talk to anyone.**

8 Q. Okay. This letter is addressed to a Gina
9 Garcia, legal assistant. Do you know who Gina
10 Garcia is?

11 **A. Yes, I do. I don't know her, but I did**
12 **speak to her on the phone.**

13 Q. Was that before or after you sent this
14 letter?

15 **A. I spoke to Gina after. That was in 2012.**
16 **In June of 2012 --**

17 Q. Okay.

18 **A. -- that's when I speak to Gina.**

19 Q. In September 2011, how did you know to
20 direct the letter to Gina Garcia?

21 **A. Like I said, again, I don't know. And,**
22 **you know, I don't recall this letter, so...**

23 Q. Okay. After September, how many times
24 did you speak to Gina Garcia?

25 **A. As I recall, I spoke to -- have spoken to**

1 **her twice.**

2 Q. Okay. Do you remember --

3 **A. But that was in June.**

4 Q. Of 2012?

5 **A. Of 2012.**

6 Q. Okay. So that was some months after you
7 sent the letter, correct?

8 **A. Like I said, I don't know about this**
9 **letter.**

10 Q. Okay. Did you ever speak to anyone else
11 at Alessi & Koenig about the letter claiming that
12 you owed them money -- or you owed money on your
13 HOA dues?

14 **A. In June of 2012.**

15 Q. Okay. Who did you speak to at Alessi &
16 Koenig?

17 **A. I speak to Catherine, as I remember.**

18 Q. Okay.

19 **A. I spoke to Gina, too, in the beginning**
20 **and then after it was Catherine.**

21 Q. Okay. So you spoke to Gina twice and
22 Catherine how many times?

23 **A. I can't even count. Several times.**

24 Q. Okay. What was said in those
25 conversations?

1 A. With -- okay. With Gina, it was -- when
2 I spoke to her, that was like in June of 2004. It
3 was, like, regarding a ledger that was supposed to
4 be sent to me, so -- which I never got the ledger
5 from her.

6 Then the next --

7 Q. Well, let me stop you. You said June
8 2004.

9 A. '12, June 2012.

10 Q. And you said letter or ledger?

11 A. Ledger.

12 Q. Okay. And she sent you a ledger in June
13 2012?

14 A. No. She did not send me the ledger. I
15 believe Catherine had sent me the ledger through
16 email.

17 Q. Okay.

18 A. Mm-hmm.

19 Q. And what did the ledger show?

20 A. The ledger, there was not much saying.
21 It was just there was an amount of a thousand --
22 1200, so 1200 and some change, which I don't
23 recall, but it was about that.

24 And then when I called her and send her
25 back, you know, the message, so I was referring to

1 the amount because there was not really, like, a
2 break down of the ledger, you know, like month to
3 month of what was it. It was just, like, the
4 amount that was showing was 1200. That was the
5 ledger, 1200 and some change.

6 Q. When did you get that ledger?

7 A. That was some time in June. I think it's
8 the beginning of June.

9 Q. Okay. So by that time, you had spoken to
10 Catherine once because she's the one that emailed
11 you the ledger, correct?

12 A. Yes. By the time I spoke to Catherine.

13 Q. How many times did you talk to Catherine?
14 Do you remember?

15 A. I spoke to her several times because I --
16 I spoke to her several times. We even went and
17 met, you know, with her personally. I went down to
18 the office.

19 Q. Did the ledger reflect the payments that
20 you made with your letter of June 30th, 2011?

21 A. When they -- that ledger that she had
22 sent me?

23 Q. Yeah.

24 A. There was -- like I said, there was no
25 break down on it. There was no, like, payment or

1 anything like that on the ledger. So this is why,
2 you know, I didn't understand the ledger, and my
3 question was 1200, I cannot remember the exact
4 amount, but I know it's 1200 that was what was in
5 question.

6 Q. Okay. And what were your conversations
7 with Gina about?

8 A. My conversation with Gina was about the
9 amount, you know, of the HOA dues, you know. You
10 know, what do I owe, that was that, so this is why
11 she was, you know, supposed to send me a ledger of
12 it.

13 Q. Have you always been -- up until the time
14 of the foreclosure sale that led to this lawsuit,
15 had you been current in your HOA dues?

16 A. My HOA dues?

17 Q. Yes.

18 A. I wouldn't say -- you know, but I do pay
19 my HOA dues, yeah. But I sometimes be late, might
20 be late on paying.

21 Q. Okay. Did you ever attempt to get copies
22 of any checks to send to Gina or Catherine to show
23 that you were not behind in your payments?

24 A. Yes, I did.

25 Q. And did you get them copies?

1 A. I personally brought them down to -- to
2 Catherine.

3 Q. And when was that?

4 A. That was in -- it's been so long. It was
5 in June of 2012.

6 Q. Who did you speak with when you went down
7 there?

8 A. Catherine.

9 Q. And what did she tell you?

10 A. She told me that she would give -- you
11 know, pass the copy -- the check to Gina, and then
12 they would put the account on hold and -- so they
13 will contact me when they get through with
14 management.

15 Q. And did they get back to you?

16 A. No, but I -- they didn't get back to me,
17 but I called. From that time when I brought her
18 the documents, I call every week, that I call,
19 like, constantly, like, every Monday. I remember I
20 called to find out about the account.

21 Q. And when you called, did you speak with
22 either Gina or Catherine?

23 A. I spoke to Catherine.

24 Q. And what were you told?

25 A. She told me that they still waiting on

1 management.

2 Q. Okay. Did you call after that?

3 A. Like I said, every Monday starting from
4 that June when I brought the document to Gina at
5 Alessi & Koenig, I called every Monday of that
6 month to find out, you know, what's going on
7 because she had told me that they would put the
8 account on hold, so -- you know, so I kept, you
9 know, in touch to find out because she told me she
10 was waiting for management.

11 Q. Okay. And when did you stop calling?

12 A. You know, I never stopped calling. I
13 never really stopped calling because -- I mean,
14 when I don't stop -- when I stopped talking to
15 Catherine, now it was someone else. Because after
16 in July '12 when I received that notice and I call
17 her again and then -- you know, and she -- as a
18 matter of fact, she didn't even know what was going
19 on with the account.

20 Because when I called her to find out
21 again about my account, she was telling me the same
22 thing, that every time that I call, that, you know,
23 she's waiting for management, she's waiting for
24 management, she hasn't heard from management.

25 Q. Okay. Did you ever call anyone at Mesa

1 as Exhibit K. And, again, this is a document that
2 was produced by your attorney. It's dated May
3 30th, 2012.

4 **A. Uh-huh.**

5 Q. And the first sentence says, "A notice
6 had been posted on my door on May 25th stating my
7 home will be auctioned June 6th, 2012, due to
8 delinquent HOA dues."

9 **A. Mm-hmm.**

10 Q. Does this refer to Exhibit H that's
11 entitled "Notice of Trustee Sale"?

12 **A. Yeah. That was the notice that was**
13 **posted at my door.**

14 Q. So what did you do with this notice when
15 you saw it posted on your door?

16 **A. I call Alessi & Koenig the same day that**
17 **I seen that -- the notice.**

18 Q. And is that when you started calling Gina
19 and Catherine?

20 **A. Yes.**

21 Q. Okay. Did you take the notice down and
22 bring it inside?

23 **A. Did I take it down to them?**

24 Q. Yes. No, no. When you --

25 **A. Oh, of the door.**

1 sale?

2 **A. Yes, I did.**

3 Q. Okay. And it told you that your house
4 was going to be foreclosed on and auctioned off on
5 June 6th, 2012; is that correct?

6 **A. That's correct.**

7 Q. Okay. And it has a warning on it, does
8 it not?

9 **A. It does have a warning, and that's why I**
10 **contact them and went down to the office**
11 **personally.**

12 Q. Okay. Did you call the foreclosure
13 section of the ombudsman's office?

14 **A. Yes, I did.**

15 Q. Okay. When did you contact them?

16 **A. I contact them, I think, either on the**
17 **26th or 27th or 28th of May, but I contact them**
18 **right after I spoke to Ryan to find out, you know,**
19 **about the procedure of why.**

20 Q. Okay. And what were you told by the
21 ombudsman's office?

22 **A. They said it's been registered or**
23 **something like that, yes. There's a registered,**
24 **you know, concerning that, so I -- I need to speak,**
25 **you know, to the party that send the notice.**

1 aid office, I believe, yeah, explaining what I did.
2 I went to the office. On the August 21st, I went
3 to Alessi & Koenig and this is what I demand them
4 for, you know, the paper, the ledger, the sale.
5 That's what it was.

6 Q. So this is your memory of what happened
7 at that meeting on that day?

8 A. On the 21st?

9 Q. Yes.

10 A. Yes, yes, yes. Yes, and that was to the
11 legal aid office.

12 MR. BOHN: All right. Let's go off the
13 record for just a second.

14 (A brief discussion was held off the record.)

15 BY MR. BOHN:

16 Q. Actually, I'm going to jump ahead. I'm
17 going to show you what's been marked as Exhibit O,
18 which is entitled "Trustee's Deed Upon Sale."

19 Have you seen that document before?

20 A. I believe this document was posted to my
21 door.

22 Q. And do you know when it was posted on
23 your door?

24 A. I don't recall when it was posted, but
25 I -- it was sometime in July, end of July.

1 Q. Was there anything posted with this on
2 your door?

3 A. What -- can you repeat? Like what?

4 Q. Was there anything in addition to this
5 posted on your door?

6 A. I don't recall.

7 Q. Okay. Let me show you what's been marked
8 as Exhibit N. That appears to be your letter of
9 August 15th. It's a two-page letter.

10 Did you draft this letter dated August
11 15th, 2012?

12 A. This letter was a letter to -- that was,
13 again, my lawyer -- you know, that was, again, to
14 the legal aid office stating, you know, what
15 happened, how this -- that's what it was
16 explaining, you know, the fact of what happened.

17 Q. Okay. It looks like the third paragraph
18 of the first page says, "On July 12th, 2012, in the
19 morning at 10:00 a.m., I received a notice posted
20 on my door to vacate the property."

21 A. Yes. That was the trustee of the sale
22 that was at my door that I said I seen at my door,
23 yes, on the July 12th.

24 Q. It says, "Posted on my door to vacate the
25 property."

1 deed of trust?

2 **A. Yes, I understand that.**

3 Q. Okay. Do you have a separate loan
4 servicer?

5 **A. Right now you mean?**

6 Q. Apart from Wells Fargo --

7 **A. No.**

8 Q. -- is there -- is there -- who do you --
9 when you make payments on your loan --

10 **A. Wells Fargo. Wells Fargo.**

11 Q. If I were to say Wells Fargo Home
12 Mortgage, does that sound like --

13 **A. Yes.**

14 Q. Does that sound familiar? Is that who
15 you make your payments to?

16 **A. Yes.**

17 Q. I just want to clarify some of the
18 questions that were asked before and hopefully just
19 clear a few things up.

20 Prior to receiving the notice of trustee
21 sale on your door, had you ever received any other
22 notice from the HOA at any time that might tell you
23 that you owed any kind of payment to the HOA
24 outside of your normal monthly payments?

25 **A. No.**

1 Q. So is it fair to say that you never
2 received, you know, a notice for a landscaping fine
3 or some other fine on your property under the
4 CC&Rs?

5 A. No.

6 Q. Is there any reason that you know of that
7 would justify the HOA recording a notice of
8 delinquent lien assessment against your house?

9 A. Say that again. Can you repeat it?

10 Q. Sure.

11 Is there anything that you can think of
12 or is there anything that you're aware of that
13 would cause the HOA to record a lien against your
14 property?

15 A. No.

16 Q. I think you testified earlier that you
17 received a notice of trustee sale on your door on
18 May 25th, 2012; is that right?

19 A. Correct.

20 Q. Is it fair to say that as soon as you
21 learned -- well, let me back up.

22 That was the first time you learned there
23 was an HOA foreclosure action against your
24 property?

25 A. Correct.

Certificate of Reporter

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Trina K. Sanchez, CCR No. 933, RPR
declare that I reported the taking of the
deposition of the witness, Venise Abelard,
commencing on Wednesday, August 26, 2015, at 2:16
p.m.

That prior to being examined, the witness
was by me duly sworn to testify to the truth, the
whole truth, and nothing but the truth.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript of said deposition is a
complete, true, and accurate transcription of said
shorthand notes taken down at said time, and that a
request has not been made to review the transcript.

I further declare that I am not a
relative or employee of any party involved in said
action, nor a person financially interested in the
action.

Dated at Las Vegas, Nevada this 31st day
of August, 2015.

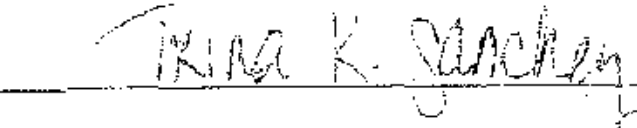

Trina K. Sanchez, CCR No. 933, RPR

EXHIBIT 4

DAVID ALESSI*
ROBERT KOENIG* *
THOMAS BAYARD*
RYAN KERBOW****
HUONG LAM***
* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bar
*** Admitted to the Nevada Bar
**** Admitted to the Nevada and California Bar



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PHONE: 818- 735-9600

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PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-843-6590

October 5, 2011

Venise Abelard
Marcus Compere
9352 Cransebill Ct
Las Vegas, NV 89149

Re: Fort Apache Square Homeowners Association

Dear Venise Abelard & Marcus Compere:

Mesa Management took over management duties of Fort Apache Homeowners Association in October 2010. At the time when they received your account information you were currently in collections with NAS. Due to this no letters or notices were sent in accordance with collection policy. After Mesa Management took over managerial duties for the association they switched the collection accounts from NAS to our offices, Alessi & Koenig. Your delinquent assessment balance stems over the course of 2 and half years, a coupon book will not be provided until the balance owed is satisfied in our office.

Alessi & Koenig has held your file in collections since 6-28-11. We have sent you a total of 3 notices with no direct contact from you. I have enclosed a breakdown of what is currently owed on your account and a proposed payment plan for said balance. You are free to contact me directly at 702-222-4033 or via email at gina@alessikoenig.com.

Thank you,

Gina Garcia
Operations Manager

A&KRPD00014

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

CASE NO. A-12-671509-C

9352 CRANESBILL TRUST; FORT
APACHE SQUARE HOMEOWNERS
ASSOCIATION; MESA MANAGEMENT,
LLC; BENCHMARK ASSOCIATION
SERVICES; IYAD HADDAD, an
individual; ALESSI & KOENIG,
LLC; NEVADA ASSOCIATION SERVICES
and DOES I through X and ROE
COMPANIES I through X, inclusive,

Defendants.

And all related matters.

DEPOSITION OF TRACI WOZNIAK

Taken at the law offices of Snell & Wilmer

Taken on Wednesday, June 8, 2016

At 2:30 p.m.

At 3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada

Reported by: Barbara Kulish, CCR #247, RPR

1 A. Yes.

2 Q. So when Mesa took over the account, did it
3 have to, I don't know the right words, populate VMS
4 with anything?

5 A. Yes.

6 Q. What information did Mesa use to populate
7 VMS?

8 A. The reports provided by the prior
9 management company.

10 Q. Did Mesa do anything to verify the accuracy
11 of the reports provided by the prior management
12 company?

13 A. There isn't a lot we can do on transitions.
14 We send notices out to the homeowners on what their
15 balances are. If there is a dispute, then we'll
16 discuss the dispute when they dispute it. There are
17 times that there are disputes with the transition, but
18 we don't know that if the homeowner doesn't communicate
19 it to us.

20 Q. So if the homeowner doesn't send you a
21 letter, then you don't do an investigation to
22 determine --

23 A. If we send them a statement and they don't
24 dispute that that's the balance owed, then we don't
25 know to do anything further.

1 Q. If that was the case, would Mesa expect to
2 receive notice if a homeowner submitted a dispute?

3 A. If the account was already at collections,
4 I guess it would depend on if that dispute had already
5 been submitted to the -- with the prior management
6 company, if the board had already reviewed it, rejected
7 it, approved it, whatever, then I might not receive a
8 copy of it.

9 There's a log that we can access online for
10 all of the collection companies, and so, typically, we
11 can look back and see if anything has been communicated
12 or -- from the homeowner to the homeowner. So it would
13 depend on when the dispute came in.

14 Q. Let's say a dispute was submitted after
15 Mesa took over the account.

16 A. Okay. But never before that?

17 Q. Right.

18 A. Then the dispute would go to the board of
19 directors.

20 Q. And then what would the board of directors
21 do with the dispute?

22 A. Determine whether or not there's -- they
23 feel there's any validity to it and respond to the
24 owner.

25 Q. So the board of directors has authority to

1 going forward, if you're aware?

2 A. Sure. Yes.

3 Q. It's possible that the homeowner paid off
4 their account and they're not in collections anymore,
5 correct?

6 A. Yes.

7 Q. Are there times where the board of
8 directors might ask that the sale be postponed for some
9 reason?

10 A. Yes.

11 Q. So if a sale is set, that doesn't
12 necessarily guarantee that it's going to go forward,
13 correct?

14 A. Correct. The board -- ultimately the board
15 has to approve the final for it to go to sale.

16 Q. Okay.

17 A. A lot of boards are hesitant to do that.

18 Q. After the homeowner is sent to collections
19 with Alessi & Koenig or NAS or any of the other
20 companies that you described that Mesa uses or has
21 used, and the homeowner is provided with the total
22 balance owing to the association from the collection
23 company, what is it that the homeowner owes to pay off
24 their account? Is it the total balance they're
25 provided or is it just assessments and late fees?

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

I, Barbara Kulish, a duly licensed court reporter in the State of Nevada, do hereby certify:

That I reported the taking of the deposition of TRACI WOZNIAK, on Wednesday, June 8, 2016, commencing at the hour of 2:30 p.m. That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time.

That there being no request for the deponent to read and sign the deposition transcript, under Rule 30(e) the signature is deemed waived; and that the original transcript will be forwarded to the custody and control of Casey Perkins, Esq.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in said actions.

Dated this 20th day of June, 2016.

Barbara Kulish

Barbara Kulish, CCR #247, RPP

EXHIBIT 6

DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

CASE NO. A-12-671509-C

9352 CRANESBILL TRUST; FORT
APACHE SQUARE HOMEOWNERS
ASSOCIATION; MESA MANAGEMENT,
LLC; BENCHMARK ASSOCIATION
SERVICES; IYAD HADDAD, an
individual; ALESSI & KOENIG,
LLC; NEVADA ASSOCIATION SERVICES
and DOES I through X and ROE
COMPANIES I through X, inclusive,

Defendants.

And all related matters.

DEPOSITION OF MANDY ENDELMAN

Taken at the law offices of Snell & Wilmer

Taken on Wednesday, June 8, 2016

At 11:55 a.m.

At 3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada

Reported by: Barbara Kulish, CCR #247, RPR

1 have any other fines or violations against it?

2 A. I don't recall.

3 Q. When did Fort Apache Square commence
4 collection activities on the account relating to the
5 property?

6 A. I don't recall.

7 Q. Are there any board minutes or board
8 meeting recordings that reflect any approval by the
9 board to commence collection on the property?

10 A. There should be minutes.

11 Q. Where would those be kept?

12 A. Executive session meeting minutes.

13 Q. Who maintains those?

14 A. The management company.

15 Q. And that's Mesa?

16 A. At that time, yes.

17 Q. Do you know who the current management
18 company for Fort Apache Square for is?

19 A. Sierra Community Management.

20 Q. So would the files relating to Fort Apache
21 Square from this 2011, 2012 time period still be with
22 Mesa Management or will they be transferred to Sierra?

23 A. They should be transferred, we just may or
24 may not have them yet.

25 Q. Other than sending the late notices and the

1 intent to lien that you talked about a minute ago, what
2 was Mesa's role with -- what was Mesa's role with
3 respect to HOA foreclosures for Fort Apache Square?

4 A. We send the late notices after the intent
5 to lien. If the account is not paid, they would refer
6 them to a collection company.

7 Q. In this case, that collection company was
8 Alessi & Koenig?

9 A. Correct.

10 Q. Who were the Fort Apache Square board
11 members at the time of the foreclosure?

12 A. I don't recall.

13 Q. Would that be reflected in records
14 somewhere?

15 A. Yes.

16 Q. What records would show that?

17 A. Board meeting minutes, executive session
18 meeting minutes.

19 Q. And those would be kept by Mesa and are in
20 the process of being transferred to Sierra, correct?

21 A. Correct.

22 Q. Why did Fort Apache Square choose Alessi &
23 Koenig to do the collection activities on this account?

24 A. I can't recall the board members'
25 decision-making process.

1 Q. As the community manager, did you recommend
2 Alessi & Koenig?

3 A. We provide three bids.

4 Q. Do you remember who the other two bids
5 were?

6 A. I do not.

7 Q. Would that be reflected in the meeting
8 minutes?

9 A. It should, yes, if they selected this
10 company while we managed them. If they came over
11 already using them, then that process would not have
12 been undertaken.

13 Q. Have you worked for any management
14 companies other than Mesa and Sierra?

15 A. Yes.

16 Q. Which other management companies did you
17 work for?

18 A. Excellence Community Management.

19 Q. When was that?

20 A. That was from about 2003 to 2008. And then
21 prior to that, RMI Management.

22 Q. And at Excellence and RMI, were you
23 community manager?

24 A. Yes.

25 Q. And as a community manager for those

1 companies, did you provide bids for the board to
2 consider when there was a decision to be made?

3 A. Yes.

4 Q. During the collection phase or
5 preforeclosure phase with respect to the property, did
6 the board communicate with Alessi & Koenig?

7 A. I don't believe so.

8 Q. Did they get any updates from Alessi &
9 Koenig other than the status reports?

10 A. No.

11 Q. Who was your primary point of contact at
12 Alessi & Koenig concerning the foreclosure of the
13 property?

14 A. I don't recall.

15 Q. Do you recall names of any people that were
16 working at Alessi & Koenig around the time of this
17 foreclosure?

18 A. I don't recall.

19 Q. Who do you talk to at Alessi & Koenig about
20 HOA foreclosures currently?

21 A. George.

22 Q. Do you know George's last name?

23 A. I do not.

24 Q. In the last five years, who else have you
25 talked to at Alessi & Koenig about HOA foreclosure

1 A. Electronically as well as archived records
2 are stored in storage.

3 Q. What do you mean by archived records?

4 A. Hard records that transition with the
5 property.

6 Q. Where are the electronic records kept?

7 A. On our server.

8 Q. Where is your server located?

9 A. In our office.

10 Q. Can you just in your own words sort of
11 describe for me the procedure that Fort Apache Square
12 followed when an account for a property became
13 delinquent?

14 A. We provide in their board packets a
15 delinquency report. The board reviews what stage each
16 owner is in in the collection process. Then we update
17 them on the most recent actions, which homes were sent
18 what letters, late notices, intents, and who is
19 currently at collections.

20 Q. Who makes the decision to move forward with
21 collection?

22 A. We follow the collection policy adopted by
23 the board.

24 Q. I'm talking again about the 2011, 2012 time
25 period. Did the association itself keep an account

1 ledger related to the property?

2 A. Yes.

3 Q. Who at the association kept that account
4 ledger?

5 A. It was maintained by the management
6 company.

7 Q. Was there a separate account ledger
8 maintained by the association?

9 A. No.

10 Q. From the time Mesa started managing Fort
11 Apache Square until the July 2012 HOA foreclosure sale
12 of the property, who at Mesa was maintaining the
13 account ledger?

14 A. The accounting department.

15 Q. Who was in the accounting department at
16 Mesa at that time?

17 A. I don't recall.

18 Q. How many employees did Mesa have in 2012?

19 A. I don't recall.

20 Q. How many employees did Mesa have six months
21 ago?

22 A. 23.

23 Q. How many of those employees were in
24 accounting?

25 A. Seven.

1 Q. So do you know who created this document?

2 A. I believe Alessi & Koenig's office.

3 Q. Did anyone at Fort Apache Square confirm
4 the amount due that's stated in the notice of default?

5 A. No, they did not.

6 Q. Do you know how the amount due that's
7 stated in the notice of default was calculated?

8 A. No, I do not.

9 (Deposition Exhibit 5 marked.)

10 BY MR. PERKINS:

11 Q. You've been handed what's been marked as
12 Exhibit 5 to your deposition transcript. It's a
13 three-page document. Do you recognize these documents?

14 A. Yes.

15 Q. What's page 1?

16 A. Looks like an account ledger from a prior
17 management company.

18 Q. It was from a prior management company?

19 A. Correct.

20 Q. Why do you believe that?

21 A. This doesn't look like a report I'm
22 familiar with. This does (indicating).

23 Q. Page 1 does not look like a report you're
24 familiar with?

25 A. Not generated from Mesa, no.

1 Q. What about the second and third pages of
2 the exhibit?

3 A. Yes.

4 Q. Yes what?

5 A. Yes, that looks like a Mesa Management
6 ledger.

7 Q. So page 1 was not created by Mesa
8 Management to your knowledge?

9 A. No, it was not.

10 Q. And the second and third pages were,
11 correct?

12 A. Yes.

13 Q. If you look on the first page, the last
14 entry, that states a balance of \$1,204.58; do you
15 agree?

16 A. Yes.

17 Q. If you look at the second page, for
18 October 31st, 2010, the balance stated is \$1,204.58;
19 do you agree?

20 MR. MARKMAN: Objection. Document speaks
21 for itself.

22 You can answer.

23 BY MR. PERKINS:

24 Q. Do you agree?

25 A. Yes.

1 Q. So would you agree with me that when Mesa
2 took over this account, it took the last balance stated
3 from the prior management company and used that to
4 determine the initial balance of the account?

5 A. Yes.

6 Q. On the first page, the first entry is
7 something that says "Balance Forward Charge." Do you
8 see that?

9 A. Yes.

10 Q. And the balance category for the first
11 entry says \$739.58; do you agree?

12 A. Yes.

13 Q. Where did that come from?

14 MR. MARKMAN: Objection. Calls for
15 speculation.

16 You can answer.

17 THE WITNESS: The comment says, "Prior
18 management AMI."

19 BY MR. PERKINS:

20 Q. You were the community manager for the
21 association for Fort Apache Square when Mesa took over,
22 correct?

23 A. No, I wasn't.

24 Q. Who was?

25 A. Traci Wozniak.

1 Q. Did you talk to Traci Wozniak before this
2 deposition?

3 A. No, I did not.

4 Q. Do you know what AMI stands for?

5 A. I do not.

6 Q. Do you know what comprises the \$739.58
7 balance forward?

8 A. No, I do not.

9 Q. Did the association make any efforts to
10 determine what that balance was made up of?

11 A. I don't know.

12 Q. Are you aware of any efforts by the
13 association to confirm that amount?

14 A. No, I'm not.

15 Q. Are you aware of any efforts by the
16 association to determine what that amount is comprised
17 of?

18 A. I'm not aware of that, no.

19 Q. Did you make any effort personally to
20 confirm the accuracy of that amount?

21 A. No, I did not.

22 Q. Did you make any effort personally to
23 determine what that amount is comprised of?

24 A. No, I did not.

25 Q. On the second page of Exhibit 5, there's an

1 A. The dispute would be provided to the
2 manager and then provided to the board for review.

3 Q. So in 2011, 2012, who was the manager that
4 would have handled that dispute?

5 A. I believe that would be myself.

6 Q. Do you recall handling a dispute with
7 Ms. Abelard?

8 A. I do not.

9 Q. And then after it's turned over, the
10 account is turned over to collections, how would Mesa
11 handle a dispute by the homeowner?

12 A. The dispute would go to the collection
13 company, the collection company would provide it to the
14 management company, the management company would
15 provide it to the board, the board would review and
16 make any decisions if needed.

17 Q. So if a homeowner continued to contact
18 Mesa, the management company, about a dispute, how
19 would Mesa handle that if it had already been turned to
20 collections?

21 A. We would refer them back to the collection
22 company.

23 Q. So you would tell the homeowner --

24 A. You have to deal with Alessi & Koenig's
25 office. If you would like to present a dispute,

1 MR. MARKMAN: Objection. Scope.

2 If you could point somewhere that says
3 she's supposed to speak on behalf of Mesa Management in
4 a deposition notice, I'll let her answer that. As to
5 the association, she is here as the PMK for the
6 association.

7 BY MS. BOOKOUT:

8 Q. Do you know the answer to the question?

9 A. What was the question?

10 MS. BOOKOUT: Can you read it back.

11 (Question read.)

12 THE WITNESS: If she provided a dispute,
13 that should have been forwarded to Mesa Management.

14 BY MS. BOOKOUT:

15 Q. So if Ms. Abelard was communicating with
16 Alessi & Koenig about a dispute, would they have
17 forwarded that information to the association?

18 A. They should have.

19 Q. Do you know if there was any communication
20 between the association and Alessi & Koenig regarding
21 Ms. Abelard's dispute?

22 A. I don't recall.

23 Q. Does the association have an attorney?
24 You?

25 Is there any other representation that the

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Barbara Kulish, a duly licensed court reporter in the State of Nevada, do hereby certify;

That I reported the taking of the deposition of MANDY ENDELMAN, on Wednesday, June 8, 2016, commencing at the hour of 11:55 a.m.

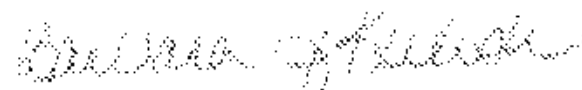
That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time.

That at the conclusion of the deposition, the deponent waived the right to review and sign the deposition transcript; that the unsigned original deposition transcript will be forwarded to the custody and control of Casey Perkins, Esq.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in said action.

Dated this 20th day of June, 2016.



Barbara Kulish, CCR #247, RPR

EXHIBIT 7

Bank of America 

Online Banking

eBanking - 3271 Transaction Details

Check number: 00000001189

Posting date: 10/07/2011

Amount: -366.00

Type: Check

Description: Check

VENISE ABELARD 800 CHAMBERS ST. 8TH FL LAS VEGAS, NV 89101		1189
Pay to the order of <u>Fort Apache Square Hotel</u>		10/07/2011
<u>Three Hundred Sixty Six and 00/100</u>		\$ 366.00
Bank of America		
ACH NNT 10100711		
For <u>Acc't Trans - Jan 2011</u>		<u>Venise Abelard</u>

10

Send with receipt
in shop payment
January - June 2011

<https://safe.bankofamerica.com/myaccounts/details/deposit/previous-page.go?adx=7614ca...> 7/12/2012

A&KRPD00029

EXHIBIT 8

EXHIBIT 9

eBanking - 3271 Transaction Details

Check number: 00000001215

Posting date: 02/13/2012

Amount: -284.00

Type: Check

Description: Check

VENISE ABELARD 6862 CHAMBERLAIN CT LAS VEGAS, NV 89169		1215
2-1-2012		1215
FORT APACHE SQUARE HOA		\$ 284.00
Two Hundred Eighty Four		00/100
Bank of America		
VENISE ABELARD		

VENISE ABELARD	
6862 CHAMBERLAIN CT	
LAS VEGAS, NV 89169	
VENISE ABELARD	

1215
2-2012 2-13-2012
Sept-Dec 2011

10/07/2011 cash
check 1189 - Jan Jun 2011
366.00/100

Check #1196 - 10/07
9/14 - July - Aug 2011
1196

2012
Jan-Feb, CCK # 1224
March 223.50 4-30-2012
cash 5-24-
1200.00
142.00/100
(4199)

<https://safe.bankofamerica.com/myaccounts/details/deposit/previous-page.go?adx=7614ca...> 7/12/2012

EXHIBIT 10

Bank of America

Online Banking

eBanking - 3271 Transaction Details

My description: Check 1224

Check number: 00000001224

Posting date: 05/24/2012

Amount: -223.50

Type: Check

Description: Check

VENICE ASHLAND 1224
6032 GRAND AVENUE #173 813
LAS VEGAS, NV 89119
RECEIVED
MAY 14 2012
FORT MONTE SQUARED HOA \$ 223.50
Two Hundred Twenty Three and 50/100
Bank of America
ACCT# 17491
North of Las Vegas, NV + 10km. *Unpaid Hotel*

This is payment
FOR
↓
Newest
one
2012
Jan, Feb
March

<https://safe.bankofamerica.com/myaccounts/details/deposit/next-page.go?adx=7614caef8d...> 7/12/2012

EXHIBIT 11

12 MAY 2012

1202

100-20-2012

149.00

1-233

NOT NEGOTIABLE

057APP000309

EXHIBIT 12

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DISTRICT COURT

CLARK COUNTY, NEVADA

VENISE ABELARD,)
)
Plaintiff,)
)
vs.) CASE NO. A-12-671509-C
) DEPT. NO. VII
9352 CRANESBILL TRUST;)
FORT APACHE SQUARE)
HOMEOWNERS ASSOCIATION;)
MESA MANAGEMENT, LAS VEGAS)
ASSOCIATION MANAGEMENT,)
LLC; BENCHMARK ASSOCIATION)
SERVICES; IYAD HADDAD, an)
individual; ALESSI &)
KOENIG, LLC; NEVADA)
ASSOCIATION SERVICES and)
DOES I through X and ROE)
COMPANIES I through X,)
inclusive,)
)
Defendants.)
)
)
AND ALL RELATED MATTERS.)
)

DEPOSITION OF DAVID ALESSI

Taken at Snell & Wilmer
at 3883 Howard Hughes Parkway
Eleventh Floor
Las Vegas, Nevada 89169

On Friday, June 3, 2016
at 9:11 a.m.

Reported by: Jualitta Stewart, CCR No. 807, RPR



1 letters and notices, and we will -- we would update
2 the status report at this time.

3 Q. Do you undertake to verify the math in
4 the ledger?

5 A. Yeah. I've been asked that before. I
6 don't know how we would do that. We don't -- we
7 don't -- I wouldn't even know how to do that. But
8 we get the ledger and we take that number as the
9 principal, for lack of a better word, balance due to
10 the client.

11 Q. So you don't do any independent
12 evaluation or review of the ledger, you accept the
13 figures as presented by the management company?

14 A. I mean, if there's an obvious
15 mathematical error on the ledger, we would hopefully
16 pick that up. As I said, I mean, I've always
17 coached our staff and, you know, our job is to get
18 it right. But, you know, as far as if a payment was
19 received or not received or if the bank -- I don't
20 know how we would verify processes that occurred
21 before the file came over to our office, but I guess
22 if it's an obvious mathematical error on the ledger,
23 we would hopefully pick that up.

24 Q. Do you do any review of the CC&Rs?

25 A. We do.



1 that point?

2 A. Correct. The notice of delinquent
3 assessment is sent only to the delinquent homeowner
4 via regular and certified mail to their property
5 address and, if different, their mailing address.
6 The notice of delinquent assessment is not sent to
7 the bank.

8 Q. At the time you do the notice of
9 delinquent assessment, do you have sufficient
10 information to determine who the lienholders are
11 against the property, lienholders of record?

12 A. The information is available online, so
13 we would have access to that.

14 Q. But that's not something you typically
15 would obtain at or near the time you send the notice
16 of delinquent assessment?

17 A. Correct.

18 Q. And you said it was your practice not to
19 send the notice to anybody other than the homeowner?

20 A. Correct.

21 Q. Why is that? Why not send it to banks?

22 A. Our Nevada counsel didn't feel that it
23 was necessary, that the statute required it.

24 Q. You described a number of things that you
25 did in connection with the notice of delinquent



1 A. Correct.

2 Q. Can you tell -- well, it appears that
3 Gina Garcia prepared the notice of default; is that
4 right?

5 A. Yes.

6 Q. To what entities is this notice sent?

7 A. I don't know off the top of my head. I
8 believe in our document production we have a copy of
9 the envelopes and certified receipts reflecting each
10 of the entities that was -- were sent this notice of
11 default. Generally it's the recorded -- any
12 recorded interest in the chain of title, the bank,
13 first mortgage, second mortgage. I believe I saw
14 that the City of Las Vegas sewer had a claim of
15 liens, so they would be noticed.

16 Q. It's your understanding that the entities
17 who have a recorded interest in the property are
18 sent the notice of default and election to sell via
19 certified mail?

20 A. The homeowners are sent -- from my review
21 of the file this morning, the homeowners were sent
22 the notice of default via certified mail, all other
23 parties in interest were sent the notice of default
24 regular mail.

25 Q. And is it your practice to retain any



1 not have extinguished the lien?

2 A. No.

3 Q. What is your understanding of the issue
4 of the litigation?

5 A. The litigation that I just --

6 Q. The one you just described.

7 A. I probably shouldn't because I really
8 don't know, but I seem to recall about a month ago
9 that Steve Loizzi, a Nevada attorney with our
10 office, mentioned to me that this Miles Bauer issue
11 came up in front of one of the Clark County District
12 judges, and the judge found that it was not a
13 tender. Because of the restrictive language, it
14 could not be considered a tender.

15 But, you know, I'm just going off memory,
16 I don't know what case it was. Certainly you're
17 welcome to talk to Mr. Loizzi and I'm sure he'll be
18 happy to discuss that with you.

19 Q. I take it it's Alessi & Koenig's position
20 that the notice of sale needs only to be mailed to
21 the lienholders of record but not served or provided
22 in such a way that there would be a record of
23 receipt; is that right?

24 A. Well, the certified mailing provides a
25 record of receipt or nonreceipt. But you're correct



REPORTER'S DECLARATION

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Jualitta Stewart, a duly commissioned
Notary Public, Clark County, State of Nevada, do
hereby certify:

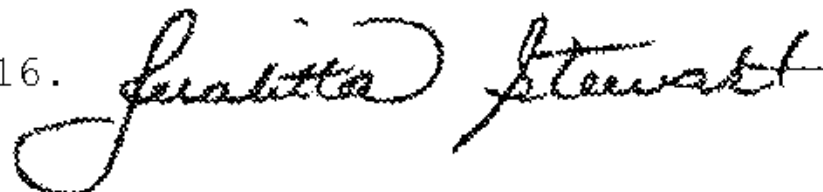
I reported the taking of the deposition
of the witness, DAVID ALESSI, commencing on Friday,
June 3, 2016, at the hour of 9:11 a.m.

That prior to being examined, the witness
was by me duly sworn to testify to the truth, the
whole truth, and nothing but the truth.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
transcript is a complete, true, and accurate
transcription of said shorthand notes.

I certify that I am not a relative or
employee of any party involved in said action, nor a
person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my official seal in my office in
the County of Clark, State of Nevada, this 15th day
of June, 2016.



JUALITTA STEWART, RPR, CCR No. 807

EXHIBIT 13

Inst #: 201109150001788

Fees: \$14.00

N/C Fee: \$0.00

09/15/2011 09:53:36 AM

Receipt #: 913962

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

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

A.P.N. 125-18-513-016

Trustee Sale No. 27031-9352

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,403.58 as of August 25, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Fort Apache Square Homeowners Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 12, 2011 as document number 0001465, of Official Records in the County of Clark, State of Nevada. Owner(s): **ABELARD VENISE & COMPERE MARCUS**, of **LOT 16 BLOCK B**, as per map recorded in Book 123, Pages 73, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. **PROPERTY ADDRESS: 9352 CRANESBILL CT, LAS VEGAS, NV 89149.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 12, 2011, executed by **Fort Apache Square Homeowners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 25, 2011



Gina Garcia, Alessi & Koenig, LLC on behalf of Fort Apache Square Homeowners Association

A&KRPD0008

27031

✓ VENISE ABELARD
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

MARCUS COMPERE
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

DHI MORTGAGE COMPANY
MIN 100020410001775498
12357 RIATA TRACE PARKWAY, SUITE

AUSTIN, TX 78727

MERS
MIN 100020410001775498
PO BOX 2026

FLINT, MI 48501-2026

CITY OF LAS VEGAS SEWER
CYCLE BILLING NO. 12-015295
400 E. STEWART AVE

LAS VEGAS, NV 89101

NORTH AMERICAN TITLE
T.S. NO. N36501
6320 S. SANDHILL RD, SUITE 3

LAS VEGAS, NV 89120

NEVADA ASSOCIATION SERVICES, INC.
T.S. NO. N36501
6224 W. DESERT INN RD, SUITE A

LAS VEGAS, NV 89146

REPUBLIC SERVICES
ACCOUNT # 10-74588-8
PO BOX 98508

LAS VEGAS, NV 89193-8508

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

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

7009 0960 0000 3724 9383

Sent to
Street
or PO
City, S

VENISE ABELARD
9352 CRANESBILL CT
LAS VEGAS, NV 89149-1636

PS Fo

Postmark Here

W. FLAMINGO ROAD
SEP 23 2011
POE

Instructions

A&KRP00009



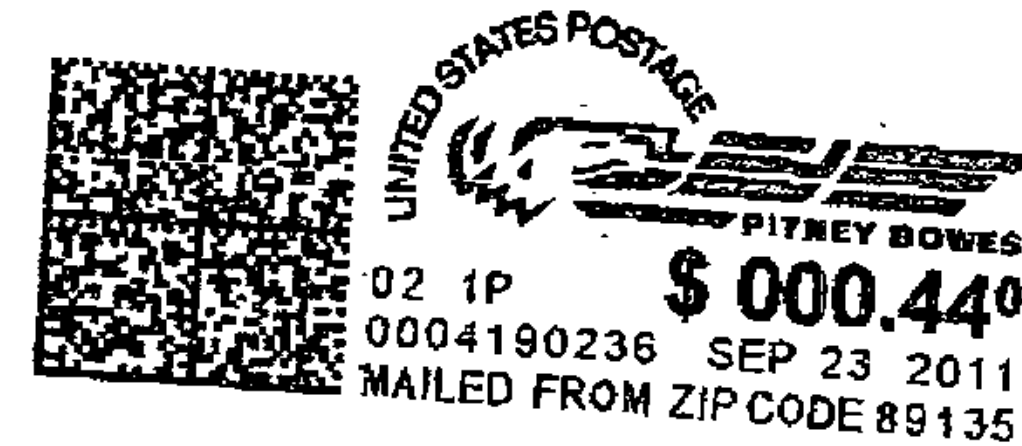
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



MERS
MIN 100020410001775498
PO BOX 2026



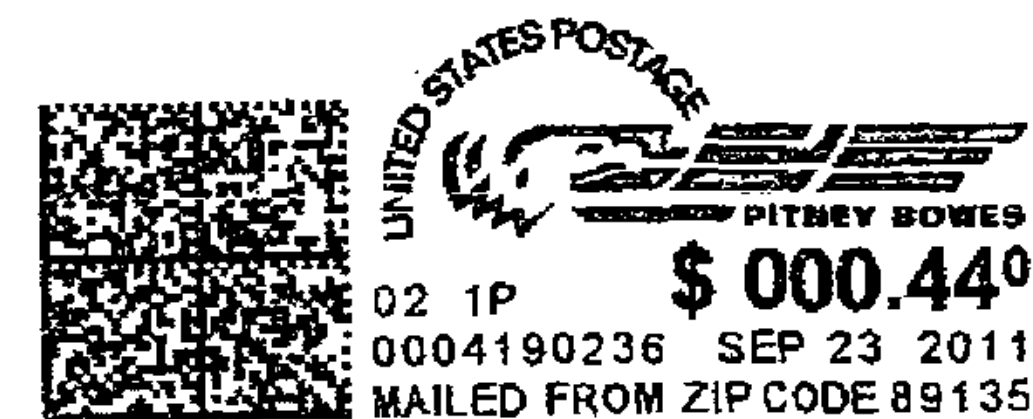
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



NEVADA ASSOCIATION SERVICES, INC.
T.S. NO. N36501
6224 W. DESERT INN RD, SUITE A
LAS VEGAS, NV 89146



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



DHI MORTGAGE COMPANY
MIN 100020410001775498
12357 RIATA TRACE PARKWAY, SUITE
AUSTIN, TX 78727

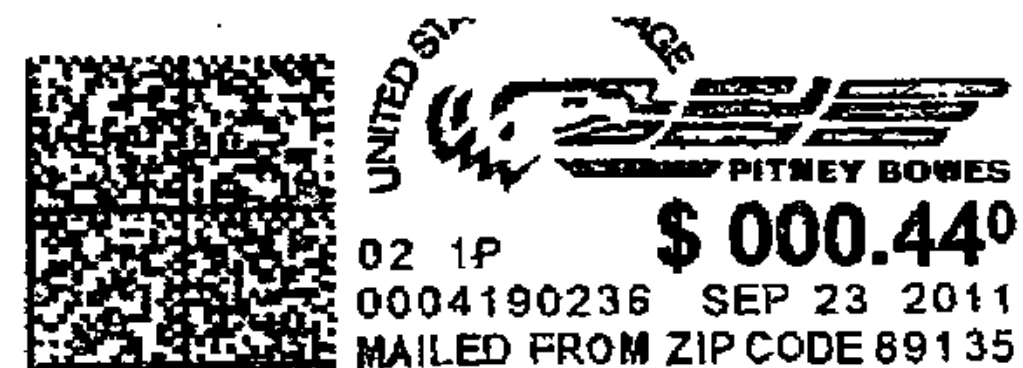
A&KRPD00010



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

CITY OF LAS VEGAS SEWER
CYCLE BILLING NO. 12-015295
400 E. STEWART AVE

LAS VEGAS, NV 89101



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

MARCUS COMPERE
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636



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

REPUBLIC SERVICES
ACCOUNT # 10-74588-8
PO BOX 98508

LAS VEGAS, NV 89193-8508



A&KRPD00011



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

NORTH AMERICAN TITLE
T.S. NO. N36501
6320 S. SANDHILL RD, SUITE 3

LAS VEGAS, NV 89120



A&KRPD00012

EXHIBIT 14

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

APN: 125-18-513-016

TSN 27031-9352

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On June 06, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 12, 2011, as instrument number 0001465, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, NV 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 9352 CRANESBILL CT, LAS VEGAS, NV 89149. The owner of the real property is purported to be: ABELARD VENISE & COMPERE MARCUS

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances; plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,932.58. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: May 1, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Fort Apache Square Homeowners Association

A&KRPD00036

VENISE ABELARD
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

MERS
PO BOX 2026

FLINT, MI 48501-2026

NEVADA ASSOCIATION SERVICES, INC.
6224 W. DESERT INN RD, SUITE A

LAS VEGAS, NV 89146

Wells Fargo Bank N.A.
c/o National Default Servicing Corporation
7720 No. 16th Street, Suite 300

Phoenix, AZ 85020

MARCUS COMPERE
9352 CRANESBILL CT

LAS VEGAS, NV 89149-1636

CITY OF LAS VEGAS SEWER
400 E. STEWART AVE

LAS VEGAS, NV 89101

REPUBLIC SERVICES
PO BOX 98508

LAS VEGAS, NV 89193-8508

OMBUDSMANS OFFICE
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

DHI MORTGAGE COMPANY
12357 RIATA TRACE PARKWAY, SUITE

AUSTIN, TX 78727

NORTH AMERICAN TITLE
6320 S. SANDHILL RD, SUITE 3

LAS VEGAS, NV 89120

National Default Servicing Corporation
7720 N. 16th Street, Suite 300

Phoenix, AZ 85020

NOTS MAILINGS

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Wells Fargo Bank N.A.
c/o National Default Servicing Corporation
7720 No. 16th Street, Suite 300
Phoenix, AZ 85020

PS Form 3800, August 2005 See Reverse for Instructions

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Total Post		

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CITY OF LAS VEGAS SEWER
400 E. STEWART AVE
LAS VEGAS, NV 89101

PS Form 3800, August 2005 See Reverse for Instructions

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REPUBLIC SERVICES
PO BOX 98508
LAS VEGAS, NV 89193-8508

PS Form 3800, August 2005 See Reverse for Instructions

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MARCUS COMPERE
9352 CRANESBILL CT
LAS VEGAS, NV 89149-1636

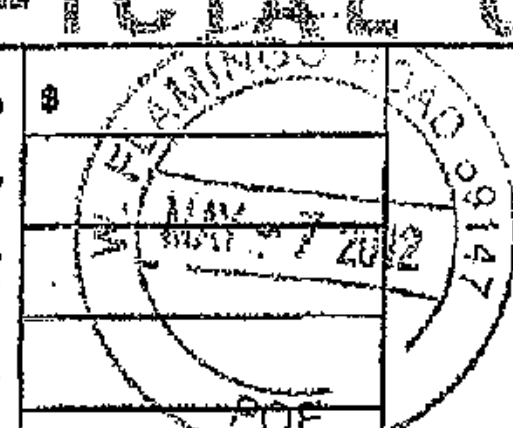
PS Form 3800, August 2005 See Reverse for Instructions

A&KRPD00037

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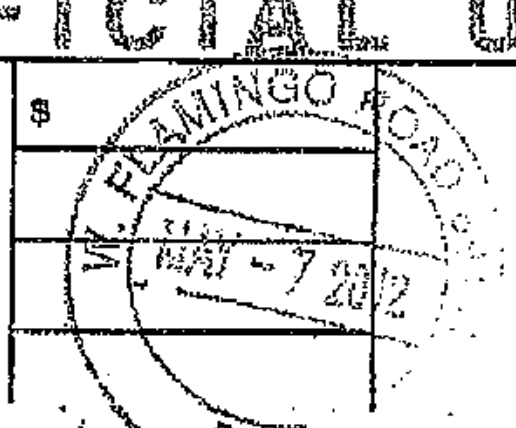
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
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Total Po		National Default Servicing Corporation	
Sent To		7720 N. 16th Street, Suite 300	
Street, Ap. or PO Box		Phoenix, AZ 95020	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

7012 0470 0002 4447 6813

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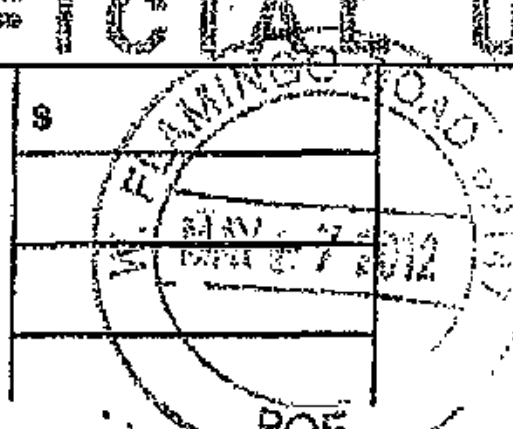
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Po		NORTH AMERICAN TITLE	
Sent To		6320 S. SANDHILL RD, SUITE 3	
Street, Ap. or PO Box		LAS VEGAS, NV 89120	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

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Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total		DHI MORTGAGE COMPANY	
Sent To		12357 RIATA TRACE PARKWAY, SUITE	
Street, Ap. or PO Box		AUSTIN, TX 78727	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

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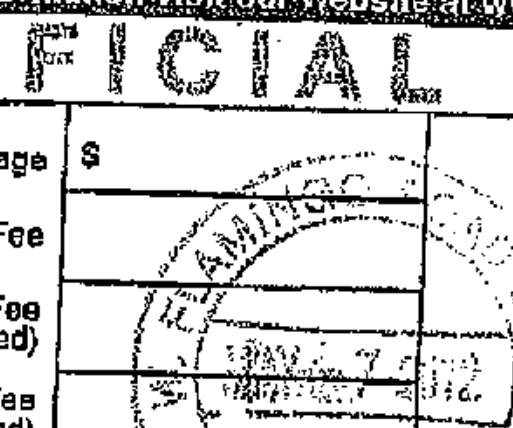
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total		NEVADA ASSOCIATION SERVICES, INC.	
Sent To		6224 W. DESERT INN RD, SUITE A	
Street, Ap. or PO Box		LAS VEGAS, NV 89146	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

7012 0470 0002 4447 6844

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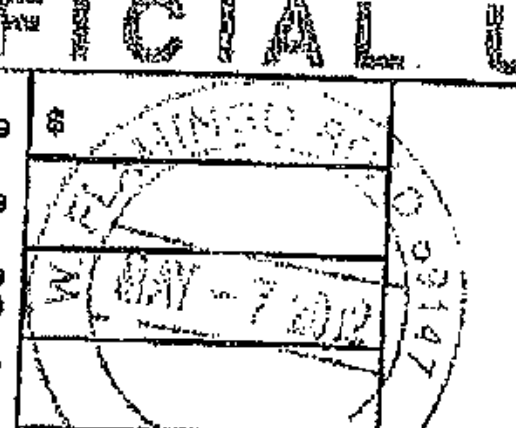
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total		MERS	
Sent To		PO BOX 2026	
Street, Ap. or PO Box		FLINT, MI 48501-2026	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

7012 0470 0002 4447 6851

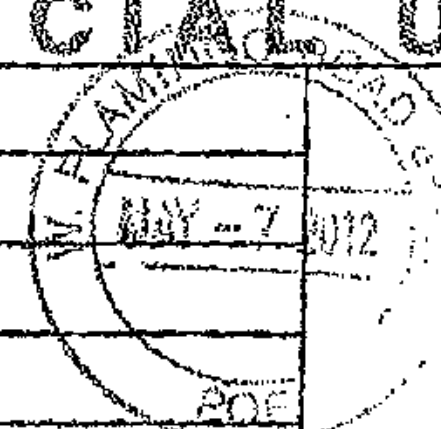
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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total		VENISE ABELARD	
Sent To		9352 CRANESBILL CT	
Street, Ap. or PO Box		LAS VEGAS, NV 89149-1636	
City, State			
PS Form 3800, August 2006		See Reverse for Instructions	

A&KRPD00038

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Payment	
To: OMBUDSMANS OFFICE	
Street, Apt. or PO Box: 251 E. SAHARA AVE #205	
City, State: LAS VEGAS NV 89104	
RE: GORDAN MILDEN	
PS Form 3800, August 2006 See Reverse for Instructions	

A&KRPD00039

EXHIBIT 15

VENISE ABELARD
9352 CRANESBILL CT.
LAS VEGAS NV.89149

MAY 30TH, 2012

TO: ALEXIS&

REF: FORT APACHE SQUARE (HOA).

A noticed had been posted on my door on may 25th, stated my home will be auction on June 06, 2012 due to delinquent of HOA dues.

I have no such knowledge of this occurrences, I have never received any noticed from HOA Management (Fort Apache Square) regarding this matter. I am wondered how I got to owed this sum of three thousands nine hundred and forty two. (\$3,942.ect..) I am not denied that I paid late on some occasion due to my financial hardship, but I have always included late fees. Even on my hardship time with mortgage situation that my property was on the status of foreclosure in 2010, I had continued paid my HOA dues at that time the HOA management was under Benchmark corp. Even taught there was no services provide to the home owners. From 2008-2010 the HOA management been switch to four different HOA management. Mesa is the Second time around. The HOA management had not provided any services to homeowners from 2008-2010, the home owners had to do the best of keeping the property in good standard. I had to do my own landscaping, cutting them bushes, which I have proof of. There were no services provided to me, even then I still paid my dues, because I know when I purchased the property I agreed to the HOA. I have never received any letter from HOA but one when Mesa took over from Benchmark on October of 2010, to forward the due for the month of November 2010. I will like this matter to be solve. I do know my rights. I have all the proof of my payments, which I will be forward to you. First of all they have no right putting a lien on my property with out sending me a notice nor to put it on auction, when I am not aware of the debt I owe after all I do paid the HOA dues, I do not owe them. Thank you for your cooperate.

Sincerely,

Venise Abelard

ABELARD 0005

EXHIBIT 16

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	ABELARD VENISE & COMPERE MARCUS	Re:	9352 CRANESBILL CT/HO #27031
From:		Date:	Monday, June 04, 2012
Fax No.:		Pages:	2, including cover
		HO #:	27031

Dear ABELARD VENISE &:

This cover will serve as an amended demand on behalf of Fort Apache Square Homeowners Association for the above referenced escrow; property located at 9352 CRANESBILL CT, LAS VEGAS, NV. The total amount due through July 2, 2012 is \$4,224.01. The breakdown of fees, interest and costs is as follows:

Pre NOD	\$90.00
Notice of Delinquent Assessment Lien - Nevada	\$325.00
Notice of Default	\$400.00
Notice of Trustee Sale	\$275.00
Foreclosure Fee	\$150.00
Release of Lien (Upon payment in full)	\$30.00
Total	\$1,270.00
1. Attorney and/or Trustees fees:	\$1,270.00
2. Notary, Recording, Copies, Mailings, and PACER	\$400.00
3. Ledger Through July 2, 2012	\$2,048.65
4. RPIR-GI Report	\$85.00
5. Title Research (10-Day Mailings per NRS 116.31163)	\$275.00
6. Management Company Advanced Audit Fee	\$200.00
7. Management Account Setup Fee	\$0.00
8. Publishing and Posting of Trustee Sale	\$175.00
10. Conduct Foreclosure Sale	\$125.00
11. Capital Contribution	\$0.00
12. Progress Payments:	\$376.86
Sub-Total:	\$4,955.51
Less Payments Received:	\$731.50
Total Amount Due:	\$4,224.01

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

A&KRPD00019

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

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PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

Please have a check in the amount of \$4,224.01 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

A&KRPD00020

Fort Apache Square
9512 W Flamingo Road #102
Las Vegas, NV 89147

Venise Abelard
9352 Cranesbill Court
Las Vegas, NV 89149

Property Address: 9352 Cranesbill Court
Account #: 17491

Code	Date	Amount	Balance	Check#	Memo
Assessment	10/31/2010	1,204.58	1,204.58		Initial Balance
Assessment	11/1/2010	56.00	1,260.58		Assessment
Assessment	12/1/2010	56.00	1,316.58		Assessment
Payment	12/13/2010	-56.00	1,260.58	1167	Mesa-12132010.TXT
Late Fee	12/30/2010	10.00	1,270.58		Lien
Assessment	1/1/2011	61.00	1,331.58		Assessment
Late Fee	1/30/2011	10.00	1,341.58		Lien
Assessment	2/1/2011	61.00	1,402.58		Assessment
Late Fee	2/28/2011	10.00	1,412.58		Lien
Assessment	3/1/2011	61.00	1,473.58		Assessment
Late Fee	3/30/2011	10.00	1,483.58		Lien
Assessment	4/1/2011	61.00	1,544.58		Assessment
Late Fee	4/30/2011	10.00	1,554.58		Lien
Assessment	5/1/2011	61.00	1,615.58		Assessment
Assessment	6/1/2011	61.00	1,676.58		Assessment
Late Fee	6/30/2011	10.00	1,686.58		Lien
Assessment	7/1/2011	61.00	1,747.58		Assessment
Assessment	8/1/2011	61.00	1,808.58		Assessment
Late Fee	8/30/2011	10.00	1,818.58		Lien
Assessment	9/1/2011	61.00	1,879.58		Assessment
Late Fee	9/30/2011	10.00	1,889.58		Lien
Assessment	10/1/2011	61.00	1,950.58		Assessment
Payment	10/24/2011	-281.43	1,669.15	61198	Alessi progress payment
Late Fee	10/30/2011	10.00	1,679.15		Lien
Assessment	11/1/2011	61.00	1,740.15		Assessment
Late Fee	11/30/2011	10.00	1,750.15		Lien
Assessment	12/1/2011	61.00	1,811.15		Assessment
Late Fee	12/30/2011	10.00	1,821.15		Lien
Assessment	1/1/2012	64.50	1,885.65		Assessment
Late Fee	1/30/2012	10.00	1,895.65		Lien
Assessment	2/1/2012	64.50	1,960.15		Assessment
Payment	2/13/2012	-284.00	1,676.15	1215	Mesa-02132012.TXT
Late Fee	2/29/2012	10.00	1,686.15		Lien
Assessment	3/1/2012	64.50	1,750.65		Assessment

Mesa Management | 9512 W Flamingo Road #102 | Las Vegas, NV 89147 | 702-750-0530

Make check payable to: Fort Apache Square

5/31/2012

Page 1 of 2

A&KRPD00021

Fort Apache Square
9512 W Flamingo Road #102
Las Vegas, NV 89147

Code	Date	Amount	Balance	Check#	Memo
Late Fee	3/30/2012	10.00	1,760.65		Lien
Assessment	4/1/2012	64.50	1,825.15		Assessment
Late Fee	4/30/2012	10.00	1,835.15		Lien
Assessment	5/1/2012	64.50	1,899.65		Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	1,899.65
0.00	74.50	74.50	1,750.65		

Mesa Management | 9512 W Flamingo Road #102 | Las Vegas, NV 89147 | 702-750-0530

Make check payable to: Fort Apache Square

5/31/2012

Page 2 of 2

A&KRPD00022

EXHIBIT 17

Account History Report **Fort Apache Square HOA**

Venise Abelard

00198-2017

Community Address: 9352 Cranesbill Court
Las Vegas, NV 89149

Date Settled:
Unit Type: 01 - Homeowner

Mailing Address: 9352 Cranesbill Court
Las Vegas, NV 89149

Last payment date: Wed Sep 15, 2010
Last payment amount: 112.00
Current balance: 1,204.58

Trans Date	Transaction	Charges	Payments	Balance	Date Billed	Reference	Comments
05/31/2009	Balance Forward Chrg	739.58		739.58		Balance Forward	prior management AMI
06/01/2009	Assessment	56.00		795.58		Monthly Charges	Recurring Charges: 06/01/2009
07/01/2009	Assessment	56.00		851.58		Monthly Charges	Recurring Charges: 07/01/2009
07/31/2009	Late Fee	10.00		861.58		Late Fee	Late Fee: 07/30/2009
08/01/2009	Assessment	56.00		917.58		Monthly Charges	Recurring Charges: 08/01/2009
08/31/2009	Late Fee	10.00		927.58		Late Fee	Late Fee: 08/30/2009
09/01/2009	Assessment	56.00		983.58		Monthly Charges	Recurring Charges: 09/01/2009
09/01/2009	Check		-125.00	858.58		138112	NAS
09/30/2009	Late Fee	10.00		868.58		Late Fee	Late Fee: 09/30/2009
10/01/2009	Assessment	56.00		924.58		Monthly Charges	Recurring Charges: 10/01/2009
10/31/2009	Late Fee	10.00		934.58		Late Fee	Late Fee: 10/30/2009
11/01/2009	Assessment	56.00		990.58		Monthly Charges	Recurring Charges: 11/01/2009
11/19/2009	Check		-100.00	890.58		147943	NAS
11/30/2009	Late Fee	10.00		900.58		Late Fee	Late Fee: 11/30/2009
12/01/2009	Assessment	56.00		956.58		Monthly Charges	Recurring Charges: 12/01/2009
12/31/2009	Late Fee	10.00		966.58		Late Fee	Late Fee: 12/30/2009
01/01/2010	Assessment	56.00		1,022.58		Monthly Charges	Recurring Charges: 01/01/2010
01/31/2010	Late Fee	10.00		1,032.58		Late Fee	Late Fee: 01/30/2010
02/01/2010	Assessment	56.00		1,088.58		Monthly Charges	Recurring Charges: 02/01/2010
02/03/2010	Check		-56.00	1,032.58		1133	Payment. Thank you
02/28/2010	Late Fee	10.00		1,042.58		Late Fee	Late Fee: 02/28/2010
03/01/2010	Assessment	56.00		1,098.58		Monthly Charges	Recurring Charges: 03/01/2010
03/31/2010	Late Fee	10.00		1,108.58		Late Fee	Late Fee: 03/30/2010
04/01/2010	Assessment	56.00		1,164.58		Monthly Charges	Recurring Charges: 04/01/2010
04/14/2010	Check		-132.00	1,032.58		1137	Payment. Thank you
04/30/2010	Late Fee	10.00		1,042.58		Late Fee	Late Fee: 04/30/2010
05/01/2010	Assessment	56.00		1,098.58		Monthly Charges	Recurring Charges: 05/01/2010
05/30/2010	Late Fee	10.00		1,108.58		Late Fee	Late Fee: 05/30/2010
06/01/2010	Assessment	56.00		1,164.58		Monthly Charges	Recurring Charges: 06/01/2010
06/16/2010	Check		-112.00	1,052.58		1144	Payment. Thank you.
06/30/2010	Late Fee	10.00		1,062.58		Late Fee	Late Fee: 06/30/2010
07/01/2010	Assessment	56.00		1,118.58		Monthly Charges	Recurring Charges: 07/01/2010
07/30/2010	Late Fee	10.00		1,128.58		Late Fee	Late Fee: 07/30/2010
08/01/2010	Assessment	56.00		1,184.58		Monthly Charges	Recurring Charges: 08/01/2010
08/30/2010	Late Fee	10.00		1,194.58		Late Fee	Late Fee: 08/30/2010
09/01/2010	Assessment	56.00		1,250.58		Monthly Charges	Recurring Charges: 09/01/2010
09/15/2010	Check		-112.00	1,138.58		1157	Payment. Thank you
09/30/2010	Late Fee	10.00		1,148.58		Late Fee	Late Fee: 09/30/2010
10/01/2010	Assessment	56.00		1,204.58		Monthly Charges	Recurring Charges: 10/01/2010

EXHIBIT 18

DISTRICT COURT
CLARK COUNTY, NEVADA

VENISE ABELARD,

Plaintiff,

vs.

CASE NO. A-12-671509-C

9352 CRANESBILL TRUST; FORT
APACHE SQUARE HOMEOWNERS
ASSOCIATION; MESA MANAGEMENT,
LLC; BENCHMARK ASSOCIATION
SERVICES; IYAD HADDAD, an
individual; ALESSI & KOENIG,
LLC; NEVADA ASSOCIATION SERVICES
and DOES I through X and ROE
COMPANIES I through X, inclusive,

Defendants.

And all related matters.

VOLUME II

DEPOSITION OF DAVID ALESSI, ESQ.

Taken at the law offices of Snell & Wilmer

Taken on Wednesday, June 8, 2016

At 9:51 a.m.

At 3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada

Reported by: Barbara Kulish, CCR #247, RPR

1 approximately half of the progress payment -- I mean
2 half of the partial payment made by the homeowner. It
3 looks like we cut a check for approximately half to the
4 HOA, which would not be unusual.

5 Q. So then what you're doing is, these
6 assessments aren't going to pay assessments, they're
7 going to pay past-due costs to Alessi & Koenig?

8 A. Both. It looks like half went to the
9 assessments -- well, \$281.43 went to the assessments.
10 I don't know -- I can't see whether or not this check
11 was -- cleared the bank, I just have the front of the
12 check for \$142. I also just have the front of the
13 check for 366. So I don't know if these checks cleared
14 the bank or not.

15 But just going off of the documents that I
16 have seen, assuming that the checks cleared the bank,
17 the 366 plus 142, which is approximately 500, would
18 have been divided, again assuming these checks cleared
19 the bank, 283 to the association -- or 281.43 to the
20 association, and a balance of approximately, what, 220
21 to Alessi & Koenig.

22 Q. But you're just -- it's not clear from the
23 ledger that that's what has happened, this is just your
24 best estimate given your practice?

25 A. Well, it says "Alessi progress payment" on

1 close to the time of the event as possible, but not
2 always the same day or even the next day.

3 Q. Did Alessi & Koenig send any letters or
4 emails to Ms. Abelard between June 5th and
5 July 13th?

6 A. I don't know. None are indicated on the
7 status report.

8 Q. If a letter had been sent, would it be
9 indicated on the status report and/or present in the
10 file?

11 A. Yes, it should be.

12 Q. Did anyone from Alessi & Koenig call
13 Ms. Abelard between June 5th and July 13th?

14 A. I don't know.

15 Q. If they had, would it be indicated in the
16 status report?

17 A. Not necessarily. I can go back to the
18 office and see if there's any notes to that effect or
19 emails to that effect, but I haven't seen anything.

20 Q. Would those notes or emails be kept
21 somewhere other than in the file for this account?

22 A. The emails are archived. We don't scan the
23 emails into the account -- into the letters and notices
24 tab always. I've seen emails produced, so sometimes
25 emails are scanned. But when we are putting together

1 our production of documents, an interoffice email goes
2 around asking that all employees search their email and
3 archived email for anything related to this property.
4 I haven't seen anything in the file to that effect.

5 Q. Will you go check and make sure there were
6 no emails?

7 A. Yes.

8 MR. PERKINS: Those are all my questions.
9 Does anybody else have any follow-up?

10

11 FURTHER EXAMINATION

12 BY MS. BOOKOUT:

13 Q. One follow-up to the communication between
14 Ms. Abelard and Alessi & Koenig.

15 Does Alessi & Koenig keep a phone log?

16 A. Never been asked that before. I don't
17 know. I can check.

18 Q. If you did keep a phone log, would it be
19 saved in the same program that you've been discussing?

20 A. No. There wouldn't be a phone log where
21 each entry in the phone log file is saved, where the
22 phone log is saved into each entry such that it would
23 require the phone log to be copied multiple times. But
24 there may be a phone log, a generic phone log that we
25 have in storage or somewhere. I can look. But there

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss.
3 COUNTY OF CLARK)

4 I, Barbara Kulish, a duly licensed court
reporter in the State of Nevada, do hereby certify:

5
6 That I reported the taking of the deposition
of DAVID ALESSI, ESQ., on Wednesday, June 8, 2016,
commencing at the hour of 9:51 a.m.


7
8 That prior to being examined, the witness
was by me duly sworn to testify to the truth, the
whole truth, and nothing but the truth.

9
10 That I thereafter transcribed my said
shorthand notes into typewriting, and that the
typewritten transcript of said deposition is a
11 complete, true and accurate transcription of my said
shorthand notes taken down at said time.

12
13 That at the conclusion of the deposition,
the deponent waived the right to review and sign the
deposition transcript; that the unsigned original
14 deposition transcript will be forwarded to the custody
and control of Casey Perkins, Esq.

15
16 I further certify that I am not a relative
or employee of an attorney or counsel involved in said
17 action, nor a person financially interested in said
action.

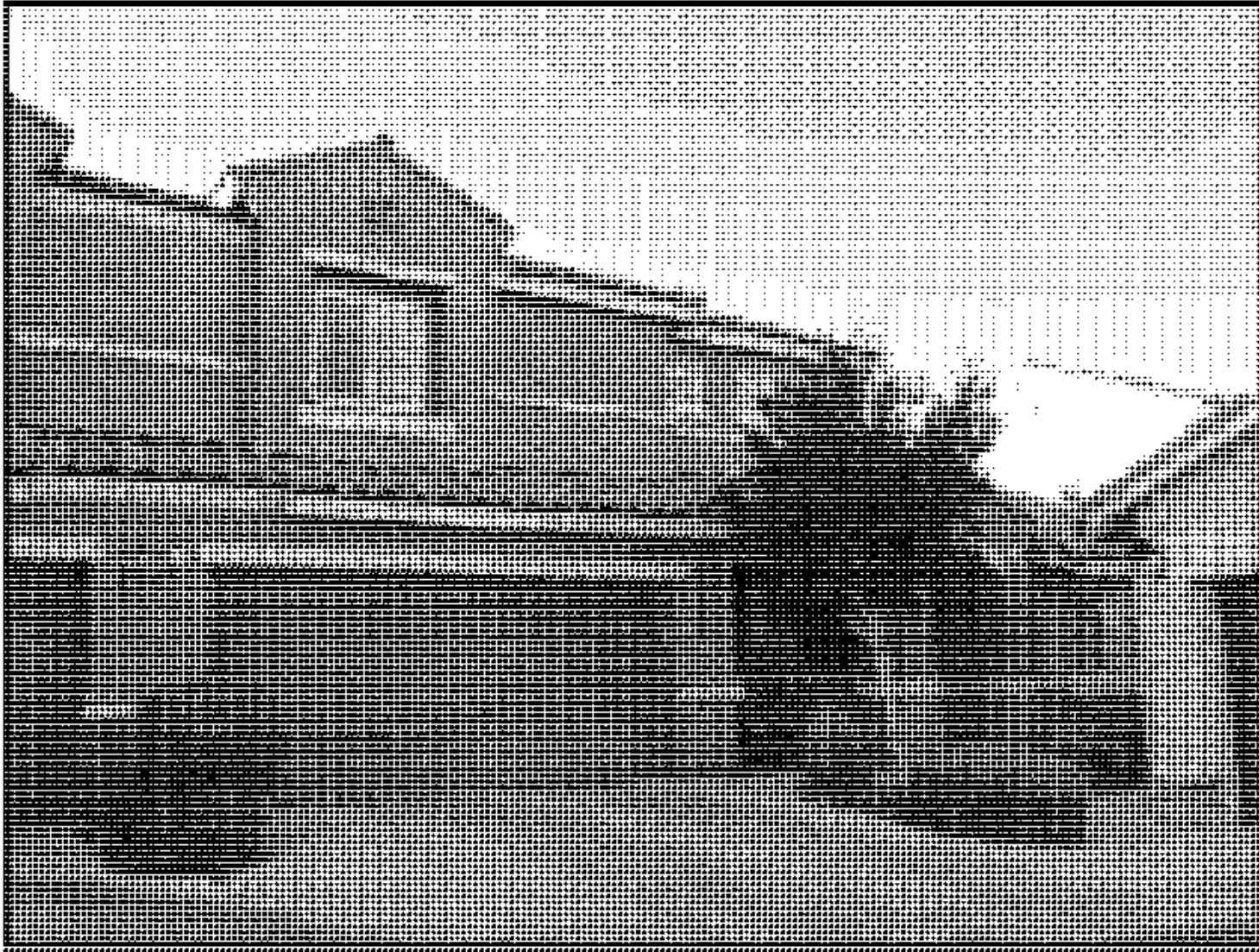
18 Dated this 20th day of June, 2016.

19
20
21 
22 Barbara Kulish, CCR #247, RPR
23
24
25

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

EXHIBIT 19

APPRAISAL OF REAL PROPERTY



LOCATED AT

9352 Cranesbill Court
Las Vegas, NV 89149
Fort Apache Ranch Plat Book 123 Page 73 Lot 16 Block B

FOR

Snell & Wilmer LLP
3883 Howard Hughes Parkway #1100
Las Vegas, NV 89169

AS OF

July 11, 2012

BY

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

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

December 07, 2015

Snell & Wilmer LLP
3883 Howard Hughes Parkway #1100
Las Vegas, NV 89169

Re: Property: 9352 Cranesbill Court
Las Vegas, NV 89149
Borrower: N/A
File No.: 9352 Cranesbill Ct

Opinion of Value: \$ 94,000
Effective Date: July 11, 2012

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

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

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

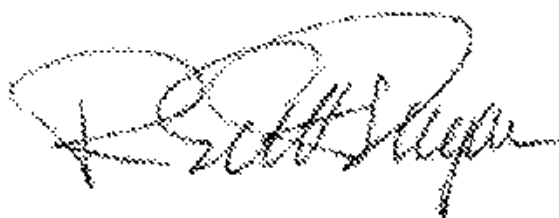
The opinion assumes the date and time of value to be prior to the HOA lien transfer on the same date. The opinion also assumes the property to be in average condition and professionally marketed under normal terms.

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

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

Thank you for the opportunity to service your appraisal needs.

Sincerely,



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

Client	Snell & Wilmer LLP			File No. 9352 Cranesbill Ct	
Property Address	9352 Cranesbill Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89149
Owner	Venise Abelard				

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RESIDENTIAL APPRAISAL REPORT

File No.: 9352 Cranesbill Ct

SUBJECT	Property Address: 9352 Cranesbill Court		City: Las Vegas		State: NV		Zip Code: 89149													
	County: Clark		Legal Description: Fort Apache Ranch Plat Book 123 Page 73 Lot 16 Block B																	
			Assessor's Parcel #: 125-18-513-016																	
	Tax Year: 2012		R.E. Taxes: \$ N/A		Special Assessments: \$ 0		Borrower (if applicable): N/A													
	Current Owner of Record: Venise Abelard		Occupant: <input checked="" type="checkbox"/> Owner		<input type="checkbox"/> Tenant		<input type="checkbox"/> Vacant		<input type="checkbox"/> Manufactured Housing											
ASSIGNMENT	Project Type: <input checked="" type="checkbox"/> PUD		<input type="checkbox"/> Condominium		<input type="checkbox"/> Cooperative		<input type="checkbox"/> Other (describe)		HOA: \$ 65 per year <input checked="" type="checkbox"/> per month											
	Market Area Name: Fort Apache Ranch - Northwest Las Vegas		Map Reference: 12-B5		Census Tract: 32.28															
	The purpose of this appraisal is to develop an opinion of: <input type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)																			
	This report reflects the following value (if not Current, see comments): <input type="checkbox"/> Current (the Inspection Date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective																			
	Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)																			
MARKET AREA DESCRIPTION	Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)																			
	Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.																			
	Intended User(s) (by name or type): Snell & Wilmer LLP and/or legal professionals associated with this case.																			
	Client: Snell & Wilmer LLP		Address: 3883 Howard Hughes Parkway #1100, Las Vegas, NV 89169																	
	Appraiser: R. Scott Dugan		Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147																	
SITE DESCRIPTION	Location: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural		Predominant Occupancy		One-Unit Housing		Present Land Use		Change in Land Use											
	Built up: <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%		<input checked="" type="checkbox"/> Owner		PRICE AGE		One-Unit 65 %		<input type="checkbox"/> Not Likely											
	Growth rate: <input type="checkbox"/> Rapid <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Slow		<input type="checkbox"/> Tenant		\$ (000) (yrs)		2-4 Unit 0 %		<input type="checkbox"/> Likely * <input type="checkbox"/> In Process *											
	Property values: <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining		<input checked="" type="checkbox"/> Vacant (0-5%)		75 Low 0		Multi-Unit 50 %		* To:											
	Demand/supply: <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply		<input type="checkbox"/> Vacant (>5%)		400 High 11		Comm'l 10 %													
Marketing time: <input checked="" type="checkbox"/> Under 3 Mos. <input type="checkbox"/> 3-6 Mos. <input type="checkbox"/> Over 6 Mos.									200 Pred 6		Vacant 20 %									
Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Horse Drive - N, Puli Road - E, Bruce Woodbury Beltway - S, and Durango Drive & I-95 - east. The subject project of Fort Apache Ranch is in northwest Las Vegas, and borders the master planned community of Providence on the west. The market area is comprised of newer tract homes on compact to medium sized lots, with a mix of custom homes on half acre lots. There are a variety of residential tract housing with supporting services in the immediate area. The subject is 2 +/- miles W of Floyd Lamb State Park and just NW of Centennial Hills Town Center North (office / retail / major medical facilities), which includes the Centennial Hills Hospital Medical Center, Centennial Centre, Mountain Ridge Park, etc. 15 to 18 +/- miles SE of are Las Vegas CBD and Resort Corridor (key employment centers) with good freeway and major street access. The market continued to decline 2011, then in 2012 stabilized in this segment. Refer to - Explanatory Comments, market conditions, etc.																				
GENERAL DESCRIPTION	Dimensions: Irregular/See Plat		Site Area: .06 Acre (2,614 Sq Ft)																	
	Zoning Classification: T-C		Description: Town Center District																	
			Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning																	
	Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown		Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Ground Rent (if applicable) \$ N/A/															
	Highest & Best Use as Improved: <input type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) CC&R's. The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.																			
SITE DESCRIPTION	Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential																			
	Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.																			
	Utilities		Public		Other		Provider/Description		Off-site Improvements		Type		Public		Private		Topography		Built Up Pad	
	Electricity		<input checked="" type="checkbox"/>		<input type="checkbox"/>		NV Energy		Street		Asphalt		<input type="checkbox"/>		<input checked="" type="checkbox"/>		Size		Typical for Area	
	Gas		<input checked="" type="checkbox"/>		<input type="checkbox"/>		SW Gas		Curb/Gutter		Concrete		<input type="checkbox"/>		<input checked="" type="checkbox"/>		Shape		Irregular/See Plat	
Water		<input checked="" type="checkbox"/>		<input type="checkbox"/>		LLVWD		Sidewalk		Concrete		<input type="checkbox"/>		<input checked="" type="checkbox"/>		Drainage		Appears Adequate		
Sanitary Sewer		<input checked="" type="checkbox"/>		<input type="checkbox"/>		Clark County		Street Lights		Electric		<input type="checkbox"/>		<input checked="" type="checkbox"/>		View		Residential		
Storm Sewer		<input checked="" type="checkbox"/>		<input type="checkbox"/>		Clark County		Alley		None		<input type="checkbox"/>		<input type="checkbox"/>						
Other site elements: <input type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)																				
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C1745E FEMA Map Date 09/27/2002																				
Site Comments: Typical site, no adverse conditions noted. These are townhouse style units with rear-yard vinyl fencing. The subject's rear property line backs to vacant land, which may or may not be considered a less desirable location by some potential buyers. No consistent value difference indication between the sales was evidenced.																				
DESCRIPTION OF THE IMPROVEMENTS	General Description		Exterior Description		Foundation		Basement		Heating											
	# of Units One Acc. Unit		Foundation Concrete/Avg		Slab Concrete		Area Sq. Ft. None		Type FWA											
	# of Stories Two		Exterior Walls Stucco/Avg		Crawl Space None		% Finished		Fuel Gas											
	Type <input type="checkbox"/> Det. <input checked="" type="checkbox"/> Att. <input type="checkbox"/>		Roof Surface Tile/Avg		Basement None		Ceiling													
	Design (Style) Townhome/2-Story		Gutters & Dwnspts. None		Sump Pump <input type="checkbox"/> None		Walls		Cooling Yes											
<input type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.		Window Type Insulated/Avg		Dampness <input type="checkbox"/> None		Floor		Central Yes												
Actual Age (Yrs.) 5		Storm/Screens None		Settlement None		Outside Entry		Other None												
Effective Age (Yrs.) 5				Infestation None																
Interior Description		Appliances		Attic <input type="checkbox"/> None		Amenities		Car Storage <input type="checkbox"/> None												
Floors Exterior Only		Refrigerator <input type="checkbox"/>		Stairs <input type="checkbox"/>		Fireplace(s) # 0		Garage # of cars (4 Tot.)												
Walls Exterior Only		Range/Oven <input checked="" type="checkbox"/>		Drop Stair <input type="checkbox"/>		Patio Yes		Attach. <input type="checkbox"/>												
Trim/Finish Exterior Only		Disposal <input checked="" type="checkbox"/>		Scuttle <input type="checkbox"/>		Deck None		Detach. <input type="checkbox"/>												
Bath Floor Exterior Only		Dishwasher <input checked="" type="checkbox"/>		Doorway <input type="checkbox"/>		Porch Yes		Blt.-In 2												
Bath Wainscot Exterior Only		Fan/Hood <input type="checkbox"/>		Floor <input type="checkbox"/>		Fence Yes		Carport <input type="checkbox"/>												
Doors Exterior Only		Microwave <input type="checkbox"/>		Heated <input type="checkbox"/>		Pool None		Driveway 2												
		Washer/Dryer <input type="checkbox"/>		Finished <input type="checkbox"/>		Spa None		Surface Concrete												
Finished area above grade contains: 5 Rooms 3 Bedrooms 2.5 Bath(s) 1,636 Square Feet of Gross Living Area Above Grade																				
Additional features: The property is assumed to have standard features and amenities for this submarket.																				
Describe the condition of the property (including physical, functional and external obsolescence): As this is an exterior-only inspection and retrospective assignment, the appraiser invokes the following Extraordinary Assumptions: 1) the condition of the interior was at minimum average 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the addendum - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.																				

RESIDENTIAL APPRAISAL REPORT

File No.: 9352 Cranesbill Ct

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): GLVAR MLS & Clark County Public Records

1st Prior Subject Sale/Transfer

Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.

Date:

Price:

Source(s):

2nd Prior Subject Sale/Transfer

Date:

Price:

Source(s):

SALES COMPARISON APPROACH TO VALUE (if developed)

The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	9352 Cranesbill Court Las Vegas, NV 89149	7821 Horsenettle Street Las Vegas, NV 89149		7805 Corn Lily Court Las Vegas, NV 89149		7893 Clearweed Court Las Vegas, NV 89149	
Proximity to Subject		0.21 miles SE		0.18 miles S		0.14 miles SE	
Sale Price	\$	\$ 95,000		\$ 105,000		\$ 106,000	
Sale Price/GLA	\$ /sq.ft.	\$ 76.92 /sq.ft.		\$ 64.18 /sq.ft.		\$ 64.79 /sq.ft.	
Data Source(s)	MLS-Pub Records	MLS-Public Records / DOM 2		MLS-Public Records / DOM 10		MLS-Public Records / DOM 6	
Verification Source(s)	Public Records	201207300:3435		201207300:3179		201207130:1020	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.
Sales or Financing Concessions		Traditional CASH \$0		REO Sale FHA \$2,000	-2,000	Traditional CONV \$0	
Date of Sale/Time		07/30/2012		07/30/2012		07/13/2012	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Ft Apache Rch/Gtd	Ft Apache Rch/Gtd		Ft Apache Rch/Gtd		Ft Apache Rch/Gtd	
Site	2,614 Sq Ft/CDS	3,049 SF/Corner		2,614 SF/CDS		2,614 SF/CDS	
View	Residential	Residential		Residential		Residential	
Design (Style)	Townhome/2-Story	Townhome/1-Story	-4,750	Townhome/2-Story		Townhome/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	5	4		6		1	
Condition	Average	Very Good	-9,900	Good	-6,500	Very Good	-13,000
Above Grade Room Count	Total Bdrms Baths 5 3 2.5	Total Bdrms Baths 5 3 2.5		Total Bdrms Baths 5 3 2.5		Total Bdrms Baths 5 3 2.5	
Gross Living Area	1,636 sq.ft.	1,235 sq.ft.	+14,000	1,636 sq.ft.		1,636 sq.ft.	
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	L/S, Patio	L/S, Patio		L/S, Patio		L/S, Patio	
Contract Date	None	06/02/2012		07/02/2012		06/14/2012	
Rent / GRM	N/A	\$1,000 / 95.00		N/A		N/A	
Net Adjustment (Total)		<input type="checkbox"/> + <input type="checkbox"/> -	\$ -650	<input type="checkbox"/> + <input type="checkbox"/> -	\$ -8,500	<input type="checkbox"/> + <input type="checkbox"/> -	\$ -13,000
Adjusted Sale Price of Comparables			\$ 94,350		\$ 96,500		\$ 93,000

SALES COMPARISON APPROACH

Summary of Sales Comparison Approach

In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$94,000. The package price per square foot of \$57 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from \$61 to \$79. The subject's package price is below the unadjusted sale price divided by gross living area of the comparables utilized, which in the appraiser's determination would reasonably compete with the subject property. This is due to downward adjustments made to the majority of comparables for better condition. Cross comparison of the data did not support adjustments for variations in lot size, age, or 1/2 bath count. While these variations were noted, in most cases a consistent value difference indication between the sales could not be isolated. The adjusted range of comparable pricing brackets and supports the value conclusion. The subject's central tendency is \$94,000 (rounded) and is considered reasonable in support of the final conclusion of value. Refer to Explanatory Comments - Sales Comparison Approach comments.

Given the large numbers of cash buyers in the market, sales concessions made were adjusted dollar for dollar to arrive at what comparables would have sold for without the concessions. In review of available data, the appraiser was also able to determine that there were no special financing or other considerations. Comparable one reported a transfer on 09/16/2010 for \$103,000.

Comparable two reported a transfer on 01/12/2012 for \$283,110 as a Trustee's Deed.

Comparable three reported a transfer on 04/15/2011 for \$120,000.

Comparable four reported a transfer on 04/11/2012 for \$78,200 as a Trustee's Deed.

Comparable five reported a transfer on 08/25/2009 for \$134,000.

Comparable six reported a transfer on 10/25/2010 for \$109,281 as a Trustee's Deed.

Indicated Value by Sales Comparison Approach \$

94,000

GP RESIDENTIAL

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APP000348

3/2007

Explanatory Comments

File No. 9352 Cranesbill Ct

Client	Snell & Wilmer LLP			
Property Address	9352 Cranesbill Court			
City	Las Vegas	County	Clark	State NV Zip Code 89149
Owner	Venise Abeland			

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2014-2015 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, July 11, 2012, the effective date of this report. The physical exterior inspection of the subject property was performed on December 4, 2015.

Comments on Sales Comparison Approach: The comparables range in gross living area (GLA) from 1,235 to 2,005 square feet. All comparables used in this report are located in the subject project.

The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas like the subject's, influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading.

Explanatory Comments

File No. 9352 Cranesbill Ct

Client	Snell & Wilmer LLP				
Property Address	9352 Cranesbill Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89149
Owner	Venise Abelard				

While two comparables used were REO sales, their prices were within close range of similar properties, thus, were deemed reliable indicators of value for comparison purposes.

If supported, individual line item adjustments were made to the comparable to reflect the market recognized contribution of key attributes or factors present or absent, when contrasted to the subject property. The contribution of big ticket items (location, age/condition, quality, site, view, GLA, swim features, etc.) were adjusted on a line item basis. Minor value features (fireplaces, solar screens, storage sheds, etc.), that may appeal to some buyers, typically are not significant enough in their contribution to isolate as a single line item adjustment. In such cases, the presence of such items in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion. Minor value features and or external influences lacking adjustment support, may not have been noted in the grid.

Comparables two and six back to an exterior surface street with minor traffic. There was no apparent value impact evidenced between the sales, thus, an adjustment for this comparison was not deemed warranted.

The comparables required one or more adjustments for variation in the following: concessions adjusted at dollar for dollar; one-story design at 5% of sale price; gross living area (GLA) at \$35 per square foot; 1/2 bath count at \$1,500 between 2-story units; condition of good and very good at \$4 and \$8 per square foot of GLA, respectively, for better recognized condition.

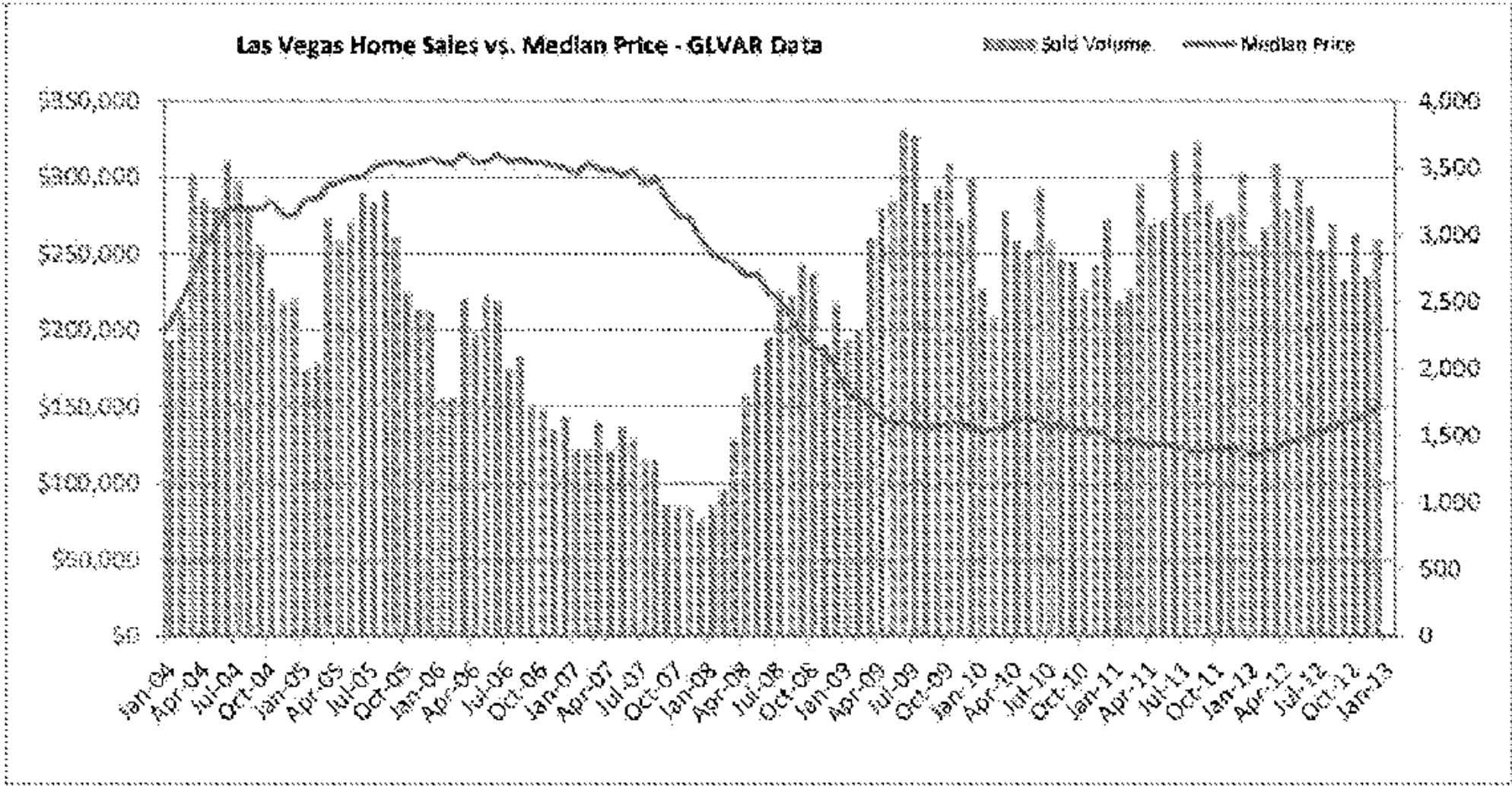
With the exception of dated comparable six, no discernible price (time) differences were evidenced between the sales; thus, adjustments for five of the six comparables were not taken in this analysis. Comparable six required a time adjustment of 1/2 percent per month from date of contract to reflect changes in market conditions over this period of time. This generally is considered consistent with price changes in this market segment.

Private Road: The road agreement has not been reviewed by this appraiser. The property clearly has access over a private road due to evidence of a gated entry noted at time of inspection. We believe its use is legal and permitted, however, no title report or maintenance agreement was furnished. No liability is implied by this office regarding the road agreement. If desired, the client should obtain a copy of the Covenants, Codes, and Restrictions (CC&R'S) to confirm that the Home Owner's Association (HOA) maintains the private streets.

Economic Indicators

Economic Indicators Addendum

Economic Overview - Key Indicators - Clark County, NV											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	09	
POPULATION - Mid Yr	1,874,837	1,954,319	1,967,716	1,973,619	1,920,756	1,931,510	1,990,466	11*			
EMPLOYMENT - Annual	873,249	890,104	880,822	864,353	853,989	856,174	869,640	11			
LABOR FORCE - Annual	911,492	933,770	969,998	980,387	994,210	994,152	970,959	11			
UNEMPLY. RATE - Yr End	4.20%	4.68%	9.19%	11.84%	14.11%	13.88%	16.40%	11			
Pop. to Employ Ratio	2.15	2.20	2.23	2.28	2.25	2.26	2.29	11			
Labor Force Growth	36,572	22,278	36,228	10,389	13,823	-58	-21,193	11			
Net Jobs Created	38,663	16,855	-9,282	-16,469	-10,384	2,205	13,466	11			
Labor to Pop. Ratio	2.06	2.09	2.03	2.01	1.93	1.94	2.05	11			
TAXABLE SALES -000'S	\$34,133,830	\$36,053,682	\$36,358,361	\$34,852,762	\$28,503,924	\$28,207,325	\$26,195,444	10			
Taxable Sales / Capita	\$19,001	\$18,448	\$18,477	\$17,558	\$14,840	\$14,504	\$13,160	10			
HOTEL ROOMS	146,605	145,948	146,372	153,165	161,383	164,374	162,257	11			
Visitors/Room	300	300	300	273	247	247	244	11			
VISITOR VOLUME	44,025,338	43,840,535	43,915,629	41,783,952	39,870,781	40,705,284	39,868,304	11			
Hotel Occupancy	85%	87%	88%	85%	81%	81%	85%	11			
Airport Passengers	44,267,362	46,198,000	47,703,259	44,060,564	40,455,500	39,757,359	38,705,135	11			
Convention Attend.	6,166,194	6,307,961	6,209,253	5,899,715	4,492,275	4,473,134	4,873,681	11			
GAMING REVENUE - 000's	\$9,718,807	\$10,643,823	\$10,868,508	\$9,796,972	\$8,833,902	\$8,908,697	\$8,574,214	11			
Revenue per room	\$66,262	\$72,929	\$74,253	\$63,964	\$54,732	\$54,132	\$52,845	11			
HOUSING STOCK - Clark County, NV											
HOUSING STOCK TOTAL	704,826	740,817	769,875	784,688	796,255	814,868	816,099	MidYr			
Pop./Housing Ratio	2.66	2.64	2.56	2.52	2.41	2.37	2.44	11			
Emp/Housing Ratio	1.24	1.20	1.14	1.10	1.07	1.05	1.07	11			
LabFor/Housing Ratio	1.26	1.26	1.26	1.25	1.25	1.22	1.19	11			
Used/Housing Stock	11.30%	10.53%	9.69%	9.08%	8.73%	8.19%	5.97%	12			
RESIDENTIAL PERMITS	38,254	33,942	28,069	14,555	5,741	4,859	7,189	11			
Single Family	29,408	20,748	13,011	6,096	3,840	4,324	6,006	11			
Multi-Family	8,846	13,194	11,058	8,460	1,901	535	1,183	11			
INTEREST RATES	5.87%	6.43%	6.34%	6.03%	5.01%	4.75%	3.94%	12			
SINGLE FAMILY SALES - Clark County, NV											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	14	
Single Family Listed	31,194	60,661	57,943	64,049	62,783	61,038	57,016	56,643	55,174	40,271	12
Single Family Sold	30,142	35,260	33,529	24,130	15,279	24,924	38,127	34,434	38,153	35,609	12
Percentage	97%	58%	58%	38%	24%	41%	67%	61%	69%	91%	Up
Single Family Median Price					\$222,500	\$140,000	\$135,347	\$124,750	\$132,393		Up
Single Family Average Price					\$285,934	\$170,118	\$166,917	\$152,520	\$165,958		Up
CONDO/TOWNHOME SALES - Clark County, NV											
Condo/Townhome Listed	7,331	11,306	11,474	15,589	15,243	13,076	14,249	12,838	11,537	8,411	12
Condo/Townhome Sold	5,539	7,581	7,872	5,826	3,276	3,694	8,752	8,526	9,146	7,569	12
Percentage	74%	67%	69%	37%	21%	28%	61%	66%	79%	90%	Up
Condo/TH Median Price					\$136,250	\$66,644	\$65,000	\$56,500	\$63,700		Up
Condo/TH Average Price					\$185,375	\$87,698	\$73,159	\$64,056	\$70,899		Up
Total Home Sales	35,681	42,841	41,401	29,956	18,555	28,618	46,879	42,960	47,299	44,178	Up
SFR Rentals Leased	N/A	N/A	N/A	13,670	16,716	18,748	21,756	25,100	28,972	33,653	17
SFR Median Rental	N/A	N/A	N/A	\$1,195	\$1,295	\$1,250	\$1,295	\$1,113	\$1,115	\$1,194	4



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The Las Vegas Housing Market 2009-2012 - Page 1

Home Builders Research, Inc.

THE LAS VEGAS HOUSING MARKET – 2009 – 2012

2009 – In 2009 there were 5,275 new home closings. That translated to a year to year decline of 5,229 transactions or 50 percent. The median new home price in 2009 was \$234,173, and decreased to \$216,854 by December, a change of 7%.

There were 3,850 new home permits pulled by home builders in 2009. That was a decrease of 2,279 permits, or 37 percent.

We counted 44,885 resale closings in 2009, which was a year to year increase of 14,394 transactions, or 47 percent. The rising number of recorded resales was indicative of the increasing number of investors purchasing REO and other distressed properties. The median price of the resale closings in January, 2009 was \$155,000, and in December, 2009 it was \$123,000, a change of \$32,000 or 21 percent.

2010 – In 2010 we counted 5,379 new home closings, a year to year improvement of 104 sales. The median price in January, 2010 was \$200,716 and in December it stood at \$218,080. This translated to an improvement of \$17,364 or 8.7 percent. The new home sales and pricing data during 2010 was greatly affected by the federal tax credit program that caused closings in June to jump to 976, a one month increase of 460, or 89 percent. During mid-2010 the median price jumped by approximately \$20,000.

New home permits in 2010 totaled 4,550, a year to year increase of 700, or 18 percent. It could be concluded that the federal tax credit brought an "artificial demand level" that resulted in 700 additional new home permits. The local economy certainly did NOT display any overall characteristics of a recovery as unemployment continued to rise and job growth was anemic.

The resale activity in 2010 declined year to year at 42,673 transactions. It would appear that some buyers were enticed by the federal tax credit program to purchase a new home instead of the lower priced resale homes. The median price of the resale closings in January, 2010, was \$125,000. In December, 2010, it dropped to \$119,000. This translates to a change of 5 percent.

2011 – The Las Vegas housing market hit its bottom in 2011. The new home closings in 2011 decreased to 3,894. This was a year to year decline of 1,485 sales, or 28 percent. There was an apparent "hangover" from the federal tax credit period in 2010. During the first 6 months there was an average of 279 closings per month, and during the last 6 months the average was 370 closings per month.

The median price of the new home closings in January, 2011, was \$208,145. It dipped to roughly \$198,000 by mid-year, and in December was \$212,250. By the end of 2011 we were starting to realize the decline of new and resale home inventories. The effects of the National Mortgage Settlement (NMS) and passage of Assembly Bill 284 (AB 284) brought Notice of Defaults (NOD) to a minimum. Prior to October 1st, 2011, (when AB 284 took effect) the number of residential NODs averaged 3,148 per month. During the first 6 months after AB 284 was in effect, the number of residential NODs averaged 171 per month. It certainly could be assumed that lenders were responding to this bill.

The Las Vegas Housing Market 2009-2012 - Page 2

Home Builders Research, Inc.

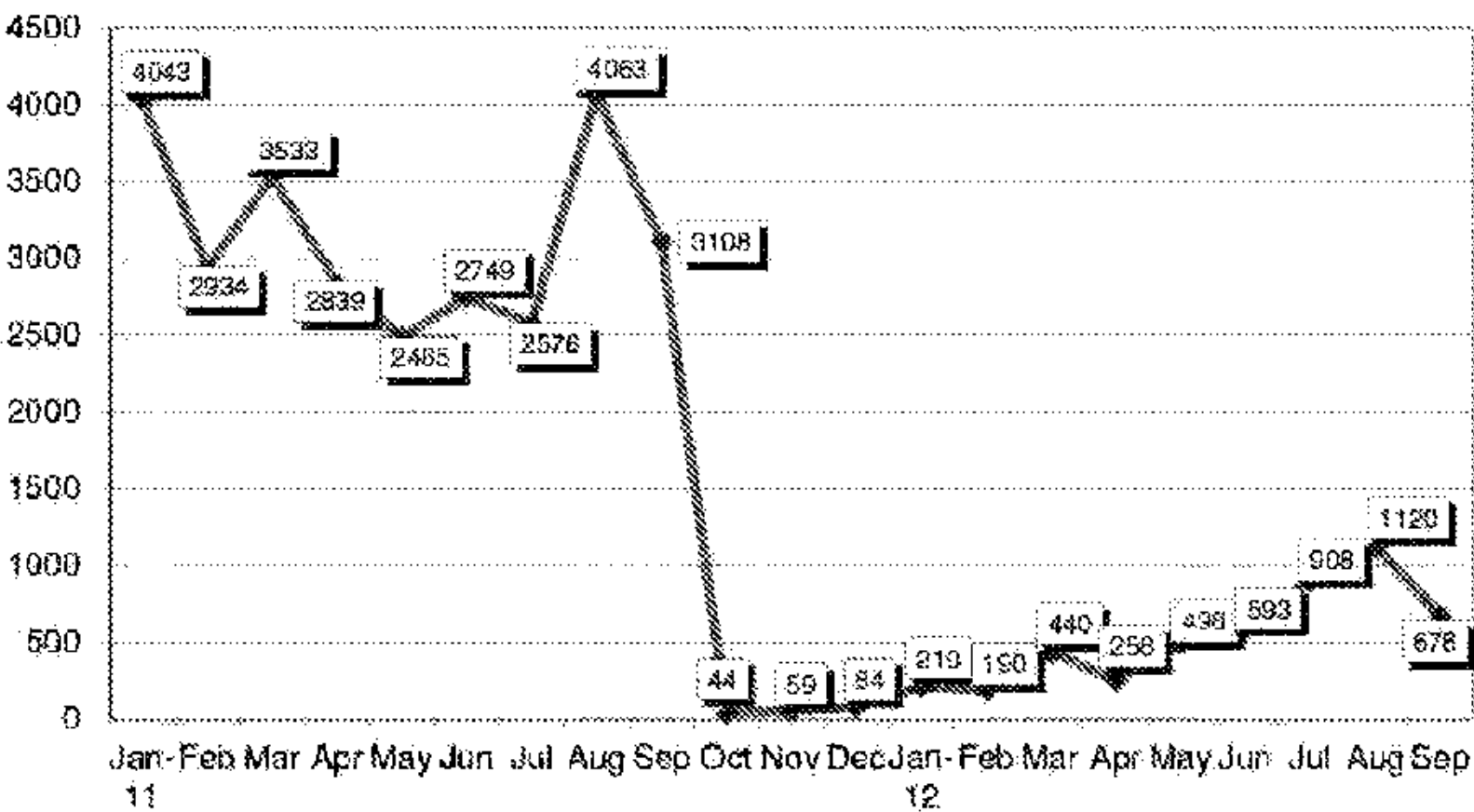
There were 3,732 new home permits pulled by home builders in 2011. It was an annual decline of 818 permits, or 18 percent. In our opinion, this signaled the bottom of the recessionary housing cycle.

We counted 48,822 resale closings in 2011. This translated to a year to year increase of 6,149 transactions or 14 percent. According to the MLS data, roughly 50 percent of their transactions were cash, which suggests investor buyers. Although not all of the cash buyers are investors, we believe most were. Investors rushed to purchase whatever inventory they could find. Most existing homes that came to the market would get multiple offers, in many instances pushing the sales prices higher.

The median price of the resale closings in January, 2011, was \$115,000. The median price in December was \$110,000, a decline of 3.5 percent.

2012 - The housing market took a dramatic turn in 2012. Lenders and servicers adjusted to the new rules and restrictions placed on them by the National Mortgage Settlement and AB 284 by virtually stopping the filing of Notice of Defaults. Residential foreclosures stopped, and the inventory of listings decreased to less than a one month supply.

Residential Notice of Defaults



As a result of this and the excessive competition from investors, many home buyers moved to the new home segment. Demand for new homes, based on the net sales per subdivision, has settled in at .7 - .8 net sales per subdivision per month. This is a strong statistic when compared to other national housing markets.

Granted, one of the factors involved in this robust barometer, is the shrinking supply of active new home communities. Due to a tight supply of finished and partially finished lots, home builders cannot

The Las Vegas Housing Market 2009-2012 - Page 3

Home Builders Research, Inc.

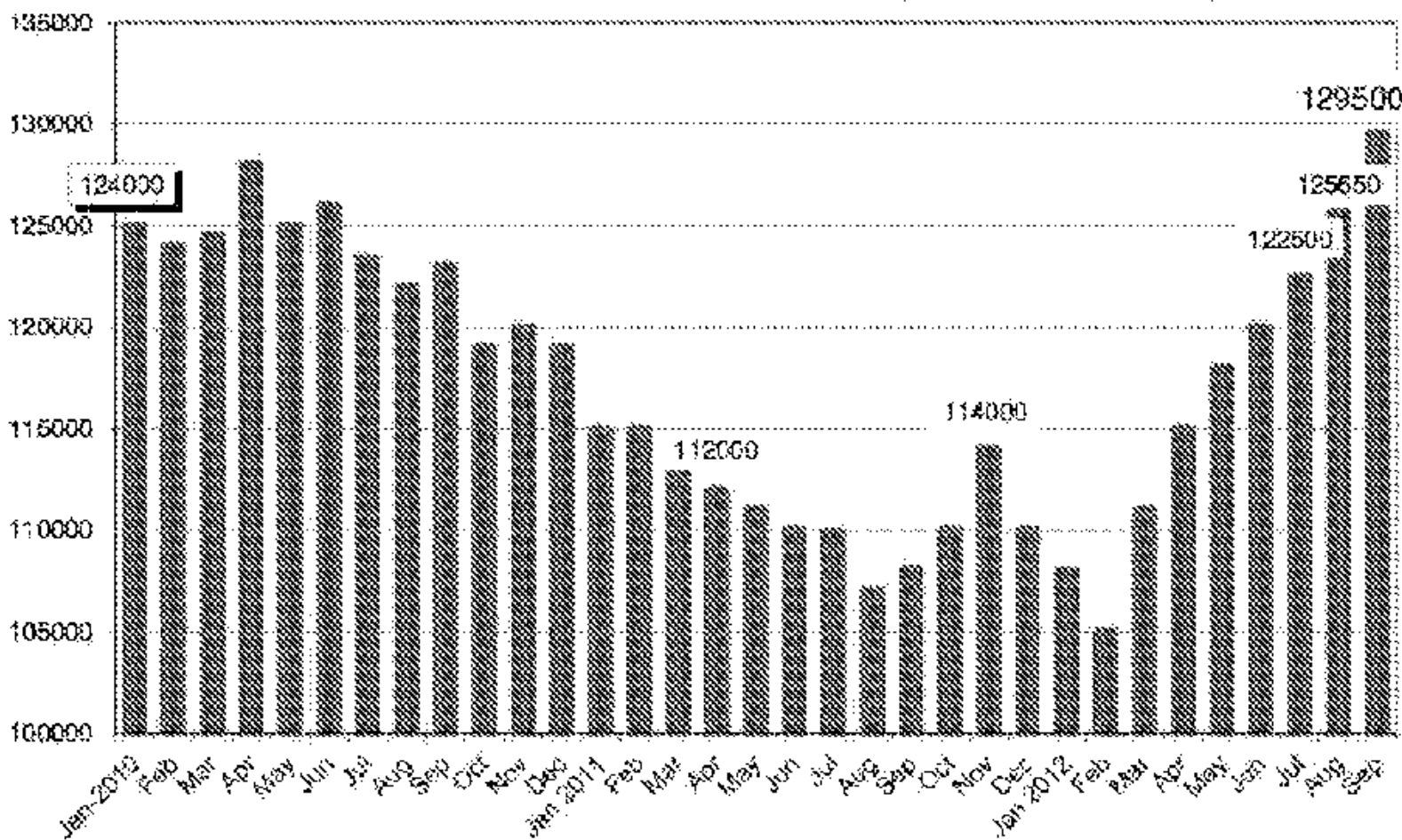
find adequate replacement lots for sold out subdivisions. Our research displays the 31 percent decline in the number of finished lots during 2012.

The number of new home closings through September totaled 3,710, a year to year increase of 33 percent. It now appears there could be approximately 5,700 new home closings in 2012. Also, through September the number of new home permits has risen to 4,451, a year to year increase of 53 percent.

The median price of the new home single family closings in September was \$198,945, a year to year decline of 3.3 percent. Because of the lengthening production schedules for new homes, their closing prices are now lagging indicators. A better way of understanding the current new home pricing trends is the base price changes in the subdivisions. Some of the better locations (specific parts of Summerlin, the southwest sub-market, Henderson, and the northwest) have now seen base prices jump 25 – 45 percent in 2012. However, there are still problems with distressed pricing in other vicinities of North Las Vegas and the east sub-markets.

The tight inventory levels have also affected the number of resale closings and their pricing. Although we have recently observed the number of monthly resale closings begin to decline, through September the 2012 sum (37,498) has increased year to year by 5 percent. The monthly resale median price has risen for the last 7 consecutive months. Year to year it represents an increase of 20 percent.

RESALE MEDIAN PRICE SINCE 2010



The Las Vegas Housing Market 2009-2012 - Page 4

Home Builders Research, Inc.

The following chart summarizes the changes in the inventory of resale listings in the MLS since April, 2011. It is striking how the number of available exsting homes for sale has changed during 2012. The REO and short sale homes listed for sale without contingent offers (the bottom half of the chart) on October 7th was 1,239, an 85 percent change from April, 2011.

SFR MLS Listings Inventory	4/17/2011	7/9/2012	8/2/2012	10/7/2012
Available SFR including accepted contingent offers				
Total	20127	14,563	15,118	16,061
Repos/REO	3308	902	827	598
Short Sales	12206	10,434	10,434	10,271
Other	4615	3,557	3,855	4,181
Available SFR NOT including accepted contingent offers				
Total	11883	3,799	3,336	4,083
Repos/REO	2127	336	366	312
Short Sales	5615	910	909	927
Other	3641	2,613	2,852	2,654

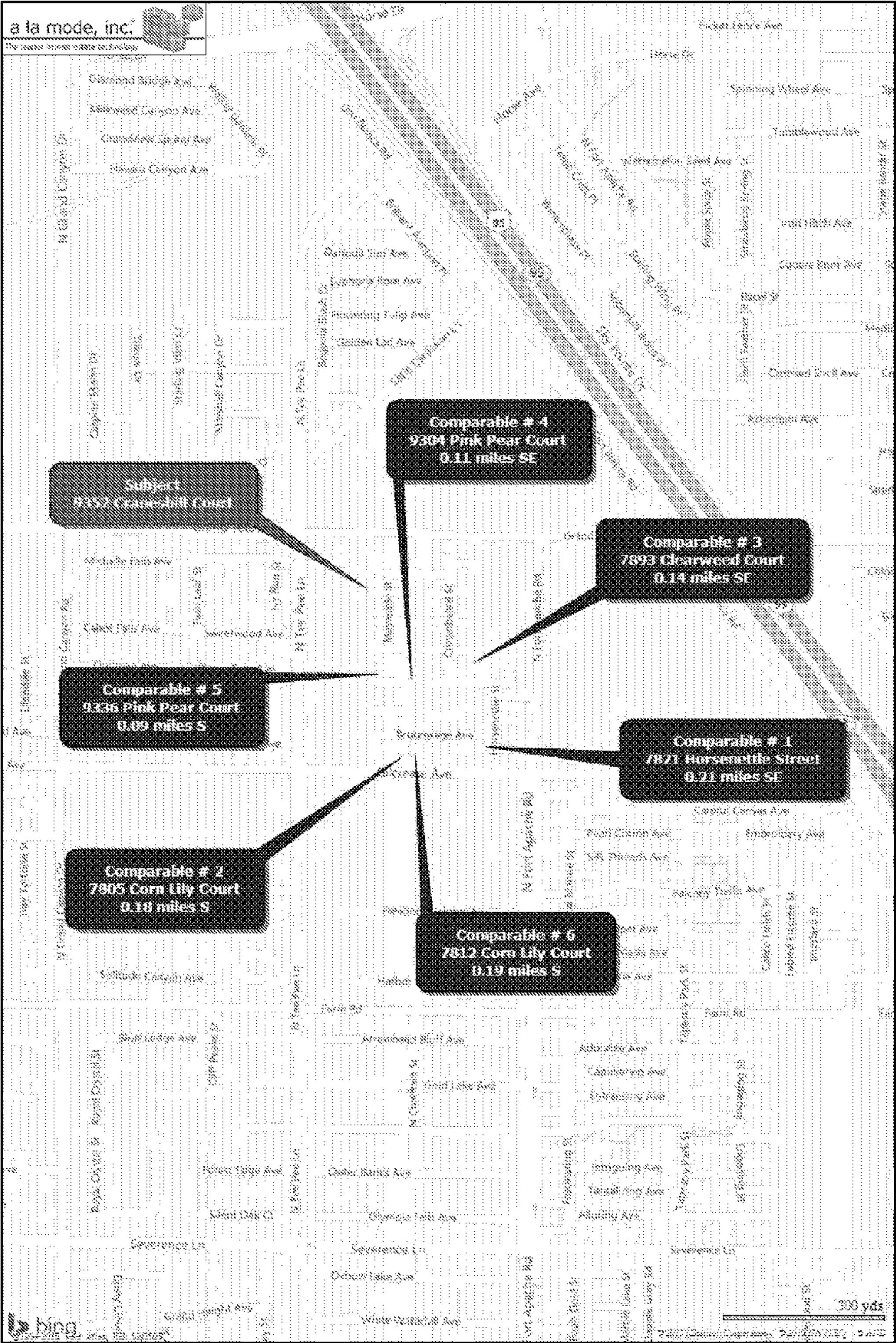
Looking forward to the end of 2012 and into 2013, we believe there will be a rise in NOD's and the resulting foreclosures. Short sales have become the favorite means for most lenders and servicers to dispose of distressed mortgages. As resale prices climb, their losses diminish by going the short sale route. As more resale inventory becomes available there will be more resale closings, primarily as investors purchase any foreclosures entering the marketplace. They can still take advantage of a fairly strong rental market.

It appears that very tight lending policies by the banks will continue, suggesting limitations to potential owner occupants wanting to buy a home. According to a recent national study, required FICO scores are approaching 750 for most new mortgages. And, many of the banks still classify Las Vegas as a "risky or declining market", therefore there still seems to be no indication that underwriting standards will change in the near term.

Tens of thousands of the existing mortgages in southern Nevada are still underwater. Even as prices begin to slowly climb, it will take many years for the Las Vegas housing market to return to any sense of "normalcy".

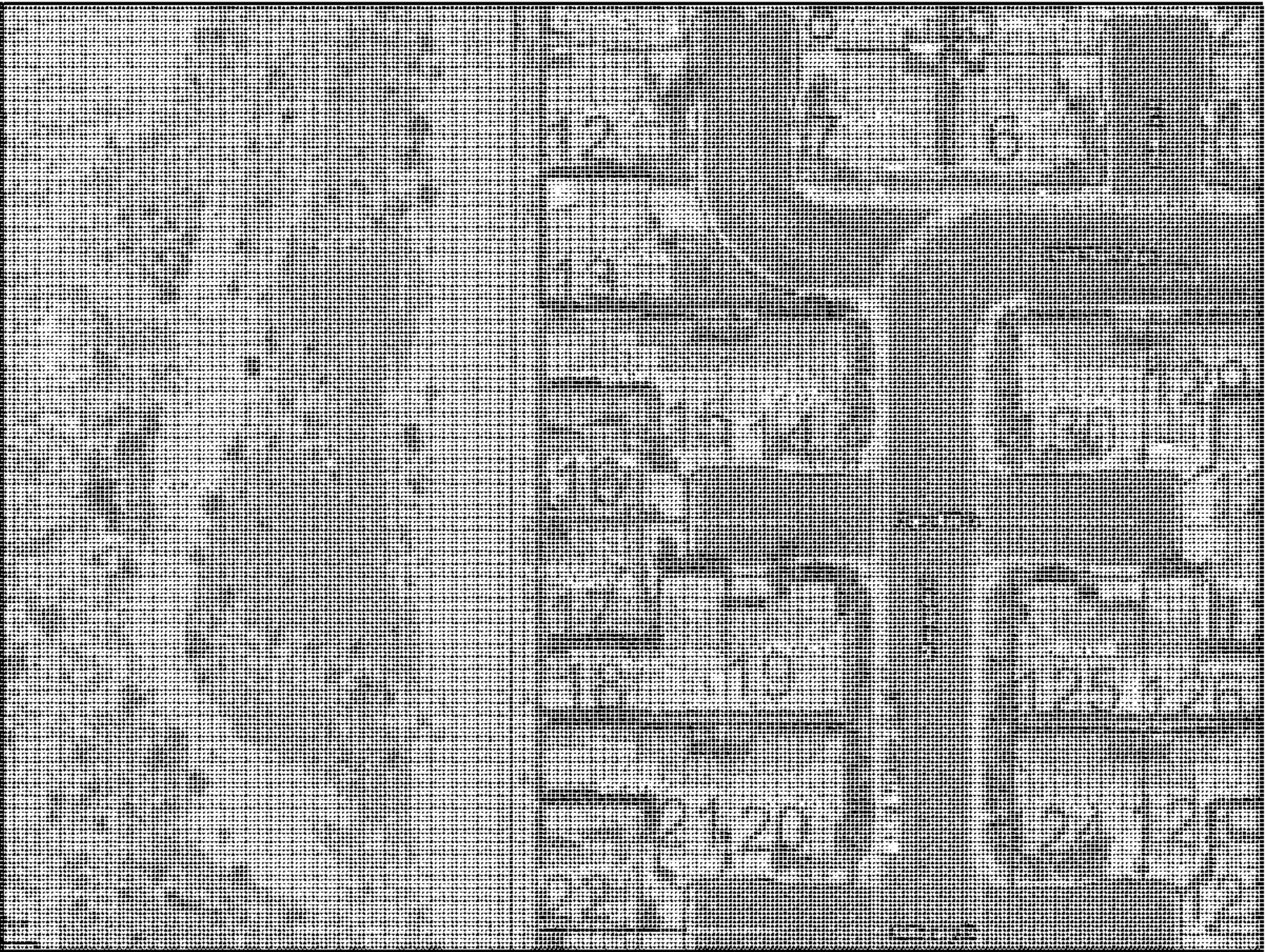
Location Map

Client	Snell & Wilmer LLP			
Property Address	9352 Cranesbill Court			
City	Las Vegas	County	Clark	State NV Zip Code 89149
Owner	Venise Abelard			



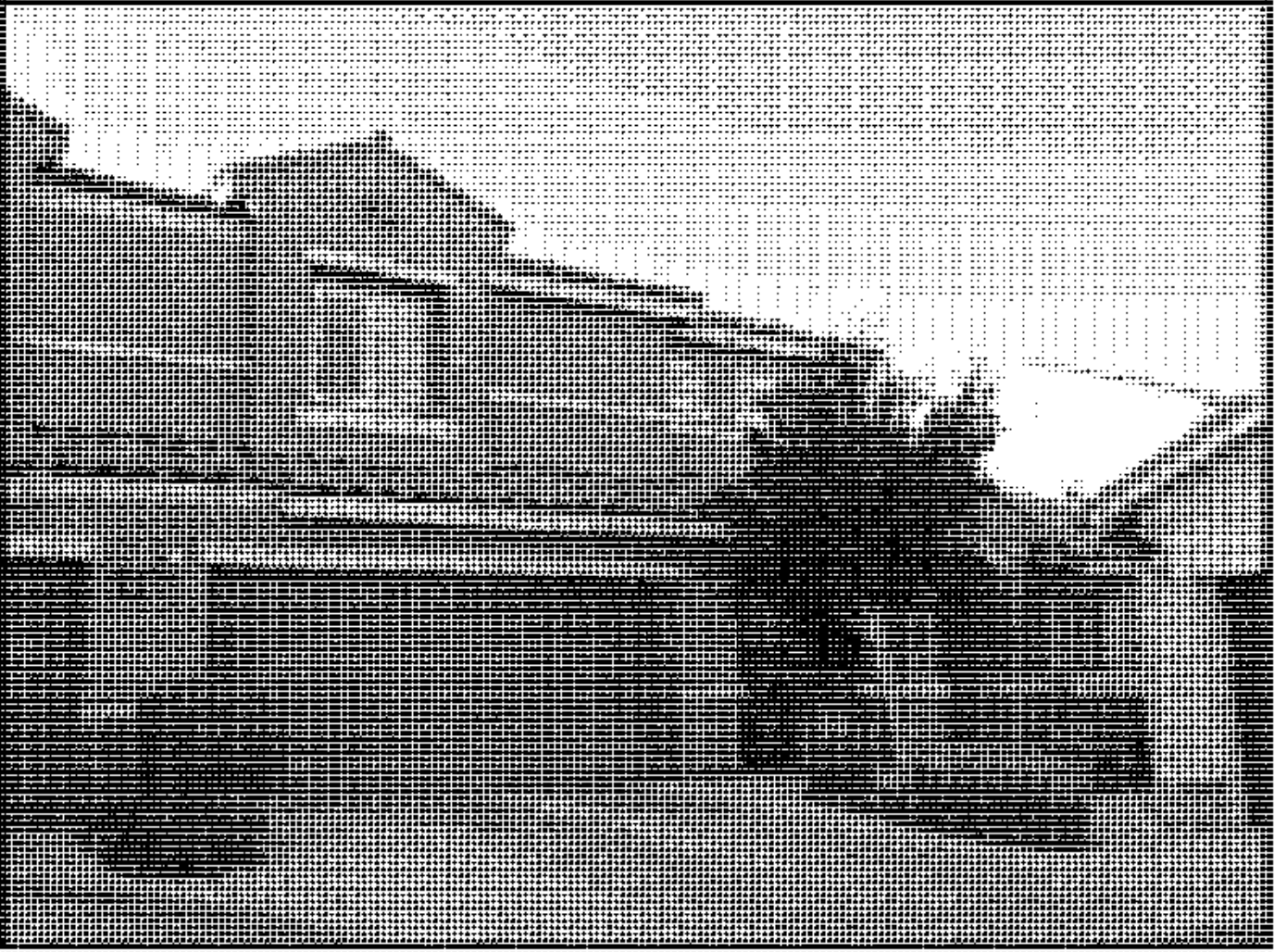
Plat Map

Client	Snell & Wilmer LLP				
Property Address	9352 Cranesbill Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89149
Owner	Venise Abelard				



Subject Photo Page

Client	Snell & Wilmer LLP				
Property Address	9352 Cranesbill Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89149
Owner	Venise Abelard				

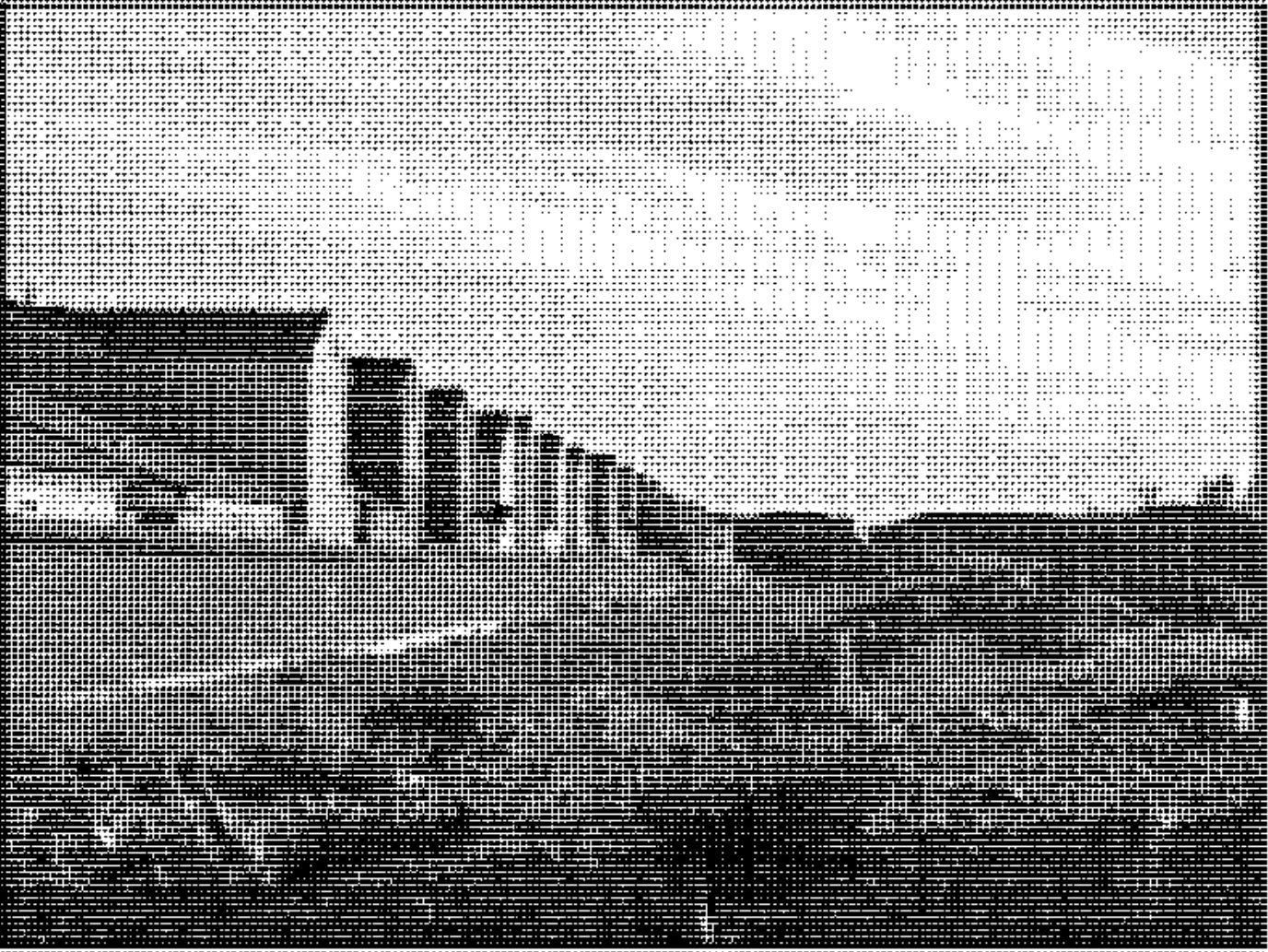


Subject Front

9352 Cranesbill Court
Sales Price
Gross Living Area 1,636
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2.5
Location Ft Apache Rch/Gtd
View Residential
Site 2,614 Sq FV/CDS
Quality Stucco
Age 5



Subject Street



Backs to Vacant Land

Comparable Photo Page

Client	Snell & Wilmer LLP			
Property Address	9352 Cranesbill Court			
City	Las Vegas	County	Clark	State NV Zip Code 89149
Owner	Venise Abelard			



Comparable 1

7821 Horsenettle Street
Prox. to Subject 0.21 miles SE
Sales Price 95,000
Gross Living Area 1,235
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2.5
Location Ft Apache Rch/Gld
View Residential
Site 3,049 SF/Corner
Quality Stucco
Age 4



Comparable 2

7805 Corn Lily Court
Prox. to Subject 0.18 miles S
Sales Price 105,000
Gross Living Area 1,636
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2.5
Location Ft Apache Rch/Gld
View Residential
Site 2,614 SF/CDS
Quality Stucco
Age 6



Comparable 3

7893 Clearweed Court
Prox. to Subject 0.14 miles SE
Sales Price 106,000
Gross Living Area 1,636
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2.5
Location Ft Apache Rch/Gld
View Residential
Site 2,614 SF/CDS
Quality Stucco
Age 1

Comparable Photo Page

Client	Snell & Wilmer LLP			
Property Address	9352 Cranesbill Court			
City	Las Vegas	County	Clark	State NV Zip Code 89149
Owner	Venise Abelard			



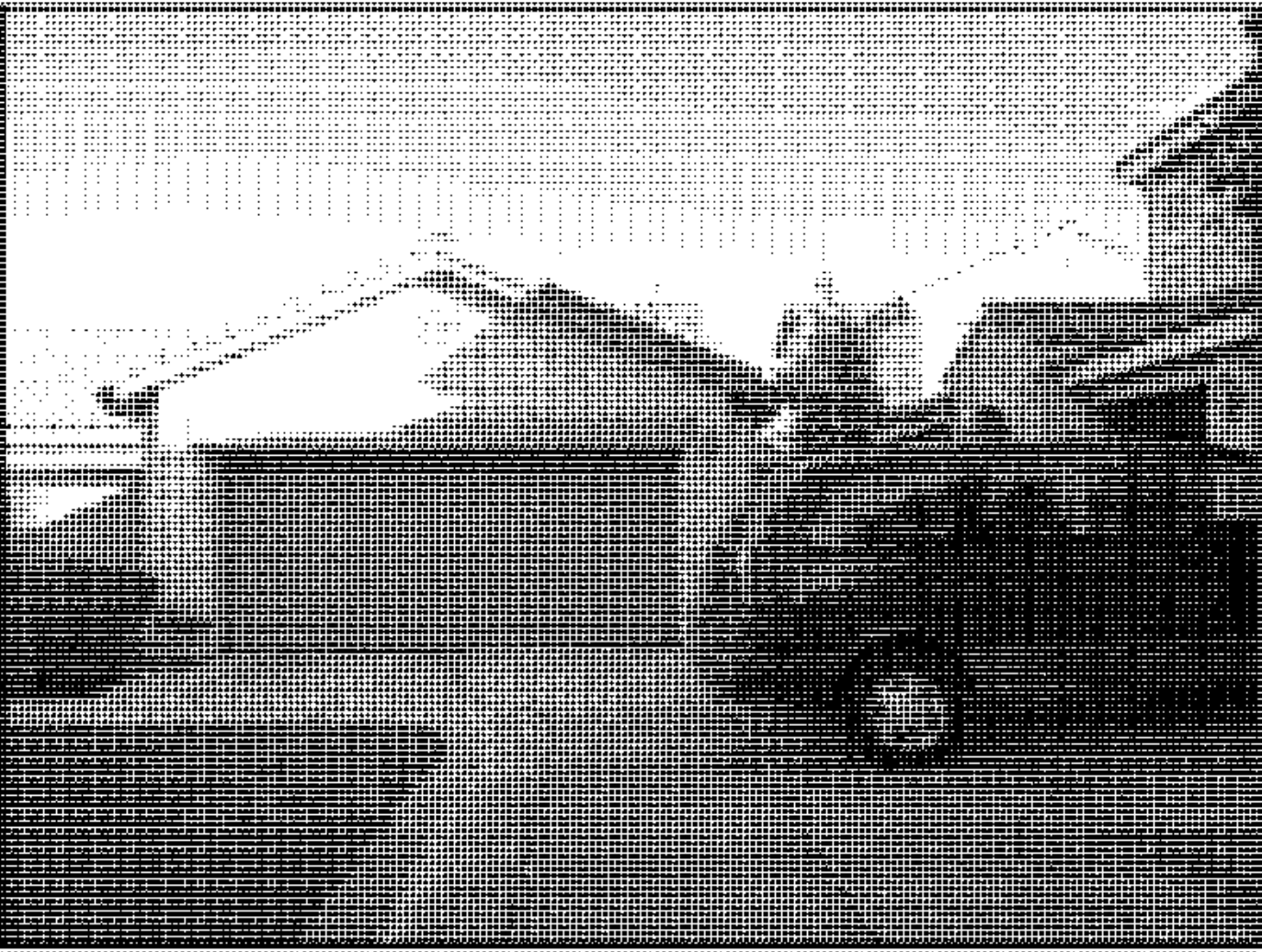
Comparable 4

9304 Pink Pear Court	
Prox. to Subject	0.11 miles SE
Sales Price	99,900
Gross Living Area	1,636
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2.5
Location	Ft Apache Rch/Gld
View	Residential
Site	2,614 SF/CDS
Quality	Stucco
Age	6



Comparable 5

9336 Pink Pear Court	
Prox. to Subject	0.09 miles S
Sales Price	98,000
Gross Living Area	1,235
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2
Location	Ft Apache Rch/Gld
View	Residential
Site	3,049 SF/CDS
Quality	Stucco
Age	6



Comparable 6

7812 Corn Lily Court	
Prox. to Subject	0.19 miles S
Sales Price	117,000
Gross Living Area	2,005
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	3
Location	Ft Apache Rch/Gld
View	Residential
Site	3,049 SF/CDS
Quality	Stucco
Age	6

Clarification of Scope of Work

File No. 9352 Cranesbill Ct

Client	Snell & Wilmer LLP			
Property Address	9352 Cranesbill Court			
City	Las Vegas	County	Clark	State NV Zip Code 89149
Owner	Venise Abelard			

CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic

Clarification of Scope of Work

File No. 9352 Cranesbill Ct

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Owner	Venise Abelard			

and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

Repairs or Deterioration: **Deficiency** and **livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

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Owner	Venise Abelard			

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 9352 Cranesbill Ct

Property Address: 9352 Cranesbill Court	City: Las Vegas	State: NV	Zip Code: 89149
Client: Snell & Wilmer LLP	Address: 3883 Howard Hughes Parkway #1100, Las Vegas, NV 89169		
Appraiser: R. Scott Dugan	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 9352 Cranesbill Ct

Property Address: 9352 Cranesbill Court	City: Las Vegas	State: NV	Zip Code: 89149
Client: Snell & Wilmer LLP	Address: 3883 Howard Hughes Parkway #1100, Las Vegas, NV 89169		
Appraiser: R. Scott Dugan	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value () Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

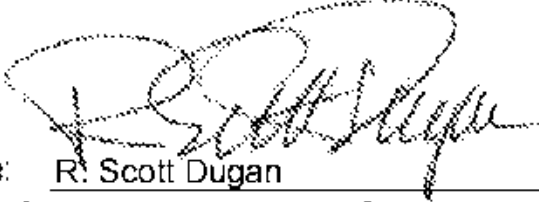
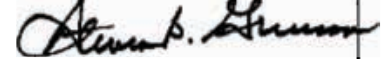
SIGNATURES	Client Contact: Snell & Wilmer LLP	Client Name: Snell & Wilmer LLP
	E-Mail: alang@swlaw.com	Address: 3883 Howard Hughes Parkway #1100, Las Vegas, NV 89169
	APPRAISER	
	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)	
		
	Appraiser Name: R. Scott Dugan	Supervisory or Co-Appraiser Name: _____
	Company: R. Scott Dugan Appraisal Company, Inc.	Company: _____
	Phone: 702-876-2000 Fax: 702-253-1888	Phone: _____ Fax: _____
	E-Mail: appraisals@rsdugan.com	E-Mail: _____
	Date Report Signed: December 07, 2015	Date Report Signed: _____
License or Certification #: A.0000166-CG State: NV	License or Certification #: _____ State: _____	
Designation: SRA	Designation: _____	
Expiration Date of License or Certification: 05/31/2017	Expiration Date of License or Certification: _____	
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None	Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None	
Date of Inspection: December 04, 2015	Date of Inspection: _____	

EXHIBIT 20



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

9 CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC;
10 U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I
through X; and ROE CORPORATIONS I through 10,
inclusive,

11 Defendants.

Case No. A-13-689461-C
Dep't No. VII

12
13 And all related actions.

14 **DECISION AND ORDER**

15 This case arises from a homeowners' association's non-judicial foreclosure sale of
16 residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The
17 HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which
18 included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf
19 Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the
20 property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit
21 alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116.
22 SFR and the homeowners' association counter that Marchai's lien is extinguished. Now
23 before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch
24 Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff
25 Marchai's opposition. These matters came before the Court on August 22, 2017. The Court
26 denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal
27 matters presented, finds in favor of Plaintiff Marchai.
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

1

001 03 2017

I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged \$140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to \$159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA \$900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA \$300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA \$645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA \$160.00 on March 10, 2011.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq... All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 II. Procedural History

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

16 On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the
17 Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada
18 Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408
19 (Nev. 2014) on September 18, 2014. The Nevada Snpreme Court denied a rehearing on
20 October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

21 Both Marchai and SFR filed motions for summary judgment on January 14, 2016.
22 The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA
23 foreclosnre procedure in the instant case complied with NRS Chapter 116. The parties filed
24 oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on
25 February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of
26 Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion
27 exceeded the appropriate page limit. SFR also argues Marchai's opposition contains
28 evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved in this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a means to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosnre under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded secnrity interest if the security interest holder "has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 "notified-the-association" provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the snperpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee's refusal to halt the sale constituted nnfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, "demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of frand, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Snpreme Court appears to distinguish a merely inadequate price from a price that is
26 "grossly inadequate as a matter of law" and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosnre sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA's statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai's responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied
26 the HOA's superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

1 **3. A Purchaser is Not Required to Present Cash at a Nonjudicial**
2 **Foreclosure Sale.**

3 Marchai presents that NRS 116.31164 requires that "on the day of the sale. . . the
4 person conducting the sale may sell the unit at public auction to the highest cash bidder."
5 It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a
6 cashier's check to Alessi on August 29, 2013, one day after the sale. Marchai argues that
7 this procedurally does not comply with the statute, interpreting the statute to require a
8 payment in U.S. currency at the time of the sale. The Court is not swayed by this argument.
9 The statute specifically requires a cash purchase rather than a credit purchase, but the
10 statute is silent as to timing of payment. A cashier's check in this context constitutes a cash
11 payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S.
12 currency, often in the many tens of thousands of dollars to an auction. SFR submitted
13 proof of funds to Alessi at the time of the sale and then tendered a cashier's check to Alessi
14 for the full price of purchase of the property. Consequently, the sale complied with NRS
15 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds
16 that a first notice of default is the operative notice when multiple notices are filed and prior
17 notices are nnwithdrawn.

18 **4. A Second Notice of Default Results in a Supplement of the First**
19 **Notice of Default when a First Notice of Default has not been Rescinded.**

20 A snperpriority lien consists of the nine months of unpaid homeowner assessments
21 prior to a notice of default. Without satisfaction or withdrawal of the first notice of default
22 a second notice of default serves only as a supplement to the first notice. A homeowner's
23 association is entitled to one superpriority lien on a single property without the rescission
24 of the prior notice of defanlt. Pnrsnant to the Nevada Supreme Court's holding in Property
25 Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev.
26 Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court's holding in
27 JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second
28 noticed super priority lien must have separate set of nnpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 snperpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensnre that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Defanlt. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

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IV. Conclusion

The Court finds that no genuine issues of material fact remain in this case. The Court denies SFR and the HOA's Motions for Summary Judgment. As the parties agree on all the material fact in this case, the resolution of the legal issues presented on the motions for summary judgment necessarily result in a finding in favor of Marchai.

DATED this 2nd day of October, 2017.


LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association


TINA HORD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017
08/2017

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT 21

1 **ORDER**


CLERK OF THE COURT

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 DESIGN 3.2, LLC.,) CASE NO. A621628
7)
8 Plaintiff(s),) DEPT NO. XV
9)
10 v.)
11 BANK OF NEW YORK MELLON,)
12 and DOES 1-10.,)
13 Defendant(s))
14)

15 **DECISION AND ORDER**

16 THIS matter having come on for hearing on June 15, 2011 for Defendant's Motion
17 For Summary Judgment, Plaintiff's Motion for Sanctions and Defendant's Countermotion
18 for Sanctions, the Plaintiff being represented by ALAN NEEDHAM, ESQ., and the
19 Defendant being represented by KEVIN HAHN, ESQ., and after reviewing all of the
20 moving papers on file herein, this Court makes the following Decision and Order:

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GMN
APR 08 2013

ABBI SILVER
DISTRICT JUDGE
DEPARTMENT FIFTEEN
CLAS VEGAS NV 89103

FACTS

On August 10, 2006, homeowner/borrower Patrick McKnight executed a promissory note, secured by a deed of trust, for \$576,000 in favor of Countrywide Bank, which was recorded on August 16, 2006. By June 6, 2008, the homeowners association, (hereinafter "HOA") recorded a "notice of delinquent assessment lien." On October 10, 2009, Plaintiff Design 3.2, LLC, hereinafter ("Plaintiff hereinafter LLC") purchased the property from McKnight. The following month, on November 1, 2009, McKnight defaulted on the mortgage. Two days later, on November 3, 2009, Plaintiff LLC purchased the property at the HOA foreclosure sale for \$3,743.84.

On April 29, 2010, ReconTrust substituted as trustee when it executed a Substitution of Trustee and on the same date filed a "Notice of Default/Election to Sell Under Deed of Trust." On April 30, 2010, Defendant Bank of New York Mellon, hereinafter ("Defendant BNYM") was assigned all beneficial interest in the property. By May 5, 2010, BNYM assigned the Deed of Trust to ReconTrust, who recorded both the assignment and the substitution of trustee that same day.

On July 26, 2010, Plaintiff filed a complaint to quiet title and unjust enrichment. On September 21, 2010, a Nevada Notice of Trustee Sale was recorded by ReconTrust. On January 10, 2011, a second Nevada Notice of Trustee's Sale was recorded by ReconTrust.

On May 10, 2011, Defendant BNYM filed this Motion for Summary Judgment on Plaintiff's quiet title and unjust enrichment claims because Plaintiff LLC purchased the property subject to Defendant BNYM's first-priority recorded deed.

DISCUSSION

Defendant BNYM seeks summary judgment on the two claims in Plaintiff's Complaint: quiet title and unjust enrichment. Defendant has provided sufficient evidence

to show that it has a priority lien on the property. Furthermore, Defendant submits it has not realized any unjust gain such that a claim for unjust enrichment in favor of Plaintiff is appropriate.

Plaintiff alleges the genuine issues of material fact that preclude summary judgment in favor of Defendant include (1) Whether Defendant purchased an invalid interest; (2) How much Defendant paid for its title interest; and (3) Whether the Assignment and Substitution are authentic and genuine documents. However, none of these are genuine issues of material fact for purposes of defendant's summary judgment motion.

Here, the Court finds that Defendant BNYM's lien is a priority lien. NRS 116.3116 controls liens against units for assessments, NRS 116.3116 (2)(b) provides:

NRS 116.3116 Liens against units for assessments.

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, 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. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

3. The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the 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, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period

of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

8. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive;

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1109, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

Here, Defendant BNYM's first security interest Deed was recorded on August 16, 2006, and is senior to the assessment lien. Furthermore, the Deed is in first priority according to common law. In the absence of countervailing equities, the order of priority depends on timing. Here, BNYM recorded first. After-acquired interests are subject to the rights of the holder of a properly recorded valid mortgage.

Further, this Court finds Plaintiff LLC is not a bona fide purchaser for value. Because Defendant BNYM's interest was recorded, thus, Plaintiff LLC was on actual or constructive notice. To allow plaintiff to prevail in its action for quiet title and extinguish BNYM's security would be a windfall and an inequity, as Plaintiff only paid \$3,743.84 for the property at the HOA foreclosure sale, where the original promissory note value was \$576,000.

1 Although the purchase of an invalid interest would preclude the right to encumber
 2 property with a lien, here there is no genuine issue as to whether the interest was validly
 3 purchased. Furthermore, there is no evidence to create a genuine issue of material fact
 4 regarding the authenticity and genuineness of the documents submitted by Defendant.
 5 Defendant has submitted evidence of a recorded Corporation Assignment of Deed of Trust,
 6 which transferred all beneficial interest from MERS to Defendant BNYM. Furthermore,
 7 Defendant has submitted evidence of a recorded Substitution of Trustee, certified by First
 8 American Title Insurance Company to be a copy of the official recording. Although
 9 Plaintiff makes allegations these are not authentic and genuine documents, the Nevada
 10 Supreme Court held in *Wood* that the nonmoving party may not defeat a motion for
 11 summary judgment by relying on the "gossamer threads of whimsy, speculation and
 12 conjecture." *Id.* at 731 (internal quotations omitted). Here, Plaintiff has submitted nothing
 13 more than speculation and conjecture to substantiate its claims, and summary judgment has
 14 not been defeated by Plaintiff's arguments.

15
 16 Furthermore, Plaintiff cannot defeat summary judgment based on the argument that
 17 there is a question as to the price Defendant paid for its title interest. Plaintiff apparently
 18 relies on NRS 40.451 to support the position that an assignee or transferee of interest in
 19 real property is limited in its right to collect on a debt to the amount of consideration the
 20 assignee or transferee paid for the interest. This is both inapplicable and incorrect. First,
 21 NRS 40.451 states that the definition of indebtedness only applies to NRS 40.451 to
 22 40.463, inclusive. These statutes only apply to foreclosure sales and deficiency judgments.
 23 Therefore, even if the Plaintiff's argument is correct, the limitation does not apply to the
 24 interest itself, but to an attempt to foreclose and collect a deficiency judgment. Thus, the
 25 argument is inapplicable. Second, Plaintiff misconstrues the statute. The statute states that
 26 the amount constituting a lien is limited to the amount of consideration paid by the
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 28

1 lienholder. This does not mean each successor-in-interest must pay the full amount of the
2 lien; such a construction would burden the alienability of property, including gift transfers
3 and assignments. Rather, because each successor-in-interest is put in the same position as
4 the original lienholder, their right to a lien is equal to that of the original lienholder.
5 Therefore, the argument is incorrect. Accordingly, summary judgment has not been
6 defeated by Plaintiff's second argument.

7 Finally, Plaintiff makes a general allegation that Defendant is perpetrating a fraud.
8 However, Plaintiff has done nothing to substantiate its claim as a genuine issue of material
9 fact. Accordingly, this allegation does not preclude summary judgment.

10 Summary judgment is also appropriate on the unjust enrichment claim. Such a
11 claim is appropriate where there is no legal contract but the person sought to be charged is
12 in possession of property, which in good conscience belongs to another.

13 Unjust enrichment is the "unjust retention of a benefit to the loss of another, or the
14 retention of money or property of another against the fundamental principles of justice or
15 equity and good conscience." *Nevada Industrial Dev.*, 103 Nev. at 363 n. 2. The essential
16 elements of unjust enrichment include: 1) a benefit conferred on the defendant by the
17 plaintiff; 2) appreciation by the defendant of such benefit; 3) and acceptance and retention
18 by the defendant of such benefit." *Unionamerica Mtg.*, 97 Nev. at 212 (1981).

19 Here, Plaintiff can only meet the element that there is lack of a contract. Thus,
20 Plaintiff has failed to show there is any genuine issue of material fact to preclude summary
21 judgment. The Court finds the Defendant has shown it has a valid interest in the property.
22 Plaintiff has failed to put forth any facts to genuinely question the validity of the
23 documents or to show there was a benefit conferred on the Defendant by the Plaintiff; that
24 Defendant appreciated such a benefit; or that there was acceptance and retention by the
25 Defendant of such benefit.

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ADD: SILVER
DISTRICT JUDGE

REPRESENT FIFTEEN
LAS VEGAS NV 89106

1 Defendant of the benefit. Accordingly, summary judgment is appropriate in favor of
2 Defendant.

3 Plaintiff has not raised other genuine issues of material fact. Accordingly
4 Defendant BNYM's Motion for Summary Judgment is granted.

5 Next, pursuant to NRCP 37, Plaintiff's Motion for Sanctions and Defendant's
6 Countermotion for Sanctions are denied. NRCP 37 states that the Court may compel
7 disclosure or sanction a party for failure to comply with discovery. The request must be
8 accompanied by a certification that the movant, in good faith, conferred or attempted to
9 confer with the other party to secure the discovery prior to court action. NRCP
10 37(a)(2)(A). Under NRCP 37(a)(4)(A), a prevailing movant is entitled to fees and costs
11 unless Plaintiff did not first make a good faith effort to obtain the discovery without court
12 action. Under NRCP 37(a)(4)(B), if the motion is denied, the Court shall, after affording
13 an opportunity to be heard, require the movant to pay the defending party the reasonable
14 expenses incurred in opposing the motion, unless the Court finds the motion was
15 substantially justified or that other circumstances make an award of expenses unjust.
16


17 Here, Plaintiff LLC has failed to comply with the requirement of NRCP
18 37(a)(2)(A), as Plaintiff LLC did not provide a certification that it conferred or attempted
19 to confer with the Defendant in an effort to secure the disclosure without court action.
20 Furthermore, none of the claims rises to the level of sanctionable behavior. Accordingly,
21 the motion is advanced and denied.
22

23 The Defendant has requested sanctions pursuant to NRCP 37(a)(4)(B). Although
24 the Court found that Plaintiff LLC failed to comply with the certification requirement of
25 NRCP 37(a)(2)(A), the Plaintiff's actions do not rise to the level of sanctionable behavior,
26 despite the vagueness of some of the submitted discovery. Accordingly, Defendant
27 BNYM's Countermotion for Sanctions is denied.
28

ABBI SILVER
DISTRICT JUDGE
COMMUNITY FIFTEEN
LAS VEGAS NV 89156

1 Based on the foregoing reasons, defendant's motion for summary judgment is
2 granted. Plaintiff's motion for sanctions and defendant's countermotion for sanctions is
3 denied.

4 DATED this 8th day of April, 2013.

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6 
7 JUDGE ABBI SILVER
8 EIGHTH JUDICIAL COURT XV
9

10 CERTIFICATE OF SERVICE

11 I hereby certify that on the date filed, I placed a copy of this Order in the attorney's
12 folder in the Clerk's Office, mailed or faxed a copy to:

13 Alan Needham, Esq. Needham Law Firm
14 Kevin Hahn, Esq. Malcolm & Cisneros

15 
16 Judicial Executive Assistant
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ABBI SILVER
JUDGE
EIGHTH JUDICIAL COURT
1207 PEARSON AVENUE
BOSTON, MA 02114